Bond Case Briefs

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GASB Issues Proposals Designed to Improve Government Financial Reports and Establish Recognition Concepts.

Norwalk, CT, September 28, 2018 — The Governmental Accounting Standards Board (GASB) today issued a Preliminary Views proposing improvements to key components of the financial reporting model. In a separate, related document, the Board also proposed new concepts intended to guide the Board in developing standards on recognition in financial statements.

GASB Chairman David A. Vaudt said: "What the Board ultimately is trying to do through these companion projects is provide better information to financial statement users. These proposals are designed to enhance both the value and clarity of the information reported in financial statements," he added.

Stakeholders are asked to review and provide input on the proposals contained in the two Preliminary Views by February 15, 2019.

Financial Reporting Model Improvements

The Preliminary Views, *Financial Reporting Model Improvements*, presents the Board's current thinking on targeted improvements to the financial reporting model—the blueprint for the annual audited financial report. The proposals are designed to improve the model's effectiveness in providing information essential to decision making and assessing a government's accountability.

The proposed improvements include:

- A short-term financial resources measurement focus for governmental funds that recognizes short-term transactions and other events when incurred and long-term transactions and other events when due
- A format for governmental fund financial statements that distinguishes between current and long-term resource flows
- Clarified explanations of operating and nonoperating revenues and expenses
- An additional subtotal in proprietary fund financial statements for operating income (loss) and noncapital subsidies
- Presentation of all budgetary comparison information as required supplementary information and required presentation of two variance columns
- Communication of major component unit information either in the government-wide statements or in combining financial statements
- A new schedule of government-wide expenses by natural classification as supplementary information in comprehensive annual financial reports.

The Preliminary Views considers improvements in selected areas of the existing financial reporting model. The Board plans to address enhancement of other areas of the model in a subsequent proposal.

Recognition of Elements of Financial Statements

The Preliminary Views, *Recognition of Elements of Financial Statements*, presents the Board's current views on concepts related to recognition of elements of financial statements, such as assets and liabilities.

Recognition concepts encompass two aspects of state and local government financial statements:

- The *measurement focus* of a specific financial statement determines *what* items should be reported.
- The related *basis of accounting* determines *when* those items should be reported.

The Preliminary Views proposes that an item being considered for recognition in financial statements would be evaluated using a hierarchy for recognition of elements. The hierarchy would require the Board follow a specific order of elements when considering if an item should be recognized and as what element (for example, as an asset, deferred outflows of resources, or expense).

The Preliminary Views also proposes a recognition framework for both the short-term financial resources measurement focus (proposed for use in governmental fund financial statements in the companion Preliminary Views) and the economic resources measurement focus (used in government-wide, proprietary fund, and fiduciary fund financial statements).

Issuing the two documents concurrently is intended to provide stakeholders with a conceptual context for how elements of financial statements would be recognized and then to see how those elements would be presented within the financial reporting model.

Alternative Views

The documents also contain alternative views to some of the proposals.

Share Your Comments

Written comments should be addressed to the Director of Research and Technical Activities, Project No. 3-25 (*Financial Reporting Model Improvements*) or Project No. 3-20 (*Recognition of Elements of Financial Statements*), and emailed to director@gasb.org.

A series of public hearings and user forums on the Preliminary Views documents are scheduled as follows:

Public Hearings
March 5, 2019, Rosemont, IL
March 12, 2019, Atlanta, GA
March 14, 2019, Flushing, NY

User Forums
March 6, 2019, Rosemont, IL
March 14, 2019, Flushing, NY.

The deadline for written notice of intent to participate is February 15, 2019. Additional information is available in each of the Preliminary Views.

BDA Submits Comment Letter: MSRB Draft Amendments to Primary Offering Rules

The BDA submitted a comment letter in response to the MSRB Request for Comment on Draft Amendments to Primary Offering Rules. The notice can be viewed here.

The final comment letter can be viewed here.

The comment letter focuses on the following topics:

G-11 Primary Offering Practies

- Free-to-Trade Wire; and
- Alignment of the time frame for the payment of group net sales credits with the payment of net designation sales credits.

G-32 Disclosures in Connection with Primary Offerings

- Equal access to the disclosure of the CUSIP numbers refunded and the percentages thereto; and
- Whether non-dealer Municipal Advisors should make the official statement available to the managing or sole underwriter after the issuer approves it for distribution.

Bond Dealers of America

September 17, 2018

Fitch U.S. Public Finance and Global Infrastructure and Project Finance 2017 Transition and Default Study.

Read the study.

28 Sep 2018

Fitch Ratings Updates US State Revolving Fund and Muni Finance Pool Program Criteria.

Fitch Ratings-Austin-27 September 2018: Fitch Ratings has published an update to its "U.S. Public Finance State Revolving Fund and Municipal Finance Pool Program Criteria." This report replaces the previous report of the same title initially published on Oct. 10, 2017. There have been no changes to Fitch's underlying methodology.

Read the Updated Criteria.

S&P U.S. Municipal Retail Electric And Gas Utilities: Methodology And

Assumptions

S&P Global Ratings is publishing its methodology for assigning ratings and related credit products to U.S. municipal retail electric, retail gas, steam, chilled water, and combined utility systems where electric and/or gas is the predominant service (together, hereafter referred to as "municipal retail electric and gas"). These criteria are implemented under the rating framework established in cha...

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Sep. 27, 2018

S&P RFC Process Summary: U.S. Municipal Retail Electric And Gas Utilities: Methodologies And Assumptions

On Nov. 27, 2017, S&P Global Ratings published a request for comment (RFC) on its proposed approach for assigning ratings and related credit products to U.S. municipal retail electric and gas utilities, including municipal retail electric utilities and electric distribution cooperatives, retail gas, steam and hot water heating, chilled water, and combined utility systems for which the before-menti...

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Sep. 27, 2018

S&P Advance Notice Of Proposed Criteria Change: Priority-Lien Tax Revenue Debt

S&P Global Ratings intends to publish within the next two months its revised criteria for assigning ratings and related credit products to priority-lien tax revenue debt issued by municipal governments, state governments, or other U.S. public finance obligors where the pledged revenue stream is limited. The proposed revised criteria provide market participants with greater insight into the ratings...

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Sep. 24, 2018

America's Libor Alternative Is Gaining Traction on Wall Street.

- **Issuers have sold more than $9 billion of SOFR-linked debt**
- **Yet tepid futures trading shows new benchmark has a ways to go**

After some early struggles, America's Libor alternative appears to be finding its footing.

Since the debut of the Secured Overnight Financing Rate almost six months ago, futures have launched in Chicago, swaps are being cleared in London and about half-a-dozen issuers have sold debt linked to the nascent benchmark. Measured against the Alternative Reference Rates Committee's [transition plan], efforts to develop SOFR as a viable replacement for the scandal-tainted London interbank offered rate appear to be proceeding ahead of schedule.

That's not to say it doesn't have a long way to go. Volumes and open interest in derivatives products indicate the market is still highly illiquid. And firms remain hesitant to commit resources to SOFR when there's a chance Libor's administrator and the panel banks that determine its setting could keep it alive past 2021, when global regulators intend to sound its death knell. Yet it's a far cry from April, when two weeks after SOFR's introduction the Federal Reserve Bank of New York disclosed it had made errors calculating the rate, an inauspicious start for a benchmark racing against time to gain traction.

Continue reading.

Bloomberg Markets

By Alex Harris

September 23, 2018, 10:01 PM MDT Updated on September 24, 2018, 9:13 AM MDT

Libor Replacement Carries Risk for States and Cities, Group Says.

- **Muni finance officers group issues bulletin on benchmark shift**
- **'There's a whole world of costs here,' says GFOA official**

The end of the London interbank offered rate after 2021 could have costly consequences for states and cities and managers need to start preparing, the Government Finance Officers Association said Thursday.

About $44 billion of floating-rate municipal bonds and an unknown amount of loans and interest-rate swaps entered into by states and cites are tied to the U.S. dollar Libor. Many of these securities and contracts will continue long after 2021, when Libor is phased out.

Municipalities will need to take inventory of debt and investments tied to Libor and hire lawyers and advisers to review contracts and renegotiate them before 2022, according to the GFOA. States and cities should also develop mechanisms to transfer Libor-based products to the Secured Overnight Financing Rate, Libor's replacement.

"There's a whole world of costs involved here that we haven't quite explored," said Emily Brock, federal liaison for the GFOA, which represents local government officials. "We don't understand the magnitude of it."

About $350 trillion of derivatives, loans, mortgages, commercial paper and other debt is tied to Libor, which was used for decades as a global floating-rate borrowing benchmark until rate-rigging scandals ruined the index's credibility. The Federal Reserve Bank of New York selected the Secured Overnight Financing Rate as Libor's recommended replacement.

Instead of a daily survey of about 20 large banks that estimate how much it would cost to borrow from each other without putting up collateral, SOFR is calculated using trades in the U.S. Treasury repurchase agreement market. S&P Global Ratings expects the SOFR rate to be lower than Libor because SOFR is secured by collateral.

It may not be feasible for banks and counterparties to amend trillions of dollars of derivative contracts before 2022, Loop Capital Markets said in March. Municipalities may be forced to terminate swap contracts, triggering millions of dollars in payments to banks or endure expensive and drawn-out legal battles.

In addition, switching outstanding tax-exempt floating-rate debt from Libor to a different index may cause them to be considered "reissued" under Internal Revenue Service guidelines, resulting in the debt becoming taxable, Loop said.

City managers that are well-versed in the transition to SOFR from Libor and actively preparing to amend documents will be viewed more favorable than those ignoring the issue or waiting until 2021 to deal with it, S&P Global Ratings said in a June comment.

"The often-restrictive procedures U.S. public finance issuers must follow to amend documents will make the three years go by very quickly," the rating company said.

Bloomberg Markets

By Martin Z Braun

September 20, 2018

— With assistance by Danielle Moran

Conflict of Interest Issues are Pivotal for Municipal Advisors.

Municipal advisors are required to manage carefully, as pivotal issues, conflicts of interest and their disclosure to municipal entity and obligated person clients.

The fiduciary duty of loyalty and MSRB Rule G-17's fair dealing mandate require that conflicts be disclosed and that advisors obtain clients' fully-informed consents to significant conflicts.

The fiduciary duties of municipal advisors arise under both federal and state common law. Dodd-Frank does not override state law. Numerous historical actions have applied state law against non-disclosing advisors.

The MSRB states regarding Rule G-42: "Municipal advisors may be subject to fiduciary … duties under state … laws. Nothing contained in this rule shall be deemed to supersede any more restrictive provision of state … laws applicable to municipal advisory activities."

Under state law, municipal advisors must act solely in their clients' best interests. Tamar Frankel states in *Legal Duties of Fiduciaries*: "The legal duty of loyalty takes two forms. One form is a requirement that fiduciaries act for the sole benefit of the entrustors. The other form is a prohibition on fiduciaries from acting in conflict of interests with the interests of the entrustors." Comment to *Restatement of Agency* §8.01 states: "the general fiduciary principle requires that the agent subordinate the agent's interests to those of the principal and place the principal's interests first as to matters connected with the agency relationship."

Under federal law, the MSRB stated, contrasting municipal advisors with underwriters: “unlike a municipal advisor, the underwriter does not have a fiduciary duty to the issuer under the federal securities laws and is, therefore, not required by federal law to act in the best interests of the issuer without regard to its own financial or other interests …” MSRB Notice 2012-25.

Some advisors may not be sensitive, however, to certain conflicts. This Commentary identifies multiple simultaneous potential conflicts, especially in, but not limited to, certain voted bond issues.

In voted bond issues, it is possible to identify three periods—the pre-election period (when issuers' governing bodies make important decisions), the election period (when voters decide), and the post-election period (when issuers, with professionals, make more detailed decisions and close transactions).

This Commentary, drawn from experience, describes a hypothetical advisor's work.

Contingent Closing Fees

Our hypothetical highly-active advisor has charged contingent closing fees in all of its bond issues for many hundreds of projects.

Contingent closing fees are recognized by many market participants as detrimental to issuers. This fee structure has tended to dominate the discussion of conflicts, although there are other significant advisory conflicts. Some issuers, especially smaller, less sophisticated ones, may be served only by professional teams who will not be paid without a closing. Those issuers may not receive input from a single professional without an eye on closing compensation.

Most bond issues require months of hard work. Risky or difficult issues commonly require additional time. Professionals paid contingent fees place those months of hard work at risk, if they provide advice delaying or discouraging closings. Professionals working directly on bond issues may experience pressures to complete transactions from supervisors or partners. Nevertheless, it may be in issuers' best interests not to close. I have seen numerous examples of imprudent bond issues.

The National Federation of Municipal Analysts' *White Paper on the Disclosure of Potential Conflicts of Interest in Municipal Finance Transactions* states: “Historically, compensation arrangements in municipal finance transactions that hinged on transactional completion have been associated with poorly structured bond issues …, to the detriment of municipal investors, as well as issuers and obligors.”

While some may argue that other fee structures also involve conflicts — professionals paid hourly fees may charge additional time — the relative risks to issuers are not identical. The risk to issuers from additional time charged as hourly fees is dwarfed in contrast to potential seven figure costs to issuer from unwise closings.

In my 40-plus years in the municipal market, I found that non-contingent fees tended to be lower than contingent fees. Indeed, the “contingency” often is cited as a risk by professionals in justifying higher fees. Our advisor does not disclose this information.

Further, additional time charged as hourly fees may be exactly what is necessary for extra care that protects issuers—time that advisors paid contingent fees may avoid to minimize their own costs and delays.

The Government Finance Officers Association's *Best Practice—Selecting and Managing Municipal Advisors* discourages the payment of contingent fees, stating a preference for non-contingent fees "to remove the potential incentive for the municipal advisor to provide advice that might unnecessarily lead to the issuance of bonds."

GFOA opines that "this may be difficult given the financial constraints of many issuers." GFOA adds, however, that issuers paying contingent fees should "undertake ongoing due diligence to ensure that the financing plan remains appropriate for the issuer's needs." GFOA does not indicate how tens of thousands of small, unsophisticated issuers heavily dependent upon their municipal advisors are able to discharge additional oversight responsibility effectively.

Non-contingent fees are rarely burdensome. Even financially-limited issuers routinely pay non-contingent fees to a wide variety of professionals. In completed transactions, non-contingent fees are recoverable from bond proceeds. Moreover, if financially-limited issuers pay non-contingent fees in uncompleted transactions, it may be for the best advice issuers possibly could have received.

In practice, some advisors act directly counter to GFOA's expressed opposition to contingent fees. What GFOA presents as an exception to the general rule of avoiding contingent fees instead is applied by some advisors on a vastly broader basis, destroying issuer choice. Those municipal advisors charge contingent closing fees in every bond issue and never offer issuers fee alternatives.

Our hypothetical advisor always proposes contingent fees to issuers without disclosing risks, without offering alternative fees, without informing issuers of the pros and cons of alternative fees, without informing issuers that non-contingent fees are recoverable from bond proceeds, and without obtaining issuer consents. Yet, our advisor advertises itself misleadingly as "independent." NFMA states: "Contingent compensation is especially undesirable for … for municipal advisors … who are expected to be independent in the provision of advice …"

Consequently, some issuers have never been offered non-contingent fees and have never received disclosure identifying fee alternatives or relative merits.

Unfortunately, the additional burden the conflicts place upon issuers severely weakens the issuers' important intended Dodd-Frank Act protections.

Notably, Tamar Frankel states: "When fiduciaries wish to engage in conflict of interest transactions and seek their entrustors' consent, the entrustors must fend for themselves. Their right to rely on their fiduciaries must be eliminated. In fact, during the bargaining, the entire fiduciary relationship must be terminated and replaced by the relationship of contract." Our advisor does not disclose this information.

Multiple Contingent Closing Fees

A related conflict is that, during the pre-election period, our hypothetical advisor encourages an issuer's board to propose to voters a tax-supported bond plan that cannot be executed completely on the basis of existing property values and estimated tax rates. The advisor encourages the issuer to add projects extending beyond the issuer's immediate intentions. The recommended plan relies in part upon a second future issuance assuming property values inflate.

Our hypothetical advisor anticipates multiple closings and multiple contingent fees pursuant to its recommended bond plan. Work on a future issue will duplicate much of the disclosure and bond documentation. Hourly fees would be based only on actual time.

Fees Contingent on Board Action and Election Results

Our hypothetical advisor describes the pre-election period as the "marketing phase."

The advisor charges, in the pre-election period, a fee contingent upon approval by the issuer's board of the advisor's recommended bond plan and upon voter bond authorization. This contingent fee motivates the advisor to promote bond issuance.

Our advisor assures the issuer's board that the advisor's recommended bond plan for multiple bond issues refunding outstanding obligations and funding additional projects is based upon "conservative" modeling. Actually, the advisor does not (and lacks skills to) prepare financial analysis supporting the recommendation. Ultimately, the advisor's recommended tax rate and bond principal prove inadequate even to refund the issuer's outstanding obligations.

Election Consulting Conflicts

Our advisor anticipates that favorable bond election results will lead to the hypothetical advisor's collection of its pre-election contingent fee and of multiple post-election contingent fees.

The advisor works on the bond election pursuant to an election committee contract for a fee drastically below the advisor's typical compensation. The advisor sends multiple officers to a distant community for several days to work in the bond election for a hypothetical fee and reimbursement of $1,500, while anticipating receipt of aggregate contingent compensation of $160,000.

In effect, our hypothetical advisor works on the bond election as an undisclosed "loss leader."

To recover its losses, the advisor must convince voters to authorize the bonds. In our hypothetical, taxpayer advocates supporting bond issuance object to assertions in campaign literature prepared by the advisor and threaten to withdraw support until retraction.

Dependence on Underwriters

Our hypothetical advisor not only cannot prepare bond structuring analyses, but depends on underwriters to do so—a serious conflict. This is why our advisor recommends negotiated bond issues even for highly-rated commoditized bonds with a common security structure.

Assistance by the advisor in the underwriters' retention enhances the conflict's severity, as does the advisor's negotiations on behalf of the issuer with the underwriters of compensation, bond terms, and yields—an agency role.

Disclosure and Consents

Requirements for disclosure of conflicts and for obtaining client consents arise under MSRB Rules G-42 and G-17, as well as the Dodd-Frank Act's statutory fiduciary duty and state common law.

MSRB Rule G-42(b) requires disclosure of municipal advisor conflicts arising from certain relationships, stating: "A municipal advisor must… provide to the municipal entity or obligated person client full and fair disclosure in writing of: … "(E) any conflicts of interest arising from compensation for municipal advisory activities to be performed that is contingent on the size or closing of any transaction …; and (F) any other actual or potential conflicts of interest, of which the municipal advisor is aware after reasonable inquiry, that could reasonably be anticipated to impair the municipal advisor's ability to provide advice .. ."

In Supplementary Material, Rule G-42 provides that "Disclosures of conflicts of interest by a municipal advisor to its municipal entity or obligated person client must be sufficiently detailed to inform the client of the nature, implications and potential consequences of each conflict."

Describing state law, Tamar Frankel states: “Fiduciaries must provide … material information necessary for the entrustors to make an informed decision. … In reality, entrustors can seldom perform [a cost-benefit] analysis because they lack accurate information … ,” adding “the burden of proving” fairness and reasonableness “is usually on the fiduciaries.”

Tax regulations

The Restatement of Agency §8.06, speaks to how agents, such as municipal advisors, are able to obtain effective state law consents. Agents must “act[] in good faith,” “disclose[] all material facts that the agent knows, has reason to know, or should know would reasonably affect the principal’s judgment,” and “otherwise deal[] fairly.” The Restatement adds that the agent has the burden of proving informed consent.

Conclusion

Municipal advisors to municipal entities and obligated persons may be subject simultaneously to multiple conflicts of interest that should be fully disclosed, with client consents, under both federal and state law. It is essential for advisors to be sensitive to these significant issues.

The Bond Buyer

By Robert Doty

Published September 25 2018

In Need of More Research – The Congressional Research Service’s Error-Filled Report on Private Activity Bonds (and, Specifically, Qualified 501(c)(3) Bonds)

As readers of this blog know, the version of the Tax Cuts and Jobs Act that was passed by the House of Representatives would not have allowed any private activity bond (including any qualified 501(c)(3) bond) to be issued as a tax-exempt bond after December 31, 2017. The version of the Tax Cuts and Jobs Act passed by the Senate, and the version ultimately enacted into law, did not include this repeal of tax-exempt private activity bonds.

We’ve previously explored (here) why the House wanted to eliminate tax-exempt private activity bonds and debunked the purported policy bases that were articulated by members of the House in support of the repeal of tax-exempt private activity bonds. The need for exploration and debunking remains, in light of both the Republicans’ insatiable desire to enact tax cuts and the release by the Congressional Research Service of its report titled “Private Activity Bonds: An Introduction,” which appears to have been drafted to afford a policy rationale to eliminate the income tax exemption for interest paid on certain private activity bonds (which elimination would, of course, be used to cover the cost of income tax rate reductions).[1] To discover the errors in CRS’s report, hit the jump.

Continue reading.

By Michael Cullers on September 25, 2018

The Public Finance Tax Blog

Squire Patton Boggs

Do Non-Municipal Exposures Help or Hurt a Bond Insurer?

The bond insurance industry was devastated in the financial crisis of 2008-2009. The failure of almost all of the bond insurers was not a result of the municipal bonds they insured but was instead largely tied to the non-municipal exposures such as asset-backed securities (ABS) and collateralized debt obligations (CDOs).

In this article, we examine why the insurers decided to insure these riskier assets and how non-municipal exposures changed bond insurers for the better.

Continue reading.

municipalbonds.com

by Joshua Hudson

Sep 19, 2018

SEC Announces Muni Conference, as Regulators Face Backlash.

CHICAGO – A Securities and Exchange Commission official announced the commission will host a muni disclosure conference at its headquarters on Dec. 6 during a bond lawyers' meeting here where regulatory officials got some backlash on recent rules and advisories.

Rebecca Olsen, director of the SEC's Office of Municipal Securities, announced the commission conference during a Thursday panel at the National Association of Bond Lawyers' Bond Attorneys' Workshop.

The conference will be a one-day affair and will feature opening remarks from SEC Chairman Jay Clayton, Olsen said. The conference stems from a recommendation in the SEC's 2012 Report on the Municipal Securities Market that the SEC hold such an event.

Olsen noted that the SEC has not provided formal written interpretive guidance on both primary and continuing disclosure since a 1994 interpretive release which explored those obligations with respect to the antifraud provisions in the federal securities laws. She said the commission hopes the conference will provide it with market perspectives to inform its decisions, including on whether to issue new guidance.

"We're very much focused on disclosure," Olsen said.

The panel, titled "Hot Topics in Securities Law," was held twice Thursday with the same participants. Besides Olsen's announcement, the discussion also included the SEC's recent amendments to its Rule 15c2-12, the Municipal Securities Rulemaking Board's controversial 2017 market advisory on selective disclosure, and an overview of the SEC's recent enforcement efforts.

The commission's amendments to 15c2-12, effective Feb. 27 of next year after their August approval, adds two new events to the list issuers must agree to disclose through the MSRB's EMMA system. One of those new events is the incurrence by the issuer of a new material financial obligation, as well as details about that obligation. The other new requirement is that issuers file an event notice for certain actions or events related to their financial obligations that "reflect financial difficulties" such as a default, event of acceleration, termination event, or modification of terms.

Though the new requirements are narrower than those originally proposed, they still have met with some backlash from the market. Panelist Ernesto Lanza, senior counsel at Clark Hill in Washington, said that he believes there are many issuers who have not been fully advised of what their new responsibilities will be.

Specifically, Lanza said, issuers need to be prepared to report any indications of "financial difficulty" related to their debts and obligations as soon as the rule is effective.

Rebecca Lawrence, chief counsel for public finance and fixed income sales and trading at broker-dealer Piper Jaffray (PJC), said underwriters and issuers are already butting heads over what is material and therefore needs to be disclosed.

Courts have said that materiality means information a reasonable investor would consider important in making an investment decision.

Underwriters generally want a lot of issuer disclosure due to the legacy SEC's Municipalities Continuing Disclosure Cooperation initiative, which in 2016 resulted in 72 underwriters being fined by the SEC.

But issuers are already saying they don't feel they should have to disclose certain obligations and covenants, Lawrence said.

"I doubt there's going to be a lot of agreement on these concepts," Lawrence said.

Olsen and Mark Zehner, deputy chief at the SEC enforcement division's public finance abuse unit, pushed back against criticism of the amendments and complaints about a lack of guidance on the concept of materiality.

"These amendments very strategically focused on an information gap," Olsen said.
Zehner suggested recording or otherwise documenting the materiality discussion so that enforcement officials who might investigate would be able to see a good faith effort to comply.

MSRB Chief Regulatory Officer Lanny Schwartz responded to criticism of the MSRB's 2017 advisory warning against the "selective disclosure" by issuers of information to only a few potential investors. The "market advisory" triggered criticism because the topic is outside the scope of the MSRB's regulatory authority.

"We have heard that criticism and we are very mindful of that criticism," Schwartz said.

Schwartz, who joined the MSRB four months ago, said the MSRB will make an even greater effort to be clear that such market commentaries do not have regulatory implications. They are meant as educational, Schwartz explained, and the MSRB is confident in its legal right to make such commentary when it sees fit.

Dave Sanchez, a senior counsel at Norton rose Fulbright in San Francisco who moderated the panel, told Schwartz that nobody has a problem with education but that market participants are unsure what to make of "extraneous statements." Zehner said that enforcement lawyers would not be guided by such commentary and that he had not read the selective disclosure advisory until recently.

The NABL conference concluded Friday. The group will convene again March 19-20, 2019, at its Tax & Securities Law Institute conference in San Diego.

By Kyle Glazier

BY SOURCEMEDIA | MUNICIPAL | 09/28/18 07:06 PM EDT

Increased Transparency to Continuing Disclosure Requirements.

Increased Transparency to Continuing Disclosure Requirements

In an effort to increase transparency and protect holders of municipal securities, on August 20, 2018, the U.S. Securities and Exchange Commission (the "SEC" or the "Commission") added two new requirements to the continuing disclosure requirements of Rule 15c2-12 of the Securities Exchange Act (the "Rule").

The Rule requires underwriters in certain offerings of municipal securities to reasonably determine that the issuer or obligated person, such as a borrower of the proceeds from the sale of such securities, has agreed pursuant to a written agreement to provide to the Municipal Securities Rulemaking Board annual financial information, certain operating data and timely notice of certain listed events.

The following two requirements were added to the Rule (the "Amendment"):

– Incurrence of a financial obligation of the obligated person, if material, or agreement to covenants, events of default, remedies, priority rights, or other similar terms of a financial obligation of the obligated person, any of which affect security holders, if material; and

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

The term "financial obligation" means a (i) debt obligation; (ii) derivative instrument entered into in connection with, or pledged as security or a source of payment for, an existing or planned debt obligation; or (iii) guarantee of (i) or (ii). The term "financial obligation" shall not include municipal securities as to which a final official statement has been provided to the Municipal Securities Rulemaking Board consistent with this rule.

Debt, Debt-Like and Debt-Related Obligations of Issuers and Obligated Persons

The Commission stated that the additional requirements to the Rule focus on "material financial obligations that could impact an issuer's liquidity, overall creditworthiness, or an existing security holder's rights." In particular, the focus of the Amendment is on "debt, debt-like and debt-related obligations," such as private placements and bank loans.

In addition, the Commission stated that "a financial obligation generally should be considered to be incurred when it is enforceable against an issuer or obligated person." For example, if an issuer enters into an agreement regarding a draw-down bond, the issuer or the obligated person should, according to the Commission, “provide notice at the time the terms of the obligation are legally enforceable against the issuer or obligated person, instead of each time a draw is made.”

Form of Notice

The Commission did not prescribe a form of event notice for the Amendment. Instead, the Commission believes that market participants should consider developing best practices regarding the form of notice. However, the Commission stated that the event notices should generally include a description of the material terms of the financial obligation, including the date of the agreement, principal amounts, maturity dates, interest rates, default rates, method of computation for variable rates and acceleration provisions. Under the Rule, issuers and obligated persons will be required to file the new notices no later than ten business days following the occurrence of the event.

Compliance Date

The Amendment is effective as of February 27, 2019. This Amendment will only affect those continuing disclosure agreements entered into on or after February 27, 2019.

The new requirements added to the Rule are complex, and whether an event notice will need to be filed in connection with a financial obligation in accordance with a continuing disclosure obligation will depend on the specific facts and circumstances at hand. We recommend that you stay in touch with your counsel to discuss how the new requirements may affect your continuing disclosure obligations. It will be important to review and revise your continuing disclosure policies and procedures to incorporate the Amendment for any new bonds issued on or after February 27, 2019.

by Sarah C. Smith

September 18, 2018

McCarter & English LLP

[Muni Bonds Are More Exciting Than You Think: An Activist Investor's Approach.]()

- **Not many people are aware that Flint’s water crisis resulted from a fraudulent infrastructure bond.**
- **Justice is needed for those who have been financially and culturally harmed, and muni bonds are one of the best-kept secrets for getting us there.**

Let’s face it—no one gets particularly excited about muni bonds. They are a portfolio bedrock for stability and liquidity, but they don’t make for great cocktail conversation. The latest on your munis in Texas doesn’t seem nearly as riveting as Tesla’s last quarterly call.

But perhaps that’s just because we’re not paying enough attention. The “muni” in muni bonds is “municipality”—these are bonds issued by government entities that raise money for communities to do critical public works. Funding muni bonds isn’t just pushing paper around to make a return—its enabling real projects in the real world.

Sometimes these projects are great for communities, like helping a city improve its water supply or building low-income housing. Other projects can harm a community or reinforce its questionable and inequitable practices.

Continue reading.

Forbes

by Morgan Simon

Sep 27, 2018

Muni Bonds Report Reinforces Stability.

Moody's Investors Service's recently released annual municipal bond market snapshot, *US Municipal Bond Defaults and Recoveries, 1970-2017*, with updates through 2017, reaffirms two hallmark benefits that muni bonds continue to offer. First, muni bonds continued to be highly rated in 2017, with upgrades narrowly outpacing downgrades for a second year running. Second, municipal bankruptcies and defaults remain extremely rare, even amidst headline-grabbing defaults by Puerto Rican entities.

The latest report also featured a significant update to Moody's entire dataset extending back to 1970. Using an algorithm, the authors were able to bring the historical credit ratings in line with Moody's 2010 Global Scale Recalibration, which affected most of the main default and performance metrics. According to Moody's, this recalculation has rendered key metrics more meaningful and offered greater explanatory power, enabling more powerful inferences regarding long-term trends.

To save you the hassle of poring through a 100-page document, we highlight three takeaways from this year's report.

Ongoing Stabilization in Muni Bonds

Nearly a decade after the Great Recession (2007-2009), the municipal bond sector is now stable and recovering, aided in part by growth and economic recovery in many regions of the U.S. For the second year running, muni bond rating upgrades have outweighed downgrades, resulting in a positive rating drift1 overall of 0.017 notches per credit by the end of 2017. "In fact," the authors observe, "rating drift has been mildly positive since late-2015." The trend had been generally negative since mid-2008, since reaching a low of -0.082 notches per credit in 2012. The report also found that greater stability was demonstrated by A-and-above rated munis when compared to like-rated global corporates.

Muni Bond Defaults and Bankruptcies Remain Rare

The five-year all-rated cumulative default rate (CDR) on municipal bonds throughout the study period (1970-2017) remained quite low, at just 0.09%, especially when compared to the 6.7% CDR of global corporates over the same time period. In this context, it is perhaps unsurprising that even in a year with a relatively elevated number of defaults, there were only ten in all of 2017 out of many thousands of issues.

The report observes that municipal defaults have been notably rare throughout the study period, even in times of financial stress, thanks to a defining feature of state and local governments: delinked revenues and expenditures. This enables municipalities to "kick the can down the road" and delay a crisis, even taking on more debt where corporate issuers might be unable to do so. Still, default volumes have grown, with 55 of the 113 defaults since 1970 occurring after 2007.

Muni Defaults Concentrated in Puerto Rico in 2017

Of the 10 defaults that occurred in 2017, entities associated with the Commonwealth of Puerto Rico accounted for seven. Due in large part to Puerto Rico's ongoing financial woes, 2017 set a U.S. dollar record for defaults: $31.15 billion, a 15% increase from 2016. The lion's share was concentrated in Puerto Rico, while the three non-Puerto Rico defaults accounted for a relatively tiny $85 million.

As the authors of the study observed, municipal credits can be strongly correlated with one another. Although a range of different entities in Puerto Rico defaulted in 2017, they were "tied together by overlapping debt burdens and shared economies and tax bases," which exacerbated the competition among the entities for revenues.

Moody's expects defaults in 2018 to be fewer in number and substantially smaller in amount, consisting of a few remaining speculative-rated Puerto Rico issuers with roughly $4.7 billion in debt outstanding.

Conclusion

Although it is still a struggle to obtain the same amount of timely disclosure from issuers of municipal bonds as one sees in other asset classes, the pure empirical evidence suggests that muni bonds continue to offer a fiscally sound vehicle for deriving an income stream free from federal and, in some cases, state taxes.

A total contrarian might say that this cannot, or will not, hold true for the long haul. But as best one can tell from Moody's study, there are no red flags flying over the industry. True, not all public sector projects succeed, but more conservative fiscal management coming out of the deep recession of 10 years ago seems to be the backstory. Ride the wave!

1 Rating drift measures the net average number of notches a credit will change over the study period. It is defined as the average upgraded notches per issuer minus the average downgraded notches per issuer.

Seeking Alpha

Sep. 27, 2018

For First Time, Columbus Letting Small Investors Buy Bonds Before the Big Dogs.

When the city of Columbus goes to market with $400 million in bonds in just over a week, Sweney Cartwright & Co. – a 10-person locally owned firm – will be selling them right alongside Bank of America, Merrill Lynch and Goldman Sachs & Co.

The city sells bonds every year, but for the first time, the process will have the feel of a crowdfunding campaign, under first-year Auditor Megan Kilgore.

Columbus has cut the lowest denomination of this offer to $1,000, from the usual $5,000, and is directly marketing the bonds to city residents as a way to support resurfacing roads, replacing aging water mains and building a new Linden Community Recreation Center.

“The city has never made an effort quite like what we’re doing right now,” Kilgore said.

Usually the first issue of a bond is “eaten up” by wealthy investors going after the tax-free income and by huge institutions like insurers and mutual funds, she said. This time, they have to wait a day.

“On Oct. 2, we’re dedicating an entire day to just individual investors,” she said.

To facilitate the transactions, Kilgore’s office canvassed Columbus-area brokerages to find those serving the majority of local retail accounts. The brokerages also have to be dealers that can execute a bond transaction. Anyone with an account with one of the listed firms can buy on the day of the sale.

Bank of America and Goldman are still the senior managers, which are the main underwriters of the sale. But the first-day selling group adds atypical local offices, including Huntington Investment Co. and Sweney Cartwright. Usually they handle big-city bonds only on the secondary market.

The 82-year-old Sweney spun out of Huntington Bancshares Inc. in the Great Depression. It was the main underwriter of bonds to build St. John Arena at Ohio State University. But for more than a decade, it hasn’t been involved in underwriting big institutional bond issues, President Frank Ingwersen said.

“We’ve got 10 people in our office here in Columbus and that’s it,” Ingwersen said. “As a small broker-dealer, it’s tough to compete with a Goldman.

“For Megan to do this is kind of neat.”

Find the full list of participating brokerages and other information on the sale here.

Anyone wanting to invest needs to set up an account before Oct. 2 to be ready. That’s an opportunity to add business for the smaller firms.

“I really doubt Merrill Lynch or Goldman Sachs are going to open up an account for somebody from German Village or Clintonville who has (only) $1,000 to invest,” Ingwersen said.

Columbus is among a handful of large U.S. cities to consistently land the highest credit rating of AAA from all three major ratings agencies, a feat largely attributed to longtime Auditor Hugh Dorrian, who retired last year.

Although a property tax levy secures the city’s debt, the actual payments are made from income taxes and user fees, like water bills.

“You’re pretty darn sure you’re going to get paid back on a bond that’s backed by taxes,” Ingwersen said.

But for the same reason, that means Columbus pays lower interest on its bonds, so a $1,000 investment might bring something like $30 in interest a year. It’s not a way to get rich.

“To be quite honest, you’re not going to get much yield off these bonds,” Kilgore said. “For someone like me, it’s because I care about the projects. Social investing has grown hugely in the last few years."

Columbus residents have a greater sense of civic engagement than in many communities, she said, basing that on her observations in several years as a municipal consultant. Take for evidence voters who approved an income tax increase in the middle of the last recession, and Columbus Crew fans launching their movement to support local ownership to stop the team from moving to Austin, Texas.

In her nine months in office, Kilgore – a Dorrian protege – has focused on bringing more technology to the office and simplifying payments of city income tax.

A big goal: online filing of returns. The current system involves downloading a PDF with a balky fill-in-the-blank function and printing it out to file.

Columbus Business First

By Carrie Ghose – Staff reporter

Sep 21, 2018

BDA & Court Street Group Research Release A Muni Bond Primer.

The BDA and CSG are proud to release this primer on municipal bond finance as BDA represents our member firms as a thought leader on infrastructure, the utilization of and benefits from the municipal bond market.

The Municipal Bond Market: Building America's Infrastructure*,* is a collaborative work that gives novices and professionals alike, the basic framework for how American infrastructure is financed, built, and utilized–thanks to the municipal bond market.

Click here to read the primer.

September 18, 2018

Fitch Ratings: Operating Margins Remain Under Siege for U.S. NFP Hospitals

Fitch Ratings-Austin-20 September 2018: Stunted operating margins remain a thorn in the side for U.S. not-for-profit hospitals, though balance sheets are healthier, according to Fitch Ratings in a new report.

Ongoing struggles with operating margins reflect a broader sector trend in which healthcare reform pressures have only been alleviated not eliminated.

"Labor and wage pressures for experienced staff will continue with the U.S. labor market improving and the need for clinicians still strong," said Senior Director Kevin Holloran. "Another factor that will add to operating margin woes is the ongoing transition to population health and at-risk contracting."

Fitch Ratings' 2018 medians show that operating margins have declined across the board for the entire rating spectrum of hospitals. Key balance sheet metrics like days' cash on hand, cash to debt and leverage, however, have improved over the last year and are now at all-time highs. Whether this means better days ahead for the sector remains to be seen. One thing is clear, however. "Operating margins remain under pressure for the second straight year, which means stress is not letting up for not-for-profit hospitals," said Holloran.

Though Fitch's revised rating criteria places more emphasis on balance sheet strength, operating profitability is still very much a pivotal factor in determining a hospital's fiscal health. Despite weakening operating margins, the median rating for Fitch's rated credits remains at 'A'. That said, "should operational pressures continue for an extended period of time, even strong balance sheets will begin to come under pressure," said Holloran.

Fitch has augmented its analysis of not-for-profit hospitals with two new key ratios: Cash to Adjusted Debt and Net Adjusted Debt to Adjusted EBITDA. Fitch's "2018 Median Ratios for Non-profit Hospitals and Healthcare Systems" special report is available at www.fitchratings.com or by clicking on the above link.

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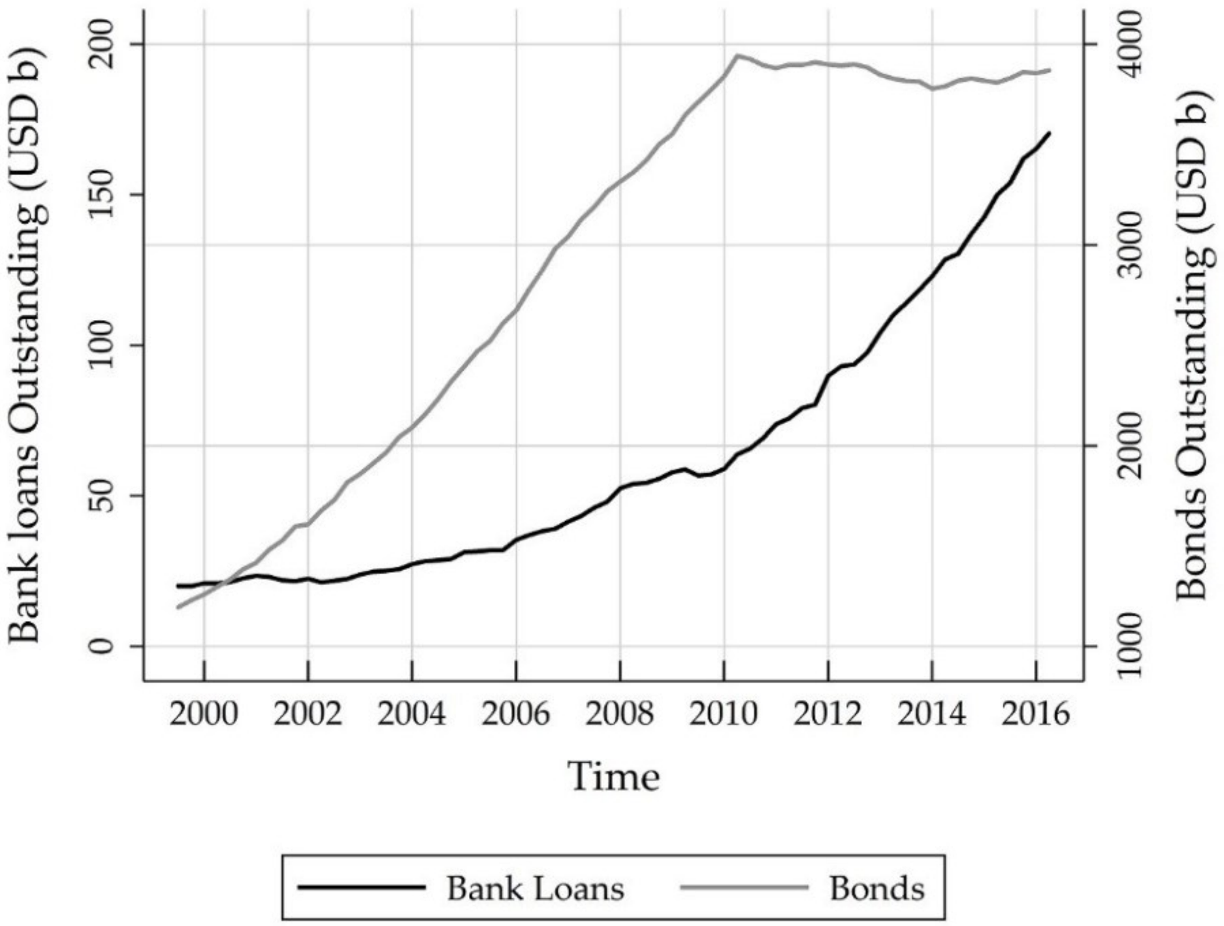
The "Privatization" of Municipal Debt.

Although state and local governments in the U.S. have historically been regarded as some of the most financially sound entities, the aftermath of the Great Recession has cast doubt on this notion. The financial crisis also led to the collapse of most bond insurance companies, leaving the vast majority of obligations of state and local governments uninsured. At the same time, unmet needs for infrastructure investments, the bulk of which are typically funded by state and local governments, have been growing and estimated to amount to approximately $2 trillion in 2017.[1] In the presence of these funding shortfalls, municipal entities have rapidly increased their reliance on private bank loans. Specifically, state and local governments have increased their bank loan obligations from about $30 billion before the financial crisis to over $160 billion in late 2016 (see Figure 1).

Figure 1. Volumes of bank loans and municipal bonds outstanding over time



Yet empirical evidence on this trend has been nonexistent. No disclosure requirements exist for private debt claims of municipal governments, and very few municipal entities choose to disclose voluntarily.[2] Using confidential supervisory loan-level data on bank lending to municipal governments in the United States, Ivan Ivanov of Federal Reserve Board and Tom Zimmermann of University of Cologne study the municipal bank debt market. They first present key characteristics of the average bank loan contract to municipalities and discuss implications for debt seniority and potential claim dilution between private and public debt claims; then analyze banks' internal assessment of the credit worthiness of municipalities and draw comparisons with that of rating agencies. Lastly, they study how exogenous adverse income shocks affect the debt structure of municipalities. This analysis helps understand whether the trend towards private debt claims is likely to persist in an environment of eroding fiscal positions.

They show that most of bank lending to states and local governments is done via credit lines, terms loans, and to a lesser extent leases.[3] The majority of bank borrowing of counties, cities, and districts (both in terms of counts and funded amounts) is done via term loans. In contrast, states that have bank borrowing exhibit greater reliance on credit lines than local governments such as counties, cities, and districts. Additionally, municipal governments may have substantial additional ability to increase debt in a short time frame because of large unused revolving credit capacity.

The paper further demonstrates bank lending to state and local governments is heavily collateralized, has high contractual priority, and contains additional guarantees. For example, 60 percent of lines of credit and 80 percent of term loans are secured, with banks almost always having first-lien priority on the assets that secure the loans. Whenever a bank loan is unsecured, banks are almost always senior in terms of priority. In addition, bank loan maturities are short: only 2-3 years for lines of credit and 7-8 years for term loans. Overall, given the high collateralization of bank loans combined with maturities that are likely to be substantially shorter than those of public bonds, state and local governments with outstanding bonds may dilute public bondholders when they issue new bank loans. While such bonds claim dilution through collateralization and shortening of debt maturities may be a way to maximize external finance proceeds given the realization of an adverse income shock,[4] it substantially limits the ability of a municipality to take on additional debt.

Read the full paper here.

The Brookings Institute

by Ivan T. Ivanov and Tom Zimmermann

Wednesday, September 26, 2018

Editor's Note: A version of this paper was presented as part of the 7th annual Municipal Finance Conference, held July 16-17, 2018 at Brookings.

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Expert: PA Pension Funds Have Underreported Billions In Payments

An Oxford University professor tasked with tracking spending in Pennsylvania's pension system has concluded that the commonwealth's two largest public funds have underreported billions of dollars they paid to private investors.

The review was undertaken at the behest of a commission of lawmakers and state officials, who are trying to find ways to ease the massive debt these funds are carrying.

Between them, the State Employees Retirement System and Public School Employees Retirement System manage about $80 billion.

Sometimes they invest it with private equity firms. That can be lucrative, but the investments are typically riskier and more expensive than traditional ones, which has led state officials to question whether they're a waste of valuable resources.

Treasurer Joe Torsella said the commission has repeatedly requested records to figure out how much the pension funds pay private investors, but have largely been denied.

Now, Dr. Ludovic Phalippou, Assistant Professor of Finance at Oxford, estimates the funds have underreported the money paid to private equity firms by a third over the last decade. That's $3.8 billion the state didn't know about.

The commission's review of the funds is still ongoing, and Torsella said he's not necessarily saying SERS and PSERS should fully stop investing in private equity. But he does think transparency has to improve.

"One of the disturbing things I heard this morning was that the consultants who were brought in to help the commission do its work couldn't get access to the data on what the performance is and what we're spending," he said. "That's just unacceptable."

Mike Tobash, a Dauphin County Representative who's chairing the commission, said it's easy for pension discussions to seem remote from the daily work of funding state programs and getting state workers their retirement income.

But the size of the unfunded liability SERS and PSERS are carrying—somewhere around $70 billion—means the money to pay thousands of public pensions isn't there right now. So in order to get that money together, the state has spent years scraping the bottoms of lots of different financial barrels.

"We struggle with budgets as a result of the massive pension debt that we've got," he said. "Doesn't' it only make sense that we've formed this commission to make sure that the costs aren't exorbitant and that the returns are fair?"

Auditor General Eugene DePasquale expressed outrage at the money being spent on private investments, saying in a statement that he is "sick and tired of learning about fuzzy contracts that leave taxpayers holding the bag while Wall Street sharks get rich."

He indicated he plans to take some form of action on the issue himself.

Governor Tom Wolf, too, expressed support for the pension commission taking "substantive measures to reduce fees."

Reached for comment, spokespeople for both SERS and PSERS said the funds are working to reduce the amount of money that goes to private managers.

Earlier this year, the SERS board directed passed a motion directing its staff to request that investment managers of private equity funds and real estate funds adopt a widely used disclosure procedure known as Institutional Limited Partners Association, or ILPA.

However, spokeswoman Pamela Hile said SERS is still not tracking carried interest, which made up a significant portion of the unreported payments to private equity firms. She maintained, "our reporting process follows industry standards and is more transparent than many other state public pension plans."

PSERS has gone slightly further to increase transparency. It has already adopted ILPA, and spokeswoman Evelyn Williams said the fund will be presenting its first-ever report tracking carried interest at next month's board meeting.

Williams took issue with the Torsella's characterization of the fund's responses to information requests. She said PSERS ignored none of the requests, and "contrary to today's comments, in fact we have cooperated with the Commission and Treasurer requests for information."

90.5 WESA

Pittsburgh's NPR News Station

By Katie Meyer • Sep 21, 2018

Homeowners Who Live on the Coast are Sleepwalking Toward Climate Catastrophe.

About 41 million Americans live in areas that have a chance of flooding — and the number exposed to serious flooding is as much as 3.1 times higher than previous estimates.

Time is clearly not on our side. Sea levels are rising faster than predicted, and homeowners in particularly vulnerable areas, such as South Florida, could see their properties literally under water within their lifetimes. Relative sea levels there are roughly four inches higher now than in 1992; various projections, including by the Army Corps of Engineers, see rises in South Florida of 12 inches by 2030 and between 2 to 3 feet by 2060.

What's more, "rare events are going to become more common in the future strictly due to sea level rise," William Sweet, an oceanographer at the National Oceanic and Atmospheric Administration (NOAA), told The Guardian.

Continue reading.

CNN Wire

Sep. 22, 2018

Georgia Municipal Association Policy Opposes Annexing Territory of Existing Cities.

The Georgia Municipal Association has formally come out against taking land from an established city to form another, four months after Gov. Nathan Deal signed legislation allowing Eagle's Landing to seek cityhood by taking half of Stockbridge.

The group's Legislative Policy Council earlier this month adopted a policy stating its support for citizens seeking more responsive representation, but said "portions of existing municipalities should not be de-annexed to create municipalities."

The issue has been central to the debate over the desire of the Eagle's Landing community to become Henry County's fifth city. After being given the go ahead from the Legislature and Deal earlier this year to hold a referendum, Henry voters will decide Nov. 6 whether to approve de-annexing about half of Stockbridge and combining the territory with parts of unincorporated Henry to form the new city.

Continue reading.

The Atlanta Journal-Constitution

By Leon Stafford

Sept 21, 2018

The Week in Public Finance: Some States Are Less Prepared for a Recession Than a Decade Ago.

But according to two analyses, a majority of states have nearly enough savings to weather a downturn.

A decade after the worst financial crisis in modern American history, two separate analyses of government finances have found that most states are better prepared to weather the next recession.

S&P Global Ratings and Moody's Analytics have concluded that a majority of states have either adequate funds or almost enough to make it through the next recession without the massive layoffs and draconian cuts governments had to resort to following the 2008 global financial crisis.

But both firms also discovered a disturbing trend: A subset of states have continued to struggle and remain worse-off than they were a decade ago. "All else equal, this is going to result in a faster recovery [compared with 2008] among the states that are most prepared," says Dan White, a director at Moody's Analytics. "What's troubling, though, is we're seeing an increasing gap between the have and have-nots."

Continue reading.

GOVERNING.COM

BY LIZ FARMER | SEPTEMBER 21, 2018

Indiana Finance Authority OKs New Toll Road Deal, Rate Hike.

Indiana Finance Authority approves a new deal with the vendor operating the Indiana Toll Road allowing 35 percent fee increases for large trucks as part of Gov. Eric Holcomb's plan to pump an additional $1 billion into infrastructure.

INDIANAPOLIS (AP) — The board of the Indiana Finance Authority unanimously approved a new deal Thursday with the vendor operating the Indiana Toll Road, allowing 35-percent fee increases for large trucks as part of Republican Gov. Eric Holcomb's plan to pump an additional $1 billion into infrastructure projects around the state.

The rate hike takes effect Oct. 5 and the state would receive $400 million that same day from the Indiana Toll Road Concession Co. The rate increase applies to vehicles with three or more axles.

Indiana would receive a total of $1 billion over three years. Indiana Public Finance Director Dan Huge told the board the new deal comes with a letter of credit, meaning banks have guaranteed Indiana will receive its future payments.

Holcomb did not attend the meeting. He was on a trade mission to Italy on Thursday.

The infrastructure plan Holcomb announced earlier this month would earmark $600 million to speed up completion of the Interstate 69 extension in southern Indiana; $190 million for projects on U.S. Routes 20, 30 and 31; $100 million to boost rural broadband access; $90 million for improving hiking and biking trails; and $20 million to lure new direct flight routes to the state's airports.

Democrats say the new Toll Road rates amount to a tax increase for the trucking industry, but Holcomb has stressed that the new fees won't apply to passenger cars and would bring Indiana in line with what nearby states charge.

The trucking industry also has criticized the rate increases. Gary Langston, president of the Indiana Motor Truck Association, told the South Bend Tribune that they follow a large increase in state fuel taxes that went into effect last year. The combination of higher tolls and fuel taxes on truckers will ultimately hurt consumers and businesses since nearly all products travel to Indiana via trucks, Langston said.

Langston also predicted trucks will bypass the Toll Road, resulting in more congestion on toll-free highways and the possibility of more accidents.

U.S. News & World Report

Sept. 20, 2018, at 8:06 p.m.

U.S. Muni Bond Market Rises to $3.853 trillion in Second Quarter: Fed

NEW YORK (Reuters) – The size of the U.S. municipal bond market inched up to $3.853 trillion in the second quarter, from $3.851 trillion the quarter before, the Federal Reserve said in a report released on Thursday.

Households, or retail investors, held $1.625 trillion of debt sold by states, cities, schools and other muni issuers in the latest quarter, down from $1.631 trillion in the first quarter, the Fed report said.

Property and casualty insurance companies took on $16.7 billion of munis in the second quarter, a rise from $14.1 billion in the previous quarter. Life insurance companies bought $4.6 billion, compared with $7.7 billion the prior quarter.

Exchange-traded funds bought $7.9 billion of muni funds compared with $2.8 billion in the first quarter.

Meanwhile, U.S. mutual funds' buying of municipal bonds dropped to $20.5 billion in the second quarter from $64.9 billion the first quarter.

U.S. banks continued to offload muni bonds in the second quarter. The financial institutions shed $40.3 billion, after selling $55.7 billion the previous quarter.

by Laila Kearney

SEPTEMBER 20, 2018

Reporting by Laila Kearney; Editing by Steve Orlofsky

Municipal-Bond Yields Hit Four-Year High as Cash Leaves Market.

- **Ten-year benchmark bonds jumped to 2.6 percent on Tuesday**

- **That’s the highest the yield has been since February 2014**

A two-week slide in the price of state and local government securities has pushed yields to a more than four-year high as investors pull money from municipal bond funds and the flood of debt payments that boosted demand over the summer recedes.

The yield on 10-year benchmark bonds jumped to more than 2.6 percent Tuesday, the highest since February 2014. The securities have slid along with Treasuries after a slew of strong economic data reinforced speculation that the Federal Reserve will raise interest rates twice more this year.

“I would suggest that the Treasury market is leading the muni market at this point, slowly grinding higher as the Treasury market makes it difficult for the muni market to stabilize,” said Michael Pietronico, chief executive officer of Miller Tabak Asset Management, which manages $1.1 billion of municipal debt in New York.

Mikhail Foux, head of municipal strategy at Barclays Plc, said that while the Treasury movement is probably the biggest driver of municipal yields right now, the anticipated uptick in new bond sales through the end of the year is figuring in as well. The supply-demand mismatch that led to positive returns recently is waning as the new debt issues are expected to outpace the amount of money investors receive from interest payments and bonds that are being paid off.

“A main reason for muni underperformance is that technicals are not as strong as they were,” Foux said.

Buyers of state and local bonds are showing signs of caution, Foux said, with investors pulling money out of municipal mutual funds for the last two weeks. Such outflows typically occur when rising interest rates threaten the value of outstanding bonds, he said.

“It seems like a lot of investors are a little cautious right now and they don’t want to put money to work even if they have money,” Foux said.

Bloomberg Markets

By Danielle Moran

September 18, 2018, 11:30 AM MDT

Muni-Bond Market Headed for Longest Rout Since Trump's Election.

- **The market is headed for its fourth straight weekly drop**
- **‘The trading environment this year has been quite brutal’**

U.S. state and local government bonds are headed for the fourth straight weekly loss as investors anticipate that the Federal Reserve will continue to raise interest rates, the market’s longest losing streak since President Donald Trump’s surprise victory in 2016.

The Bloomberg Barclay’s municipal index has lost 0.82 percent since the start of the month, with 10-year bond yields hitting a four-year high. The rout tracks a selloff in the Treasury market, which has lost 1.12 percent this month as traders bet that the Fed will raise interest rates four more times by the end of 2019.

"Not just the past several weeks, but in general, the trading environment this year has been quite brutal," Barclays Plc analysts led by Mikhail Foux said in a note sent to clients Friday. "Munis have started the year rich outright and versus Treasuries, and most of the year has been a constant struggle for investors."

Municipals tend to be more volatile during the final months of the year, when debt sales typically pick up and investors no longer have as much money from bond payments to reinvest.

Barclays said it sees "very few positive signs for munis on the horizon."

Bloomberg Markets

By Danielle Moran and Martin Z Braun

September 21, 2018, 12:00 PM MDT

— With assistance by Liz McCormick

Guggenheim Restructuring Team Looks to Muni Debt, Derivatives.

- **Stress from pension obligations emerging on state, city level**
- **Guggenheim bought Millstein & Co. to create new advisory group**

Guggenheim Partners, which recently merged its restructuring business with Millstein & Co., sees opportunities in helping struggling local government creditors as budget impasses and pension liabilities put pressure on municipal bond issuers.

"We're starting to see some stress" on the state and local government side, driven by pension and other post-employment benefits and liabilities, which states are having "an impossible time funding," said Elizabeth Abrams, a senior managing director at Guggenheim, who came over from Millstein when the two advisory firms combined this month.

Pension liabilities in particular are an issue, she said, with the Federal Reserve estimating shortfalls for public pensions standing at around $1.8 trillion. Millstein was an adviser to Puerto Rico in the island's $74 billion bankruptcy.

Companies have also been taking on more debt relative to assets, while offering weaker loan safeguards to investors. As a result, one place the combined firm is looking for opportunities is reviewing companies' debt documents to advise them on how to position themselves in negotiations with lenders, Abrams said.

Guggenheim Securities, the investment banking arm of the New York-based company, on Monday closed on its takeover of the advisory firm founded in 2011 by Jim Millstein just after he counseled the U.S. Treasury during the Great Recession. The deal creates a combined restructuring group with around 50 employees in anticipation that the expansion of corporate credit will turn into a bust for over-indebted companies.

Restructurings have grown more complicated as distressed investors and companies have grown more likely to use credit derivatives, which can give them unexpected incentives.

'Smart Money'

“Smart money is attracted to the distressed space, and with that smart money, more creative structures,” said Morgan Suckow, a senior managing director at Guggenheim. “That has changed our jobs, it has made our jobs a lot more interesting.”

CDS have stirred controversy in debt markets recently, a decade after they played a key role in the 2008 financial crisis. Some hedge funds, as part of financing packages they extend to troubled companies, are pressing the companies to trigger or avert payouts on these derivatives, depending on what side of the trade the hedge funds are on. Critics say using CDS trades this way amounts to rigging an $11 trillion market.

Guggenheim’s takeover of Millstein comes as other financial firms expand their restructuring offerings: Greenhill & Co. hired Rothschild & Co. veteran Neil Augustine in March to help run its North American turnaround business. Todd Snyder, formerly of Rothschild, opened up his own shop in February. Last August, UBS Group AG hired LLoyd Sprung from Evercore Partners LLC to build a new practice in the area. Lazard Ltd., Perella Weinberg Partners and AlixPartners are also among firms that have expanded their turnaround teams.

“We’re expecting activity in the market to intensify,” said Ronen Bojmel, who will lead the combined Guggenheim restructuring team.

Guggenheim’s Chief Investment Officer Scott Minerd has projected a U.S. recession may come within the next two years. So has Millstein who has cited both trade wars heating up under President Donald Trump and a wall of corporate debt. They are echoing views across Wall Street that tighter fiscal and monetary policies will create problems for the world’s biggest economy by 2020.

Millstein’s firm has advised US Airways in its acquisition of American Airlines and Caesars Entertainment Corp. in its Chapter 11 proceedings. It has also worked on Venezuelan debt. Guggenheim’s recent restructuring work includes Iconix Brand Group Inc., Payless Inc. and Intelsat SA.

Bloomberg Markets

By Katherine Doherty

September 19, 2018, 4:00 AM MDT

Pensions Are Shelling Out Billions in Fees -- and It's Not Paying Off

SPEED READ:

- According to a new report by the Pew Charitable Trusts, pension plans spend at least $2 billion a year on investment fees.
- Over the past decade, pension plans have devoted more of their assets to alternative investments, such as hedge and private equity funds.
- The shift means that pensions are more vulnerable to stock market swings and are paying far more in fees than ever.
- The report recommends pension plans to change their reporting requirements.

Public pension plans spend at least $2 billion a year on investment fees to high-priced Wall Street firms to boost their returns. But, according to a new report, it doesn't appear to be paying off.

The report, released Wednesday by the Pew Charitable Trusts, attributes the steep bill to the fact that more and more pension funds are putting money in alternative investments, such as hedge and private equity funds. Over the past decade, the average plan has gone from devoting about 11 percent of its assets to those types of investments to 26 percent.

The uptick is part of a larger trend over the past 30 years of pensions reducing their reliance on stable, fixed income investments like bonds in favor of more volatile — but potentially more lucrative –investments like stocks and alternatives. Since 1986, the latter two have gone from representing roughly 38 percent of pension portfolios to 75 percent in 2016.

The shift means that pensions are more vulnerable to the swings of the stock market and are also paying far more in fees than they ever were before. Pew's Director of Public Sector Retirement Systems Greg Mennis estimates that, in addition to the $2 billion in fees pension plans do report, Wall Street fund managers are pocketing an additional $3 billion to $4 billion in fees each year. That's because the majority of funds don't disclose so-called performance fees, which allow investment fund managers to get a cut of the investment earnings if their returns hit a certain target.

Meanwhile, pension plan performance has waned over the past decade. Among the 44 funds that the Pew report studied, the average rate of return during that period was 5.5 percent, and no plan's average investment return met its target of 7.5 percent. (In general, plans tracked closer to their investment return goals when the years around the 2008 financial crisis are excluded.)

Among the plans studied, Mennis says that the ones that had more experience investing in alternative assets tended to do better. For example, South Dakota's pension, which has for more than a decade been investing up to 20 percent of its portfolio in alternatives, averaged a 6.8 annual rate of return. But Indiana's public employees fund, which has ramped up its alternative investments rapidly over the past five years to account for roughly 40 percent of its assets, averaged 3.8 percent over the 10-year period.

Pension plans' reporting requirements "haven't kept pace with the risk" they've opened themselves up to, according to Pew. To rectify that, it recommends that all plans disclose their net return after fees and include costs like performance fees. The report also suggests pensions implement stress-test reporting, which throws different economic loss scenarios at pension plans to see how each could affect a plan's fiscal health and funded status.

The report notes that many plans are lowering their assumed rate of return to prepare for a future with lower annual earnings. Over just a two year period, 33 states have done so. Still, Pew estimates that most plans should prepare for an average annual investment return of somewhere near 6.5 percent. Some — Kentucky and South Dakota — are at or below that mark, but most still have higher expectations.

GOVERNING.COM

BY LIZ FARMER | SEPTEMBER 26, 2018

The Week in Public Finance: Amid Rising Home Prices, 2 States Take

Property Tax Proposals to Voters

Ballot measures in California and Louisiana seek to protect homeowners from huge property tax spikes.

SPEED READ:

- Voters in California and Louisiana face ballot measures that would reduce their property taxes at a time when the median U.S. home price has risen by 40 percent in five years
- California's Proposition 5 would help seniors, the disabled or people who are homeless as the result of a natural disaster.
- Louisiana's Amendment 6 would phase in homeowners' new property taxes over four years.

Home prices have risen, but when voters in two states head to the polls in November, they could at least reduce their property taxes.

The median home price has risen by 40 percent nationwide in the past five years and is still rapidly rising. The increase is blamed largely on a housing shortage. The problem has been especially acute in California, which — along with Louisiana — is considering property tax reductions this fall.

Continue reading.

GOVERNING.COM

BY LIZ FARMER | SEPTEMBER 28, 2018

Governments Can Improve TIF Practices.

The Lincoln Institute of Land Policy and Professor David Merriman have developed five recommendations on ways to improve Tax Increment Financing (TIF) for economic development. Their guidance stems from case studies and a review of academic work on TIF theory, practice, and effectiveness.

1.States should track and monitor TIF use. Basic monitoring helps states evaluate the use of TIF and helps state legislators better understand whether TIF regulations are achieving their goals.

2. States should revise statutes to allow counties, school districts, and other overlying local governments to opt out of contributing resources to TIF districts. This measure would diminish or eliminate the incentive for local governments to use TIF as a device to capture revenues that otherwise would have gone to overlying governments.

3. State legislators should review their "but for" TIF requirements to determine whether they are effective. Prior to the creation of a TIF district, some states require proof that the planned development would not occur "but for" the tax increment financing. An effective "but for" clause can prevent communities from using TIF when other tools might be more helpful and transparent.

4. Local governments should provide extensive, easily accessible information about TIF use, revenues, and expenditures. This information would enable local elected officials to monitor and regulate the application of TIF, shortening the duration of TIF arrangements, for example, or making other adjustments to the terms of use as needed.

5. Researchers should study, document, and explain the different outcomes resulting from TIF use in various geographic areas. To date, academic studies of TIF document mixed outcomes but do not clearly identify the factors that explain this variation.

> "The basic design of TIF has significant virtues, but decades of experience and research from around the United States show that often TIF is flawed in practice."

Smart Incentives agrees with many of these recommendations, which are consistent with our guiding principles on the need for better data, analysis, transparency and accountability in incentive use. We also appreciate the emphasis on understanding outcomes.

Going past the high-level recommendations, we found some of the topics from the review of previous research interesting. For example, the discussion around "but for" in the paper highlights the issue of whether the diverted revenues would exist "but for" the TIF – not simply whether the development itself would have occurred. This brings into the conversation a look at local government choices relative to other taxing jurisdictions and the implications of shifting rather than creating development. It also includes a reminder that there can be negative fiscal effects from development that often are not, but should be, counted.

The extensive look at studies examining efficacy in economic development raises the usual frustrations with academic studies that yield "mixed" findings, with 42% showing positive results, 42% with neutral or mixed results, and 16% with negative results.

What is interesting is the variety of ways those results are measured. The chapter begins with the statement that, "TIF is designed to promote real estate investments that raise the market and assessed values of real estate parcels in a given area." The studies, however, examine variables that include "employment, retail sales, assessed values, growth in median house value, median household income, and value of building permits, among others." It's not surprising the findings are mixed.

We generally agree with the point that "the purpose of stimulating growth in property values is to ultimately improve citizens' quality of life," which is presumably the way all government activities should be measured and evaluated. But there may be some additional steps or metrics that are needed to help link TIF activity to those broader outcomes as we think through exactly how a TIF district influences community-wide measures like employment or income.

Learn more and read the entirety of this highly informative report here.

Smart Incentives

by Ellen D. Harpel | Sep 19, 2018

CDFA Annual Volume Cap Report.

An Analysis of 2017 Private Activity Bond & Volume Cap Trends

Read the Report.

Released September 2018

Opportunity Zones and Shared Prosperity: Emerging Principles from Cleveland.

Since their enactment in the 2017 Tax Cuts and Jobs Act, Opportunity Zones have attracted significant interest as a potential major source of untapped capital to revitalize America's struggling neighborhoods and communities. A growing number of local leaders are eager to turn this buzz into investment that delivers economically inclusive and racially equitable outcomes.

Yet those leaders face an important challenge: how can they ensure that private funds deliver sustainable investment in lower-income communities that truly need it, rather than simply accelerate real estate development in neighborhoods where market forces are already strong?

While cities await further guidance from the U.S. Department of Treasury—a crucial step in determining how the Zones actually function—a group of community leaders in Cleveland recently convened to address these questions. Organized as part of the Shared Prosperity Partnership, a national collaboration between the Kresge Foundation, Brookings, the Urban Institute, and Living Cities, the discussion drew on national and local expertise in community and economic development and finance. The discussion highlighted three principles that can inform cities' efforts to use Opportunity Zones to spur equitable community revitalization:

Continue reading.

The Brookings Institute

Rachel Barker and Alan Berube

Wednesday, September 19, 2018

U.S. States Are Showing Their Age: How Demographics Are Affecting Economic Outlooks.

The U.S. is facing an "old-age" crisis as national population growth becomes insufficient to balance the needs of aging baby boomers. In S&P Global Ratings' opinion, the national aging is affecting state economic output, with different parts of the country being more resilient than others.

Continue Reading

Sep. 25, 2018

S&P: When The Credit Cycle Turns, U.S. States May Be Tested In Unprecedented Ways

It has now been 10 years since the start of what former Federal Reserve Chairman Ben Bernanke called the "worst financial crisis in global history." What ensued in its wake was also the most severe economic downturn since the Great Depression. In retrospect, U.S. states weathered the historic turmoil remarkably well from a credit perspective.

Continue Reading

Sep. 17, 2018

The Increasing Cost Of Governmental Pensions: Discount Rate And Contribution Practices

As part of S&P Global Ratings' ongoing efforts to educate the market about our views on how unfunded pension liabilities could affect credit risks for state and local governments, this report focuses on how certain plan assumptions and methods may negatively influence future budgets.

Continue Reading

Sep. 27, 2018

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National Center for Public Private Partnerships

Removing the Impediments to Infrastructure Investment.

Insurers are eager to provide hundreds of billions in capital. There are things governments can do to help that happen.

Nearly every aspect of our nation's infrastructure could benefit from restoration and modernization. If done the right way, these repairs and upgrades can create jobs, boost economic output and raise Americans' living standards.

But improving our infrastructure will be costly. By some estimates, simply updating and maintaining our transportation networks, communications systems, and social- and public-service facilities would cost more than $1 trillion. With limited sources of funding, every dollar will have to be used to maximum effect, including leveraging private financing for public works.

While the Trump administration and Congress have put forth proposals to address our infrastructure challenges at the federal level, much of the activity and heavy lifting happens at the state and local levels. With a few critical steps, state and local leaders can help unlock new levels of capital ripe for infrastructure investment.

RELATED
How Inclusive Contracting Can Produce the Infrastructure We Need The Road Funding Policy That Doesn’t Improve Roads Much Even When Teams Pay, Stadiums Still Aren’t Free for Cities For Muni Bond Sales, Brand Matters Navigating the Complex Landscape of P3s
The insurance industry, which includes companies like mine, is eager to invest hundreds of billions of dollars in infrastructure. These projects typically deliver stable, strong returns, often with less risk than some other investment options. A new toll road, utility plant or airport has a long shelf life. And it produces predictable revenue, with a built-in base of users that may increase over time.

Unfortunately, a few things hold back such investment. One is the patchwork of regulatory requirements that apply to infrastructure projects. States and local jurisdictions have a variety of different rules governing the use of public-private partnerships (P3s), and 17 states don’t allow P3s at all. Furthermore, projects must go through numerous regulatory reviews, which can be lengthy and duplicative. And political uncertainty may result in the plug being pulled on a project after capital has been expended but before it generates revenue.

A second factor inhibiting infrastructure investment by insurers is the complex and varied processes that state insurance commissioners use to determine valuation and risk in infrastructure projects. These methods often require insurers to maintain capital ratios that are more appropriate for riskier investments.

Finally, tax-policy uncertainty has the potential to restrain insurers’ investments. U.S. insurance companies account for about 10 percent of the holdings in the $3.8 trillion municipal bond market that supports many infrastructure improvements. These low-risk investments deliver solid returns due in part to the tax-free treatment of interest earned on them. The recent federal tax reform preserved this exemption. However, with federal budget deficits expected to top $1 trillion annually, there could be pressure to reverse course, which would effectively lower the return on bonds, reduce demand and raise borrowing costs for states and municipalities.

Fortunately, while maintaining our infrastructure requires collaboration and partnership at all levels of government, state and local policymakers are in a position to help remove these impediments. Here are a few key steps they can take:

First, states and municipalities should work together to create more harmony around P3 rules. A national set of rules is unlikely, but some states have developed effective policies that could be a model for others.

Second, governments at all levels should strive to limit duplication of regulatory reviews, which add time and raise costs for both taxpayers and private investors.

Third, the National Association of Insurance Commissioners can work with insurance companies to develop standards for evaluating the risk and quality of infrastructure investments while safeguarding policyholders.

And fourth, state and local leaders should keep up the pressure on Congress and the White House to preserve the tax exemption on municipal bond interest, ensuring that debt financing remains an affordable option for infrastructure projects.

Insurers stand ready to partner with states and municipalities, as well as the federal government, to modernize America’s infrastructure. By removing some of the barriers that prevent insurers from increasing investment in infrastructure projects, policymakers at all levels of government can unleash new private capital to spur economic growth and bring much-needed benefits to communities across the country.

governing.com

By Larry Chadwick | Contributor
Senior managing director of government relations for TIAA

September 27, 2018

[Utilities Helped Puerto Rico Fix Its Power Grid. Now They Face Hefty Tax Bills.]

When nearly the entire power grid of Puerto Rico was knocked out by a pair of ferocious hurricanes last year, utility companies from across the United States sent crews and equipment to help.

It was a power emergency on a scale rarely seen before, and companies spent tens of millions of dollars to mobilize. The utility in Sacramento, Calif., sent 30 workers and a dozen trucks. Ameren, which serves over two million customers in Missouri and Illinois, sent 225 workers. New York dispatched workers on at least five deployments to repair power lines and assess damaged substations. Florida Power & Light sent more than 100 trucks, several tons of equipment and 800 employees, many of whom spent Thanksgiving and the winter holidays working 16-hour days.

Though their costs are expected to be reimbursed by the federal government, the companies were not earning a profit. So it was with astonishment that, over the summer, some of the utility companies that had sent aid crews opened letters from the towns where they had worked in Puerto Rico: bills demanding millions of dollars in license and construction taxes.

Continue reading.

The New York Times

By James Glanz and Alejandra Rosa

Sept. 26, 2018

[Statement by U.S. Conference of Mayors CEO & Executive Director Tom Cochran on FCC's Order Subordinating Local Property Rights.]

Washington, DC — Below is a statement by U.S. Conference of Mayors CEO and Executive Director Tom Cochran on today's FCC final Order on removing barriers to small cell deployment:

"The U.S. Conference of Mayors conveys its strongest opposition to today's final Order issued by the Federal Communications Commission. While The U.S. Conference of Mayors supports the nation's efforts to win the race to 5G, today's FCC action misapplies federal law to federalize local public property as part of its efforts to bestow upon a class of private companies special rights to access local rights-of-ways and public property.

"Despite efforts by local and state governments, including scores of commenters in the agency's docket, the Commission has embarked on an unprecedented federal intrusion into local (and state) government property rights that will have substantial and continuing adverse impacts on cities and their taxpayers, including reduced funding for essential local government services, and needlessly introduce increased risk of right-of-way and other public safety hazards.

“This wrongful intrusion threatens to slow down and undermine the FCC’s own efforts to accelerate the deployment of new wireless infrastructure. In another action, the commission even seeks to rewrite and overturn decades-old compensation agreements between local (and state) governments and cable providers.

“Over the past year and in several instances, the federal government – the Administration, Congress and/or FCC – chose not to make deployment of small cells a federal priority in its own actions, be it new statutes and rules pertaining to federal property use rules, federal tax policy, federal spending and/or even federal spectrum revenue uses; yet, today’s Commission actions seek to use a misapplication of federal power to confiscate local taxpayer property to this end. Mayors and other local and state government leaders rightly and strongly oppose these actions.

“The Conference believes this aggressive, and surely unlawful, intervention will prove counterproductive. The record on 4G deployments shows that the nation’s mayors with other local and state officials partnered successfully with the private sector to build out the nation’s fourth generation (4G) network, with the U.S. today accounting for roughly 40 percent of the world’s 4G facilities. Regrettably, the Commission is choosing conflict over cooperation, and subordination over partnership.

“The Conference and its members now look to the federal courts to review and rectify this unlawful taking of local property, actions which we believe will compel local elected officials to subsidize, or “gift”, local public property to a small, favored group of private businesses.”

Counties, Cities Voice Concern Over FCC’s Small Cell Ruling.

Washington – The National Association of Counties and the National League of Cities today released the following statement regarding the Federal Communications Commission’s (FCC) vote on the Declaratory Ruling and Third Report and Order on state and local governance of small cell wireless infrastructure deployment.

“Cities and counties are strongly committed to the timely and successful deployment of 5G facilities and services throughout the nation, just as we led and supported public and private partnerships that resulted in the successful introduction and expansion of 4G infrastructure and services.

“Today’s vote, however, overlooks significant concerns from the nation’s cities and counties. Over 100 local governments from 22 states filed comments in opposition to the proposed ruling during the FCC’s comment period.

“The FCC’s impractical actions will significantly impede local governments’ ability to serve as trustees of public property, safety and well-being. The decision will transfer significant local public resources to private companies, without securing any guarantee of public benefit in return.

“Counties and cities are the stewards of substantial amounts of public rights-of-way, which many telecommunications providers use to construct their own communications networks. By narrowing the window and resources for evaluating small cell applications, the FCC is effectively hindering our ability to fulfill public health and safety responsibilities during the construction and modification of broadcasting facilities.

"Local governments share the FCC's goal of ensuring affordable broadband access for every American, regardless of their income level or address. However, today's vote applies a one-size-fi-s-all approach to broadband deployment that simply will not work in the vast majority of cities and counties across the country.

"With this ruling, the FCC is overlooking its overall goals to 'build on the commonsense reforms adopted in state legislatures and town councils across the country.'

"Local governments share the FCC's urgency; however, this ruling promises to force local governments to rubber-stamp small cell applications or face crippling legal recourse from providers racing to corner the 5G communications market.

"We urge the FCC to delay the rule, and we plan to support local effort to mitigate its impacts."

September 26, 2018

FCC Sets Rules for 5G Infrastructure, Limiting State and Local Control.

The new industry-backed regulations are likely to attract lawsuits from state and local government groups that worry they will cost them revenue, make it easier for internet providers to sue them and do little to address the digital divide.

The Federal Communications Commission (FCC) approved sweeping regulations on Wednesday for 5G wireless infrastructure, significantly curtailing the authority of states and localities.

The industry-backed declaratory ruling includes several preemption provisions aimed at accelerating deployment of 5G networks that are expected to offer higher internet speeds. It prompted immediate pushback from a wide-range of public-sector association groups and is expected to face legal challenges.

"The ultimate result from this is going to significantly and negatively impact local governments' ability to protect and serve public property, safety and welfare," said the National Association of Counties' (NACo) Arthur Scott.

The federal regulations carry major ramifications, particularly given the buildout of 5G networks that's ramping up or is already underway in many larger cities.

Underpinning the networks is wireline fiber supporting "small cell" nodes, typically antennas mounted on street poles or other public infrastructure. Small cells are akin to WiFi-networks in that their coverage is limited, typically 300 to 500 feet, requiring providers to deploy hundreds of the devices to cover relatively small areas.

Time Limits

One of the more controversial provisions of the order establishes "shot clock" time limits for jurisdictions to process applications for mounting small cells on public infrastructure. Installations on existing infrastructure must be processed within 60 days, while requests to build new poles need to be processed within 90 days.

The shot clock resets if a company submits an incomplete application and a government notifies them of the issue within 10 days. Under the new order, failing to act within the specified time limits constitutes a presumptive prohibition of services, giving companies further ammunition to take governments to court.

According to NACo, applications were generally taking about 120 days to process. Scott is concerned that many local governments lack the resources to process them within the new, tighter deadlines and would need to hire additional staff.

“[The ruling] forces local governments to make a decision between rubber stamping applications or facing crippling litigation with these providers in court,” he says.

Under the FCC ruling, batch applications of multiple requests for the same type of facilities filed simultaneously are subject to the same deadlines. Greg Wilkinson, the city administrator for Yuma, Ariz., says his city would have no problem processing a few applications quickly but receiving a hundred or more at once could pose challenges. For instance, some companies seek to affix old, bulky equipment to poles, potentially leading to safety concerns or violations of the Americans with Disabilities Act if they obstruct sidewalks.

“You have to look at location by location,” he says. “You can’t just give them blanket approval to deploy everywhere.”

Fee Guidelines

The FCC order also effectively limits what local governments can charge — $500 for an initial application fee covering up to five small cells and $270 for an annual right-of-way access fee per small cell — both considerably lower than what cities have typically charged. Localities could still levy higher fees, but if a wireless provider sued, local officials would need to demonstrate the fees are a “reasonable approximation” of costs incurred. In larger jurisdictions where fees are higher, the FCC ruling could amount to seven-figure losses in unrealized revenues.

Part of the FCC’s motivation for the lower fees is to enable providers to bring high-speed internet to rural and unserved areas of the country.

Commissioner Brendan Carr recounted at Wednesday’s meeting that he heard from officials in unserved communities who worried delays and higher small cell fees levied in big cities would effectively hinder deployment to their jurisdictions.

“Cutting these costs changes the prospects for communities that might otherwise get left behind,” he said.

But state and local officials argue that lower fees will make little difference in bridging the digital divide unless there is adequate market demand making it economically feasible for companies to deploy. Furthermore, the ruling lacks any requirements for telecommunication companies to provide service to unserved and underserved areas.

Some cities fear that the fee recommendations wouldn’t cover their costs. Philadelphia, for instance, provided estimates to Governing tallying labor costs for all approvals and field inspections that amounted to $800 per small cell node.

“The city will have incurred disproportionate, unrecoverable costs and lost all its leverage to incentivize deployment in a manner that ensures a complete citywide deployment and reduces the digital divide," said Michael Carroll, deputy managing director of the Office of Transportation and Infrastructure Systems, of the ruling.

Some telecoms complain that cities use aesthetic concerns about the small cells as a way to delay wireless infrastructure projects. The FCC order doesn't prohibit localities from outlining their own aesthetic requirements, provided they are "reasonable" and "no more burdensome than those applied to other types of infrastructure deployments."

The vast majority of state and local officials filing comments opposed the FCC rules. One of the few expressing support was Chairman Jeffrey Bohm of the St. Clair County (Mich.) Board of Commissioners.

"By making small cell deployments less expensive, the FCC will send a clear message that all communities, regardless of size, should share in the benefits of this crucial new technology," wrote Bohm.

The order was modeled largely after similar laws passed in 20 states that preempt local authority to varying degrees. They've been mostly adopted in Republican-controlled states, usually passing by wide margins.

Although the FCC's fee levels and regulatory guidelines mirror those passed by states, the ruling would preempt any existing legislation not meeting its requirements. In response, the National Conference of State Legislatures and the National Governors Association filed a joint statement opposing the ruling.

"Not only will these 20 states be affected, but it also ties the hands of any other state that is looking to ensure inclusive and equitable access to high-speed internet services to residents," the groups wrote.

What Happens Next?

Many larger localities, such as Austin, Boston and San Jose, have already entered into agreements with telecoms in states where they're permitted to do so. Attorneys for the municipal advocacy group Next Century Cities believe it is unlikely that telecom providers will pursue litigation seeking to void existing agreements. While the ruling doesn't explicitly exempt preexisting agreements or prohibit local governments from negotiating future agreements, it does significantly reduce their leverage in these deals.

The ruling is expected to face multiple legal challenges over the FCC's regulatory authority.

One group likely to lead litigation on the matter is the Smart Communities and Special Districts Coalition, which is made up of localities and association groups in 11 states and the District of Columbia. Gerard Lavery Lederer, an attorney with Best Best & Krieger representing the group, told Governing prior to the meeting that they were considering litigation.

"We're committed to defending local governments rights wherever we have to do it, including the courts," he said.

Blair Levin, a former FCC official, said that if the rules aren't overturned, a second wave of litigation will ensue over the meaning of several phrases used to define different provisions, such as fees that are a "reasonable approximation" of localities' costs.

Next Century Cities has issued guidance for localities, recommending they quickly move to enact zoning, installation requirements and any other regulations. Developing pre-approved design and aesthetic requirements, it also noted, could be particularly beneficial in processing applications faster and defending legal challenges.

GOVERNING.COM

BY MIKE MACIAG | SEPTEMBER 26, 2018

Removing the Impediments to Infrastructure Investment.

Insurers are eager to provide hundreds of billions in capital. There are things governments can do to help that happen.

Nearly every aspect of our nation's infrastructure could benefit from restoration and modernization. If done the right way, these repairs and upgrades can create jobs, boost economic output and raise Americans' living standards.

But improving our infrastructure will be costly. By some estimates, simply updating and maintaining our transportation networks, communications systems, and social- and public-service facilities would cost more than $1 trillion. With limited sources of funding, every dollar will have to be used to maximum effect, including leveraging private financing for public works.

While the Trump administration and Congress have put forth proposals to address our infrastructure challenges at the federal level, much of the activity and heavy lifting happens at the state and local levels. With a few critical steps, state and local leaders can help unlock new levels of capital ripe for infrastructure investment.

The insurance industry, which includes companies like mine, is eager to invest hundreds of billions of dollars in infrastructure. These projects typically deliver stable, strong returns, often with less risk than some other investment options. A new toll road, utility plant or airport has a long shelf life. And it produces predictable revenue, with a built-in base of users that may increase over time.

Unfortunately, a few things hold back such investment. One is the patchwork of regulatory requirements that apply to infrastructure projects. States and local jurisdictions have a variety of different rules governing the use of public-private partnerships (P3s), and 17 states don't allow P3s at all. Furthermore, projects must go through numerous regulatory reviews, which can be lengthy and duplicative. And political uncertainty may result in the plug being pulled on a project after capital has been expended but before it generates revenue.

A second factor inhibiting infrastructure investment by insurers is the complex and varied processes that state insurance commissioners use to determine valuation and risk in infrastructure projects. These methods often require insurers to maintain capital ratios that are more appropriate for riskier investments.

Finally, tax-policy uncertainty has the potential to restrain insurers' investments. U.S. insurance companies account for about 10 percent of the holdings in the $3.8 trillion municipal bond market that supports many infrastructure improvements. These low-risk investments deliver solid returns due in part to the tax-free treatment of interest earned on them. The recent federal tax reform preserved this exemption. However, with federal budget deficits expected to top $1 trillion annually, there could be pressure to reverse course, which would effectively lower the return on bonds, reduce demand and raise borrowing costs for states and municipalities.

Fortunately, while maintaining our infrastructure requires collaboration and partnership at all levels of government, state and local policymakers are in a position to help remove these impediments. Here are a few key steps they can take:

First, states and municipalities should work together to create more harmony around P3 rules. A national set of rules is unlikely, but some states have developed effective policies that could be a model for others.

Second, governments at all levels should strive to limit duplication of regulatory reviews, which add time and raise costs for both taxpayers and private investors.

Third, the National Association of Insurance Commissioners can work with insurance companies to develop standards for evaluating the risk and quality of infrastructure investments while safeguarding policyholders.

And fourth, state and local leaders should keep up the pressure on Congress and the White House to preserve the tax exemption on municipal bond interest, ensuring that debt financing remains an affordable option for infrastructure projects.

Insurers stand ready to partner with states and municipalities, as well as the federal government, to modernize America's infrastructure. By removing some of the barriers that prevent insurers from increasing investment in infrastructure projects, policymakers at all levels of government can unleash new private capital to spur economic growth and bring much-needed benefits to communities across the country.

governing.com

By Larry Chadwick | Contributor
Senior managing director of government relations for TIAA

September 27, 2018

Which States Are Voting on Transportation Funding This Year?

Lawmakers have long wrestled with how to raise money to fix roads and other infrastructure. In four states this November, voters will have a chance to weigh in.

SPEED READ:

- Voters in four states — California, Colorado, Missouri and Utah — face ballot measures this year that could affect gas taxes or transportation funding.
- California voters may roll back a gas tax that's only a year old, while Missouri looks poised to raise its fuel tax for the first time in 22 years. Meanwhile, Colorado voters face a confusing trio of conflicting ballot measures, and Utah could become only the second state to use gas tax money to fund schools.

Gas taxes may be the most practical way to raise money for transportation, but they can also be politically perilous. That’s why transportation advocates are closely watching four statewide ballot measures this November that would affect fuel taxes or transportation funding.

The questions that voters in California, Colorado, Missouri and Utah face are all the more contentious because they deal directly with issues that have stymied lawmakers for months, and in most cases, years.

It is unusual to see as many statewide ballot measures on transportation funding; local measures are much more common. But these four statewide transportation questions could be in reaction to a growing willingness by state lawmakers to raise taxes or find other sources of new money to improve roads and other infrastructure. Over the last six years, 31 states have increased revenues for transportation, according to Joung Lee, the policy director for the American Association of State Highway and Transportation Officials.

Continue reading.

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BY DANIEL C. VOCK | SEPTEMBER 25, 2018

S&P U.S. Public Finance Credit Forum - Charlotte

Oct. 23, 2018 | Charlotte, NC

Please join the U.S. Public Finance team for our inaugural Charlotte U.S. Public Finance Credit Forum on Tuesday, October 23, 2018.

Register For This Event

TAX - CONNECTICUT

Town of Ledyard v. WMS Gaming, Inc.

Supreme Court of Connecticut - September 4, 2018 - A.3d - 330 Conn. 752018 WL 4175892

Town brought action against owner of slot machines to collect unpaid personal property taxes imposed on the machines. Owner and town filed cross motions for summary judgment as to owner’s liability for town’s attorney fees incurred in defense of tribal nation’s separate federal action against town, in which tribal nation challenged town’s authority to impose personal property taxes on machines that owner leased to tribal nation.

The Superior Court granted town’s motion and denied owner’s motion. Owner appealed. The Appellate Court dismissed the appeal. Owner of slot machines appealed.

The Supreme Court of Connecticut held that trial court’s decision concluding that owner of slot machines was liable to town for town’s attorney fees incurred in defense of tribal nation’s separate federal action against town, in which tribal nation challenged town’s authority to impose personal property taxes on owner’s slot machines leased to tribal nation, was an appealable final judgment in town’s action against owner seeking to collect the taxes, even though the trial court had not determined the amount of attorney fees owed; all that remained to be done after the trial court’s decision was for town to file a motion for attorney fees, which it did, and for the court to conduct a hearing on that motion to determine the amount of the fees.

TAX - NEW YORK

NYCTL 2009–A Trust v. Morris

Supreme Court, Appellate Division, Second Department, New York - September 12, 2018 - N.Y.S.3d - 2018 WL 4344592 - 2018 N.Y. Slip Op. 06022

New York City Tax Lien (NYCTL) Trust and Bank of New York brought action against property owner to foreclose a tax lien encumbering premises.

The Supreme Court denied NYCTL Trust's motion for summary judgment. On appeal, the Supreme Court, Appellate Division, affirmed. NYCTL Trust filed second renewed motion for summary judgment and also sought to appoint a referee to compute the amount due, to substitute plaintiff, and to amend the caption. The Supreme Court, Queens County, denied motion for summary judgment. NYCTL Trust appealed.

The Supreme Court, Appellate Division, held that:

- NYCTL Trust demonstrated their prima facie entitlement to judgment as a matter of law;
- NYCTL Trust made a prima facie showing that they satisfied due process rights of property owner; and
- Property owner failed to raise a triable issue of fact rebutting NYCTL Trust's prima facie showing or as to the merit of his affirmative defense.

New York City Tax Lien (NYCTL) Trust moving for summary judgment in action to foreclose property tax lien demonstrated their prima facie entitlement to judgment as a matter of law by submitting the subject tax lien certificate, which was presumptive evidence of a valid and enforceable lien, along with proof that no payments had been made on the tax lien.

New York City Tax Lien (NYCTL) Trust moving for summary judgment in action to foreclose property tax lien made a prima facie showing that they satisfied the due process rights of property owner by furnishing constitutionally adequate notice of the sale of the tax lien.

Property owner failed to raise a triable issue of fact rebutting New York City Tax Lien (NYCTL) Trust's prima facie showing or as to the merit of his affirmative defense in opposition to NYCTL Trust's motion for summary judgment in action to foreclose property tax lien.

Holdout Bondholders Join Puerto Rico Sales Tax Debt Restructuring.

Sept 21 (Reuters) – Two major holders of Puerto Rico bonds that opposed a restructuring deal for the bankrupt U.S. commonwealth's Sales Tax Financing Corporation (COFINA) revenue bonds are now part of the agreement, the island's federally appointed oversight board announced on Friday.

The board said Aurelius Capital Master Ltd and Six PRC Investments LLC, an affiliate of Monarch Alternative Capital, have opted to support the deal. Both own significant amounts of COFINA senior and junior bonds, but mostly own Puerto Rico general obligation (GO) bonds.

The move ends opposition from the island's Ad Hoc Group of GO Bondholders to a COFINA debt restructuring plan, according to the board. The three-member group, which includes Aurelius and Monarch, objected to a COFINA settlement framework in bankruptcy court in June, calling parts of it unlawful. GO and COFINA bondholders have long debated the ownership of Puerto Rico's future sales tax revenue.

Claims by Aurelius and Monarch in a lawsuit filed in federal court in 2016 challenging COFINA's constitutionality will also be dropped, under terms of the agreement.

"The Amended and Restated Plan Support Agreement represents the restructuring of nearly 24 percent of Puerto Rico's crushing debt, and provides the Commonwealth of Puerto Rico a 32 percent reduction in COFINA debt and more than $17 billion in debt service savings," the oversight board said in a statement.

The deal is expected to be presented to a U.S. judge overseeing Puerto Rico's bankruptcy case next month, the statement added.

Puerto Rico has been in bankruptcy court since May 2017 trying to restructure about $120 billion of debt and pension obligations.

Other parties to the COFINA deal, which would be Puerto Rico's first debt adjustment plan under the bankruptcy to seek court approval, include bond insurance companies, municipal bond funds, and holders of bonds sold exclusively to island residents.

Outside of the bankruptcy case, Puerto Rico has secured overwhelming creditor approval for a plan to restructure its Government Development Bank debt.

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

SEPTEMBER 21, 2018

MSRB Proposes Professional Qualification Requirements for Municipal Advisor Principals.

Washington, DC – The Municipal Securities Rulemaking Board (MSRB) is charged by Congress with establishing competency standards for municipal advisor professionals. Today, the MSRB filed with the Securities and Exchange Commission (SEC) a proposed rule change to amend MSRB Rule G-3, on professional qualification requirements, to enhance the professional qualification standards for municipal advisor professionals who act in a principal capacity at their firms.

The proposed amendments to Rule G-3, in part, will require municipal advisor principals to pass both the existing MSRB Municipal Advisor Representative Qualification Examination (Series 50) and a new Municipal Advisor Principal Qualification Examination (Series 54) to be appropriately qualified as a municipal advisor principal. Read the notice.

The establishment of a principal-level examination for municipal advisor professionals by the MSRB ensures that individuals who engage in the management, direction or supervision of the municipal advisory activities of a municipal advisor firm and its associated persons demonstrate a specified level of competence in order to promote compliance with the rules and regulations governing such activities.

The MSRB anticipates offering a pilot version of the Series 54 examination from February 2019 through June 2019. Any municipal advisor principal will be able to take the pilot exam during the pilot period. Thereafter, when the permanent version of the Series 54 examination becomes available, all municipal advisor principals will have one year to become appropriately qualified by taking and passing the exam.

Date: September 19, 2018

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

Requesting Interpretive Guidance from the MSRB.

The MSRB is committed to facilitating industry understanding of, and compliance with, MSRB rules. The MSRB welcomes inquiries by regulated entities, including brokers, dealers and municipal securities dealers and municipal advisors, as well as issuers, attorneys, investors and other market participants relating to MSRB rules. To help ensure that requesters receive meaningful, effective and responsive assistance, the information below is provided to assist requesters in understanding the process and guidelines for asking for assistance from the MSRB.

Oral Interpretive Requests
A requester may contact the MSRB by telephone at 202-838-1330 to seek assistance in understanding an MSRB rule. MSRB Staff often can resolve many inquiries over the telephone by referring the caller to the specific rule language, any associated interpretive guidance, along with compliance resources and educational material that can be found on the MSRB's website at msrb.org.

In addition, the MSRB may receive inquiries from regulated entities on existing MSRB rules and interpretations that relate to a pending regulatory examination. To promote regulatory certainty essential to an effective regulatory framework, the MSRB staff may address, as appropriate to safeguard the integrity of the examining and disciplinary processes, an inquiry directly with the regulated entity or directly or jointly with the applicable examining authority (U.S. Securities and Exchange Commission, Financial Industry Regulatory Authority, Federal Reserve Board of Governors, Federal Deposit Insurance Corporation or Office of the Comptroller of the Currency).

As telephone inquiries are often, by their nature, informal and lack supporting documentation, responses will not necessarily contain a discussion of all material considerations, address the applicability of all MSRB rules or interpretations or all the possible regulatory and legal issues that may be involved. Information provided by MSRB staff in response to a telephone inquiry is intended as general information based on the facts as described by the requester, does not express any legal conclusion on the questions presented and should not be relied on as a definitive legal position of the MSRB.

Written Interpretive Requests
If a requester is seeking a more formal response to an inquiry, they may submit a written request for interpretive guidance to the MSRB at: MSRB Market Regulation, 1300 I Street NW, Suite 1000, Washington, DC 20005 or via email at: legalmail@msrb.org.

The written request should reflect any prior communications with MSRB staff relating to the issues presented; it is generally beneficial to speak with MSRB staff in advance of submitting a written interpretive request to discuss the request and allow staff to raise any additional questions that may help facilitate the interpretive guidance. The written request should include a description of the facts relating to the interpretive question, the MSRB rule(s) to which the facts relate and a description of the scenario under which those facts could arise. Upon receipt of a written interpretive request, MSRB staff will send an acknowledgement letter to the requester. The amount of time to provide a response to a written request for interpretive guidance varies depending on the facts and circumstances raised.

Depending on the specific facts and circumstances raised, MSRB staff may respond to the request orally or in writing or conclude that it is not appropriate to respond to the request. Additionally, in some circumstances, a written response to a request for interpretive guidance may necessitate formal Board action and could require SEC approval. MSRB staff will inform the requester of the internal process and provide opportunities throughout the process to supplement or withdraw the initial request.

The Role of the MSRB in Providing Interpretive Assistance
MSRB staff can only provide guidance on matters that raise questions of interpretation under the MSRB's rules and such guidance does not provide an exemption, safe harbor or no-action relief from compliance with MSRB rules. In responding to requests, the MSRB is not acting as the requester's attorney and communications are not subject to an attorney-client privilege.

Liquidity Coverage Ratio – Treatment of Certain Municipal Obligations as High-Quality Liquid Assets.

SIFMA provided comments to the Federal Reserve, the OCC and the FDIC on their interim final rule providing Level 2B HQLA treatment for certain municipal securities.

Read the comment letter.

Fitch Ratings: Prop 6 Highlights Impact of Voter Initiatives on CA

Fitch Ratings-New York-24 September 2018: An initiative on the California ballot in November highlights the extent to which voter initiatives can limit the state of California's operating flexibility, according to Fitch Ratings.

Proposition 6 would repeal legislatively authorized tax increases dedicated to transportation improvement projects and make it more difficult for the state to increase transportation related fees and taxes in the future. The initiative uses the ballot to counter revenue raising decisions made by the legislature to support significant spending actions, illustrating the ways in which California voters can directly affect state operations. Adding a requirement to seek voter approval of transportation fee and tax increases could also increase the likelihood that infrastructure spending demands, often funded through use of dedicated funds, may to a greater extent compete with general operating needs.

Proposition 6 would repeal the tax increases incorporated in the "Road Repair and Accountability Act of 2017" and require voter approval for increases in gas and vehicle taxes going forward. Voter approval would be in addition to the legislative two-thirds vote that is already required to increase taxes and fees. The Road Repair and Accountability Act, passed as Senate Bill 1 (SB1), increased transportation-related taxes and fees and dedicated the increased revenue to improving the state's transportation infrastructure. Voters further protected the revenues by passing Proposition 69 in June 2018 to constitutionally limit spending of SB1 revenues to transportation. The state estimates SB 1 will generate over $5 billion annually, allowing the state to direct an estimated $54 billion to transportation improvement projects over the next ten years. Approximately two-thirds of the money is to be directed toward highway and road repairs, with the balance applied to other programs, including mass transit.

Proposition 6, which is contentious but has received support in a high-profile election year, highlights the impact of voter initiatives on California's operating flexibility. Passage of SB1, albeit along partisan lines in the Democratically- controlled legislature, represented a breakthrough in funding for backlogged infrastructure projects that had accumulated through a period of budget shortfalls and a deadlocked legislature. Repeal of the SB1 tax increases would likely cause delays or cancellation of projects, even as supporters of Prop 6 indicate that funding for state transportation projects can be found elsewhere in the budget. The fiscal 2019 budget includes approximately $35 billion in transportation funding, of which approximately $12 billion comes from the state, an amount which has increased by approximately 75% over the last two years with the additional SB1 funds.

A requirement for voter approval of future tax increases may factor into Fitch's assessment of the state's operating resiliency related to its ability to raise revenues. As with all states, California has an unlimited legal ability to raise revenues, even with a requirement for a two-thirds vote in the legislature. If Proposition 6 passes, the state would continue to have extensive control over its revenues, but the voter approval requirement of future transportation tax increases would create a limit on at least a portion of that revenue raising ability. Additional extensions of voter approval requirements for state revenue increases could erode the state's revenue framework and ultimately its ability to manage its budget in response to changes in the economy.

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Massive Study Shows California Schools Face Bleak Financial Future.

Study concludes that California needs to raise overall school spending by 32 percent.

A team of researchers managed by Stanford University and Policy Analysis for California Education (PACE) recently released a massive study of California schools' successes and shortcomings.

It concluded that for California's elementary and secondary schools to reach academic performance goals, the state should expand education into early childhood, prior to kindergarten, and raise overall school spending by 32 percent.

The report said that "while public schools in California spent about $69.7 billion on school operations in 2016-17, an additional $22.1 billion — 32 percent above actual spending — would have been necessary for all students to have had the opportunity to meet the goals set by the state Board of Education."

One could question the premise that spending more — a lot more — would have the desired effect. Nationwide school finance and academic data reveal almost no correlation between the level of per-pupil spending and outcomes as measured by the federal government's nationwide testing.

States that spend less than California often do better on those tests. Those that spend more — even much more — don't appear to be doing any better than California, indicating that money is not a panacea for this state's low performance. More money would make a difference only if it reaches the classroom in the form of better instruction.

Getting such an increase, moreover, would be a very heavy political lift.

A $22.1 billion increase in annual school support would require a 100 percent increase in state sales taxes, a 25 percent increase in income taxes or a more than one-third increase in property taxes.

If anything, the financial future of the state's school districts is headed the other way, as a new report from Moody's Investors Service, which charts trends in public and private finance and rates debt-worthiness, catalogs.

Moody's sees California schools facing "a confluence of financial complications over the next decade," to wit:

Schools have seen sharp increases in state and local revenue — averaging 13.8 percent a year for the last half-decade — thanks largely to a booming economy, rising taxable-property values and a state income-tax increase. Going forward, however, Moody's sees school spending rising by less than 3 percent a year, just about the rate of inflation.

· Enrollment has dropped slightly over the past decade, even as the state's population increased, thanks to declining birth and immigration rates. Over the next decade, state officials expect a steeper decline, which will impact district financing largely based on enrollment.

· School-district pension costs are escalating rapidly as both the California Public Employees Retirement System and the California State Teachers Retirement System seek more money to attack their large "unfunded liabilities." The rising pension bills will largely consume the lower level of state aid also being projected.

We're already seeing real-world examples of the trends in Moody's report. Despite the large increases in school revenue over the last half-decade, many districts, especially those with declining enrollments, are struggling to balance their books.

Sacramento Unified, for example, just saw its budget rejected by the county superintendent of schools because it dipped into reserves meant to cover pension costs to finance a hefty raise for its teachers.

Los Angeles Unified faces immense deficits, in part because it is seeing a steep decline in enrollment due to both demographic factors and a strong shift of students into charter schools.

The next governor and the Legislature will have to stabilize current school finances before giving any thought to the 32 percent increase advocated in the Stanford/PACE report.

SAN JOSE MERCURY NEWS

by DAN WALTERS, CALMATTERS

PUBLISHED: September 30, 2018

S&P Medians And Credit Factors: California Schools

California's school district credit quality remains strong, in S&P Global Ratings' view, supported by a dynamic economy that has been one of the nation's top performers for the past several years. S&P Global Ratings maintains public ratings on 650 school districts (roughly 70% of the statewide total).

Continue Reading

Sep. 18, 2018

UBS Investors Dealt Setback Over Puerto Rico Fund Losses.

Judge bars investor class action over closed-end fund losses

Investors who lost money on UBS Group AG mutual funds stuffed with Puerto Rico government bonds can't sue as a group, a federal judge said Monday, a setback in their efforts to collect from the Swiss financial services giant.

The ruling by Judge Sidney H. Stein of the U.S. District Court in New York means that investors in closed-end mutual funds managed by UBS Financial Services of Puerto Rico Inc. must pursue their claims individually through arbitration, a more difficult path to recouping damages, rather than proceeding as a single, certified class.

Investors have claimed that UBS brokers told them their mutual funds were safe when in fact their assets were heavily concentrated in just a few Puerto Rican municipal bonds and the funds had used leverage to improve returns.

Judge Stein said the plaintiffs' circumstances and their decisions to buy and sell were so dissimilar that their claims needed to be adjudicated case-by-case. Attorneys for the plaintiffs didn't respond to a request for comment.

A decline in Puerto Rico bond prices starting in 2013, when the U.S. territory's fiscal crisis came into focus, drained value from the mutual funds and sparked hundreds of claims against UBS. Prices on some securities have declined further since Puerto Rico embarked on a court-supervised restructuring of its $73 billion debt load last year.

UBS said in its second-quarter report that mutual-fund customers had claimed $2.6 billion in damages through arbitration complaints arising from the downturn in Puerto Rican bonds. Of those complaints, $1.6 billion worth have been resolved through settlements, some of which were for millions of dollars, according to the regulatory filing.

Investors said UBS failed to structure the mutual funds to preserve capital as advertised and reaped millions of dollars in fees by selling and trading mutual-fund shares. UBS largely controlled the market for those shares, making them illiquid and prone to outsize price swings, according to investor complaints.

UBS has said investors received excellent returns for years that often exceeded the broader bond market.

UBS paid roughly $34 million in 2015 to settle accusations of failing to supervise a former broker who had customers invest borrowed money into the bond funds. The U.S. Securities and Exchange Commission separately sued the former broker, Jose Ramirez Jr., in federal court. He was fired by UBS in early 2014.

The Wall Street Journal

By Andrew Scurria

Sept. 18, 2018 3:40 p.m. ET

Port of Wilmington Uses P3 Concession to Develop Port Facilities.

The State of Delaware and a subsidiary of Gulftainer Company Limited ("Gulftainer") have finalized a concession agreement for the operation and further development of the 100-year-old Port of Wilmington ("Port").

While the concession agreement signed on September 18, 2018 is not publicly available, it is expected, based on deal terms described in Port documents submitted in support of approval of the P3 transaction,[1] that the agreement grants Gulftainer exclusive rights to manage the Port for a 50-year term. In return, Gulftainer agrees to invest up to $584M in the Port in the first 10 years to improve the Port's cargo terminal facilities, $411M of which will be used to develop a new 1.2 million TEU (twenty-foot equivalent units) container terminal. Gulftainer will pay concession fees to the State based on cargo volume along with periodic adjustments for inflation. These fees could reach $13M by the tenth year of the concession.[2] At the end of the concession, Gulftainer must hand the Port facilities back with the capacity to handle specified minimum service and tonnage volume requirements.

In May 2017, Diamond State Port Corporation ("DSPC"), the state entity that owns and operates the Port, issued an RFQ seeking private partners to develop, finance and/or operate port-related infrastructure.[3] After evaluating submissions, DSPC signed a non-binding letter of intent with Gulftainer in December 2017.

Continue reading.

By Andrée Blais and Racquel Muindi on September 27, 2018

Infra Insight Blog

Nossaman LLP

Financing Dies in Darkness? The Impact of Newspaper Closures on Public Finance.

Local newspapers in the United States have been steadily declining in recent years. Accompanying this change was a decline in statehouse reporters who play an important role in gathering information about local governments and reporting it to their readers. Related academic studies in the political economy space show that geographic areas with reduced local media coverage have less informed voters and lower voter turnouts, removing the incentives of local politicians to work hard on behalf of their constituencies.

Despite the growing academic research on the real effects of media coverage on finance outcomes, it still remains an open question whether shocks to media coverage affect these outcomes in the long run. If a negative coverage shock such as a newspaper closure leads to increased government inefficiencies and informational frictions, then potential municipal lenders will likely demand higher yields to compensate for these effects. On the other hand, if there is high degree of substitutability between the affected media outlet and alternative, unaffected outlets, then there should be no effect on local financial markets in the long run. This effect could even be positive if these alternative sources of news provide more accurate and timelier information to their readers.

Pengjie Gao of the University of Notre Dame and Chang Lee and Dermot Murphy of the University of Illinois at Chicago, empirically examine how shocks to local media coverage affect long-run public borrowing costs. The municipal bond market provides an ideal setting for their study because the individual bonds are largely bought and sold by local investors, providing a more direct link between local media shocks and securities prices. They use local newspaper closures as a proxy for local media shocks, as the closures effectively cause large, discrete changes in local media coverage. Their main finding is that newspaper closures have a significantly adverse impact on municipal borrowing costs in the long run. Specifically, following the three year period after a newspaper closure, municipal bond offering yields increase by 5.5 basis points, while yields in the secondary market increase by 6.4 basis points; these results are significant at the 1% level. Further, these results are robust to a comparison of yields between affected and unaffected counties in the pre-closure period. The effect of newspaper closures on revenue bonds, which are backed by cash flows generated by specific projects and more subject to misappropriation, is even stronger, with offering and secondary yields increasing by 10.6 and 9.9 basis points. In dollar terms, an additional 10 basis points increases the cost of an average issue by about $650 thousand.[1] Taken together, their evidence suggests that there is not a sufficient degree of substitutability between local newspapers and alternative information intermediaries for evaluating the quality of public projects and local governments.

Read the full paper here.

The Brookings Institute

by Pengjie Gao, Chang Joo Lee, and Dermot Murphy

Monday, September 24, 2018

The authors did not receive financial support from any firm or person with a financial or political interest in this article. Neither is currently an officer, director, or board member of any organization with an interest in this article.

Editor's Note: *A version of paper was presented at the 7th Municipal Finance Conference at The Brookings Institution on July 16-17, 2018.*

Public Finance Watchdog Gives Illinois an "F"

States are putting taxpayers on the hook for more and more debt, with Illinois among the state's with highest tax burden per taxpayer in the nation, according to the latest report from public finance watchdog Truth In Accounting.

Despite the improving national economy, some states are in worse shape now than they were shortly after the end of the Great Recession. Truth In Accounting's ninth Fiscal State of the States report reviews states' comprehensive annual financial reports (CAFR) for the overall financial condition for all 50 states. From there, TIA offers up a letter grade for each state, from "A" to "F," where Illinois lands.

"Based on our grading methodology, three states received A's, seven received B's, 12 received C's, 18 received D's, and 10 states received failing grades," The report said.

Illinois was the third-worst state in debt per taxpayer at $50,800. That's $400 more than the previous year's report. Only Connecticut, at $53,400 debt per taxpayer, and New Jersey with $61,400 debt per taxpayer, were worse than Illinois.

Truth In Accounting considers Illinois one of five Sinkhole States that don't have enough assets to cover their debt.

"Illinois only has $28.8 billion of assets available to pay bills totaling $244.9 billion," according to the report.

The other four Sinkhole States were Massachusetts, Kentucky, Connecticut and New Jersey.

At the other end of the spectrum were the five Sunshine States, with Alaska leading the country with a per-taxpayer surplus of $56,500. The other were North Dakota ($24,900 surplus per taxpayer), Wyoming ($19,600), Utah ($4,400) and South Dakota ($3,100).

TIA Research Director Bill Bergman said some states – like Illinois – are in worse shape than they were shortly after the Great Recession.

"Given that we've had a recovery since then, and a significant one in the stock market, the fact that Illinois' financial condition has worsened since 2009 is even more of a concern," he said.

Illinois keeps getting worse, Bergman said, with a per taxpayer debt liability of $29,000 in 2009 ballooning to $50,800 in TIA's most recent report.

Bergman said states that are running surpluses have something in common.

“The good states have a record of funding their pensions and funding their [other post-employment benefits] in a timely way that doesn’t kick the can down the road,” he said.

While credit rating agency reports are for bond holders, TIA’s rating is designed to show taxpayers what’s going on, Bergman said.

“Our review is something that’s guided by the concern for the common citizen and the average taxpayers, whereas credit ratings focus on bond holders,” Bergman said.

Moody’s has Illinois’ general obligation bonds rated at Baa3 with a stable outlook, S&P at BBB- with a stable outlook and Fitch at BBB with a negative outlook, all just above junk status.

Some ratings reports acknowledge Illinois’ unfunded liabilities and structural debt, but they change the outlook from negative to stable because of things like tax increases. In the summer of 2017, Illinois’ ended a more than two-year budget impasse by increasing income taxes by $5 billion over the governor’s veto. Credit ratings agencies hinted at a junk status rating if there wasn’t a budget.

“[Governments] have the power to tax and that’s definitely something worth respecting, but from the point of view of the average taxpaying Joe or Jane, that’s not necessarily the source of financial strength,” Bergman said. “In fact, they’re relying on the average taxpayer to make the bonds whole with the power of tax and the power of force.”

The TIA report also shows that because of new financial reporting rules requiring all unfunded post-employment benefits to be reported, Illinois’ hidden debt was among the worst in the country at $36.1 billion, for a total of $52.5 billion in promised benefits.

Another area Illinois failed at were filing comprehensive annual financial reports within 180 days. Illinois was 258 days tardy from the end of its fiscal year, the report said. Illinois was tied for fifth worst in the nation there.

Bergman said he wants to bring awareness to taxpayers about the true cost of their government’s structural debt.

“This is hard stuff,” Bergman said. “A lot of people, their eyes just fog over. We’re trying to help them understand it.”

While Illinois is among the worst states, the report notes that the entire country is in financial trouble.

“States in general do not have enough money to pay all of their bills,” the report said. “Based on our latest analysis, the total unfunded debt among the 50 states increased by $53.4 billion to more than $1.5 trillion in fiscal 2017. Most of this debt comes from unfunded retiree benefit promises, such as pension and retiree healthcare debt. This year, pension debt accounts for $837.5 billion, and other post-employment benefits – mainly retiree healthcare liabilities – totaled $663.1 billion.”

The Fiscal State of the States report can be found at StateDataLab.org.

WBGZ Radio

By Greg Bishop – Illinois Radio Network

9/27/2018

- **Ed. Note:** We will be off next week. Double dose of drivel 10/2.
- A Reshuffling of the 8038 Deck: Squire Patton Boggs
- Can EMMA Be Used as a Defense by Banks in VRDO Lawsuit?
- Little Publicized Section of Tax Cut and Jobs Act Could Cause Burden for Governments.
- Fitch Ratings: Leverage Isn't One-Size Fits All for Revenue-Supported Bonds.
- The Trouble With TIF.
- Improving Tax Increment Financing (TIF) for Economic Development.
- MSRB Seeks Comment on Application of Content Standards to Advertisements by Municipal Advisors.
- And finally, The Pantheon of Barrys is brought to us this week by *Ryan v. Napier*, in which a motorist "swerved into the opposite lane and nearly collided with a patrol car driven by Pima County Sheriff's Deputy Matthew Dixon," eventually leading to an intimate encounter with Barry the police dog after Barry's handler announced "stop or you will be bitten" (if I only had a nickel…). Barry, welcome to the pantheon. Let me be the first to introduce you to Mssrs. Manilow and White. Good boy.

LIABILITY - ARIZONA

Ryan v. Napier

Supreme Court of Arizona - August 23, 2018 - P.3d - 2018 WL 4016372

Suspect brought a negligence action against a sheriff and deputy for injuries arising from events that occurred when suspect was bitten by K-9 police dog after a police chase.

The Superior Court entered a judgment upon jury returned in favor of suspect. Sheriff and deputy appealed, and the Court of Appeals affirmed. The Supreme Court granted review.

The Supreme Court of Arizona held that:

- Negligent use of intentionally inflicted force is not a cognizable claim;
- Officer's internal evaluation of whether to release police dog and his decision to do so was part and parcel of his intent to inflict harmful or offensive contact on suspect and thus could not constitute negligence;
- Justification defense for law enforcement officers who use physical force is either redundant or immaterial, and therefore inapplicable, in negligence actions brought against law enforcement officers;
- Law enforcement defendant bears the burden of proving a justification defense by a preponderance of the evidence in a civil case; and
- Expert oversteps by testifying that *Graham v. Connor*, 490 U.S. 386, governs application of the justification defense in a negligence or battery action against law enforcement officers.

VENUE - CALIFORNIA

GameStop, Inc. v. Superior Court

Court of Appeal, Fourth District, Division 2, California - August 22, 2018 - 236 Cal.Rptr.3d 874 - 18 Cal. Daily Op. Serv. 8464

Secondhand dealer of consumer electronics and video games filed petition for writ of mandate, seeking to compel the Superior Court to transfer venue of law enforcement action brought by the People, by and through county district attorneys, under Unfair Competition Law (UCL) for violations of Secondhand Dealers Law (SDL), to neutral county.

The Court of Appeal held that mandatory removal provisions for action brought by county or local agency were inapplicable to UCL actions brought by district attorney on behalf of the People to enforce SDL.

SECURITIES ARBITRATION - INDIANA

Earley v. Edward Jones & Co., LP

Court of Appeals of Indiana - June 25, 2018 - N.E.3d - 2018 WL 3097991

Client filed breach of contract, negligence, constructive fraud, and conversion action against investment company after funds invested with company suffered a significant decrease.

The Superior Court granted company’s motion to compel arbitration. Client appealed.

The Court of Appeals held that:

- Arbitration agreement was valid and enforceable, and
- Federal Arbitration Act (FAA) preempted state law.

Arbitration agreement contained in contract between client and investment company was valid and enforceable in parties’ dispute over loss of client’s funds, in which client alleged breach of contract, negligence, constructive fraud, and conversion, and in which investment company sought to compel arbitration; all of the contracts in the parties’ controversy were valid and enforceable, and, contrary to client’s claim, not procured by fraud, and evidence showed that client simply chose not to read the contract and chose to remain ignorant of the terms and conditions thereof.

Federal Arbitration Act (FAA) preempted state law in dispute between client and investment company, in which client alleged breach of contract, negligence, constructive fraud, and conversion over the loss of funds, and in which investment company sought to compel arbitration; notice of arbitration statute from governing state law were preempted by the FAA in cases of interstate commerce, and it was undisputed that parties’ agreements affected interstate commerce.

BANKRUPTCY - KENTUCKY

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

United States Court of Appeals, Sixth Circuit - August 24, 2018 - F.3d - 2018 WL 4042666

Kentucky Employees Retirement System (KERS) filed complaint seeking determination that debtor, as tax-exempt nonprofit employer that operated mental health facilities in Kentucky, was “governmental unit” that was statutorily barred from seeking Chapter 11 relief, to enjoin debtor from seeking to withdraw from KERS, and to require debtor to continue to contribute to KERS.

The United States Bankruptcy Court dismissed complaint and granted debtor's motion to reject its alleged contract with KERS, and KERS appealed. The United States District Court affirmed in part and reversed in part, and appeal was taken.

The Court of Appeals held that:

- Employer was not state instrumentality, weighing in favor of conclusion that it was not statutorily disqualified from filing Chapter 11 petition;
- Kentucky's statutory empowerment of employer to oversee administration of mental health services did not weigh in favor of conclusion that employer was subject to state control and therefore statutorily disqualified from filing Chapter 11 petition; and
- Question had to be certified to Kentucky Supreme Court of whether participation by employer as department in and its contributions to Kentucky Employees Retirement System were based on contractual or a statutory obligation.

Unpublished case from Court of Appeals panel could provide support for proposition that tax-exempt nonprofit employer, like its predecessor, should be given benefit of access to Chapter 11 proceedings; although statutory scheme was different in prior case, it did not explain its reasoning, and it was not binding, subsequent panel was required to not read Bankruptcy Code to erode past bankruptcy practice absent clear indication that Congress intended such departure.

Tax-exempt nonprofit employer that operated mental health facilities in Kentucky was "instrumentality" of Commonwealth of Kentucky, weighing in favor of conclusion that it was subject to state control and therefore statutorily disqualified from filing Chapter 11 petition, since employer's work of providing safety net of mental health care served public purpose.

Kentucky did not in normal course of events choose leadership of tax-exempt nonprofit employer that operated mental health facilities in Kentucky, weighing against conclusion that employer was subject to state control and therefore statutorily disqualified from filing Chapter 11 petition; although Kentucky had power to do so in emergency situations, board and officers of employer were selected internally without input from state government and lone state official who attended some board meetings, as governmental liaison, did not have any vote and was excluded from executive sessions.

Kentucky did not govern operations of tax-exempt nonprofit employer that operated mental health facilities in Kentucky through enabling statute, and Kentucky did not fund it through mechanism that normally was reserved for public entities, weighing against conclusion that employer was subject to state control and therefore statutorily disqualified from filing Chapter 11 petition; although employer was subject to governmental regulation and recognition, being subject to regulation was not synonymous with functioning pursuant to enabling statute, employer undertook projects unrelated to its role as regional provider of mental health services, and it never took even limited step of making request for tax even if it had ability to do so.

Kentucky's ability to withdraw its recognition of tax-exempt nonprofit employer that operated mental health facilities in Kentucky, as community mental health center (CMHC), and thereby render it ineligible for main service provision contract did not weigh in favor of conclusion that employer was subject to state control and therefore statutorily disqualified from filing Chapter 11 petition; although withdrawal of recognition would create financial difficulties because that contract accounted for more than 20% of annual revenue, CMHC had to take or fail to take certain actions listed in statute to trigger those consequences, and employer would not thereby cease to exist.

Tax-exempt nonprofit employer that operated mental health facilities in Kentucky was not state instrumentality, weighing in favor of conclusion that it was not statutorily disqualified from filing Chapter 11 petition, since Commonwealth of Kentucky did not create employer, Kentucky did not in normal course of events choose employer's leadership, Kentucky did not govern its operations through enabling statute, Kentucky did not fund it through mechanism that normally was reserved for public entities, and Kentucky could not unilaterally destroy it.

Kentucky's statutory empowerment of tax-exempt nonprofit employer that operated mental health facilities in Kentucky, as community mental health center (CMHC), to oversee administration of mental health services did not weigh in favor of conclusion that employer was subject to state control and therefore statutorily disqualified from filing Chapter 11 petition, since complying with regulations for special purpose governmental entities was not same as being special purpose governmental entity, and overseeing was not same as making policy.

Question had to be certified to Kentucky Supreme Court of whether participation by tax-exempt nonprofit employer that operated mental health facilities in Kentucky, as community mental health center (CMHC), as department in and its contributions to Kentucky Employees Retirement System were based on contractual or a statutory obligation, since key problem was one of Kentucky law and Kentucky Supreme Court previously had accepted certification of questions that apply Kentucky law to facts, Kentucky Supreme Court's decision on issue could be determinative, precedent from Kentucky courts was not available to provide clear guidance in answering question, decision could have significant impact on fiscal health of Kentucky public pension system, and final resolution of case depended on Kentucky Supreme Court's determination.

PUBLIC UTILITIES - MINNESOTA

Charter Advanced Services (MN), LLC v. Lange

United States Court of Appeals, Eighth Circuit - September 7, 2018 - F.3d - 2018 WL 4260322

Subsidiaries of a national communications company that provided voice over internet protocol (VoIP) services to residential and business customers brought action against chair and members of Minnesota Public Utilities Commission (PUC), seeking declaratory judgment that state regulation of its services was preempted by federal law, and injunctive relief prohibiting defendants from seeking to enforce regulation of its service.

The United States District Court for the District of Minnesota granted summary judgment for subsidiaries. PUC appealed.

The Court of Appeals held that:

- VoIP offerings acted on consumer's information, and therefore were "information service" under Telecommunications Act, warranting preemption of state regulation of that service, and
- Carve-out from definition of "information service" under Telecommunications Act did not apply to VoIP offerings.

Voice over internet protocol (VoIP) offerings acted on consumer's information, and therefore were "information service" under Telecommunications Act, warranting preemption of state regulation of that service, since information entered network as either internet protocol (IP) or time division multiplexing (TDM) and left in another, and system offered "net" protocol conversion, which Federal

Communications Commission (FCC) defined as occurring when end-user could send information into network in one protocol and have it exit network in different protocol.

Carve-out from definition of “information service” under Telecommunications Act did not apply to voice over internet protocol (VoIP) offerings, since service was “between or among users,” network protocol technology was essential feature of those offerings as ability to call users of legacy telephony services via service was vital selling point for consumers, service was not aimed at providing backwards compatibility for existing customer premises equipment (CPE), but, instead, customers had to receive new CPE, which included multimedia terminal adapter (eMTA) to utilize its services, CPE fell outside carrier’s network, eMTA was located outside of carrier’s network by definition, and any conversion back into original form of information took place outside of network in eMTA.

PUBLIC UTILITIES - OHIO

State ex rel. Citizens for Responsible Green Government v. City of Green

Supreme Court of Ohio - August 30, 2018 - N.E.3d - 2018 WL 4263511 - 2018 -Ohio- 3489

Objector to municipal ordinance granting easements to company for interstate natural gas pipeline system filed complaint for writ of mandamus, seeking to compel city, city finance director, and county board of elections to place referendum regarding ordinance on general-election ballot, and objector also filed motion to supplement the record.

The Supreme Court of Ohio held that:

- Objector lacked adequate remedy at law, as required for mandamus relief, given proximity of general election;
- Length of time between rejection of petition and filing of suit was unreasonable, as element of city’s laches defense;
- Objector was aware of injury during period of delay in filing suit, as element of laches defense;
- Objector’s unreasonable delay in filing suit was not excused, as element of laches defense; and
- Objector’s unreasonable delay in filing suit prejudiced city, as element of laches defense.

MUNICIPAL CORPORATIONS - TENNESSEE

Comprehensive Security Inc. v. Metropolitan Government of Nashville and Davidson County

United States District Court, M.D. Tennessee, Nashville Division - August 14, 2018 - F.Supp.3d - 2018 WL 3853201

Private, security-for-hire provider, which employed police officers, brought action against metropolitan government for city and county, alleging violations of Sherman Act for monopolization and attempted monopolization with regard to secondary employment opportunities for police officers.

Government moved to dismiss.

The United States District Court held that:

- Broad state police powers did not constitute a clearly articulated and affirmatively expressed state policy to authorize anticompetitive conduct and thus did not provide basis for antitrust immunity under state action doctrine, and
- Alleged anticompetitive conduct was not foreseeable result of power delegated to municipalities under Private Protective Services Licensing Act, and thus Act did not provide basis for application of state action immunity.

IMMUNITY - TEXAS

Providence Behavioral Health v. Grant Road Public Utility District

United States Court of Appeals, Fifth Circuit - August 28, 2018 - F.3d - 2018 WL 4099682

Mental health provider and property owner brought action against public utility district, its board of directors and board members, alleging defendants' denial of water, drainage and septic services to provider's intended psychiatric facility violated Americans with Disabilities Act (ADA), federal Fair Housing Act (FHA), and Texas Fair Housing Act (TFHA).

The United States District Court for the Southern District of Texas entered judgment dismissing provider's claims. Provider appealed.

The Court of Appeals held that:

- District was local government entity, rather than instrumentality of state of Texas and thus, was not entitled to Eleventh Amendment sovereign immunity from action;
- District, board and board members were not liable for discrimination under ADA, FHA, and TFHA;
- District, board and board members were not liable for failing to provide reasonable accommodation to provider and owner in violation of ADA, FHA and TFHA; and
- District, board and members were not entitled to an award of attorney fees.

Fitch: California Public Power Utilities Face Carbon Neutral Target in 2045.

Fitch Ratings-Austin-13 September 2018: California has ratcheted up its statewide environmental goals with the passage of the California 100% Clean Energy Act. The legislation, signed by the Governor earlier this week, is the latest step in the state's ambitious transformation of its energy supply through the implementation of additional constraints on utility power supplies.

Fitch Ratings expects the credit quality of Fitch-rated public power utilities in California to remain strong over the medium term, although compliance with the legislation will require careful resource planning and heighten the importance of meaningful industry developments in areas that extend beyond individual publicly owned utility (POU) control. Advances in generation and storage technologies, the pace of electrification in the transportation sector, and potential regional market expansion and design changes will be crucial to the state's success in reaching its targets.

California's 100% Clean Energy Act requires utilities to achieve 60% of their energy supply from renewable sources by 2030, which is an increase from the 50% renewable by 2030 mandate set by legislation passed as recently as 2015. Significantly, the legislation also requires 100% of a retail utility's energy supply to be provided by renewable or carbon-free energy by 2045, the same goal as the state of Hawaii, which previously held the most ambitious renewable standard.

POUs must make long-term resource decisions while factoring in the requirements of the new legislation, the limitations of existing storage technologies and carbon-free generation resources, and near-term system needs. Decisions regarding the development of additional natural gas-fired resources must now be evaluated under the legislatively imposed deadline of 2045, which shortens the timeframe over which to recover the investment.

MOUNTING REGULATIONS ADD TO LONG-TERM INVESTMENT UNCERTAINTY

The 100% Clean Energy Act was proposed during the 2017 legislative session so the industry was prepared for it or a similar bill to be enacted. The act's requirements are in line with the trajectory established by previous mandates. However, this legislation further heightens investment uncertainty for natural gas-fired generation. The rapid decline in energy that can occur from both wind and solar requires a corresponding generation resource that can ramp-up energy production in minutes to provide grid stability and service reliability. One such option is natural-gas generation given its flexibility and fast start capabilities. Several utilities have delayed or changed planned or expected investment in natural gas resources given the uncertainty regarding the state's unfolding environmental mandates.

Los Angeles Department of Water and Power (LADWP; power revenue bonds rated 'AA'/Stable Outlook) placed its multi-decade local generation investment plan on hold in 2017. Since 2011, LADWP has been investing capital to reconstruct three of its local gas-fired generation facilities. In order to comply with state regulations, the plants must be rebuilt to cease using ocean water for once-through power plant cooling purposes by 2029 with a total estimated cost of over $2.0 billion. The three power plants account for 70% of the 4,736MW net generating plant capacity owned by LADWP. LADWP's pause in the long-term investment is intended to provide time to analyze the need for the continued investment in local gas-fired generation in light of other alternatives, including the increased availability of renewables in the state and the greenhouse gas emissions of various alternatives.

Glendale Water and Power (electric revenue bonds rated 'A+'/Stable Outlook) has also been planning the replacement of its older gas-fired generation unit, the Grayson Power Plant. The city's integrated resource plan identified the rebuild of the Grayson power plant on the existing site with approximately 200 MW of new, efficient natural gas-fired capacity as the city's best option at an estimated cost of just under $500 million. However, earlier in 2018, Glendale decided to place the repowering decision on hold while it solicited alternative proposals. Similar to LADWP's reasoning, Glendale wanted to explore renewable and non-carbon emitting alternatives.

In both cities, the alternative exploration process was initiated by community requests and City Council direction ahead of the passage of the 100% Clean Energy Act but both actions reflect the climate of uncertainty in which utilities are attempting to make long-term investment decisions. While it appears that natural gas-fired generation will need to continue to play a significant role in the state's power supply until other technology developments occur, the 2045 deadline now puts a hard limit on the potential useful life of this investment, with the ongoing risk that subsequent state legislation moves the target date forward in the future.

THE FATE OF THE INTERMOUNTAIN POWER PROJECT REPOWERING

Certain POUs in California are involved in a multi-year process to implement a repowering of the Intermountain Power Project (IPP), a 1,800 MW coal-fired generation plant located in Utah with a 490 million 500 kV direct current transmission line into California. California utilities are contracted to purchase the output of the IPP coal plant through 2027. IPP represents one of the last sources of coal-fired generation for California's POUs following the recent divesture of the San Juan power project in New Mexico and the Navajo Generating Station in Arizona. The repowering was designed to allow the California participants to comply with state legislation enacted in 2006 that limits the use of coal-fired resources in the future by repowering the resource as a combined cycle natural gas-fired plant. Project participants have worked through a multi-year process towards this goal. The repowered IPP may still provide valuable capacity and reliability benefits prior to 2045 and the IPP transmission line into California provides valuable import capability for out-of-state renewable energy.

STRONG CREDIT QUALITY BUT WITH COMPLIANCE COST RISKS

California's POUs have managed the challenge of mandated energy targets thus far and have exhibited strong credit quality due largely to the timeliness of cost recovery and the preservation of margins. Fitch expects this success to continue over the medium term. It is noteworthy, however, that the rate impact to consumers during the initial years of regulatory compliance was materially dampened by the corresponding decline in the cost of renewable energy and natural gas commodity prices during the same period of time. Future compliance costs may not experience the same buffer.

Future compliance costs could also be significantly higher than recently observed. While the 100% Clean Energy Act is just one in a succession of mandates levied on the state's POUs that began over a decade ago, the legislation further constrains future resource options. The confluence of the 2045 deadline and reliance on still emerging technologies raises the concern that utilities will be hampered by sizable cost increases while simultaneously challenged to maintain the high reliability levels that ratepayers have come to expect. Over the longer term, the preservation of credit quality will continue to depend upon the timely recovery of those costs and maintenance of strong financial margins during any potential operational challenges.

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AT&T, City of LA Explore Smart Cities Public-Private Partnership.

AT&T and the City of Los Angeles are in talks regarding a public-private partnership to make LA one of the smartest cities in America. AT&T's role in the partnership is the provision of IT technology and support for the deployment of small cell technology to address the problems that matter most to the people that live, work, and visit there.

To help the city solve issues related to road traffic, natural disaster preparedness, and public safety, AT&T said it's exploring the deployment of a variety of smart city products ranging from digital kiosks to structural monitoring to digital infrastructure. The deployment of these technologies will benefit all neighbourhoods in Los Angeles, helping to provide better connectivity to neighbourhoods that have been traditionally left behind in the digital divide, the company said in a press release.

To enhance existing voice and data capacity in LA, the company said it will be looking to deploy a greater number of small cells more rapidly to expand its existing network and begin deployment of a 5G network.

Small cell technology also helps bring increased capacity to first responders. This is in addition to the increased coverage and capacity that FirstNet is providing to the LA public safety community through the network's Band 14 spectrum build and integration of assets from the Los Angeles Regional Interoperable Communications System.

Thursday 13 September 2018 | 13:12 CET | News

Bank of Los Angeles: No Plan Just Promises

LA WATCHDOG–Charter Amendment B: Shall the City Charter be amended to allow the City to establish a municipal financial institution or bank?

Over the next two months, we will be experiencing a full court press by the well-financed proponents of Charter Amendment B, the pet project of City Council President Herb Wesson, promising billions in savings and benefits to the City.

But these pie-in-the-sky claims have not been documented, substantiated, or made available to the public because the City does not have a business plan for the proposed City owned Bank of Los Angeles.

Rather, the fiscally irresponsible politicians who occupy City Hall want us to give them a blank check to form a bank that will eventually require a cash investment of $1 billion from the City to capitalize the bank, to establish the required loan loss reserves, and to pay for the new bank's "exorbitant" start-up costs.

Again, there is no plan to raise the $1 billion in capital, especially since the City's two underfunded pension plans would be prohibited from making such a risky, related party investment, contrary to comments made by several Councilmen.

The proponents claim that the City paid $170 million in banking fees last year, implying that the Bank of Los Angeles will eventually save the City tens of millions. But this will require the Bank to develop and manage sophisticated data processing systems, a highly unlikely prospect given the City's poor record of developing and operating management information systems.

For example, we certainly experienced the pain associated with the disastrous rollout of the DWP billing system.

Furthermore, it is unlikely that the Bank of Los Angeles will be as efficient as Bank of America or JP Morgan who have some of the most sophisticated, secure systems in the world staffed by experienced personnel and programmers.

The proponents claim that the "big banks receive billions in City deposits virtually interest free." But according to reports from the Office of Finance, banks deposits are only about 1% of the City's $9 billion investment portfolio.

The proponents claim that the City paid $1.1 billion in interest to "big banks" and investors. But there is no evidence to support this claim, especially given that the City is budgeting only $28 million in interest expense on its outstanding General Obligation Bonds. Of course, the City's three proprietary departments (DWP, the Port of Los Angeles, and LAX), the Sewer Department, and other special revenue departments have outstanding bonds which require interest payments. But $1.1 billion in interest expense appears to be a vast overstatement.

The supporters of the Bank of Los Angeles anticipate that the bank will invest in City debt, resulting in huge savings for the City. While the savings are probably overstated given the need for the proposed Bank of Los Angeles to charge high interest rates to cover its anticipated City mandated payroll and overhead, the bulk of the savings will go to the proprietary departments or the capital-intensive Bank, not to the City's treasury.

There is also the risk that the proposed Bank will be financing its investment in long term bonds with short term deposits, a recipe for disaster if interest rates should happen to increase. In that case, the Bank, its capital, and its deposits would be exposed to significant losses.

The Mayor and the City Council will tell us that the proposed Bank of Los Angeles is the answer to our prayers, overlooking the risks of bad loans and investments and swings in interest rates. Maybe that is why they have not developed a plan, unlike the Bay Area governments who are considering a public bank.

It is no wonder that the City Legislative Analyst recommended against establishing the Bank of Los Angeles.

The same City Hall politicians that gave us unbalanced budgets, a Structural Deficit of $1 billion a year, unfunded pension liabilities of $15 billion, and lunar cratered streets want us to give them a blank check that will allow them to raid the cash reserves of the City and its proprietary and special revenue departments.

We would be crazy to give a blank check for a City owned bank that would be controlled by the Mayor, the City Council, and their cronies.

Vote NO on Charter Amendment B.

JACK HUMPHREVILLE 10 SEPTEMBER 2018

Little Publicized Section of Tax Cut and Jobs Act Could Cause Burden for Governments.

Changes to Internal Revenue Code section 162(f) and an added section 6050x imposed by the Tax Cut and Jobs Act could result in burden for governments. Under section 162(f), taxpayers cannot deduct amounts paid or incurred to a government or governmental entity in response to a violation of law or potential violation of law. An exception exists if a taxpayer can show that the amount (i) constitutes restitution for damage or harm that may have been caused by the violation of or potential violation of law, or (ii) is paid to come into compliance with any law that was violated. Additionally, the court or settlement agreement must identify the amount as restitution or as paid to come into compliance with the law.

The Tax Cuts and Jobs Act also added section 6050X which requires governments and governmental entities to report amounts received from taxpayers under section 162(f). Section 6050X requires governments to report the amount of the nondeductible payment, any amount that constitutes restitution or remediation of property, and any amount paid for coming into compliance with any law that was violated or part of the investigation.

Issues that have been noted by states include:

- The reporting is required at the point the suit or agreement is reached making it impossible to trigger the reporting from the financial transaction.
- Each state agency's legal counsel would need to be made aware of the reporting requirements related to 6050x as it would be legal counsel's responsibility to determine when a suit or settlement agreement is finalized and whether it is subject to 6050x reporting.
- The forms would need to be immediately produced for 6050x reporting for the "defendant" in the suit. The forms would also need to be filed with the IRS (per the requirements of this notice/section of the law).
- Such reporting would pose a substantial administrative burden on a state having to review all settlements/suits a State may have to determine if the reportable under the law (6050x).
- It also appears that the tax reporting burden would be on the legal counsel whom is not generally an expert in tax reporting.

As the provision applied when the law was passed on December 22, 2017 however, the IRS has released transitional guidance on the new requirement setting the compliance date for some time after January 1, 2019. The proposed regulations are expected soon.

A copy of the transitional guidance (Notice 2018-23) regarding nondeductible penalties under Code sections 162(f) and 6050X can be found here.

Further, the IRS is seeking comment on the burden of the 6050x transitional guidance. This is not a request for comment on the guidance itself but rather a request for comment on the burden of collection i.e., a paperwork reduction notice. Nonetheless, people often provide comment on the actual requirement even though the notice requests comment on paperwork burden.

Should you have any comments on the issue, please provide those to Cornelia Chebinou. Should we receive enough input, we will craft an association response. The paperwork reduction notice is available here.

Fitch Ratings: U.S. Colleges Turning to P3s More Frequently.

Fitch Ratings-New York-10 September 2018: Strains on revenue are leading more U.S. colleges and universities to seek extra help in the form of public private partnerships, according to Fitch Ratings in a new report.

Colleges and universities are finding P3s increasingly more attractive in addressing campus infrastructure and physical plant needs in an effort to keep demand high for their institutions while retaining both students and staff. Use of P3s could prove to be pivotal in certain parts of the country where enrollment in colleges has dropped off considerably.

‘The number of high school graduates in the Northeast and Midwest has declined over the last decade,’ said Director Emily Wadhwani. ‘Additionally, recent private institution closures and consolidation among some public intuitions are showing that demand can vary greatly by market and by institution.’

Digging deeper, the number of high school graduates is expected to plateau over the next decade, with schools in the Northeast and Midwest likely to see more declines. As such, ‘a university’s strategy to address its housing and other auxiliary needs must be executed in the context of an increasingly competitive and revenue-strained environment,’ said Senior Director Seth Lehman.

P3s for financing around student housing, parking and other auxiliary assets have become more commonplace in recent years, but they do come with cost risks that could prove to be more difficult to control over time. ‘Adding and upgrading amenities to keep up facility attractiveness also adds to cost risks,’ said Lehman. Completion risk also remains an important component in evaluating higher education P3s, particularly when there is no backstop support from the college or university itself.

‘Higher Education Demand-Based Project Financings’ is available at www.fitchratings.com.

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Fitch Ratings: Leverage Isn't One-Size Fits All for Revenue-Supported Bonds.

Fitch Ratings-New York-11 September 2018: The stronger the business model a revenue-supported enterprise in U.S. public finance has, the more leverage it can carry without constraining its credit rating, according to Fitch Ratings in a new report.

Financial leverage for U.S. revenue supported public finance sectors varies widely and thus needs to be viewed through risks specific to each sector. Fitch’s analysis shows large scale public universities and public utilities to have the strongest business models due largely to independent pricing powers and very strong demand characteristics. Conversely, public safety net hospitals and not-for-profit charter schools tend to have the weakest profiles.

In other words, a public safety net hospital without taxing authority would need to carry substantially less debt in order to reach a rating similar to that of a first tier public university.

Despite the attention it has received over the last several months, unfunded pension liabilities are not generally a pre-eminent driver of ratings. "The municipal market has been sharply focused on pensions in state and local government ratings but pensions are also part of the risk profile of public enterprises,' said Jessalynn Moro, Fitch's Head of U.S. Public Finance. 'Pensions' impact on ratings varies with the strength of the enterprise business model.'

Further evidence of this came in Fitch's recently completed not-for-profit healthcare ratings review following the release of its final criteria at the start of 2018. Of the 135 providers Fitch rates, only three significant rating changes were a direct result of large unfunded pension liabilities. One notable recent exception was Spartanburg Regional Health Services (SRHS) that Fitch recently downgraded to 'BBB' citing high overall leverage including a large unfunded pension liability reported in its most recent financial statements.

Fitch notes that the Spartanburg rating action has little relevance to ratings in the public higher education sector with its stronger business model. If SRHS had a business model like that of a public university with strong revenue defensibility and operating risk, it would have a much higher rating.

Fitch began its revenue sector criteria revisions last summer in an effort to improve the consistency and transparency of its ratings. Fitch's next sector-specific revenue supported exposure draft will be for Higher Education next month. See 'Higher Education Next in Revenue Sector Criteria Revisions' for more information. Fitch is also currently soliciting market feedback for its Public Power exposure draft published in June.

'Leverage, Ratings and the Relevance of Unfunded Pension Liability' is available here.

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Fitch U.S. Not-for-Profit Hospitals and Health Systems Rating Criteria Update: Implementation Complete.

Fitch Ratings completed the initial implementation of its U.S. Not-for-Profit Hospitals and Health Systems Rating Criteria as of July 9, 2018. We reviewed 125 existing issuers, or just under one-half of our total acute portfolio.

Read Full Report.

A Reshuffling of the 8038 Deck.

The IRS recently released a new Form 8038-G, which is the information return for issues of tax-exempt governmental bonds, and a new Form 8038, which is the information return for tax-exempt private activity bonds. In addition, the IRS has released draft instructions for each form. The revised forms are in part a response to changes made to the Internal Revenue Code by the Tax Cuts and Jobs Act (P.L. 115-97), which was signed into law on December 22, 2017 ("TCJA"). Keep reading for more information on the new forms, the fate of some old forms, and some gratuitous commentary.

Continue Reading

The Public Finance Tax Blog

By Cynthia Mog on September 13, 2018

Squire Patton Boggs

S&P Looking Forward: The Application Of The Discount Rate In Funding U.S. Government Pensions.

Public pension system costs can have a significant impact on U.S. governments' credit quality. However, the magnitude of these costs can be quantified in different ways.

Continue Reading

Sep. 13, 2018

The Trouble With TIF.

Cities love to use Tax Increment Financing to boost development. Should they?

Local governments often hail this tool as a way to revitalize investment-deprived neighborhoods, fix dilapidated roads, clean up polluted waters, revamp blighted property, and foster commercial activity and job creation. It's often poorly understood by city taxpayers, but it affects them in very real ways.

I'm talking about Tax Increment Financing (TIF), a popular mechanism meant to boost economic development. Its usage is widespread: Every state but one employs it, and it's a go-to move for many cities trying to revive struggling neighborhoods, especially in the Midwest. But how effective is it, really?

The answer, like life itself, is complicated. But David Merriman, a professor at the University of Illinois at Chicago, takes a stab at it in a new report for the Lincoln Institute of Land Policy. After reviewing available research on the implementation and impacts of TIF, Merriman concludes that the mechanism, while helpful in some ways, leaves a lot to be desired.

Continue reading.

CITY LAB

TANVI MISRA

SEP 12, 2018

Can EMMA Be Used as a Defense by Banks in VRDO Lawsuit?

WASHINGTON – The disclosure of some variable-rate demand obligation information on EMMA shouldn't be used to dismiss a lawsuit alleging fraud in VRDO remarketing because the whistleblower involved is providing non-public information gleaned from an independent investigation, lawyers for the plaintiff told an Illinois court.

Attorney Michael Behn of the Chicago law firm of Behn and Wyetzner made that argument along with others late last week, in urging a Cook County, Ill., Circuit Court judge to allow the suit to go forward.

The defendants, banks who provided remarketing services for Illinois VRDOs, had previously argued that the law requires the suit be dismissed in part because it is based on information that is available to the public through the Municipal Securities Rulemaking Board's EMMA website.

The outcome of the suit has wide-ranging implications because a victory for the plaintiff (relator) could set the table for more actions in other states.

The suit, filed as a False Claims Act action, charges that the remarketing firms set VRDO rates artificially high in order to be paid for remarketing services without having to remarket the securities, in violation of remarketing circulars and agreements that generally commit remarketing agents to try their best to set the rates at the level necessary to market the bonds at par.

A major point of contention is whether the claims of the relator, Edelweiss Fund LLC, which filed the suit on behalf of Illinois, are subject to a "public disclosure bar" under the law. That bar is intended to prevent whistleblower lawsuits brought on the basis of information available to the wider public.

The banks vigorously denied the fraud and other charges. In July, lawyers for the banks told the court that the suit is based entirely on publicly available VRDO reset information, including information posted on the MSRB's EMMA website. EMMA and other publicly-available websites are effectively news media, the defendants argued.

But in a Sept. 14 filing in response to the defendants' request to dismiss the suit, Behn told the court that the information disclosed on EMMA and elsewhere does not meet the threshold for dismissal under the disclosure bar.

"The EMMA website, which is the primary outlet through which the banks say Edelweiss' allegations were disclosed, does not qualify as 'news media' or an 'administrative' report," Behn said. "Any claimed disclosures on the EMMA website are inapplicable to the public disclosure bar."

Even if EMMA and the other websites the banks cite qualify as “news media,” they do not disclose the alleged fraud, Behn added. The interest rates and information laid out in official statements reveal nothing of the alleged robo-resetting scheme, or of the collusion, of which Edelweiss claims to have direct knowledge.

“If the EMMA data constitutes disclosure of the misrepresented state of facts, where was the true state of facts publicly disclosed?” asked Behn.

Edelweiss brought the suit on the basis of non-public knowledge and data gleaned from Edelweiss’ own investigation, Behn said, meaning that the banks’ efforts to dismiss the suit on the basis of the public disclosure bar must fail.

Edelweiss is a Delaware-registered limited liability company formed specifically to pursue the litigation but is not identified beyond that in the suit. An expert consulting witness for Edelweiss is Michael Lissack, the former Smith Barney banker who helped the government win hundreds of millions of dollars — and reaped tens of millions of dollars himself in the process — from filing whistleblower lawsuits against Wall Street and other firms in 1995 over charges they engaged in yield-burning.

Behn’s filing also attacked the several other points on which the banks sought to have the suit dismissed, including claims that Edelweiss has not properly alleged false claims or a conspiracy. The complaint lays out specific false statements, Behn wrote, namely the language in the remarketing agreements that pledges to remarket the bonds at the lowest rate permitting them to be sold at par.

The banks also attempted to have the court throw out the claims pertaining to conduit issuances, since Illinois is not on the hook for the conduit bonds and could not have paid the allegedly inflated remarketing fees. But the law does not require financial damage to Illinois for those claims to be upheld, Behn said, and courts have previously imposed False Claims Act liability when government interests were harmed regardless of direct financial loss to that government.

Scrutiny of the VRDO market appears to have grown in the months since the Edelweiss suit was unsealed in April. Sources told The Bond Buyer earlier this month that the Securities and Exchange Commission is conducting a sweep of the 12 top banks and broker-dealers that remarket VRDOs and has sent them letters seeking information and documents on their remarketing and rate resetting practices.

Other VRDO whistleblower and class action suits have been filed in courts in other states and the Justice Department’s antitrust division is conducting a criminal investigation of VRDO remarketing practices of a number of banks and broker-dealers, some of the sources said.

But even if the court sides with Edelweiss and allows the suit to continue, it may be many months before it is decided.

“Cook County courts like to try cases before juries and so do we,” Behn said. “We hope to get discovery done and this case to a jury within a year or two after we win this motion.”

By Kyle Glazier

SOURCEMEDIA | MUNICIPAL | 09/17/18 07:10 PM EDT

[MSRB Seeks Comment on Application of Content Standards to Advertisements by Municipal Advisors.]

[Read the Request for Comment.]

[Muni Bond Issuers Reach Out to Individual Investors (and Their Advisors).]

With year-end tax planning and rebalancing in mind, financial advisors are well-advised to keep an eye out for large new-issue offerings.

On the heels of tax reform, the elimination of advance refundings, and record new-issuance municipal volume at the end of 2017, the municipal market was expecting new issuance to contract in 2018.

In spite of predictions, new-issuance volume in 2018 is just slightly behind 2017's pace. And as we look toward the end of the year, we may see more state and local government issuers coming to market to finance expanding infrastructure needs as well as refund outstanding high coupon debt — so long as long-term interest rates don't spike.

The chance of a spike, however, appears remote, as the municipal yield curve has been toying with inversion — where short-term rates are higher than long-term rates — since May 2018.

With new-issuance volume remaining robust, state and local government issuers are looking for more active participation by individual investors. And this spells opportunity for the fee-based advisor to take a more active role in new-issue underwritings for investor clients.

Practically all municipal market participants see the benefit of individual investors. State and local governments want individual investors because they tend to buy and hold their investments, supporting an issuer's long-term goals for raising capital. Likewise, these issuers see value in having local investors have a stake in local projects. Institutional investors see the benefit to individual investors as a ready market for secondary market support and liquidity.

As tax reform has placed limits on an individual filer's tax-saving deductions, municipal bonds have become one of the few reliable investments for reducing income taxes. While individual investors have yet to prepare tax returns for 2018 and realize the full consequences of tax reform, the municipal market has seen yields on issues from states with high income taxes like New York, New Jersey, California, Oregon, Minnesota and Vermont compress. Compression is a consequence of investor demand resulting from the implementation of the tax overhaul.

States, local governments and schools are expanding their outreach to individuals with the intent of stimulating investor demand. Dedicated bond-buying websites, online "road shows," conference calls with governors and state treasurers, and internet and radio advertising are all promotional means used by municipal bond issuers to attract individual investors and the fee-based advisors who serve them.

Some issuers have even attempted to reduce the minimum investment in a municipal bond to attract more individual investors. However, this notion hasn't received much traction, as such "mini-bonds" offer limited liquidity and inefficient recordkeeping. Municipal bonds are typically sold in $5,000 denominations, but the average trade in July 2018 was approximately $300,000. The $5,000 minimum generally steers away small investors who may not be able to reap the full benefit of the preferential tax exemption, keeping the market efficient.

The large volume of new issuance combined with the issuers' express interest in having individual investors engaged have created an opportunity for fee-based advisors to both put in orders at the point of new issuance and receive confirmations of allocations.

For some of the largest and most liquid issues on the Street, issuers are giving priority to individual investors and their fee-based advisors. This means advisors and their clients are receiving access to opportunities that are traditionally available only to institutional investors. Advisors now have the tables tilted in their direction for some municipal issues. Recent issues from Vermont, Massachusetts (including the recent Commonwealth Water Trust Green Bonds), California, the City of New York, NYC's Municipal Water Finance Authority, and the NYC Transitional Finance Authority have all sold bonds this summer offering priority to advisors and their clients.

Issuers have also been binding their underwriters to rules that give preference to individual investors, meaning individual investor orders have priority above institutional orders. Most importantly, the pricing is the same for individual and institutional investors.

This encouraging trend means a fee-based advisor who has a trading account with the lead manager, co-manager or selling group member can enter orders with a much greater chance of allocation, as these issuer-imposed guardrails prevent the book-running lead manager from violating the issuer's intent to give priority to individual investors.

With year-end tax planning and rebalancing in mind, financial advisors are well-advised to keep an eye out for large new-issue offerings designed to give preferential outreach to individual investors. New issues favoring individual investors are likely to be plentiful through December, presenting abundant opportunities for tax-efficient investments.

Tom Lockard, managing director and head of investment banking at 280 CapMarkets, joined as a co-founder knowing the power of a broker-dealer combined with distribution reach for public finance opportunities. Prior to 280 CapMarkets, he worked at Fundrise, a pioneering fintech company specializing in commercial real estate.

Previously, Tom was a managing director at Stone & Youngberg and a member of the company's executive committee and board of directors. Over his 30-year career there, he structured more than 500 municipal bond issues representing more than $6 billion.

Lockard earned degrees from the University of Pennsylvania, Wharton School, Claremont Graduate University and Stanford University.

ThinkAdvisor

By Tom Lockard | September 12, 2018 at 03:35 PM

TAX - ALABAMA

[Burnett v. Chilton County Health Care Authority]()

Supreme Court of Alabama - August 31, 2018 - So.3d - 2018 WL 4177518

Objector brought action county and county health care authority for a judgment that act concerning authorization of county to levy a sales tax for hospital operations was unconstitutional, and objector sought an injunction against act's enforcement.

The Circuit Court entered judgment on the pleadings for county and county health care authority. Objector appealed.

The Supreme Court of Alabama held that:

- Act was not a bill for raising revenue within the meaning of provision of state constitution that mandated that all bills for raising revenue originate in the House of Representatives, but
- Failure of published notice to state that bill that eventually became the act repealed a prior act was a violation of notice provision of state constitution regarding local acts.

Act concerning authorization of county to levy a sales tax for hospital operations was not a "bill for raising revenue" within the meaning of provision of state constitution that mandated that all bills for raising revenue originate in the House of Representatives, and thus the bill's origination in the Senate was not a basis to find it unconstitutional.

Failure of published notice to state that legislative bill, which eventually became an act, that concerned the authorization of county to levy a sales tax for hospital operations repealed a prior act was a violation of notice provision of state constitution regarding local acts, and thus the newer act would be struck down, despite arguments that the prior act, which also concerned the authorization of county to levy a sales tax for hospital operations, was unconstitutional for being dependent on a local referendum and for delegating the power to levy taxes; the unconstitutionality of the purportedly repealed act was disputed, and even if newer act repealed prior act by implication, state constitution's notice provision still required informing the people affected by the repeal.

FASB and GASB to Cohost IN FOCUS: Not-for-Profit and Governmental Accounting Webcast for Academics

Date: Thursday, October 11, 2018
Time: 1:00–2:40 p.m. Eastern Daylight Time

News Release | Course Description and Registration

Innovative Financing for a 21st Century Infrastructure.

BDA Hosted Roundtable Early 2019

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

The BDA is in the process of planning a D.C. infrastructure event in early 2019 to further its position as a thought leader on infrastructure finance – from a Main Street perspective. As key details emerge such as date and location in Washington, D.C. and featured speakers, the BDA will provide updates.

Background

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

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

Continue reading.

Bond Dealers of America

September 10, 2018

Highland Park Joins Three Other Suburbs in Forming Liability Insurance Cooperative.

The City of Highland Park is joining with the villages of Buffalo Grove, Elk Grove Village and Hoffman Estates to form a Suburban Liability Insurance Pool that is expected to save the city between 13 and 37 percent over current insurance costs.

Buffalo Grove proposed forming a pool among similar communities with similar loss histories in 2017. Municipal administrators have been meeting for more than a year with the chosen broker, A.J. Gallagher, to define the structure for a possible cooperative — a first step toward estimating coverage costs and quantifying potential savings.

The Highland Park City Council Sept. 12 approved membership for a three-year term starting Jan. 1. The Buffalo Grove Village Board is scheduled to consider the matter Sept. 17.

According to the city, the Suburban Liability Insurance Pool (SLIP) will maintain a self-insurance loss fund to cover that portion of any claim that exceeds the municipality's deductible but is not yet covered by the pool's insurance carrier.

Funds in the pool's own loss fund will be invested and can earn interest income. Surplus funds can be returned to member municipalities in proportion to their contributions once an actuary has determined the funds are no longer needed to pay claims.

"Right now, if you cut a $100,000 check to your insurance company and they only pay out $10,000, they're not giving any of the money back," said Tia Incapreo, a Gallagher representative, during an Aug. 27 presentation to Highland Park city council members. "Being part of a cooperative like this allows you to have more control over your insurance program.

City Finance Director Julie Logan said insurance premiums have tended to go up each year regardless of claims experience.

"Currently, we go to market by ourselves basically and they just kick us up by five percent every year," Logan said.

She said some of the pools managed by Gallagher have gone for five and 10 years without increases.

Highland Park's fixed annual liability insurance costs are expected to drop from about $407,000 this year to about $222,000. In addition, the city would make a contribution to the pool's loss fund that could be as high as $132,000 but is expected to be around $33,000.

The Chicago Tribune

by Karen Berkowitz

September 14, 2018

1.1 Trillion Reasons to Remember State and Local Bond Obligations.

We can all agree that we want our states and cities to avoid the painful lessons collectively learned from the recent bankruptcies in places like Detroit, Puerto Rico and the California cities of Stockton and San Bernardino.

While unfunded pension liabilities in those locations received a lion's share of the news coverage, one topic that has unfortunately flown under the radar is the $1.1 trillion in bonded obligations issued across the 50 states and within their component units of government.

Our new study, State Bonded Obligations 2018, provides a new look on the way states have accumulated bonded debt and other bonded obligations. As usual, the 50 laboratories of democracy provide us with a wide range of policy approaches — and the best and worst outcomes are listed in the table below.

The good news from our report is that Nebraska, Indiana and Wyoming all carry far less than $1,000 in bonded obligations per resident, and fiscally responsible states like Florida and Tennessee place just behind.

Today, 11 states prohibit or place significant barriers to the issuance of general obligation bonds, which are supported with the general taxing power of the state and secured with the full faith and credit of the state.

On the other hand, states like Alaska and Connecticut have more than $10,000 of bonded obligations for every man, woman and child in their states. Rhode Island, Massachusetts and Hawaii, no strangers to state and municipal financial challenges, round out the bottom of the list.

While those levels of bonded obligations should be concerning, states structure their obligations in very different ways. For instance, Connecticut issued 62 percent of their total bonds as general obligation bonds. Alaska, on the other hand, issued 69 percent of their total bonds as component bonds.

This means that a greater portion of Alaska's bond obligations can likely be restructured without encumbering taxpayers. Additionally, Alaska also does a far better job of maintaining a substantial budget stabilization of $4.7 billion, and their Permanent Fund, about $88,000 per capita ($65 billion), safeguards the state from a potential fiscal crisis from its large total of bonded obligations.

Several key lessons emerge from our research. First and foremost, it really brings us back again to finance or accounting 101, as it is essential to balance assets with liabilities. State budget stabilization funds are an important tool and can be improved by matching them to the state's revenue volatility to prepare for the next economic downturn.

Furthermore, states should attempt to pay down debt during good economic times to maintain future flexibility when economic conditions worsen. This has the added benefit of creating the flexibility to issue bonds during periods of very low interest rates, such as recessions.

Lastly, states should utilize revenue bonds that are funded with user fees. States that pursued these strategies tended to have less damaging bonded obligations, particularly relative to their assets. To see how your state ranks, check the State Profiles section of State Bonded Obligations, 2018.

There are countless aspects of the American experiment worth celebrating, but few have been so beneficial as the decentralized structure of our federalist system. States can indeed learn from mistakes in highly publicized bankruptcies.

While most of the national media attention has been devoted to unfunded state pensions, where the magnitude of liabilities is staggering, we have $1.1 trillion reasons to remember the massive bonded obligations that are carried on the books state and local governments across America.

THE HILL

BY JONATHAN WILLIAMS AND THURSTON POWERS, OPINION CONTRIBUTORS

09/15/18

Jonathan Williams is chief economist at the American Legislative Exchange Council (ALEC), an organization of state legislators and private sector representatives who draft and share model state-level legislation for distribution among state governments. He's also vice president of its Center for State Fiscal Reform. Thurston Powers is a research manager at the ALEC Center for State Fiscal Reform.

[Rising Special Purpose Taxes Carry Long-Term Funding Concern.]()

Tight budgets and public backlash to broad-based tax increases are causing a growing number of state and local governments to enact special purpose taxes, which directly link revenues to specific programs, stoking concerns about their long-term financial viability.

Whether they are for teacher salaries and school safety enhancements in Florida, road repairs in Mississippi, police protection in Kansas, public health services via soda tax in Boulder, Colorado, or even flood control in Iowa, tax policy experts say the use of special purpose taxes is clearly on the rise.

While this trend of augmenting existing income, sales and property taxes might be understandable, critics worry about the long-term ramifications that this ad hoc funding will have on the delivery of essential services.

"The appeal of special purpose taxes is that voters tend to have much more favorable views of specific government services than they do of government as a whole," said Jared Walczak, senior policy analyst at the conservative-leaning Tax Foundation. "The problem with special purpose taxes is that they tie the hands of policymakers."

Not only do they crimp the ability of elected officials to reprioritize spending and respond to changing circumstances, Walczak said, but these quid pro quo taxing arrangements also lock in specific spending targets, even as needs and priorities change.

Part of the problem, or impetus, behind the trend is the simple fact that the cost and demand for top-quality local service has, in many jurisdictions, risen faster than local wages and income. While inflation is clearly not a new problem, the increased use of this type of municipal taxing response to it is.

"Special purpose taxes have a longstanding history but are being once again popularized mostly as a result of backlash against state and local tax increases as well as due to cuts in state aid to localities," said Lucy Dadayan, senior research associate at the Urban-Brookings Tax Policy Center. "Politicians and government officials know that voters are most likely to support new taxes that are targeted to a specific need or purpose."

For example, Dadayan points to Coweta County, Georgia, as an example of a jurisdiction that has successfully used special purpose taxes to fund scores of local projects since 1986 via a program it calls the Special Purpose Local Option Sales Tax, or SPLOST.

Like most special purpose taxes, Coweta's SPLOST program requires ongoing annual or biennial approval from voters. As a result, county government actively and unapologetically promotes the benefits that the 1 percent local sales tax levy brings to the community.

"SPLOST has enhanced quality while keeping property taxes low, has minimized long-term debt in Coweta County, and an estimated 40 percent of shoppers" who pay the tax live outside the county, Coweta's website says, alongside photos of the many roads, bridges, parks, playgrounds, firetrucks, equipment and building repairs the tax has funded.

To be sure, special purpose taxes — or any tax revenue, for that matter — can be shown to support all manner of popular programs and projects, but these visible and tangible outcomes do not reflect how efficiently the money was spent in building a particular bridge or building, or if the revenue was equitably shared between different neighborhoods and districts.

Frank Shafroth, director of the Center for State and Local Leadership at George Mason University, sees the rise of special purpose taxation as worthy of attention.

"It is hard to find anyone who likes taxes," Shafroth said via email, "but every city, county, and school district either is mandated to have a balanced budget, or wants to reduce their costs of borrowing to finance public infrastructure."

In fact, Shafroth feels the salesmanship that is involved with many of these taxes is not entirely unlike traditional retail advertising, which plainly identifies costs and benefits for consumers to see.

"That means that, increasingly, these jurisdictions want to ensure voters appreciate that their taxes will be devoted to paying for valuable public infrastructure or services," Shafroth said of this store-like marketing of public finance.

Carl Davis, research director for the Institute on Taxation and Economic Policy, has written extensively about the impact of reduced state and federal aid and cost shifting on localities, but argues that if relabeling a tax is all that is needed to get vital programs funded, so be it.

"Telling people exactly how a tax will improve their community is key to overcoming knee-jerk antitax sentiments," Davis said, noting that "the whole reason taxes exist is to fund public services that people need and want."

While the debate over the merits of dedicated revenues, which assign tax receipts to a specific purpose, versus consolidated funding, which puts all municipal revenues into one big pot, may never be settled, experts say it's important to at least be aware of the trend and its potential impacts.

"Raising taxes for teacher pay raises, funding the fire department or fixing potholes is a lot more attractive than raising taxes to fund general government operations," Walczak pointed out, "even if, at the end of the day, the spending mix is the same."

Law 360 – Tax Authority

By Matthew Nesto · September 10, 2018, 6:44 PM EDT

–Editing by Tim Ruel and John Oudens.

Improving Tax Increment Financing (TIF) for Economic Development.

Economist David Merriman of the University of Illinois at Chicago reviews more than 30 individual studies in the most comprehensive assessment to date of tax increment financing (TIF), a popular economic development tool. The report finds that while TIF has the potential to draw investment into neglected places, it has not accomplished the goal of promoting economic development in most cases. First implemented in the 1950s, TIF funds economic development within a defined district by earmarking increases in future property tax revenues that result from increases in real estate values in the district. The tax revenue can be used for public infrastructure or to compensate private developers for their investments, but TIF is prone to several pitfalls: it often captures some revenues that would have been generated through normal appreciation in property values, it can be exploited by cities to obtain revenues that would otherwise go to overlying government entities such as school districts, and it can make cities' financial decisions less transparent by separating them from the normal budget process. The report recommends several ways that state and local policy makers can reform TIF practices going forward.

Read the Full Paper.

Lincoln Institute of Land Policy

by David Merriman

September 2018

Can Booming Green Bonds Finance Sustainable Cities?

In this three-part blog series "Making Vanilla Green or Making Green Vanilla," EDF+Business Sustainable Finance Manager Jake Hiller, and Clean Energy and Sustainable Finance Intern Gabriel Malek unpack how an environmental advocacy group like EDF could best use its resources and expertise to drive impact in the fixed income market. This research is informed by interviews *conducted with Eric Glass, Senior Portfolio Manager at AllianceBernstein and founding member of the Municipal Impact Investment Policy Group; Rob Fernandez, Director of ESG Research at Breckinridge Capital; and Navjeet Bal, General Counsel of Social Finance Inc. and former Commissioner of Revenue of the Commonwealth of Massachusetts.*

Over the past few years, experts in socially responsible investing have become increasingly intrigued by green bonds, financial vehicles designed to kickstart environmental projects. In 2016, both EDF and the *Stanford Social Innovation Review* examined the strengths and challenges of the growing green bond market and outlined how this novel financial tool could help channel capital to sustainable development initiatives. Since the publication of these articles, the green bond market has expanded dramatically. In the US alone, the value of green bonds between 2016 and 2017 doubled to $48 billion. What began in 2008 with an experimental, World Bank-issued “green” labelled bond has since developed into a $155 billion market that is projected to expand this year.

Given this boom, a renewed examination of the relationship between environmental advocacy organizations, investors, and the fixed income space — both green and vanilla — seems appropriate. EDF has used its clout to influence private equity strategies but has yet to similarly influence the bond world. As it works to shift financial markets, EDF and similar nonprofits must understand fixed income’s environmental gaps that could hinder sustainable progress. Moreover, advocacy groups must focus on fixed income as they rely on municipalities, which depend on bonds, to catalyze investment in coastal resilience. This three-part blog series attempts to highlight some of these gaps and discuss potential actions that environmental advocacy groups could take to ameliorate current problems.

Specifically, this series asks whether helping further grow the green bond market or improving environmental reporting in the standard, vanilla bond market would more effectively drive sustainable impact. Although green bonds have taken off in the last decade, they still account for only a sliver of the total fixed income space, representing approximately 1 percent of the worldwide bond market and .06 percent of the US bond market. Could green bonds, despite being only a tiny portion of fixed income, generate substantive change? And ultimately, what should environmental nonprofits do — make green vanilla or vanilla green?

Growing the Green Bond Market

Advocacy groups could benefit from capitalizing on the current buzz surrounding the green bond market.

“We participate in a number of green bonds because they receive a lot of attention and support,” said Rob Fernandez, Director of ESG Research at Breckinridge Capital. “They enhance an issuer’s reputation by highlighting the issuer’s sustainability. Issuing a green bond also expands an issuer’s investor base; it can bring in normal fixed income investors as well as ESG investors.”

Additionally, green bonds have more rigorous environmental disclosure requirements than vanilla bonds.

“We like green bonds because of the transparent use of proceeds,” Fernandez explained. “Issuers can comply with the green bond principles and release impact reports annually. These reports give us information to share with our clients to show them how their money is going towards worthwhile projects.”

Still, some investors fear that these marketing advantages can result in a green-washing effect, allowing unsustainable bonds to pass as environmentally friendly.

“The problem I have is that there’s no narrative behind the green bond certification,” noted Eric Glass, Senior Portfolio Manager at AllianceBernstein and founding member of the Municipal Impact Investment Policy Group. “Why was bond x certified? The system is too much of a black box. I want to have the raw data in my hands and decide for myself whether or not I think a certain project is environmentally beneficial. Some investors are fine with the third party assessments and don’t care who analyzes a bond so long as it’s labelled green. I care. I think we need more open source data.”

Others, however, are less convinced that green-washing is a problem.

“I would push back on that criticism,” countered Navjeet Bal, General Counsel of Social Finance Inc. and former Commissioner of Revenue of the Commonwealth of Massachusetts. “For decades, the government has always done this stuff, whether it’s supplying clean drinking water or open space preservation.”

In Bal’s opinion, just because green bond-backed projects are not new, does not mean they do not benefit the environment.

Whether or not green bonds offer novel advantages remains unclear. At this point, labelling bonds “green” may be more of a branding strategy than a tool to bridge the financing gap for sustainable infrastructure projects. Still, just because green bonds have not yet brought new types of environmental projects to market does not mean they lack the potential to do so. Advocacy organizations could perhaps harness green bond enthusiasm to effect more substantive, innovative change.

Lowering the Cost of Capital

Regardless of their stance on green-washing, investors across the industry agree that green bonds have yet to lower the cost of capital for bond issuers. Until labelling a bond “green” actually reduces interest rates for debt issuers, green bonds will struggle to help bring new environmental projects to market.

“Right now, it’s a buyers’ market, so there is no pricing benefit for issuers who produce green bonds,” Glass noted.

Although the green bond market has boomed in recent years, demand might still be too limited to lower the cost of capital. Glass believes that once environmental data becomes more robust, investor demand will reach an impactful threshold.

“Oversubscription is what allows bankers to lower the yield. But if an issuer doesn’t provide enough relevant information, there won’t be any sort of oversubscription. There needs to be greater transparency before enough investors are interested in green bonds to lower the cost of capital.”

An organization like EDF could work with bond issuers to improve environmental reporting. This strategy could increase the number of investors interested in green bonds, ultimately allowing bond issuers to release debt at a lower cost.

Others experts, however, feel that the problem surrounding cost of capital lies in US financial markets more broadly.

“The reality is that interest rates have been so low that it’s hard to really detect if there has been a change in the cost of capital,” Bal remarked.

Perhaps, then, green bonds can impact cost of capital more thoroughly than experts currently believe. Green bonds' effects will become clearer when interest rates rise.

Takeaways

Whether or not green bonds can transform the fixed income market to compel investors to drive capital towards sustainable development remains unclear. Green bonds have struggled to diminish the cost of capital for issuers, leading some experts to believe these relatively new bonds contribute to greenwashing.

Still, despite these potential downsides, green bonds have drawn unprecedented interest in climate finance. Environmental advocacy groups may want to grow the green bond market as a stepping stone towards larger ambitions. If intrigue swells, nonprofits may be able to convince investors to reimagine more traditional aspects of the fixed income market using an environmental lens. In the next installment of this series, we will discuss potential long-term next steps EDF and its counterparts could take to influence the standard, vanilla bond space.

EDF + Business

By: Jake Hiller / Thu, Sep 13

Co-author Gabriel Malek is a junior at Yale University, where he leads the Dwight Hall Socially Responsible Investment Fund and the Yale Roosevelt Institute, the school's only undergraduate-run public policy think tank. You can contact him at gabriel.malek@yale.edu.

New Data on City Finances Show True Realities of Nation's Economy.

WASHINGTON — September 13, 2018 — Despite strong national economic growth and almost full employment, a new report from the National League of Cities (NLC) released today indicates that cities are still recovering from the Great Recession and shouldering the country's residual economic burden. The 33rd annual City Fiscal Conditions report, based on a survey of 341 city finance officers, found that while city fiscal health is not yet declining, growth is slowing and echoing cautionary signals from previous economic downturns.

Numerous factors indicate a more complex economic reality in cities across America as slowing housing markets, stagnating wages and the impact of the 2017 federal tax reform legislation influence the outlook of many city finance officials. In FY 2017, 10 years after the Great Recession, local revenues grew only 1.25 percent over the previous year compared to expenditures, which grew 2.16 percent.

Continue reading.

National League of Cities

September 13, 2018

As Economy Booms, U.S. Cities Report Slowing Revenue Growth.

- **Property, sales tax revenue projected to stagnate in 2018**

- **Results echo cautionary signals from previous downturns**

U.S. cities are seeing the growth of their tax collections slow, suggesting local governments' gains from the more than nine-year economic expansion are diminishing even as they face pressure to spend more on wages, pensions and infrastructure, according to an annual survey by the National League of Cities.

City general-fund revenues are projected to stagnate in 2018 after increasing 1.25 percent in 2017, as property, sales and income tax collections slow, the group found. The share of cities reporting that they're more able to meet their financial obligations than they were a year ago rose slightly to 73 percent, after slipping to 69 percent last year, the lowest since 2012, when many were still contending with some of the fiscal aftermath of the housing crash and recession.

"Although fiscal health is not yet declining, these conditions echo several cautionary signals from previous economic downturns," according to the report, which is based on results from 341 cities.

The findings are surprising, given the strength of the U.S. economy and the housing market that provides a big share of cities' tax collections. Consumer confidence is near an 18-year high and the nation's gross domestic product expanded at its fastest clip in four years during the second quarter. On Wednesday, the Census Bureau reported median household income rose 1.8 percent in 2017, when adjusted for inflation.

The biggest drags on municipal finances stem from rising wages and the need to rehabilitate aging infrastructure: Ninety-four percent of officials reported that wages rose and 86 percent reported the cost of infrastructure increased. Spending growth continues to outpace revenue growth, according to the survey.

Thirty-five percent of respondents said Congress's narrowing of cities ability to refinance tax-exempt bonds has already had a negative impact and 61 percent expect it will harm cities' future fiscal health.

Growth in property-tax collections, typically the biggest source of municipal revenue, is anticipated to slow to less than 1 percent in 2018 from 2.6 percent the prior year. The survey projected stagnant sales-tax growth, though that may change because of the U.S. Supreme Court decision that expands states' ability to tax online retailers.

Common Action

The previous inability to collect state and local sales tax on Internet retailers that didn't have a fiscal presence in a state cost state and local governments an estimated $26 billion in foregone tax revenue in 2015, according to the National Conference of State Legislatures and the International Council of Shopping Centers.

Loath to raise property taxes or restrained by law from doing so, the most common action taken to boost city revenue is to increase fees. About two in five finance officials said their city raised fee levels, while one in five reported increasing the number of fees that are applied to services.

"In some places, adding new fees may not be a politically feasible policy option, while in others the city may have already levied fees on all applicable services," the report said.

The National League of Cities survey points up regional and demographic differences, affecting the fiscal health of municipalities. Finance officers in southern cities are more likely to report being able to meet fiscal needs as do larger cities, which have been experiencing faster economic growth and expanding tax bases.

Bloomberg Economics

By Martin Z Braun

September 13, 2018, 6:00 AM PDT

A Troubling Trend for Cities: Slowing Revenue But Rising Spending Growth.

The annual National League of Cities report signals potentially more challenging times ahead for many localities.

Despite a relatively strong economy, most U.S. cities aren't enjoying robust revenue growth.

On Thursday, the National League of Cities (NLC) released its annual survey of finance officers across the country, finding city revenues grew by an inflation-adjusted average of only 1.25 percent in fiscal year 2017 and are expected to further slow over the current fiscal year. At the same time, spending pressures aren't subsiding, climbing at a steeper 2.16 percent last fiscal year.

Historically, fluctuations in cities' revenues have generally mirrored changes in expenditures. But the latest data from the City Fiscal Conditions report suggests spending growth is exceeding revenue growth. Annual revenue growth peaked in 2015 after declining in the aftermath of the Great Recession and has since started to decelerate, as has spending growth, but to a lesser extent.

Taken together, the findings signal potentially more challenging times ahead for many localities.

"City leaders and finance officers are being conservative and are being cautious," says NLC's Christiana McFarland, who co-authored the report. "They're being a lot smarter about how they're planning and the likelihood for uncertainty."

A number of factors are effectively holding back cities' revenues from keeping up with expenditures.

Property taxes, a major source of revenue for many local governments, are still climbing as property values increase. But they've taken a downward turn recently as the housing market has cooled down, with surveyed cities reporting growth of less than 1 percent for the current fiscal year.

Income tax revenues have similarly slowed significantly — ticking up by 1.3 percent nationally last year — as many segments of the workforce haven't experienced wage increases. Only select cities in states like Kentucky, New York and Ohio rely on income taxes, though, while most others don't assess any such taxes.

"When we look under the hood of what is happening in the broader economy, there is still expansion, but there is slower growth. That's being reflected in city finances," McFarland says.

The largest major recent drop in revenue growth has come in sales tax collections. The report's year-over-year increase of 1.8 percent was the lowest recorded in the survey since 2011. The good news for city budgets is that they're expected to eventually receive a boost after the Supreme Court ruled earlier this year that governments could collect sales taxes from businesses without a physical presence in a state. The decision's exact fiscal impact on individual localities has yet to be determined, though.

Further putting pressure on local budgets, jurisdictions in many areas have incurred cuts in state aid. Nationally, localities' own-source revenues have grown much faster than intergovernmental funding over the longer term.

Cities have typically responded, McFarland says, by shifting their revenue sources. One of the more common responses in recent years has been to levy higher fees, such as those paid for trash or parks and recreation. The NLC survey found that 41 percent of cities increased existing fee prices last fiscal year, but fewer are initiating new types of fees.

Still, forecasted revenue growth remains slightly positive. The report also notes that finance officers typically take a conservative approach in forecasting revenue growth, so actual final numbers will likely be above those reported in the survey. But NLC doesn't expect budgeted fiscal 2018 revenues to exceed those recorded last fiscal year.

On the spending side, major line items most commonly requiring more city spending last year included employee wages (88 percent), infrastructure (71 percent) and public safety (78 percent).

Individually, many cities are faring better or worse than the aggregate survey results suggest. About 63 percent of cities with populations under 50,000 reported they were "better able" to meet their financial needs than the prior year. Larger cities reported more positive findings, with 84 percent of the biggest cities over 300,000 residents saying their ability to meet financial needs had improved.

GOVERNING.COM

BY MIKE MACIAG | SEPTEMBER 13, 2018

Calls Mount for Investors to Sell High-Yield Munis After Rally.

- **Oppenheimer, Ramirez advise clients to sell riskiest debt**
- **Muni junk bonds have returned twice as much as corporates**

A growing chorus of analysts is advising those who invest in high-yield municipal bonds that it may be time to take their money and run.

Analysts from Oppenheimer & Co. and Samuel A. Ramirez & Co. on Monday said it makes sense to lock in their gains by selling the riskiest municipal bonds, which rallied this year as fixed-income investors sought out bigger returns. The 4.4 percent return on high-yield state and local government debt in 2018 is about twice the gain for corporate junk bonds and stands in contrast to the loss in the broader municipal market, according to Bloomberg Barclays indexes.

Oppenheimer analyst Jeffrey Lipton said high-yield municipal bond performance has possibly peaked after "outperforming the broader muni market with extended inflows" that have pushed down the yields relative to top-rated securities.

"We are not sure that further spread tightening is sustainable," he wrote.

Ramirez, a New York-based brokerage, said the sector has run up too far and advised clients to look at highly-rated debt with maturities at 15 years or less, particularly those that can be called back by the issuer in five to eight years.

"It makes sense to pare back credit risk and improve credit quality into 'AA' or better general market names," Ramirez wrote in its note. "We particularly like selling muni high yield into current market strength to capture gains at this time as we think bonds in this sector are vastly overbought."

Bloomberg Markets

By William Green

September 17, 2018, 12:50 PM PDT

— With assistance by Amanda Albright

The 'Iron Lady' Trying to Fix Puerto Rico's Money Problems.

Facing down critics from all sides, Natalie Jaresko has broad powers to revamp the island's economy; 'something has to change'

Natalie Jaresko has faced almost constant criticism since taking the helm of Puerto Rico's federal oversight board 18 months ago. Investors and politicians on the mainland attack her for pushing reforms too slowly, while those on the island blast her austerity measures and criticize her $625,000 annual salary. Lawyers and bankers involved in the restructuring—all men—call her blunt and brusque.

"I'm getting used to it," said Ms. Jaresko, 53, who restructured Ukraine's finances in 2016 as that country's finance minister and now is looking to do the same in Puerto Rico. "With all due respect, the challenges in this situation are as great, or greater than, in Ukraine, which is much larger and has been attacked and occupied by Russia."

The project to revamp Puerto Rico's economy is at a critical juncture as the board shifts from fact finding and economic forecasting to actually enacting the debt restructurings and structural reforms needed to stabilize the island's financial health. Ms. Jaresko aims to install policies she hopes will reverse more than a decade of economic stagnation on the island, but such measures are politically unpopular, especially after the devastation caused by Hurricane Maria last year.

Continue reading.

The Wall Street Journal

By Matt Wirz

Sept. 14, 2018 9:00 a.m. ET

Statement by U.S. Conference of Mayors on FCC's Order Proposing to Usurp Local Property Rights.

Washington, DC—Below is a statement by U.S. Conference of Mayors CEO and Executive Director Tom Cochran on recent FCC proposals diminishing local government ownership rights over local rights-of-way and other public property:

“The U.S. Conference of Mayors strongly opposes recent proposals by the Federal Communications Commission to grant communications service providers subsidized access to local public property and to dictate how local governments manage their own local rights-of-ways and public property. This unprecedented federal intrusion into local (and state) government property rights will have substantial adverse impacts on cities and their taxpayers, including reduced funding for essential local government services, as well as an increased risk of right-of-way and other public safety hazards.

“We believe the courts will conclude that FCC’s proposals are based on misguided interpretations of federal law. Congress previously addressed and resolved these issues resoundingly in favor of local and state governments and their property rights. The Conference and its member cities reject efforts by this unelected federal regulatory agency to improperly invade state and local government authority by compelling local elected officials to subsidize, or “gift”, local public property to a small, favored group of private businesses. According to FCC’s own estimates, just one of these actions – the proposed small cell rules – threatens future revenues to local (and state) governments by billions of dollars over the next decade.

“The Conference of Mayors strongly opposes these proposals and calls on the agency to change them; absent such changes, the Conference and its members will seek relief in federal court to overturn this unprecedented overreach by the FCC.”

As Climate Impacts Threaten Cities, Mayors Take Action.

Cities Step in to Lead and Aggressively Fill Void Left by Federal Government

Survey: Mayors Leading the Way on Climate – 2018

SAN FRANCISCO—A survey released today by the United States Conference of Mayors and the Center for Climate and Energy Solutions (C2ES) in San Francisco points to mayors as a key force behind U.S. action to reduce greenhouse gas emissions responsible for the growing effects of climate change. The Alliance for a Sustainable Future—a joint effort of the two organizations—was joined today at City Hall by San Francisco Mayor London Breed, U.S. Conference of Mayors President Columbia (SC) Mayor Steve Benjamin, dozens of U.S. mayors from across the country, and business leaders. The survey was part of a forum sanctioned by the Global Climate Action Summit meeting in San Francisco this week.

In the absence of federal action and a comprehensive climate policy, mayors have stepped up to fill the vacuum of climate leadership and counter efforts by the administration to stymie climate protection programs.

The survey found that 57% of cities responding are planning for new climate actions in the coming year.The effects on their cities, public health concerns, and cost savings are making low-carbon transitions an increasingly attractive option for cities – a bright spot for climate leadership despite the U.S. announcement of its intended withdrawal from the Paris Agreement.

The survey is a window into the actions cities are taking or considering to limit emissions as 95% report they have experienced climate impacts – from flooding, heavier snow and ice storms, and wildfires to heat waves and drought – in the last five years. The impacts are a stark reminder for why mayors are acting to improve energy efficiency, purchase renewable energy, and adopt low-emission vehicle fleets.

Cities are also reporting strong collaboration with other local governments and private sector partners to address climate change. Respondents expressed great interest in pursuing new opportunities with private sector partners to improve building efficiency and advance renewable energy usage and low-carbon transportation solutions.

Both large and small cities are tackling climate problems, with large cities leading the way to green vehicle fleets and cities under 250,000 residents increasingly switching to renewable energy for municipal purposes.

Key findings from 158 responding cities nationwide include:

• Cities are buying renewable energy: 65% of cities use renewable electricity for municipal operations. 27 cities now cover 30% or more of their operational needs with renewables – a 20% greater rate for that benchmark than a 2017 Alliance survey – and 8 cities cover 100% ofmunicipal electricity needs with renewable power.
• Green vehicle purchasing programs: Nearly 60% of cities have programs, and 80% of new municipal vehicle purchases are made by cities with green purchasing policies.
o Bike-share and scooter-share services are the most popular transportation options cities are considering, with 22% of responding cities exploring bike sharing and 21% considering scooter sharing.
• Improving building efficiency: More than 70% of cities have energy efficiency polices for new and existing buildings. And better than half have policies or incentives in place for new commercial and residential buildings.
• Seeking business partnerships: 83% of cities are looking to the business community for support in advancing transportation, renewable energy, and energy efficiency solutions.
• Growing use of climate policies & initiatives: Over the last 12 months, 60% of cities have launched or significantly expanded a climate initiative or policy.
The survey included the responses of 158 cities from 39 states, including large and small cities ranging in size from 3,906 (Lambertville, NJ) to 8.5 million (New York City). Collectively, the cities surveyed represent more than 50 million Americans. The survey, now in its second year, is aimed at assessing the actions of cities to identify opportunities and help set priorities in their climate solutions.

“Our survey shows that cities of all sizes know that climate change is real. And, therefore, we are taking action. The U.S. Conference of Mayors is committed to lead in the development of programs to reduce carbon and make our cities healthier. Would it be easier if the Federal government and Congress were our partner? Yes. But in their absence, we will not abandon our responsibility to lead and preserve this earth for future generations,” said USCM President and Columbia (SC) Mayor Steve Benjamin.

“We know the business community wants to work with us. In Salt Lake City we have partnered with Rocky Mountain Power on a comprehensive program to reduce greenhouse gas emissions. We believe there are many utilities nationally which are willing to step up and tackle this issue. We will be reaching out to them more aggressively in the future,” said Chair of the Alliance for a Sustainable Future and Salt Lake City (UT) Mayor Jackie Buskupski.

“It is an honor to host this important forum of mayors and businesses in City Hall as part of the U.S. Conference of Mayors commitment to fight global warming. With our national leaders failing to confront climate change, the nation’s mayors are stepping up to make our cities more sustainable and protect our environment for future generations,” said San Francisco (CA) Mayor London Breed.

“The actions of this Administration seek to roll back the progress we have made on climate action.

But the American people know that the weather is changing and beginning to threaten both urban and rural America, and that a major effort is needed to respond. Mayors have their ear to the ground. The need for climate protection is not going away. And neither will America's mayors," said USCM CEO and Executive Director Tom Cochran.

"What we're learning is that partnerships with the business community and local utilities result in far greater returns in reducing greenhouse gas emissions than mayors can do alone," said C2ES President Bob Perciasepe. "It speaks volumes that so many cities have a high level of interest in private sector partnerships. They want solutions for their residents, and partnerships help provide the needed expertise, funding, and services to achieve them."

About the Alliance for a Sustainable Future: The Alliance for a Sustainable Future was formed by USCM and C2ES in 2016 with the shared goals of keeping city officials and business leaders informed and empowered to design and implement local plans for low-carbon, sustainable communities.

About The U.S. Conference of Mayors: The U.S. Conference of Mayors is the official nonpartisan organization of cities with populations of 30,000 or more. There are nearly 1,400 such cities in the country today, and each city is represented in the Conference by its chief elected official, the mayor. Learn more at www.usmayors.org.

About C2ES: The Center for Climate and Energy Solutions (C2ES) is an independent, nonpartisan, nonprofit organization working to forge practical solutions to climate change. Our mission is to advance strong policy and action to reduce greenhouse gas emissions, promote clean energy, and strengthen resilience to climate impacts. Learn more at www.c2es.org.

Catastrophe-Bond Investors Hard to Rattle as Florence Approaches.

- **Aon's Schultz sees no panicked sales in 'sophisticated' market**
- **Investors are in 'for the long term,' Fitch's Grimes says**

Catastrophe-bond investors probably stayed calm and didn't nervously sell their holdings as they watched Hurricane Florence hurtle toward the U.S. East Coast this week, market observers say.

Trading has been relatively muted ahead of the storm that's set to make landfall in the Carolinas on Friday, according to Paul Schultz, chief executive officer of the Aon Plc investment-banking group that helps companies issue cat bonds. The securities offer higher yields in exchange for the risk that the principal could be wiped out by natural disasters.

"The market is more sophisticated," Schultz said in an interview. "There's not sort of panicked selling, there's not distressed levels of just getting out of a bond if you think there's some exposure. It's more of an informed view where you're looking at the potential track of the hurricane, you're looking at the implications of your portfolio."

Investors such as pension funds have snapped up cat bonds, which can help diversify portfolios. One gauge of the market, the Swiss Re Cat Bond Price Return Index, prices weekly on Friday. Christopher Grimes, a Fitch Ratings director, said the index might move down slightly, then is likely to recover unless Florence is worse than forecast.

"We don't think that the market is maybe as opportunistic as maybe it was thought to be at one point," Grimes said. "This is fairly sticky capital, where investors are in for the long term."

Florence's leading edge had struck waterfront towns in North Carolina by Thursday afternoon, with the full impact still to come. When the hurricane is done lashing the coast, its storm surge could flood tens of thousands of structures, according to North Carolina Governor Roy Cooper.

Aon's Schultz said that bid-ask spreads this week indicate muted volatility in the cat-bond market. Prospective investors are generally asking for a larger discount, but bondholders seem to be resisting. That reflects a "mature view in the marketplace," Schultz said.

The cat-bond index plunged last year as Hurricane Irma approached Florida. It later rose slightly, but has stayed under pre-Irma levels. Florence's current path could help temper any impact on cat bonds this time around because fewer of the securities carry risk in the Carolinas, and Florida is expected to avoid a hit.

Damage estimates for Florence remain uncertain because the storm's path could shift as it moves inland. Widespread power failures and business interruptions are seen as likely, and hundreds of thousands of people have evacuated the region.

"As long as that hits in a populated area, we would expect it to have some impact to the cat-bond market," said Brett Houghton, a portfolio manager at Fermat Capital Management, which oversees investments in insurance-linked securities.

Bloomberg Markets

By Katherine Chiglinsky and Ivan Levingston

September 13, 2018, 9:00 PM PDT

S&P Hurricane Watch: Monitoring The Financial Impact On Governments In Florence's Path

Anticipating the path of a hurricane, gathering information on the damage, and then evaluating its potential credit implications can be challenging and the effects can vary widely, even within a relatively small geographic area.

Continue reading.

Sep. 14, 2018

Hurricane Florence Barrels Toward Unfazed Municipal-Bond Market.

- **North, South Carolina munis see little trading ahead of storm**
- **Even Hurricane Katrina didn't cause municipal-bond defaults**

With more than a million residents evacuating as Hurricane Florence heads toward North Carolina, one would expect money managers to be unloading bonds sold by local governments in the path of what may be the strongest storm to pummel the region since 1954.

But they’re not.

On Tuesday, there was little trading in debt issued by governments in North and South Carolina and prices of the most active securities were little changed, according to data compiled by Bloomberg. It’s a bond-market response similar to those ahead of previous natural disasters, including the hurricanes that dealt devastating blows to New Orleans and Houston.

Those storms, like others, prompted an influx of aid and insurance money and ultimately posed little peril to investors. And no state or local government whose bonds were rated by Moody’s Investors Service has defaulted because of a natural disaster, according to the credit-rating company.

Even Hurricane Katrina, which caused a lasting exodus from New Orleans, didn’t cause it to renege on bond payments. Nor did Hurricane Harvey, which submerged Houston and caused an estimated $125 billion in damages, stop most affected Texas localities from growing: Sales-tax revenue has actually climbed in the year since that storm, partly because of the rebuilding efforts, according to Moody’s.

“If you go back and look at what happened in Houston, which had devastating results from Hurricane Harvey, the economy bounced back surprisingly well,” said Patrick Luby, municipal strategist at CreditSights Inc., noting local governments’ ability to rebound from storm damage in recent years. “What the market is hoping is that most of these issuers are going to have some free resources that they can redirect.”

While storm surges are threatening hundreds of thousands of homes in coastal communities, it’s so far impossible to predict what sort of specific damage could occur, much less the potential impact on creditors. Florence is projected to make landfall Sept. 13 or Sept. 14 between Charleston, South Carolina, and Norfolk, Virginia, according to the National Hurricane Center in Miami.

One of the most active North Carolina bonds, general-obligation securities due in 2029, had six trades, selling for an average of 105 cents on the dollar, down from 105.5 cents on Sept. 5, the last time they traded. The most active South Carolina state bond traded for about 109 cents, little changed from Sept. 5.

“The big thing is how much the damage is and how much it takes to come back,” said Daniel Solender, head of municipal investments at Lord Abbett & Co., which manages $20 billion of state and local debt. “A lot of times the insurance proceeds really cover a lot of the damage, or the state will cover it or the federal” government.

While states and cities typically recover, big storms can have lingering effects on small, lesser known borrowers in the municipal market. Hurricane Matthew, a Category 5 storm in 2016, caused disruptions that negatively affected Southeastern Regional Medical Center in Lumberton, North Carolina when families who lost their homes left the area, according to S&P Global Ratings. It also hurt the operating performance of the BBB rated Columbus Regional Healthcare System, which is located about 45 miles from the coastal city of Wilmington, North Carolina, according to the ratings company.

“There are some muni assets that could be adversely affected,” said Adam Buchanan, senior vice president of municipal sales and trading at Ziegler Capital Markets Group in Chicago. “We’ll have to wait and see.”

Bloomberg Markets

By Elizabeth Campbell and William Green

September 11, 2018, 10:42 AM PDT

— With assistance by Amanda Albright, and Brian K Sullivan

The Week in Public Finance: Thanks to SCOTUS, States Are Taxing Online Sales. But the Legal Fight May Not Be Over.

In its bid to start collecting a sales tax on internet purchases, Colorado could run afoul of the Supreme Court's ruling.

The U.S. Supreme Court may have ruled that states can collect sales taxes for online purchases, but it turns out it's not so easy. Thanks to the complexities of tax structures in some states, the legal challenges may not be over.

This week, Colorado signaled it was moving forward on taxing out-of-state retailers by notifying them of a new requirement. In order to sell goods online to Coloradans, retailers have to register by Nov. 30 for a remote seller's license.

But here's the potential problem: As it's worded, Colorado's notice puts the onus on out-of-state retailers to figure out how to comply with one of the most complicated taxing structures in the country. The state has more than 300 separate sales tax jurisdictions which are locally administered. In its landmark sales tax ruling, *Wayfair v. South Dakota*, the Supreme Court said that a state may require collection of sales tax by out-of-state internet retailers so long as the law does not discriminate against or place excessive burdens on retailers.

Continue reading.

GOVERNING.COM

BY LIZ FARMER | SEPTEMBER 14, 2018

Developers Still Exploring Possibilities of Opportunity Zones.

One of the more bipartisan aspects of the Tax Cuts and Jobs Act of 2017 passed last December was the creation of the Opportunity Zones Program. Investors willing to put their capital gains to work in some of the country's most vulnerable communities may defer their tax obligations to as late as the end of 2026. Those willing to stay invested in these areas for ten years or more may be relieved of their capital gains tax burden altogether.

ULI South Carolina invited tax and government affairs experts to help demystify the Opportunity Zones Program at the 10th Annual Capital Markets Conference held in September at the Sanctuary Resort on Kiawah Island.

Moderator Mark Cooter, who serves as accounting firm Cherry Bekaert's managing partner in South Carolina, introduced three panelists who have become well versed in the program in a very short time: Mary Burke Baker, a government affairs counselor at K&L Gates in Washington, D.C.; Michael Elliot, director of tax services at Cherry Bekaert; and Bobby Werhane, assistant vice president in the

Charlotte, North Carolina, office of Bellwether Enterprise Real Estate Capital. (Download Presentation)

Baker kicked off the discussion with a primer on the program, defining Opportunity Zones as low-income areas in a given census tract with a 20 percent poverty rate or a median income less than 80 percent of the surrounding area. Governors and local officials determined which areas in their state should become Qualified Opportunity Zones and submitted their list to the U.S. Department of the Treasury for approval. (See the list by state here.)

Opportunity Zones need capital. Individuals and businesses with windfalls from the sale of assets need tax-friendly places to put their capital gains. The program gives these investors 180 days from the sale of the asset to put their capital gains into an Opportunity Fund. Those managing the Opportunity Fund have another 180 days to invest in Opportunity Zone Property, which Baker defined as “either a direct interest in tangible property located in an Opportunity Zone, or an investment in stock of a business or partnership interest operating in an Opportunity Zone.”

Since the purpose of the program is to “incentivize new activity and create jobs” in these low-income areas, Opportunity Funds are required to hold at least 90 percent of their assets in Opportunity Zones Property.

“They don’t want to see passive investments,” explained Baker. “The property has to be newly used by the Opportunity Fund or . . . substantially improved . . . within a 30-month period.”

Here’s where it gets good for the long-range investor.

The program offers tax incentives on the initial capital gains investments in a number of ways, and the longer you stay, the less you will pay in taxes. Those who hold on to their Opportunity Fund investments for five years get a 10 percent increase in basis; those who hold on for seven years get a 15 percent increase in basis. Those who hold on for ten years before selling their interest do not pay any taxes at all on their initial investment.

And there are other benefits, and not just for developers.

“Opportunity Zones also have relevance for retail and manufacturing, for warehouse, for startups, for incubators, for renewable-energy projects,” Baker explained. “They’re urban, they’re rural, they’re everywhere. If you have clients interested in these other areas, they provide another hook.”

If the Opportunity Fund itself generates capital gains, said Baker, “they can be reinvested, but that’s considered a different tranche, on a different timeline.”

“And, unlike the 1031 exchange, where you can’t get any cash back, here you can reinvest your full gain,” Elliot said. “You can get your basis back, keep that cash, and reinvest it elsewhere.”

Elliot also said that if you sell your investment in the Opportunity Fund before 2026, you will pay taxes on that gain. If it goes down in value, “you only have to recognize the lesser of your original per gain investment.”

According to Elliot, “all things being equal, this program lets you come out ahead.”

Though certain elements of the program are necessarily political, the panelists emphasized that it came together in a spirit of bipartisanship. It began when impact investor Sean Parker—of Napster and Facebook fame—approached lawmakers about ways to bring investors and community stakeholders together for mutual gain.

“It started as freestanding legislation, introduced by South Carolina’s own Senator Tim Scott,” Baker said, “and included 81 bipartisan co-sponsors in the House and 14 in the Senate.”

Once the program was swept up in the tax bill, it was fast-tracked, leaving unanswered questions and plenty of room for well-documented controversy and skepticism. While the Treasury Department is expected to deliver new guidelines by the end of 2018, there’s no telling which of the “fixes” the federal government will be able to address and which ones will require additional legislation.

Despite all the unknowns, the panel agreed that the potential benefits associated with Opportunity Zone investing were substantial and worth pursuing, albeit with considerable caution and under the guidance of experts who can stay current on every aspect.

“This is a completely new type of capital that excites us,” said Werhane, echoing the sentiments of Elliot, Baker, and Cooter, “especially when we overlay that with the idea of bringing mission-based, communal change to areas.”

Urban Land

By Lisa Rubenson

September 10, 2018

CA Releases New OZ Webpage.

Access the Webpage.

Transit Advocates: Is the White House Purposefully Delaying Project Funds?

Advocates say the Federal Transit Administration is sitting on nearly $1.8 billion that’s supposed to help build light rail lines, streetcars and subway improvements. Delaying these projects, they argue, could increase costs for local transit agencies.

Transit advocates are becoming increasingly alarmed that the Trump administration may be intentionally slowing down the process for local agencies to get the money they need to build new projects, like light rail, streetcars and bus rapid transit.

The U.S. Department of Transportation is sitting on nearly $1.8 billion for projects that are ready or nearly ready for final federal approval, according to Transportation for America, a group that promotes local transportation improvement efforts. Specifically, the group is concerned that the Federal Transit Administration (FTA) is not distributing money from its New Starts, Small Starts and Core Capacity programs, which all help local transit agencies pay for big-ticket construction projects.

The delays at the FTA affect rail projects in and around Chicago, Dallas, Minneapolis and New York City. They could impact new streetcar service in Sacramento, Calif.; Tempe, Ariz.; and Orange County, Calif. And new rapid bus service in El Paso, Jacksonville, Fla., Reno, Nev., Seattle and St. Petersburg, Fla. could be delayed as well.

The backlog may actually be even bigger than that, says Beth Osborne, a former Obama administration official who now works for Transportation for America. It's hard to know exactly how much money is waiting to be distributed, she says, because the Trump administration has released fewer details than previous administrations about the status of projects. (The Obama administration's 2016 report, for example, was 189 pages long, while the Trump administration's corresponding 2018 report is just 20 pages long. The FTA says it no longer includes information on individual projects in those reports, because details are available online.)

Transit officials are reluctant to complain publicly, Osborne says, because they don't want to jeopardize funding for their projects.

Osborne worries that the Trump administration is deliberately trying to "slow walk" the grant process, because it opposes the federal government spending on money on local transit projects. "I take this administration at its word," she says. "This administration has made very clear that they don't believe that federal government should put any money to transit. They've told us that repeatedly. Then there seems to be surprise when we [connect] those beliefs to this action. But it's hard to see any other way."

But the FTA says the reason the projects haven't received funding is because they aren't yet ready. "Transportation for America fails to recognize that projects must be eligible to receive funding by meeting the established requirements and criteria. FTA cannot give out funding for proposed projects that have not met the established requirements to be eligible for consideration to receive [capital] funding," said an FTA spokesperson in a statement to Governing. "Any characterization of FTA delaying the funding of grants is inaccurate as the majority have not met eligibility requirements."

The process can be a lengthy one. Transit agencies have to round up funding for the rest of the project, get agreements with contractors and other third parties, develop cost estimates and prove that they can manage a project of its scope. Then the FTA reviews the projects and rates them. Projects must earn a "medium" rating to obtain funding.

Other hiccups can slow down the processes even further. A bus rapid transit system in Seattle, for example, has to be redesigned because the vehicles the city planned to use can't make the climb up steep hills on the route. A lawsuit is holding up one light rail project in Minneapolis, and another one is on hold because a freight railroad won't grant the transit agency right of way. A legal challenge is also threatening the funding of a riverfront streetcar in Sacramento.

Clearly, the FTA's own review processes can also be a factor. The agency, for example, has asked for more financial information about tunnel repairs on New York City's 'L' line between Manhattan and Brooklyn. And it is conducting risk assessments for platform extensions for Dallas' light rail.

One of the most common problems among the applicants, though, appears to be that they haven't secured all of their non-federal funding. That is an issue for bus rapid transit projects in both St. Petersburg and Jacksonville in Florida, along with the Sacramento streetcar and a bus rapid transit project in El Paso.

Meanwhile, the Tempe streetcar and Minneapolis orange line are near the end of the FTA review process.

It is true, though, that the Trump administration has repeatedly tried to reduce the federal government's spending on infrastructure projects, particularly for mass transit. In explaining the president's infrastructure package in February, the White House said an "unhealthy dynamic" had developed in which local governments delayed projects to try to get more federal support for them. Then, the administration opted not to request any money from Congress to fund the transit-building programs in next year's budget. "Future investments in new transit projects would be funded by the localities that use and benefit from these localized projects," the president's budget proposal stated. Congress added funding for those programs anyway.

On the other hand, President Trump has repeatedly chafed at how long it takes for public infrastructure projects to be built. He signed an executive order to speed along federal reviews of major infrastructure projects, with the goal of giving local officials a decision within two years.

But delays with the federal funding process could wreak havoc with transit agencies' plans to upgrade or expand their systems.

Earlier this year, for example, Los Angeles-area officials broke ground on a subway route extension that will connect downtown to Beverly Hills, Century City and the neighborhood around the University of California, Los Angeles. Organizers hope the new stations will be ready by 2025, well in advance of the 2028 Summer Olympic Games that the city will be hosting.

But the Purple Line Extension could get a lot more expensive — $200 million more, according to the Los Angeles Times — and could take up to two years longer if Los Angeles Metro does not receive a federal sign-off on the final portion of the project by Oct. 3. That's the date that a bid from construction companies to dig the western portion of the tunnel expires, so going beyond that date could require the agency to put the work out to bid again. LA Metro is not explicitly looking for FTA funds at this point, but it wants the federal government's permission to spend its own money for the time being and still be eligible for reimbursement later.

LA Metro asked for the FTA to respond by Sept. 30, and the FTA is currently reviewing that request.

The administration's slow progress on transit grants has also caused problems for the FTA on Capitol Hill.

In March, the Republican-led Congress ignored the president's request to eliminate new funding for the transit projects. In fact, in its spending package, it specifically directed FTA to obligate 85 percent of the transit capital plans by Oct. 1, 2019. That's an unusual arrangement, especially for programs where there is usually more interest than money available.

The U.S. Government Accountability Office (GAO), though, later reported that the FTA did not intend to comply with that provision. The FTA "did not indicate that they have any immediate plans to address those provisions," the oversight agency wrote in a May report to Congress . "Moving forward, if FTA does not take steps to address the outstanding provisions, FTA runs the risk of violating federal law."

It's not clear, though, what would happen if the Trump administration does not meet the congressional mandate, says Transportation for America's Osborne. Normally, unspent money goes back to the federal treasury, but that's exactly the outcome that Congress sought to avoid.

Congress could pick projects itself, but its members have been loathe to insert specific earmarks after a series of earmark-related scandals in the mid-2000s. Republicans banned earmarks when they took control of Congress in 2011.

Meanwhile, the GAO auditors also determined that the FTA had not been working on other regulations required by recent federal laws, such as issuing rules for grants that improve existing transit systems, creating a process for transit agencies to apply for grants for more than one project at the same time and creating a quicker process that would allow certain types of projects to get funding faster.

FTA officials disputed the auditors' findings that it had not addressed those needs, but they agreed to work on the issues raised by the auditors.

GOVERNING.COM

BY DANIEL C. VOCK | SEPTEMBER 11, 2018

How the Triple Tax Exemption on Puerto Rico's Bonds Financed Its Territorial Status - and Helped Spark Its Debt Crisis.

How did Puerto Rico manage to incur a monumental debt of $72 billion without raising red flags among the sophisticated investors who continuously bought its bonds? Here associate professor of business Evaluz Cotto–Quijano points to the role of a tax exemption designed by the US Congress over 100 years ago to finance Puerto Rico's territorial government by inflating its bond debt instead of appropriating federal funds.

On June 30, 2016, a day before the government of Puerto Rico missed a bond payment, the US Congress and President Obama passed the Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA). This statute places the Financial Oversight and Management Board for Puerto Rico in charge of handling Puerto Rico's debt crisis "[to] provide a method to achieve fiscal responsibility and access to capital markets."

PROMESA excludes the government of Puerto Rico from the control of the process to restructure the crippling $72 billion debt that could threaten the stability of the US financial institutions (mainly investment companies—hedge funds, closed-end funds, open-end funds—and monoline insurance companies) that bought Puerto Rican bonds.1) Its enactment and implementation raise many questions. One, especially, comes to mind: How was such a monumental debt incurred?

In this essay, I discuss issues not addressed in most media coverage of PROMESA and the Puerto Rico debt crisis. This debt crisis, I argue, goes beyond the simplistic narrative of a profligate people redeemed by the intervention of the US government through PROMESA. I propose that the enormity of the Puerto Rican bond debt is the intended result of a US government policy dating back more than a century to finance the operations of its territorial government.2)

Continue reading.

Pro – Market

Posted on September 11, 2018 by Evaluz Cotto-Quijano

S&P Higher Education Hot Topics - Chicago

Oct. 11, 2018 | Chicago, IL

Please join S&P Global Ratings for a discussion based forum focused on current trends and risk in the U.S. higher education sector. These forums will be held in Boston, Chicago and New York.

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S&P Higher Education Hot Topics - Boston

Oct. 3, 2018 | Boston, MA

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Oct. 4, 2018 | New York, NY

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Council Members Told Nothing Will Change if Gary Sells, Then Leases Back, its Police Headquarters.

Financial advisers who are putting together an agreement allowing Gary city government to sell its Public Safety Building, then lease it back tried Wednesday to reassure Common Council members that the deal would not change anything about the way the city operates.

Brandon Coleman and Jimmy Shanahan, municipal advisers working to put together the deal that Common Council members will be asked later this year to approve, said the intent is to allow city government to raise up to $40 million, which would be used in upcoming years to pay municipal government bills.

Council members last month approved a broad outline for a sale and lease-back of the Public Safety Building at 555 Polk St. Specific details of the transaction have yet to be put together, which is why Coleman and Shanahan were before the council’s finance committee to explain how things are progressing.

Coleman said the city followed up last month’s council vote of approval by sending out Requests for Proposals to some 20 financial institutions to gauge interest in the concept. Nine of those institutions expressed interest, and now talks are taking place between a three-member committee of city officials chosen by Mayor Karen Freeman-Wilson and those banks that could wind up buying the bonds that would produce money for Gary.

“It won’t matter that we say we want to raise $40 million if no one out there wants to do this,” Coleman said.

Selling bonds would create debt for Gary government in future years and Coleman said the plan originally was to devote the city’s share of proceeds from the Majestic Star Casino to guarantee the debt. Coleman said city officials are now confident that local income tax proceeds will provide enough – allowing them to use casino monies for other future projects.

Shanahan said the terms of the deal being put together likely would state that upon the full repayment of the fundraising bonds, ownership of the Public Safety Building would revert back to Gary municipal government.

Even during the years that debt existed, the title to the property would indicate the structure being owned by the Gary Building Corp., an entity to be created for whomever winds up buying the bonds.

Police Department will not be at risk at any point in the future of being evicted from their longtime headquarters, officials said.

“If the Building Corporation defaults on the bonds, the city will not lose use of the facility,” according to a memorandum Shanahan presented to council members. “The facility is not being mortgaged or pledged as security to the repayment of the bonds.”

Shanahan’s memo also stated, “no property taxes will be raised to make lease payments and debt service on the bonds.”

Councilwoman Rebecca Wyatt, D-1st, said she is skeptical that taking on additional debt to repay bonds will somehow help Gary municipal government get out of debt over the long-term.

“I don’t have a lot of confidence we can do this,” Wyatt said. Councilwoman LaVetta Sparks-Wade, D-6th, agreed, saying she fears what could happen if the city can’t pay the lease.

Mayoral Chief of Staff Dayna Bennett said the sale-and-lease back transaction is part of an overall play by which the city will be engaging in cost-cutting measures meant to reduce government expenses while also increasing the amount of money available to the city.

Some of those changes will become evident as soon as October, which Bennett said will be when the full Common Council will be asked to consider a series of fees the Fire Department would charge to increase the amount of income it can produce for the city.

“We’re going to see the gap shrink in the amount of money we’re short of paying our bills” Bennett said.

Coleman said this is all part of a long-range plan to bolster Gary’s financial status. “The adage of ‘you can’t borrow your way out of a financial problem’ is true,” he said. “But if we don’t develop a plan that brings more revenue into Gary, then we might as well all go home and just give up.”

The Chicago Tribune

by Gregory Tejeda

September 14, 2018

Gregory Tejeda is a freelance reporter for the Post-Tribune.

Wells Fargo Bolsters Public Finance Team on Both Coasts.

Wells Fargo Securities, the investment banking and capital markets business of Wells Fargo & Company (NYSE: WFC), has made two additions to its Public Finance team: Tom Wynne has joined the company and will lead a new housing financing initiative in the West, and Michael Colton has joined the company to support the municipal finance business in New York.

Based in Los Angeles, Wynne joins Wells Fargo as a director in the Public Finance Housing group. His focus includes multifamily housing deals, land-secured financing, and general government transactions in the company's Western region. He previously led business development with municipal bond issuers in the Western Region at Morgan Stanley in Los Angeles. Wynne earned an MBA from Oxford University Business School and a Bachelor of Science degree from the University of Colorado at Boulder.

"As one of the largest commercial real estate leaders in the U.S., we're in a strong position to leverage our balance sheet, bringing greater focus on capital market financing for both governmental and developer clientele," said Wynne. "I look forward to increasing multifamily housing financing in the West to match what we have in the East."

Colton brings 30 years of municipal finance experience to Wells Fargo. His industry tenure includes 20 years in Morgan Stanley's municipal securities group, serving most recently as managing director at Lamont Financial Services. As managing director for Wells Fargo Public Finance, Colton focuses on both New York City and New York state issuers. He has specialized in municipal infrastructure, transportation, utilities, and sports facilities at the local and state levels. Colton holds a master's degree in industrial engineering and operation research from Columbia University and a bachelor's degree in computer science from Yeshiva University.

"Whether our clients are city or state issuers, our service sets our team at Wells Fargo Securities apart," said Colton. "I'm proud to join some of the industry's best talent, and I look forward to expanding our business in the Northeast."

Wynne and Colton are the seventh and eighth industry veterans to join Wells Fargo Securities' Public Finance division under Stratford Shields, head of Public Finance, who assumed his role in late 2017. Eight junior level associates have also joined the firm during his tenure.

September 13, 2018, 07:18 AM

Taxpayers Urged to Demand Elected Officials Resist Investing Public Money in Rays' New Stadium.

It will be a baseball palace – a 28,000-seat stadium on 14 acres north of Ybor Channel in Tampa's nightlife district with paneled windows to let the breeze blow in off the bay and a translucent roof to see lightning lace the summer sky.

It will be the new home of the Tampa Bay Rays, scheduled to open by first pitch of the 2023 season, and it will cost $892 million.

The Rays have no funding plan for their proposed new stadium, but one thing is sure: They aren't going to pay for much of it.

Americans for Prosperity – Florida (AFP-FL) is among groups raising alarm about the Rays' new stadium proposal as a Dec. 31 deadline nears for the franchise to opt out of its Tropicana Field lease with St. Petersburg or remain there through 2027.

"We absolutely oppose using taxpayers money for the stadium," AFP-FL Director of Coalitions Demetrius Minor told Watchdog News. "We are not saying don't build it, we're saying you shouldn't build it with public money."

When the Rays formally announced the proposal in July, it prompted an immediate response from most members of the Tampa City Council and Hillsborough County Commission that little to no public money would be funneled into the stadium.

Mayor Bob Buckhorn, while acknowledging the ballpark would be a great addition, noted there was little momentum to ask taxpayers to pay for a ballpark, suggesting the Rays and local business leaders could find "creative ways" to fund it.

But Minor said the AFP-FL and others fear the Rays will essentially coerce local taxpayers into kicking in direct and indirect subsidies to build the stadium by threatening to move elsewhere.

The Rays are proposing to contribute anywhere from $150 million to $400 million – how much depends on securing "naming rights" – and a local advocacy group, Rays 2020, is working to generate private financing for the stadium.

But hidden in the proposal are federal, state and local subsidies pivotal to the project.

The city, for instance, could be asked to contribute some or all of the $83 million in infrastructure improvements for the project, including water, sewer and utility lines, a pedestrian walkway over Adamo Drive and a 1,000-space parking garage.

The county, for instance, could be asked to contribute a share of hotel taxes it collects to upgrade and maintain tourism-related infrastructure.

The proposed Ybor City stadium site is within one of 32 federally designated "economic opportunity zones' in Hillsborough County. It is among the 427 tracts in Florida granted that designation by the U.S. Treasury Department in June under provisions of the Tax Cut and Jobs Act of 2017 signed into law by President Donald Trump in December.

The designation allows developers to delay paying taxes on certain investments or real estate sales if they build in that zone, something supporters say will draw investors but critics argue is a "sweetheart deal" that diverts capital away from projects that offer a better return on investment for taxpayers.

"They're saying, 'We're going to rob Peter to pay Paul," Minor said. "The return-on-investment is not going to be what they say it is."

Minor pointed to a 2018 study by the Florida Office of Economic and Demographic Research that found public subsidies and incentives for pro sports stadiums through the Florida's Professional

Sports Facilities Incentive Program returns only 32 cents per tax dollar spent.

He called any attempt to infuse public money into the proposal “corporate welfare,” cautioning that end-arounds to side-step taxpayers’ input is “nothing new.”

Minor said Georgia’s Cobb County taxpayers are paying $300 million – more than $400 million over time – for Sun Trust Stadium, where the Atlanta Braves now play.

“Cobb County is now closing down public libraries because they can’t afford it,” he said.

There are plenty of examples in Florida illustrating how taxpayers eventually pay more for sports stadiums then they get back in jobs, tax revenues and economic development.

In July, AFP-FL called upon Miami-Dade County residents to speak out against the “whale of a deal” the Miami Dolphins are seeking in a request for $750,000 a year in property tax exemptions in addition to a $5 million “bonus” taxpayers give the team to host other events at its stadium. The deal could be worth nearly $58 million, the group says.

“The Dolphins went fishing for taxpayer subsidies and Miami-Dade and Miami Gardens elected officials swallowed hook, line and sinker,” AFP-FL State Director Chris Hudson said in a statement. “But it’s wrong that local taxpayers are being asked to pad the privately owned Dolphins’ bottom line. The only ones benefiting from this deal are the teams’ shareholders.”

In 2009, Miami-Dade County borrowed $400 million to finance the Miami Marlins’ new ballpark. Projections forecast the subsidy could ultimately cost county taxpayers $2.4 billion.

During the 2018 legislative session, Rep. Manny Diaz, Jr., R-Hialeah Gardens, sponsored House Bill 13 “to curtail abuses that have gone on, where cities are being held hostage” by prohibiting public money or land from being used to build stadiums for sports teams.

HB 13 passed the House on Jan. 12 in a 75-27 vote, but died in the Senate Appropriations and Commerce & Tourism committees.

Minor said local and state taxpayers must “put the pressure on elected officials” to resist sports stadium promoters that promise big returns in exchange for public subsidies.

Ultimately, he said, there is only so much money available to address so many needs. Money spent on stadiums is money not spent elsewhere.

“Government should not be in the business of picking winners and losers,” Minor said.

By John Haughey | Watchdog.org

New Orleans Convention Center's View 'Substantially' Misses Value of Proposed Hotel's Public Funding, Watchdog Says.

A local government watchdog is raising new questions about the financial and practical assumptions behind the Ernest N. Morial Convention Center’s proposed 1,200-room high-rise hotel.

The nonpartisan Bureau of Governmental Research says the view of a consultant hired by the Convention Center “appears to substantially underestimate the value of the proposed public contributions."

BGR and that firm, HVS Convention, Sports and Entertainment Facilities Consulting, are at odds over the size of the public contributions being sought by the hotel's would-be developers. BGR says the total is close to $330 million, but HVS puts it at about half as much under a formula that the authority that governs the giant facility has endorsed.

Continue reading.

BY RICHARD THOMPSON | THEADVOCATE.COM SEP 13, 2018

- GASB Clarifies Guidance on Majority Equity Interests.
- Rising Rates on Wall Street Loans Push States to End Swap Deals.
- Tax Increment Finance: Innovation & Trends
- MSRB Request for Comment on Draft Interpretive Guidance on Pennying and Draft Amendments to Existing Guidance on Best Execution.
- Why MSRB is Concerned About `Pennying'
- Disaster Recovery Bond Financing: Considerations for Congress
- How Munis Could Play a Role in Disaster Legislation.
- Smart Beta ETFs Take on the $3.8 Trillion Municipal Bond Market.
- What 'Adult Entertainment,' Puerto Rico And Chapter 9 Bankruptcy Have In Common.
- And finally, Just a Minor Discrepancy (Can't We All Get Along?) is brought to us this week by *PBBM-Rose Hill, Limited v. Commissioner of Internal Revenue*, in which landowner was shocked to find itself facing a gross valuation misstatement penalty by the IRS in what appeared to be a minor valuation squabble. After all, what's be big deal here? The IRS determined that the landowner could deduct $100k for a conservation easement, while the landowner claimed a deduction of $151,600. Certainly, reasonable minds could…. Oh, we need more zeros, you say? Ok. How many? Two? Hang on, gotta move a couple commas… So we're talking $15,160,000? As in millions? Oh, that is more.

EMINENT DOMAIN - ALABAMA

Portersville Bay Oyster Company, LLC v. Blankenship

Supreme Court of Alabama - August 29, 2018 - So.3d - 2018 WL 4124504

Limited-liability company (LLC) that was in the oyster-farming business and its members brought inverse-condemnation action against Commissioner of the state Department of Conservation and Natural Resources in his official capacity, which was a claim that related to the Department's decision to contract with construction company to build a breakwater and marsh for coastal protection, which allegedly caused sediment and silt to kill the oysters being farmed in LLC's oyster beds in the shellfish aquaculture easement held by LLC's members.

The Circuit Court. LLC and members appealed.

The Supreme Court of Alabama held that LLC and members stated an inverse-condemnation claim against Commissioner; overruling *Ex parte Carter*, 395 So.2d 65.

Limited-liability company (LLC) that was in the oyster-farming business and its members stated an inverse-condemnation claim against Commissioner of the state Department of Conservation and Natural Resources in his official capacity, where the action was based on the Department's decision to contract with construction company to build a breakwater and marsh for coastal protection, which allegedly caused sediment and silt to kill the oysters being farmed in LLC's oyster beds and in the shellfish aquaculture easement held by LLC's members, and complaint alleged that the Department knew that the project would or could carry excess sediment and silt onto the oyster beds; overruling *Ex parte Carter*, 395 So.2d 65.

Limited-liability company (LLC) that was in the oyster-farming business and its members stated an inverse-condemnation claim against Commissioner of the state Department of Conservation and Natural Resources in his official capacity, where the action was based on the Department's decision to contract with construction company to build a breakwater and marsh for coastal protection, which allegedly caused sediment and silt to kill the oysters being farmed in LLC's oyster beds and in the shellfish aquaculture easement held by LLC's members, and complaint alleged that the Department knew that the project would or could carry excess sediment and silt onto the oyster beds; overruling Ex parte Carter.

ZONING & PLANNING - CALIFORNIA

Oakland Bulk & Oversized Terminal, LLC v. City of Oakland

United States District Court, N.D. California - May 15, 2018 - F.Supp.3d - 2018 WL 2210680

Developer of bulk cargo shipping terminal brought action against city alleging, inter alia, that resolution adopted by city council applying coal ordinance to terminal breached development agreement, which required substantial evidence that failure to apply ordinance would pose substantial danger to health or safety of city's residents for any postdated regulation to apply to terminal.

Environmental advocacy groups intervened as defendants. Following bench trial, findings of fact and conclusions of law were issued.

The District Court held that city council resolution breached development agreement.

City council resolution applying new coal ordinance to bulk cargo shipping terminal breached development agreement, which required substantial evidence that failure to apply ordinance would pose substantial danger to health or safety of city's residents for any regulation adopted after execution of agreement to apply to terminal; emissions estimates in consultant's report to city council on health and safety effects of transporting coal through terminal excluded developer's mitigation measures, including use of rail car covers and surfactants, emissions estimates were based on misapplication of federal guidance and mistaken assumption about type of coal that would be transported, and estimates did not consider requirements placed on terminal as part of air district permitting process.

OPEN MEETINGS - GEORGIA

City of College Park v. Martin

Supreme Court of Georgia - August 27, 2018 - S.E.2d - 2018 WL 4054929

Former city employee brought action against city and city officials, alleging that interim officials' appointments violated the Open Meetings Act (OMA), and seeking reinstatement, expungement of her personnel record, attorney fees and expenses of litigation, a writ of quo warranto, and the imposition of civil penalties.

The Superior Court granted city's and officials' motion for summary judgment. Employee appealed, and the case was transferred to the Supreme Court and back to the Court of Appeals. The Court of Appeals affirmed in part, reversed in part, and remanded. Defendants petitioned for certiorari review.

The Supreme Court of Georgia held that the Open Meetings Act did not mandate a vote by city council on the interim appointment of a city manager.

LABOR & EMPLOYMENT - ILLINOIS

Oak Lawn Professional Firefighters Association v. Village of Oak Lawn

Appellate Court of Illinois, First District, Third Division - July 18, 2018 - N.E.3d - 2018 IL App (1st) 172079 - 2018 WL 3649816 - 2018 L.R.R.M. (BNA) 271, 903

After interest arbitrator issued an award requiring city's firefighters to be residents of Illinois as part of collective bargaining agreement, firefighters' union and union members who were residents of Indiana brought action against city, alleging arbitrator exceeded his authority, and seeking a declaratory judgment that residency requirement was prohibited under Municipal Code.

The Circuit Court granted union's motion for summary judgment, denied city's motion to dismiss, and granted a declaratory judgment that firefighters had a right to maintain residency requirements that were in effect at the time they were hired throughout their duration of employment with city. City appealed.

The Appellate Court held that:

- Union's duty to bargain collectively did not include the obligation to bargain over residency restrictions;
- Legislature intended in provision of Municipal Code governing full time fire departments to deny home rule units the authority to impose residency restrictions on current employees of its fire service that were more restrictive than those in effect at the time the employee began service with municipality;
- Provision of Labor Relations Act governing arbitration of disputes involving peace officers did not control in residency requirement dispute; and
- Interest arbitrator lacked the authority to issue an interest award regarding firefighter residency requirement.

PUBLIC UTILITIES - MAINE

Conservation Law Foundation v. Public Utilities Commission

Supreme Judicial Court of Maine - August 16, 2018 - A.3d - 2018 WL 3901484 - 2018 ME 120

Environmental advocacy organization sought judicial review of a decision of the Public Utilities

Commission adopting a rule that altered the calculation of incentives under a renewable energy incentive program.

The Supreme Judicial Court of Maine held that Superior Court, rather than Law Court, had jurisdiction over appeals from Commission's rulemaking decisions; overruling Central Maine Power Company v. Public Utilities Commission, 734 A.2d 1120.

Superior Court, rather than the Law Court, had original jurisdiction over an environmental advocacy organization's appeal from a decision of the Public Utilities Commission adopting a rule that altered the calculation of incentives under a renewable energy incentive program; statute permitting appeals from a "final decision" of the Commission evinced a legislative intent to define appellate review over decisions of the Commission when it acted in its adjudicatory role, not in its rulemaking capacity, statute excepted from Law Court's jurisdiction the Superior Court's jurisdiction to review rules, and Superior Court's enabling statute precluded any inference that the Law Court and Superior Court shared concurrent jurisdiction; overruling *Central Maine Power Company v. Public Utilities Commission*, 734 A.2d 1120.

How Munis Could Play a Role in Disaster Legislation.

WASHINGTON – Congress should consider legislation to facilitate bond funding in the wake of major disasters, such as broadening the types of private enterprises that can access tax-exempt financing and allowing certain advance refunding issuances, the National Association of Bond Lawyers urged in a paper released Wednesday.

The paper, "Disaster Recovery Bond Financing: Considerations for Congress" is the product of a working group chaired by John England of Butler Snow's Jackson, Miss. office.

Based on legislation previously adopted by Congress in response to 9/11, Hurricane Katrina, and flooding in the Midwest, the recommendations lay out what NABL suggests are the most important components of comprehensive, permanent disaster recovery legislation.

"Despite containing a useful guide for designating disaster areas, the federal aid which follows such a designation, provided under the Robert T. Stafford Disaster Relief and Emergency Assistance Act and other sources, may not be immediately be available for local governments to use to address emergency issues," NABL said in the paper.

This isn't the first push to tap the muni market for more sustainable disaster-relief funding. Last year, for example, the Council of Development Finance Agencies threw its support behind a proposal to permanently authorize as much as $20 billion of federally tax-exempt bonds for disaster rebuilding.

NABL also made recommendations for legislative and regulatory changes in September 2005 after states and localities were devastated by Hurricane Katrina.

"This paper is intended to provide Congress with a blueprint for permanent disaster relief financing mechanisms that our experience shows would benefit state and local governments in the aftermath of a major disaster," said NABL President Sandy MacLennan, a partner at Squire Patton Boggs in Tampa, Fla. "The concept of a permanent structure for these provisions will expedite the recovery process."

New legislation should revise the tax law to allow local governments to establish and maintain a disaster recovery working capital reserve in excess of 5% of the previous year's working capital expenditures without resulting in tax-exempt bond proceeds being deemed not to have been spent, NABL said. A new law should also permit Treasury to draft regulations allowing tax-exempt financing to provide for costs incurred in connection with direct losses resulting from a disaster, NABL suggested, such as overtime pay and expenses to relocate staff and equipment.

Legislation should "expressly recognize that proceeds of tax-exempt bonds are spent once allocated to a recovery-related project," NABL said, "and permit reimbursements of recovery-related costs paid with proceeds of tax-exempt bonds to be reallocated to other expenditures related to the post-disaster recovery, regardless of the initial allocation of disaster bond proceeds."

The group recommended putting the tool of advance refundings back into the hands of disaster-affected issuers, regardless of whether such bonds were previously advance refunded prior to the passage of the 2017 tax reform legislation that ended advance refundings.

Other suggestions include easing private activity bond restrictions and granting additional low-income housing tax credit authority to each state and allowing states to convert unused carryforward of their volume cap from previous years to additional low-income housing tax credit authority.

NABL's paper also makes suggestions on how new legislation could support the credit of disaster-stricken issuers. For example, Congress could raise the bank-qualified bond cap to $30 million from $10 million for disaster-affected issuers for some amount of time, it recommended. Congress could also permit local governments to specifically pledge Federal Emergency Management Administration (FEMA) reimbursement funds as security for the payment of bonds, and authorize states to issue tax credit bonds and lend the proceeds to disaster-affected localities.

The paper concludes its recommendations with suggestions on how legislation could create jobs to promote a sustainable recovery from a disaster. This could be accomplished through broadening the types of entities that could benefit from tax-exempt financing, including hotels, office buildings, retail stores, medical clinics and other healthcare facilities, public utility property, warehouses, and manufacturing plant buildings, NABL said.

Congress could also ease public-private partnership restrictions, and use a formula to provide a maximum private activity bond volume cap with no restrictions on years of carryforward, NABL said.

NABL said it would be happy to assist Congress, Treasury, and the Internal Revenue Service in considering specific legislative proposals.

By Kyle Glazier

BY SOURCEMEDIA | MUNICIPAL | 09/05/18 07:04 PM EDT

GFOA's 3rd Annual Better Budgeting Web-Stream Event.

Sign up for GFOA's 3rd Annual Better Budgeting web-stream event! This year's event will take place as a three-part series. Each course is a separate topic (Creating a Budget Aligned with Community Priorities 10/4/18, Budget Monitoring 10/11/18, and Building a Better Budget Office 10/25/18) and stand-alone session.

Interview with David Vaudt, Chairman of the GASB.

An Interview with David Vaudt, Chairman of the GASB

Article from the October 2018 Risk Management Association Journal

Read the interview.

[09/05/18]

GASB Clarifies Guidance on Majority Equity Interests.

Norwalk, CT, September 4, 2018 — The Governmental Accounting Standards Board (GASB) has issued guidance clarifying the accounting and financial reporting requirements for a state or local government's majority equity interest in an organization that remains legally separate after acquisition.

A public hospital's acquisition of a rehabilitation center that remains legally separate after acquisition is an example of the type of transaction the new guidance addresses.

Under Statement No. 90, *Majority Equity Interests*, a government's majority equity interest in a legally separate organization should be reported as an investment if that equity interest meets the GASB's definition of an investment. In many instances, a majority equity interest that meets the definition of an investment should be measured using the equity method.

Statement No. 72, *Fair Value Measurement and Application*, defines an investment as "a security or other asset that (a) a government holds primarily for the purpose of income or profit and (b) has a present service capacity based solely on its ability to generate cash or to be sold to generate cash."

For a majority equity interest in a legally separate entity that does not meet the definition of an investment, Statement 90 requires a government to report the legally separate entity as a component unit.

Statement 90 also establishes guidance for remeasuring assets and liabilities of wholly acquired governmental organizations that remain legally separate. That guidance brings the reporting of those acquisitions in line now with existing standards that apply to acquisitions that do not remain legally separate.

Statement 90 is available on the GASB website, www.gasb.org.

More U.S. Cities Brace for 'Inevitable' Hackers.

Majority of top 25 U.S. cities have, or are looking to buy, cybersecurity insurance

Hackers are constantly probing for "the one flaw overlooked" in Houston's computer networks, the official responsible for safeguarding the fourth-largest U.S. city's system said.

“Compromise is inevitable,” said Christopher Mitchell, chief information security official, at a Houston City Council hearing last month. His presentation helped persuade local lawmakers they needed a $30 million cybersecurity insurance plan with a $471,400 premium, an example of a burgeoning trend across the country. Policies vary, but insurance can cover hackers’ extortion demands, legal liabilities, computer-forensics expertise and costs for problems like having government services knocked off line.

A majority of the 25 most-populous U.S. cities now have cyber insurance or are looking into buying it, according to a Wall Street Journal survey. A ransomware attack on Atlanta earlier this year—one of the biggest reported breaches of a city’s network—served as a warning to officials everywhere of the constant barrage from hackers. Cities and even library systems are being hacked more often than people realize, but many heard about Atlanta.

“It got a lot of people nervous and got a lot of people coming to the market and saying, ‘Hey, I’m really interested in buying this,’ ” said Brad Gow, global cyber product leader at insurer Sompo International Holdings Ltd.

Cities including Boston, Nashville, Tenn., Washington, D.C., and San Jose, Calif., are actively researching cyber insurance. Dallas, San Diego, Denver and Detroit are among those that already have cyberpolicies; none have filed claims.

“I wanted A to Z to have it covered,” said Mark Barta, risk management director in Fort Worth, Texas, which got a $5 million cyberpolicy with a $99,570 premium last year. “I didn’t want to be in a situation on a Monday morning hearing this happened, and saying, ‘What do I do next?’ ”

Some cities—including New York, Chicago and Philadelphia—declined to say whether they have cyber insurance. Some, like San Antonio, have cyber coverage through an existing property policy. Others say they are self-insured, which can entail creating a special fund to cover losses.

Seattle is self-insured and doesn’t have additional cyber insurance, but reviews its need for coverage every year and is currently soliciting quotes, a spokeswoman said.

“There has been an increase in cyberattacks facing state and local governments this year,” Andrew Whitaker, Seattle’s chief information security officer, said in a statement.

Insurers writing cybersecurity policies for cities include Sompo, American International Group Inc., Lloyd’s of London and Axis Capital Holdings Ltd.

Atlanta has a cyber-insurance policy that took effect Jan. 1, less than three months before hackers managed to freeze city computer systems. The city refused to pay a $51,000 ransom, but hacks can entail many other costs, from the emergency response to building stronger defenses. Mayor Keisha Lance Bottoms has estimated that Atlanta was facing more than $20 million in costs following the attack.

An Atlanta spokesman said officials have begun submitting claims but didn’t respond to questions about the monetary value of those claims or whether the carrier, AIG, has issued any payments.

Cyber insurance has recently been a fast-growing market for U.S. corporations worried about attacks. Mr. Gow said his business—which insures Fort Worth, Charlotte, N.C., and soon, Houston, according to the cities—is also seeing strong public-sector growth. Overall, Sompo’s cyber business has grown 30% a year since 2014, he said.

Cities are generally a “tough class” for underwriters, Mr. Gow said. One challenge municipalities face is hiring and retaining top IT staff. “There are not enough of these men and women around for the Fortune 500, much less for all the towns and cities and states that need these talents,” he said.

Houston’s cyber insurance—three $10 million policies from different insurers—is intended to cover many potential problems, including costs due to an interruption of city services and the expense to restore, re-create or re-collect lost or damaged data, officials say.

It would also cover costs tied to ransomware attacks like the one that struck Atlanta. Mr. Gow said it often makes sense to give in to lower-cost extortion demands.

“As a rule, if it’s manageable—under $5,000 or $10,000 or $20,000—it’s better for everyone, as distasteful as it is, to pay the ransoms,” he said.

Though the Houston City Council unanimously approved the plan, one member had questions about the nearly $500,000 premium. Council member Jack Christie embraced the insurance plan. “We’ve been attacked, and the defense system so far has worked,” he said. “Because the intensity has picked up, we need this insurance against that.”

Los Angeles doesn’t carry a policy, an official said. The city has, however, spent the last several years on an “aggressive strategy to improve protection,” said Reuben Wilson, general counsel for public safety in the mayor’s office, at a June meeting of the U.S. Conference of Mayors in Boston. This includes creating an operations center to monitor for threats citywide, he said.

On an average day, Los Angeles sees 45 million unauthorized access attempts that are blocked automatically by firewalls, Mr. Wilson said. But firewalls and antivirus software don’t catch all of the latest attacks, he said, and the city’s cybersecurity analysts neutralize about 2,000 intrusions each week before any harm is done.

Many cyber incidents happen when an employee opens an attachment or clicks on a link that inadvertently gives hackers access to the network.

“Humans fall for stuff, humans make mistakes,” said Austin Morris Jr., chief executive of an insurance brokerage in Huntingdon Valley, Pa. He said such scenarios generally don’t allow an insurer to deny coverage.

The risk hit home in San Francisco two years ago when hackers infiltrated systems at the city’s transportation agency, causing it to turn off ticket vending machines as a precaution. While San Francisco has a $50 million cyberpolicy for its public-health department, the city wants to cover the entire municipal government.

Risk managers are working with brokers to learn about other cities’ policies, and San Francisco has also hired a consultant to help quantify its risk so it can get sufficient coverage. The hackers are always evolving, said Michael Makstman, San Francisco’s chief information security officer.

“This is their work, day in and day out, to try to attack,” he said. “We do X, then they react with Y. We do Y, and then they react with Z.”

The Wall Street Journal

By Scott Calvert and Jon Kamp

Updated Sept. 4, 2018 5:20 p.m. ET

Statement by U.S. Conference of Mayors President Columbia (SC) Mayor Steve Benjamin on Meeting with Treasury Secretary on Opportunity Zones.

Washington, DC—Today, a bipartisan delegation of mayors, led by U.S. Conference of Mayors (USCM) President Columbia (SC) Mayor Steve Benjamin, met with Treasury Secretary Steve Mnuchin to discuss the importance of timely and effective IRS guidance to implement the Opportunity Zone provisions of the Tax Cuts and Jobs Act of 2017. The delegation included Rochester Hills (MI) Mayor and USCM Vice President Bryan Barnett; Louisville (KY) Mayor and USCM 2nd Vice President Greg Fischer; Detroit (MI) Mayor Mike Duggan; and Mesa (AZ) Mayor John Giles.

Below is a statement on the meeting from Mayor Benjamin:

"Mayors across the country—both Democrat and Republican, and from cities large and small, are excited about the great potential of this new federal initiative. It is a true once-in-a-generation chance to reconnect communities with capital investment. In fact, we are already seeing a remarkable degree of interest from investors, philanthropies and community stakeholders nationwide.

During our meeting with the Secretary, we conveyed our enthusiasm about the capacity for Opportunity Fund investments to revitalize communities that have long been overlooked by private investors. We told the Secretary that investors, entrepreneurs, and local leaders are activated and already preparing business and community plans to implement the Opportunity Zone program.

But we also expressed our concern that without timely and effective IRS guidelines that allow Funds to attract a wide-ranging array of investors and deploy capital to new and existing businesses, the opportunity to revitalize low-income areas will be lost. Clarity is needed now to ensure that this innovative tool is broadly accessible and can spur economic development as was intended by Congress and the Administration.

We are encouraged today by the Secretary's commitment to the successful implementation of Opportunity Zones, and we pledged our assistance to help launch the Opportunity Zone program and bring investment to people and communities who need it most."

Smart Beta ETFs Take on the $3.8 Trillion Municipal Bond Market.

- **Columbia Threadneedle files for 'strategic beta' muni bond ETF**
- **Fund excludes California, has high exposure to revenue bonds**

First smart beta investing took stocks by storm. Then it moved to bonds. Now it's making its way to the $3.8 trillion market for U.S. municipal debt.

Columbia Threadneedle Investments, known for its municipal-bond mutual funds, has filed for an exchange-traded fund called the Columbia Multi-Sector Municipal Income ETF, which will seek to replicate the performance of a muni market index with a "rules-based" and "strategic beta" approach, according to a May filing with the U.S. Securities and Exchange Commission.

Once it starts trading, it'll be Columbia's first municipal bond ETF and likely one of the first smart beta funds in the muni market. Smart beta is a strategy that aims to give investors more targeted exposure by building indexes around themes, called factors, such as momentum or value.

ETFs haven't made deep inroads in the municipal-bond market like they have in other asset classes, with just over 40 muni funds trading. Still, Columbia found in a survey of more than 100 financial advisers that over half would consider buying a smart beta municipal-bond ETF for clients.

The results are "encouraging," Marc Zeitoun, head of strategic beta at Columbia Threadneedle, said in an interview. He estimates the shift to benchmarking and passive investing in municipals is about six years behind the equity market.

"This is a trend that will likely occur in the municipal world," Zeitoun said. "It's happening in every other asset class."

Making Munis Smart

Muni ETFs typically use traditional passive investing strategies. For example, BlackRock Inc.'s $10 billion iShares National Muni Bond ETF, known by the ticker MUB, follows the performance of a market-value weighted index, meaning it carries high exposures to the states and sectors with the largest amounts of debt outstanding, like California and New York.

The Columbia fund would take a different approach, targeting debt market factors such as yield, quality, maturity, liquidity and interest rate sensitivity, according to the filing. The ETF also would establish "rules" for what it won't buy, like California bonds, which have gotten increasingly expensive as people look to shield their income from taxes.

Similarly, while the fund will have some exposure to junk-rated munis, it's taking a careful approach to those securities. The ETF won't have tobacco bonds as part of its high-yield holdings because they risk default if Americans keep quitting smoking. And it won't buy notes sold by bankrupt Puerto Rico or other U.S. territories that are all facing high debt levels.

About 45 percent of the fund will be in "core" revenue bonds that are rated Aa3 or lower, 20 percent will be in health-care municipals rated Aa2 or lower, 15 percent will be in revenue bonds rated Aa2 or higher, 10 percent will be in general-obligation bonds rated Aa3 or higher and another 10 percent will be in high-yield municipals, according to the filing says. Each sector carries different maturity requirements.

Indexing Catches On

Catherine Stienstra, head of municipal bond investments at Columbia, is listed as the lead portfolio manager for the Columbia Multi-Sector Municipal Income ETF.

The high exposure to revenue bonds jibes with a widespread preference among municipal-bond investors for debt backed by a revenue stream as opposed to a promise to pay, known as general-obligation bonds. This comes after Detroit's bankruptcy imposed losses on general-obligation bondholders, eroding the value of a pledge once considered sacrosanct.

Indexing has been slow to catch on in the municipal market because investors believe it's difficult to navigate and therefore are willing to pay for actively-managed portfolios, said Todd Rosenbluth, director of ETF and mutual fund research at CFRA Research. The Columbia fund could be appealing because its smart beta approach would screen for investments based on characteristics that active managers use, he said.

Evolutionary ETFs

“It’s a great marriage of what’s working in both the active world and in the index world,” Rosenbluth said.

One concern financial advisers have surrounding smart beta fixed-income funds is the cost, Columbia found in its survey. The ETF filing does not yet disclose the fund’s proposed fees. Rosenbluth said the costs will likely be cheaper than actively-managed alternatives. He expects smart beta to catch on in the municipal market — just like equities and taxable fixed-income products — especially if the Columbia fund can gather assets quickly.

“It’s evolutionary that we see this happening in the muni bond ETF space,” he said.

North Las Vegas Rebounds From Near Insolvent to Investment Grade.

- **Poster child of bust offers first bond deal since 2011**
- **Upgrade from junk status permitted refinancing chance**

North Las Vegas, once considered the poster child of the housing bust, is betting the municipal-bond market will validate its rebound from the brink of insolvency.

The city is selling $99 million of general-obligation bonds on Sept. 11, its first such sale since 2011. The refinancing was made possible after it was upgraded back to investment-grade status in June last year by Moody’s Investors Service and then this April by S&P Global Ratings.

The community of 243,000 bordering Las Vegas has benefited from the growth in the national and local economies and from diversifying its tax base. Amazon.com Inc. in April said it was building the state’s fourth facility there, and Sephora, a cosmetics company under Paris-based conglomerate LVMH, broke ground on a distribution center in July.

“We really had no place but up to go,” the city’s chief financial officer, Darren Adair, said in an interview. “This recognizes the hard work that the city has done to restore structural balance.”

The bond sale from North Las Vegas, which just four years ago faced the prospects of a state takeover and forcing concessions on bondholders, comes as money flows into funds and sales of new issues remain subdued. Wall Street memories can be short when demand for yield runs high, said Jason Ware, head of trading at brokerage 280 CapMarkets.

“That deal would have no problem getting done,” he said.

North Las Vegas was the nation’s third fastest-growing municipality from 2000 to 2009, until property values went into free fall from the recession and ensuing aftermath. Moody’s cut its rating 10 notches from June 2011 through January 2014, according to spokesman David Jacobson. The city will have about $431 million in municipal debt outstanding after the refinancing, bond documents show.

Officials in Nevada, which doesn’t permit municipal bankruptcy filings, discussed taking over the city’s finances and possible legal changes that would force concessions on bondholders. Ultimately, the city didn’t fall under the state’s control and embarked on cutting costs and expanding its appeal to warehouse developers and logistics centers.

In June 2017, Moody's, which put the city in junk in 2013, returned it to investment-grade status by upgrading it to Baa3. Last month, the company bumped it up two notches to Baa1 with a positive outlook because of the continuing financial improvement.

S&P Global Ratings, which cut North Las Vegas to junk in 2014, moved it back to investment-grade in April with a BBB rating with a stable outlook.

Bloomberg Markets

By Romy Varghese

September 6, 2018, 7:57 AM PDT

Teetering Chicago Suburb Sued by Investors After Bond Default.

- **City of Harvey owes bondholders more than $2.5 million: suit**
- **Oppenheimer, Susquehanna seek payment from struggling city**

A financially struggling Chicago suburb was sued by investment firms for defaulting on $32 million of debt, claiming the town violated its contract with bondholders.

The Oppenheimer Rochester High Yield Municipal Fund, Oppenheimer Rochester AMT-free Municipal Fund and Susquehanna Government Products sued Harvey, Illinois, its mayor and Cook County officials for the city's failure to make more than $2.5 million of payments on bonds sold in 2007, according to a copy of the lawsuit filed in Cook County court.

The Sept. 4 suit alleges that the Cook County tax collector hasn't been depositing property-tax revenue collected for the city into a separate account to pay principal and interest on the bonds, as the city had guaranteed. Instead, the revenue has been distributed to the city first, in violation of the bond contract, according to the suit. The funds are supposed to be transferred to the city only after the debt is paid, the suit says.

Tom Corfman, a spokesman for Cook County Treasurer Maria Pappas, didn't immediately respond to a request for comment, nor did spokespeople for the companies that filed the suit.

Harvey, about 20 miles south of Chicago, has long been wracked by poverty and crime and was sued by the Securities and Exchange Commission four years ago for misusing money raised by selling bonds for an ill-fated hotel project.

The city missed six bond payments in fiscal year 2017, according to Moody's Investors Service, which described the municipality as "structurally insolvent" in a May report. Its available fund balance was negative $56 million at the end of April 2017, according to Moody's.

By Aug. 1, Harvey was more than $2.5 million in arrears on principal and interest payments due on the bonds sold in 2007. That includes more than $1.2 million owed to the plaintiffs, according to the suit.

Harvey Mayor Eric Kellogg didn't immediately respond to an email seeking comment on the suit, and his voicemail box was full. In 2016, Kellogg agreed to never participate in another municipal bond-offering in order to settle the SEC's charges of defrauding investors in connection with the hotel project.

Bloomberg Markets

By Elizabeth Campbell and Martin Z Braun

September 6, 2018, 10:20 AM PDT

Rising Rates on Wall Street Loans Push States to End Swap Deals.

- **Tax cut triggered clauses letting banks boost rates on loans**
- **Market shift lets them come out ahead despite big bank fees**

U.S. state and local governments are paying Wall Street firms millions of dollars to terminate interest-rate swap trades, spurred by rising costs on bank loans and bond-market swings that are allowing them to save money by refinancing derivative-laden deals.

Some of the nation's biggest debt issuers, including Illinois, New Mexico, and Massachusetts, have all sold fixed-rate bonds in the last six months and used some of the proceeds to pay banks to back out of the swap agreements. The low yields on new fixed-rate bonds have allowed some of them to come out ahead despite the termination payments.

In June, the New Mexico Finance Authority issued $420 million of fixed-rate debt, spending $64 million of the proceeds to terminate five swaps on floating-rate bonds and loans. That came after its costs on about $285 million of the notes owned by Bank of America Corp. had increased by about $1 million annually after the corporate tax cut allowed the bank to raise the interest rate to make up for its smaller profits on the tax-exempt loans.

"If you have debt out there that's costing you over 5 percent and you can refinance it for less than 3 percent, the savings can be used to absorb the cost of the termination," said Michael Zavelle, chief financial strategist at the New Mexico Finance Authority.

The derivative trades are the legacy of a popular financial tactic used more than a decade ago, when states and cities sought to save money by borrowing with floating-rate bonds paired with interest-rate swaps instead of selling traditional fixed-rate debt. The deals unraveled during the financial crisis when the housing bust hammered insurers that guaranteed the bonds, causing the interest rates to soar.

While many governments paid billions to back of out the deals, others opted to convert their floating-rate bonds into direct loans with banks. But many loans included clauses giving banks the right to raise the interest rate if legal changes lowered the return on their investment. The 2017 tax cut that slashed the corporate rate made the tax-exempt loans less valuable than before compared with other assets, once federal taxes are taken into account. So banks demanded more interest to make them whole.

"That changed the whole economics of this transaction," said Zavelle. "It made sense only because costs increased because of the tax law change."

Last month, Illinois issued $965 million of fixed-rate debt at an overall rate of 4.2 percent, using $75 million of the proceeds to terminate five swaps. A portion of the new bonds retired $600 million in floating rate-debt sold to four banks under direct purchase agreements that were set to expire in November. The borrowing costs on the new debt was about half of the old bonds, according to the state.

“Although a swap termination payment was due in order to fix out the bonds, the savings associated with the new lower interest cost fixed-rate refunding bonds far exceeded those costs,” Elizabeth Tomev, a spokeswoman for Governor Bruce Rauner, said in an email.

Swap terminations have also been driven by the drop in short-term municipal bond yields compared with those in the swaps market. That has made it more advantageous for governments to issue debt to unwind swap agreements that are set to expire within the next ten years, according to Nat Singer, senior managing director at Swap Financial Group, an interest-rate swap adviser to states, hospitals and universities.

In February, the Palm Beach County school district in Florida issued $339.5 million of bonds to refinance three series of floating-rate notes, using $50.4 million of the proceeds to end related swap trades. The rates on the new fixed-rate debt of 4.6 percent to 5.3 percent was about the same as the combined rate on the old debt and swaps, according to an April presentation to the school board.

“We actually had permission from our school board to terminate them for a couple of years now, we were just waiting for the right market conditions,” said Leanne Evans, the school district’s treasurer.

Bloomberg Markets

By Martin Z Braun

September 6, 2018, 10:30 AM PDT

— With assistance by Elizabeth Campbell

Oops! Some U.S. States Forget to Save Despite Growing Economy.

- **State fund balances can cover a median of 31 days: Pew Study**
- **Metric shows whether states are prepared for next recession**

Consumers are taught to save money during good times to prepare for the worst. Lawmakers who run U.S. states apparently haven’t learned that lesson.

An analysis by Pew Charitable Trusts found that the financial cushion states have for recessions is wearing thin — despite the U.S. economy enjoying the second-longest expansion on record. States’ total balances — including rainy-day fund reserves and general fund money left over at the end of the year — cover a median of 31 days of general fund expenditures as of fiscal 2018 estimates, 10 days less than right before the recession, the report found.

The situation is worse in states like Kentucky, where the rainy-day fund and leftover cash covers only about a third of a day of general fund expenditures, according to an analysis of fiscal 2018 estimates. The data are based on estimates from states before the close of the fiscal year and could change, Barb Rosewicz, project director at Pew, said in an email.

Continue reading.

Bloomberg Business

By Amanda Albright

September 4, 2018, 10:31 AM PDT

[Exit by Trump Foe Emanuel Raises Concerns for Corporate Chicago.]

- **Former Obama chief of staff has led the city since 2011**
- **He was facing an expanding field of challengers in 2019**

President Donald Trump won't have Rahm Emanuel to kick around anymore, but corporate leaders in Chicago may not be as happy with the mayor's decision not to seek a third term.

In a move that promises to trigger a political free-for-all and could rattle investors in bonds tied to the nation's third-most-populated city, Emanuel, 58, announced Tuesday that he won't run for re-election next year.

Rahm EmanuelPhotographer: Scott Olson/Getty Images
The news comes as Chicago's population growth has stalled, the city faces massive pension liabilities, and it's routinely used by Trump as a synonym for urban decay and crime. Emanuel's announced departure also creates uncertainty just as he has helped stabilize the city's finances and led its bid to attract Amazon.com Inc.'s second headquarters, with its 50,000 jobs. Chicago is one of 20 finalists in the competition.

"This is a big moment for Chicago, which is now at a crossroads," said Jack Lavin, president and chief executive officer of the Chicagoland Chamber of Commerce. "Mayor Emanuel has been good for the growth and development of the city, and the business community needs stability to continue creating jobs and opportunities for people."

Wooing Corporations

Emanuel has had success wooing corporations: more than 50 companies have relocated their headquarters to Chicago during his tenure. And others like Chicago-based United Continental Holdings Inc., one of the city's largest private employers, have added jobs to the city.

"We are proud of the productive partnership we've built with the mayor and his team, working together toward a common goal of creating greater economic opportunity for all Chicagoans," United CEO Oscar Munoz said in a statement. "Particularly, the mayor's focus on building 21st century infrastructure, especially forging a landmark agreement to modernize O'Hare, will support Chicago's economic competitiveness and success long into the future."

The city's fiscal challenges remain daunting, with pensions still only 27 percent funded. Chicago plans to contribute $1.18 billion to the retirement funds in fiscal year 2019 with payments ramping up in the coming years, according to an annual financial analysis. Chief Financial Officer Carole Brown has also been considering issuing pension-obligation bonds to further stabilize the massive debt.

"They have before them one of the most serious fiscal problems in America right now, and that is the huge liabilities," said Richard Ciccarone, president of Merritt Research Services LLC, which analyzes municipal finance. "They're going to have to be paid for by taxes and new revenues without disturbing economic stability in the city of Chicago."

Chicago's fiscal picture improved under Emanuel, said Laurence Msall, president of the non-partisan Civic Federation, which tracks the city's finances. He cited Emanuel's move to end the borrowing for operations and selling bonds to pay off maturing debt.

Who's Next?

"It will remain to be seen whether the next mayor will continue to embrace these practices or slip into such financial lapses," Msall said. "It's difficult to know who the next mayor will be or whether they will be able to match Mayor Emanuel's persona and dedication to economic development. But many of the structural improvements that Mayor Emanuel can rightfully take credit for will continue beyond his administration."

An adviser close to Emanuel said he thinks the announcement was made now so that candidates more to the mayor's liking still had enough time to enter the race and that the decision to leave the job was more personal than political.

His decision came on the eve of a murder trial where a white Chicago police officer is accused of repeatedly shooting a black teenager — a case that encapsulated Emanuel's struggle to both improve public safety and community relations with police in a city Trump has ridiculed for its crime problems.

"Chicago Police have every right to legally protest against the mayor and an administration that just won't let them do their job," Trump tweeted in May. "The killings are at a record pace and tough police work, which Chicago will not allow, would bring things back to order fast…the killings must stop!"

In fact, Chicago's murder rate is down this year. But the city still suffered nearly twice as many homicides as New York City, which has more than three times the population. Chicago recorded 375 murders this year through Sept. 2, down 19 percent from last year, according to police department data. New York has recorded 188 murders as of Aug. 26.

The city's bloodshed has drawn national attention. After a single weekend saw about 70 wounded last month, Rudy Giuliani, Trump's lawyer and the former mayor of New York, tweeted about the crisis, blaming the city's Democratic rule and expressing support for one of Emanuel's challengers: Garry McCarthy, a former New York City police official who the mayor hired to lead Chicago's force.

Police Shooting

McCarthy was fired by Emanuel in 2015 in the wake of the release of a video showing the fatal police shooting of 17-year-old Laquan McDonald. The incident brought calls for Emanuel's resignation. The murder trial of the police officer accused of killing McDonald, Jason Van Dyke, is scheduled to start this week.

Emanuel's departure also raises uncertainty for investors who have praised his work to right the junk-rated city's finances. For years, Chicago hadn't paid enough into its four retirement funds, and the strain had been weighing on the city's ability to provide services to residents.

As mayor, Emanuel enacted higher property taxes and utility levies as part of a series of steps to shore up Chicago's retirement funds. Moody's Investors Service, which had cut Chicago's rating to below investment grade in 2015, raised the city's outlook to stable in July, citing some of the work of Emanuel's administration. S&P Global Ratings and Fitch Ratings consider the city's bonds investment-grade.

Daley Successor

Emanuel's tenure was relatively brief, at least by Chicago standards. Before his election, a Daley had run Chicago for 43 of the previous 55 years.

"This has been the job of a lifetime, but it is not a job for a lifetime," Emanuel told reporters during a City Hall news conference on Tuesday, flanked by his wife, Amy Rule.

In his 2011 win, Emanuel beat a field that included five other candidates to became Chicago's first Jewish chief executive. While in office, he generally remained composed in public, not showing what he has acknowledged to be a sometimes expletive-laced, explosive personal style.

The mayoral election is scheduled for Feb. 26. If a single candidate doesn't receive more than 50 percent of the vote, the two contenders with the most votes will compete in a run-off on April 2, according to the city's Board of Election Commissioners.

Emanuel, former President Barack Obama's first chief of staff and a former Chicago congressman, had been raising money ahead of next year's election. In the second quarter alone, his campaign took in more than $6 million, according campaign finance disclosures.

Emanuel had $7.5 million in his campaign account at the start of July, disclosure reports show. While he's not obligated to do so, Illinois law would allow him to give any amount of that total to a political party committee or even a mayoral candidate.

Among the dozen challengers he was facing were McCarthy and former Chicago Public Schools chief Paul Vallas. There's no clear frontrunner now.

Emanuel's departure has left the city with a "political free for all" where candidates will be forced to address issues rather than attack the incumbent, said Michael Pagano, dean of the College of Urban Planning and Public Affairs at the University of Illinois at Chicago.

"They're going to have to start proposing solutions," Pagano said. "It really has to be based on who has the proposal that can appear to move us away from those two major issues: financial issues and gun violence."

Bloomberg Markets

By Elizabeth Campbell and John McCormick

September 5, 2018, 2:00 AM PDT

Racial Bias in Muni Market Costs Black Colleges, Research Shows.

- **HBCUs pay more than other schools with similar credit profile**
- **Difference more pronounced in Louisiana, Mississippi, Alabama**

Before Dillard University can start building a new dorm for its 1,291 students, the historically black college in New Orleans needs to raise money. To do that, it will have to contend with what researchers say is racial discrimination in the muni-bond market.

Historically black colleges and universities in the U.S. pay more to issue municipal bonds than nontraditionally black schools, according to recent research. After controlling for credit quality, issue type and other relevant factors, HBCUs pay on average 14 percent more in underwriting fees compared with historically white institutions.

Banks have to work harder to sell HBCU bonds, said Pengjie Gao, professor of finance at the Mendoza College of Business at Notre Dame and one of the authors of the report entitled “What’s in a (school) name? Racial discrimination in higher education bond markets.” Because of that effort, the school gets charged a higher fee.

For non-HBCUs, an average 81 cents out of every $100 raised flows to underwriters. HBCUs pay 11 basis points more, at 92 cents per $100 dollars raised. “Somehow the investor taste does matter for their decisions,” Gao said.

In states like Louisiana, Mississippi and Alabama, the spread jumps to 30 basis points. The report, written by professors from Duke University, Drexel University, University of Southern California and Notre Dame, attributes the upcharge to racial bias among local investors, who are most likely to buy muni bonds for the state tax break.

‘Racial Animus’

“Because HBCUs are located in states with high levels of anti-black racial animus, underwriters face steep frictions when trying to find willing buyers,” the report read.

These higher spreads come at a significant price. Gao put the cost at $35,000 per issue on the low end. America’s 100-plus HBCUs could find better things to do with that money, said Dillard President Walter Kimbrough. More than 75 percent of students at historically black institutions rely on Pell Grants to cover tuition and expenses, according to the Thurgood Marshall College Fund. At Dillard, for example, $35,000 would cover two full scholarships.

Bias in the bond market is another version of discrimination black Americans and institutions have faced in the financial sector, academics noted. In recent years, large financial institutions have defended themselves against charges of racial discrimination against employees and customers.

“There’s already inequity, so I’m not surprised to see this ongoing inequity in the bond market,” said Joni E. Finney, director of the Institute for Research on Higher Education at the University of Pennsylvania. “I think somebody should call them out on it and say, ‘We expect this to change.’”

Expanding Pool

Some lawmakers have tried. After a preliminary version of the academic study was released in 2016, Minnesota Congressman Keith Ellison introduced the HBCU Investment Expansion Act, an action that would grant triple tax-exempt status to bonds sold by the schools. That would allow out-of-state buyers to purchase the bonds tax-free. In theory, expanding the pool of possible investors outside of the state they were sold would make it easier for underwriters to place the bonds — and less costly for the historically black colleges.

“This legislation will level the playing field and help HBCUs get the funds they need to build new dorms, labs or classrooms without additional costs or fees,” Ellison said at the time.

The bill stalled in both the Ways and Means and Finance committees where it has remained ever since. Ellison is now running for Minnesota Attorney General.

As Dillard prepares for its first muni-bond offering since 2002, Kimbrough said he hopes the findings from the report will help him negotiate a fair deal with the underwriter they choose. He also said he knows what he's up against.

"We are under-resourced institutions that serve an under-resourced community," Kimbrough said. "Because of how everything else operates in the nation, those with the least resources end up paying more."

Bloomberg Markets

Danielle Moran and Jordyn Holman

September 4, 2018, 5:47 AM PDT

[3 Ways Blue States Could Still Get Around Tax Reform.]()

The IRS has moved to block high-tax states from circumventing GOP limits on tax deductions — but not in every way possible.

The Internal Revenue Service issued [new regulations]() late last month in an effort to [end workarounds by blue states]() hoping to bypass the state and local tax deduction cap introduced under December's federal tax overhaul. But observers say that even with the new regulations, states still have several ways to get around the cap.

So far, Connecticut, New Jersey, New York and Oregon have passed laws that would allow residents who owe more than $10,000 in state and local taxes to pay the remainder into a state or local charitable trust, which is still deductible under federal law. Similar proposals are pending in California and Illinois.

Residents in the above states who itemize their taxes average far more in state and local tax deductions than the new federal cap. As such, states with high taxes have an interest in protecting their rates by making sure their residents can lower their federal tax burden by still deducting those taxes from their income.

[Continue reading.]()

GOVERNING.COM

BY LIZ FARMER | SEPTEMBER 6, 2018

[On Water Problems, Governments Actually Work Together.]()

When it comes to dirty lakes and rivers, governments have learned how to cooperate.

The greatest lubricant for intergovernmental harmony may well be water. I know that sounds odd, but the nation's largest bays and lakes offer compelling examples of how multiple states can work with each other — and also with towns and cities, federal agencies, universities, nonprofits, and foreign governments — to combat water pollution.

There is a lot of work to do. Ambitious surveys of more than 2,000 locations carried out in five-year cycles by the states and the Environmental Protection Agency show that a little more than half of the nation's rivers and streams are significantly polluted. That dirty water, in turn, flows downstream into the nation's bays, lakes and coastal areas. The chief contaminants are nitrogen and phosphorus, which contribute to the formation of algae blooms that lower oxygen levels needed to support aquatic life. A lot of the phosphorus comes from fertilizer, so the problem is particularly acute near farmland, though urban areas contribute as well. Once the chemical is introduced, it poses a permanent problem for the water, much like the carbon dioxide being released into the atmosphere.

A good example of this phenomenon is Lake Champlain in New England — one of the most beautiful inland lakes in the country, but also one of those most threatened by what is known as "legacy phosphorus." A recent study by the University of Vermont estimated that almost 240,000 tons of pollution had accumulated in the watershed in the past 90 years.

The Lake Champlain Basin Program was created 23 years ago and has the support of Vermont, New York and the Canadian province of Quebec, plus a wide array of local governments and private organizations. The regional administrator of the EPA has been a consistent player, as has the Quebec premier. The most recent report of the program concluded that the deterioration in the lake's water quality had subsided somewhat, but that the long-term problem of phosphorus buildups in parts of the lake continues.

The Lake Champlain Basin Program was marked for elimination this year by the Trump administration's proposed budget, but Democratic Sen. Patrick Leahy of Vermont, the vice chair of the Senate Appropriations Committee, had a blunt response: "That's not going to happen." He instead succeeded in getting the program a $4 million increase in funds this year. But the EPA did make it clear that the governments in the program must develop a new funding source of their own so the work can continue "regardless of fluctuations in federal spending."

Compared to Lake Champlain, the Chesapeake Bay is vast, with a watershed covering more than 64,000 square miles, including parts of Delaware, Maryland, New York, Pennsylvania, Virginia and West Virginia, as well as Washington, D.C. But there are similarities: The campaign to save the bay is well coordinated, largely by the EPA's Chesapeake Bay Program, created in 1983 and headquartered in Annapolis, Md. Here, too, the Trump administration attempted to zero out the $73 million in federal money allotted to the program, but Congress refused to go along.

Four years ago, when he was running for governor of Maryland, Republican Larry Hogan vehemently criticized a stormwater remediation fee, enacted in 2012 and designed to reduce the amount of runoff pollution headed into sewer systems and eventually the Chesapeake Bay. Hogan derisively called it a "rain tax." But as studies began to show stormwater remediation promoting underwater grasses that help clean up the bay, Hogan changed his tune and came to support the program. The "rain tax," coupled with other measures designed to eliminate runoff, has had a positive effect both environmentally and politically.

Finally, there are the five Great Lakes. Taken together, they form the largest surface freshwater system on the planet, hosting more than a fifth of the earth's freshwater supply. Their combined watershed includes significant areas of Canada and eight U.S. states, plus more than half a dozen major metropolitan areas and about 40 tribal nations.

The watershed is vitally important in both the U.S. and Canada as a center for manufacturing and agriculture, as well as shipping. The structure for cooperation to protect it was established early on, in 1972, when President Richard Nixon and Canadian Prime Minister Pierre Trudeau signed a Great Lakes Water Quality Agreement defining specific areas that were threatened by pollution. In the ensuing years the agreement has been amended many times, most recently six years ago to address the frightening algae blooms in Lake Erie.

If you have ever flown over the southwestern tip of Lake Erie in summer, you will understand the concern: The entire lake surface is a mass of green algae. The most serious infestation came in 2011. Not long after that, the 1972 agreement was amended to deal with the algae problem.

The water pollution challenge to governments at all levels is daunting because it mixes intricate science with complicated politics. But the intergovernmental outcome generally has been positive. There is occasional friction, as when Michigan complains that Illinois isn't doing enough to keep the invasive and dangerous Asian carp from entering its waters via the Chicago River. But the EPA regional offices have continued to be a positive force. That is vital. In the age of Trump, it also is highly uncertain.

Governing.com

By Peter Harkness | Founder, Publisher Emeritus

SEPTEMBER 2018

What To Expect From S&P Global Ratings' U.S. Public Finance Rating Process.

Our ratings, research, and insights support transparency in the capital markets and help market participants and investors make educated, confident decisions.

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Sep. 5, 2017

S&P: Pension Costs Will Remain High For Largest U.S. Cities, As Revised Liability Measures Place Upward Pressure On Contributions.

U.S. cities have varying legal, governance, and benefit structures and operate in different legal and economic environments, so there's no one-size-fits-all measure for assessing their pension and other postemployment benefit (OPEB) risk.

Continue Reading

Sep. 5, 2018

Doing More With Less: The Case for Investing in Multi-Use Infrastructure

In our current climate environment, critical infrastructure is under intense strain and not keeping pace with the changes and challenges of the 21st century — from the pot-holed roads we drive on every day to our outdated storm drainage systems. According to The Union of Concerned Scientists, more than 300,000 homes in U.S. coastal areas could be underwater within the next 30 years. It's clear that we need to rethink our traditional approach to infrastructure, and we should do so now to capitalize on the growing commitment to renewable energy and efficiency goals, and the new interest in green infrastructure projects.

At Neighborly, we want to help communities pursue a transformative approach to creating vibrant, sustainable and resilient infrastructure, and we believe modern municipal finance is is at the heart of delivering on this social contract. So it's concerning that California's infrastructure investment and resiliency challenges will adversely impact people and places, and as a result also their ability to access the capital markets to finance the very infrastructure they need to protect themselves.

In short, we need to do more with fewer public dollars by building multi-use, multi-benefit infrastructure.

Continue reading.

Neighborly

Posted 08/29/2018 by Kiran Jain

What 'Adult Entertainment,' Puerto Rico And Chapter 9 Bankruptcy Have In Common.

To keep a sense of perspective during the ongoing contentious priority-of-liens fight in the Puerto Rico bankruptcy proceedings, consider the case of *Eric Joelner, Fish, Inc. d/b/a XXXtreme Entertainment v. Village of Washington Park, Illinois*. In the annals of municipal bankruptcy, this is a very small footnote, for sure, but still relevant.

Back in 2003, Washington Park was having a hard time paying its bills. The usual economic suspects were making it tough on this 2.5 square mile town of 5,300 residents with a 42% poverty rate—manufacturing jobs were gone, there were cuts to state aid, and people were leaving. By its own admission, it was "in the red" on its $3.8 million budget.

To make ends-meet, the town raised licensing fees on its highest revenue generating businesses: "adult entertainment" establishments. Those businesses within the city limits saw their licensing fees jump ten-fold, from $3,000 to $30,000.

Mr. Joelner, a long-time proprietor of such a "public service" business (the court's words, not mine) took exception on First Amendment grounds, sued and prevailed. Washington Park didn't get the revenues. The Village ultimately filed for bankruptcy protection, in part due to, among other things, yes, monies owed to the owner of a certain topless bar—Mr. Joelner, to be exact.

Priorities

That put the judge in the case in the rather thankless role of determining the priority of unsecured liens that, in addition to the bar's claim, included fees to lawyers, the police pension and one Johnny "Chico" Matt, the town's former public safety director. While the jokes write themselves about how to weigh the priority of lawyers against adult entertainment owners in the Washington Park case, the judge handling Puerto Rico's case faces the same issue of prioritization, just without any of the humor.

For example, look at the recent intricate proposal by the bondholders of Puerto Rico's sales-tax backed COFINA (Puerto Rico Urgent Interest Fund Corporation) debt seeking court approval in an upcoming hearing. It includes, in addition to a bond swap, a provision to pay themselves the $1.2 billion in Trustee-held funds. In justifying the plan, COFINA bondholders point to Act 91-2006 as the statutory security for their senior priority of lien claim.

The general obligation bondholders disagree vehemently. In their view, the plan gives COFINA investors, senior and subordinate, priority over what they see as their constitutionally protected priority lien. They point to Article VI, Section 8 of the Puerto Rico's Constitution.

Let the legal fisticuffs ensue.

Practitioner's Perspective

This problem of prioritizing and resolving conflicting claims falls to the job of the U.S. District Court magistrate. When it comes to municipal bankruptcies, one former judge on that court has given this a great deal of thought. Drawing from his considerable experience on the bench, most notably overseeing the $3 billion bankruptcy filing by Jefferson County, Alabama, the Honorable Thomas B. Bennett (Ret.) (now of Counsel with Bailey & Glasser) reflected on the problem of unsecured or conflicting liens when a municipality files under Chapter 9.

A Quick History Of The General Obligation Pledge

Since the general obligation (GO) security pledge backs the vast majority of debt issued by municipalities, the Counselor offered some key legal history as to how it came to pass. A democratic government is by and of the people; government entities cannot offer a lien on those things owned by the people. Hence the "general obligation" pledge: a promise to pay but not a lien on any specific public assets.

That left governments seeking to borrow with a problem. They lacked traditional hard assets to offer as a lien to secure payment. A promise to pay is not a lien. To make up for that, some states established a statutory mandate to back the GO pledge. Often local governments added unlimited taxes to the pledge as further, tangible security.

An Unsecured Security

But as the Detroit bankruptcy demonstrated, even the "unlimited tax" pledge has limitations. Bondholders found themselves fighting not only other unsecured creditors but also pensioners who claimed, well, a superior claim. Bondholders discovered, to their chagrin, that court can only rule on the GO pledge's priority in the pantheon of liens and claims; it cannot impose nor raise "unlimited taxes" by judicial decree. The "unlimited tax" bondholders took a cut that left them with 74 cents on the dollar.

James E Spiotto, retired partner of Chapman and Cutler LLP and now Managing Director Chapman Strategic Advisors LLC framed the problem succinctly: a paper right might not exist in reality. He too comes from a practitioner's perspective. A published author in the field of Chapter 9 bankruptcies, Spiotto not only practiced bankruptcy law but also provided testimony and written statements to the U.S. House of Representatives and Senate on the 1988 Amendments to Chapter 9 legislation.

A More Secured Security

Unsecured creditors are but one lien issue the court has to vet through. As government and its services expanded, politicians got "cutesy"— Bennett's words exactly. To avoid taking on more municipal debt on their balance sheet and having to go to the voters to raise taxes to support it, they created new financing authorities and agencies to fill the need. This begat types of security other than the GO pledge to back those bonds. Correspondingly, a cascade of varying liens and carve-outs developed as revenues from fees, sales taxes, taxes on incremental property values, tolls, fuel taxes and structured settlements—to list a few—were codified in bond documents as secured liens to repay debt holders.

Liening On The Law

As these liens developed, the law did not keep pace. This created a problem for the U.S. District Court judge adjudicating a Chapter 9 proceeding. Bennett observed that in a municipal bankruptcy, the law hasn't been fully fleshed out and the issues haven't been worked. Because municipal bankruptcy is rare and the causes unique, the Bench has limited guidance from which to draw when looking to apply legal criterion to determine priority among unsecured creditors. To misapply the words from Tolstoy's Anna Karenina, happy bondholders are all alike; every unhappy bankruptcy participant is unhappy in their own way. Stockton, Vallejo, Harrisburg and Central Falls make for good headlines; they leave little in terms of precedent in the case law for the courts to cite. The plethora of other liens, as the Puerto Rico example highlights, only complicates matters.

Statutory Direction

Bennet offered that, in the courtroom, the judge can only rely on the facts presented and make a determination based on the law. Here is where turning to the actual statute should offer direction. The Chapter 9 legislation establishing the municipal bankruptcy framework was drafted to offer guidance but also to be flexible. Since experience and case law didn't offer much, legislators had limited experience from which to draw. Additionally, there was the tacit acknowledgement of the varying circumstances in each bankruptcy. No law can be so comprehensive as to cover every situation, nor should it be. The courts need some leeway to find direction in working the law. Additionally, the drafters had to consider the varied state statutes governing bankruptcy; there are state by state laws as to whether or not a municipality can file and under what terms they can file if so permitted. Consequently, to take all these factors into account, the statute was crafted to offer guideposts as to process and procedure, but not dictate outcomes.

Spiotto contends that there is one aspect of the law that is clear. The U.S. Bankruptcy Court is bound to adhere to the Tenth Amendment of the U.S. Constitution and co-sovereignty the states. State laws and mandates cannot be rewritten from the bench. Equally, his view was that a municipality not only must pay any revenues dedicated to creditors but also those dedicated revenues cannot be used for other purposes until creditors are paid. Moreover, the municipality cannot be compelled by the court to not pay that which the state, by statute or otherwise, has mandated to be paid—which was the rationale behind the 1988 amendments to the federal statute.

Ultimately, that is the legal root of the dispute that continues to this day in Puerto Rico.

Academic Thinking

Discerning and prioritizing claims in municipal bankruptcies is on the minds of legal scholars as well. David Schleicher, professor of law, Yale Law School and fellow authors Adam J. Levitin, professor of law Georgetown University Law Center and Yale Law School graduate Aurelia Chaudhury, in their upcoming article *Junk Cities: Resolving Insolvency Crises in Overlapping Municipalities* (California Law Journal) take up the central question of conflicting security interests in Chapter 9 bankruptcy.

In this thoroughly researched and well-written piece, the authors contend that conflicts between bondholders as seen in Puerto Rico are just the tip of the iceberg and are likely to get more intractable. For example, one count had residents of Chicago paying taxes to 21 different districts, entities and authorities with separate levies on essentially the same underlying taxable boundary. It is not difficult to imagine the troubles one or more bankruptcy filings could create.

Seeing the emerging problem and noting that "Chapter 9 does not currently address the problems of overlapping local debt crises" and that the "statutory language is sufficiently capacious and indeterminate," Schleicher, et alia view that as an opportunity. They advocate that the vagueness leaves room for "both courts and state legislatures [to] develop tools to stop local governments from acting in ways that are collectively harmful, even if individually rational, during insolvency crises." Given the events in Puerto Rico, the authors may be both current and prescient.

What Guides The Final Plan

If plan approval were solely a matter of clean-cut law, the dispute would be over and done with in Puerto Rico, as some contend it should be.

But the fact that it *hasn't* been clean cut summons the issue that the law is conjoined by another factor the court must weigh—public policy. Municipal bonds fund essential public purposes. It is the core of their strength as an asset class. Businesses may come and go as public tastes change and technologies evolve. Municipal services—good schools, paved roads, clean water, green parks, lit streetlights and such—are necessary regardless. The law can say whatever it says but, if at the end of the day, a plan leaving a municipality bereft of resources to provide its citizens basic services yet still pays bondholders in full is dead before the ink dries on the brief.

This critical factor weighs on the mind of every justice overseeing a Chapter 9 proceeding and likely, in particular, the judge overseeing the case in cash-strapped and economically destitute Puerto Rico.

So what guides the court through the fog of litigation to address both the law and public policy so a plan can be approved? Spiotto presented three simple and to the point questions:

1. Is the plan feasible both economically and by implementation?
2. Is it in the best interest of the creditors?
3. Is it fair and just?

For a plan to be approved, the answer to each of these questions must be an unequivocal "yes."

There is a lesson for the municipal bond investor. When sorting through the seemingly overwhelming number of debt issues, their jumble of security liens and unduly complex documents, keep in mind that good economics and an essential public purpose will do more than any carefully drafted legal protections. Otherwise, be ready to face the risk of joining the unhappy bankruptcy family.

Forbes

by Barnet Sherman

Sept 6, 2018

Barnet Sherman has over 30 years of investment experience in the fixed income markets in credit *analysis and portfolio management.*

Barnet Sherman. Portfolio Manager, Credit Analyst, Published Author, and Speaker has over 30 years of investment experience in the fixed income markets.

Cook County Board Considering New Revenue Forecasting Commission.

A previously deferred proposal to create a revenue forecasting commission designed to give additional financial analysis to the Cook County Board is slated to formally be presented for a vote on Wednesday, Sept. 12 in the Board's finance committee.

So far, the idea has support from several commissioners and at least one notable detractor.

Supporting the proposal is its sponsor, 7th District Commissioner Jesus "Chuy" Garcia (Pilsen), and co-sponsors 1st District Commissioner Richard Boykin (West Side), 14th District Commissioner Gregg Goslin (Glenview), and 17th District Commissioner Larry Suffredin (Evanston).

Board President Toni Preckwinkle came out against the idea earlier this summer, resulting in Garcia deferring the presentation until this month.

Making the case

Those on each side of the issue have stated their case going into the September meeting.

Garcia has been reframing the proposal, meeting with his co-sponsoring supporters as well as Michael D. Belsky, executive director of the Center for Municipal Finance at the University of Chicago Harris School of Public Policy. He aims to present to fellow commissioners a vote-friendly proposal.

The initial proposal included establishing a seven-member panel of financial experts, selected by the board president and approved by the board.

Garcia said, "This independent body would specialize in conducting five-year revenue forecasting and would serve as a much needed fiscal resource and research arm to the board and would not pose a burden to the County as has been previously characterized."

Boykin said an independent commission would help because the board president "currently has all the information" regarding revenue and that "we basically rely on her in good faith though the budget office."

He referred to last year's soda tax, which the board later rescinded, as an example of needing a better method to forecast revenue needs.

"Just like Congress has the budget office independent of the president, we need something that will provide transparency," Boykin said.

Preckwinkle opposition

Becky Schlikerman, spokesperson for Preckwinkle, said, "We do not believe creating this commission at this time is an appropriate use of tax dollars. Incurring additional expenses at a time when we continue to face financial challenges and have to make difficult decisions on how to balance our budget would be irresponsible."

Schlikerman pointed to other concerns, including adding a new layer of government. She also said revenue projections over the past three years have come within 2% of home rule taxes and that commissioners already are well informed about revenues and have the option to meet with the president's finance team. She drew a further difference with revenue commission proponents in noting the effectiveness of the 2017 beverage tax projections and needed collections.

"The projection was spot on," Schlikerman said.

"I don't recall any of our revenue projections being that far off," agreed 11th District Commissioner John Daley, noting that the board members all have an equal opportunity to discuss revenue matters. He said the revenue commission may be worth considering, though he also expressed concern over costs that may increase over time.

Other commission proponents and opponents have focused on anticipated costs of creating a revenue commission as well. A June 26 letter from Ammar M. Rizki, chief financial officer of the County's Bureau of Finance, to the Board of Commissioners noted that first-year costs could amount to at least $600,000. The Better Government Association (BGA) in Chicago, which offered a July 19 letter to commissioners supporting the revenue commission creation, outlined a $400,000 cost based on one part-time and two full-time staff members. The letter uses a comparative example of the Office of Economic and Financial Analysis in Washington State's King County.

Rachel Leven, policy manager and co-author of the BGA letter, said her organization recommends a three-person staff, including one economist, that ideally would forecast five years and assess whether the County's proposed budget is balanced. The proposal also suggests the commission could offer education and assessment to other Cook County governments, including small municipalities and townships.

"I imagine there is an element of control," Leven said. "Revenue forecasting is understandably political because it may be hard to trust someone else to do that."

Academic views

Local academic experts said they see value in creating a revenue commission, with added suggestions.

Michael Pagano, dean of the University of Illinois at Chicago (UIC) College of Urban Planning and Public Affairs, favors having an extra set of eyes. He noted the Congressional Budget Office has operated along with the U.S. President's Office of Management and Budget since 1974. While that move resulted from Congressional mistrust toward the Richard Nixon administration, Pagano said better revenue forecasting is likely with a commission.

He also said the BGA's estimated $400,000 price tag may not be enough.

"That's hardly enough for the kind of staff that is truly independent," Pagano said. "What it might be able to do is provide research in certain cases."

Pagano also suggested obtaining research through resources at a university level. UIC has a Government Finance Research Center.

At Roosevelt University, Ralph Martire, Arthur Rubloff Endowed Professor and executive director of Chicago-based think tank Center for Tax and Budget Accountability, said there are two ways to look at the proposed revenue commission.

“This is one of those interesting situations where they [Preckwinkle and Garcia] both make good points,” Martire said. “When you struggle with a shortfall, you wouldn’t want to take away from services to fund a good government initiative. But you do want to put a policy in place for a long-term benefit. Preckwinkle won’t always be in office. Cook County government is larger than most state governments, and it has unique challenges. It’s a balancing act.”

For the BGA, log on to https://www.bettergov.org/. For the Cook County Board, log on to https://www.cookcountyil.gov/board-of-commissioners. For CUPPA, log on to https://cuppa.uic.edu/. To contact Martire, email rmartire@roosevelt.edu.

Gazette Chicago

By Rick Romano

September 7, 2018

[Advisers’ Top Concern About Muni Bonds Is Yield.]

> “As passive investing continues to grow, rather than simply accept an imperfect benchmark portfolio, municipal bond investors with a preference for passive solutions should think about adopting a smart beta approach,” suggests Catherine Stienstra, head of municipal investments at Columbia Threadneedle.

When establishing municipal bond exposure for clients, advisers are most concerned about yield and market complexity, according to a Columbia Threadneedle Investments survey.

Forty-three percent say their biggest concern with the asset class is finding the right amount of yield to align with their clients’ goals and preferences. The next most highly cited concern (14%) was complexity in the muni market post-2008, followed by unintended consequences of benchmark investing (12%) and an inability to conveniently access all sectors of the muni market (12%).

Eighty-five percent said their muni investment decisions are at least moderately affected by credit and interest rate environments.

“Financial advisers are concerned about yield and market complexity when it comes to allocating client dollars to the muni space,” says Catherine Stienstra, head of municipal investments at Columbia Threadneedle. “Traditional benchmark indices exclude viable investment options, are debt-weighted and can be over-concentrated in less attractive sectors. This puts advisers in a tough position when they try to balance cost-efficiency with investment opportunity. As passive investing continues to grow, rather than simply accept an imperfect benchmark portfolio, municipal bond investors with a preference for passive solutions should think about adopting a smart beta approach.”

Fifty-five percent of advisers said they would consider investing or are already invested in a muni bond strategic exchange-traded fund (ETF). Fifty-four percent favor actively managed investments. Thirty-nine percent are concerned about cost.

"Financial advisers are being pulled in multiple directions as they remain committed to doing what's best for their clients," says Marc Zeitoun, head of strategic beta at Columbia Threadneedle. "The competing priorities of price and preference for active management are a good example of the balancing act they face. Strategic beta ETFs present a great middle ground between 'best thinking active investment insight' and passive implementation. It's no wonder that track record and a firm's expertise as an active fixed income manager remain the most important factors when considering strategic beta ETFs."

Columbia Threadneedle's findings are based on a survey of 111 financial advisers.

By Lee Barney

TAX - SOUTH CAROLINA

[PBBM-Rose Hill, Limited v. Commissioner of Internal Revenue]

United States Court of Appeals, Fifth Circuit - August 14, 2018 - F.3d - 2018 WL 3853450 - 122 A.F.T.R.2d 2

Limited partnership petitioned for redetermination of final partnership administrative adjustment (FPAA) which determined that it was not entitled to charitable contribution deduction for its donation of a conservation easement to a land trust and penalty for overvaluing the conservation easement.

The United States Tax Court entered decision for IRS. Partnership appealed.

The Court of Appeals held that:

- In determining whether public-access requirement for qualified conservation easements was fulfilled, Tax Court was required to focus on terms of the deed and not on actual use of the land after donation;
- Terms of easement fulfilled public-access requirement for partnership to be able to claim charitable contribution deduction;
- Terms of easement did not fulfill the perpetuity requirement for partnership to be able to claim charitable contribution deduction;
- Fair market value of property before partnership donated it, based on its highest and best use, was IRS expert's estimate of $2,400,000 rather than taxpayer's expert's estimate of $15,680,000, so that total amount that could be deducted was $100,000 instead of the $15,160,000 claimed by partnership;
- Managerial signature on cover letter of report sent prior to issuance of FPAA satisfied IRS's obligation to obtain written managerial approval of initial determination of gross valuation misstatement penalty; and
- Gross valuation misstatement penalty applied to penalize partnership's overstatement of the deduction, but not to decision to claim deduction which it was not entitled to claim.

[Pensions in Dispute - August 2018]

Welcome to our quarterly pensions litigation briefing, designed to help pensions managers identify key risks in scheme administration, and trustees update their knowledge and understanding. This briefing highlights recent Pensions Ombudsman determinations that have practical implications for schemes generally.

Please see full publication for more information.

Allen & Overy LLP

September 4, 2018

Municipal Bonds vs. Corporate Bonds: The Better Investment Vehicle

Everything from corporate debt to municipal debt instruments, the sheer size of U.S. capital markets can certainly be puzzling for an investor seeking to strike the right balance between risk tolerance, time horizon and desired yield to enhance their potential returns.

In the global debt universe, government bonds make up the largest piece of the pie followed by the corporate debt instruments. Where both, corporate and municipal debt, are quite similar in their formation and structure, their returns and tax treatments can be significantly different for investors.

In this article, we will take a closer look at both forms of debt, their main characteristics and how each one can fit into an investor's portfolio.

Continue reading.

municipalbonds.com

by Jayden Sangha

Sep 05, 2018

MSRB Request for Comment on Draft Interpretive Guidance on Pennying and Draft Amendments to Existing Guidance on Best Execution.

Read the Request for Comment.

Why MSRB is Concerned About `Pennying'

WASHINGTON – The Municipal Securities Rulemaking Board is requesting comment on draft guidance regarding "pennying" and best execution, giving the market the chance to weigh in before publishing information that could be influential in industry practices.

The MSRB released the request Friday, about five months after suggesting earlier this year that it would seek comment on the subject of pennying.

The request for comments on both sets of guidance is part of a formal process that could lead up to the formal adoption of that guidance.

The best execution rule guidance would actually be amendments to existing guidance on the relatively new rule, which took effect in March 2016.

The MSRB is seeking comments by Nov. 6.

Pennying, which is sometimes called “last look,” occurs when a dealer places a retail client’s bid-wanted out to the market and determines the winning bid, but then rather than executing the trade with the winning bidder marginally outbids the high bid and buys the bonds for its own account. The MSRB raised concerns about pennying in a letter to the Securities and Exchange Commission in October, and said following its April board meeting this year that it would request comment on the issue.

While the practice can appear beneficial in isolation because the dealer technically provides the customer a price equal to or better than the best bid, the MSRB is concerned that widespread pennying disincentivizes participation in the bid-wanted process, discourages bidders from giving their best price in a bid-wanted and “may impact the efficiency of the market.”

A recent study of similar behavior in the equity market demonstrated an impaired market quality, the MSRB said.

The draft interpretive guidance states that using the bid-wanted process, whether via a brokers’ broker or an alternative trading system solely for the purposes of price discovery could be a violation of the board’s Rule G-17 on fair dealing.

The MSRB wants to know about the prevalence of pennying, whether dealers would bid more aggressively if they were confident pennying was not widespread, and how often dealers post the same bid-wanted simultaneously on multiple trading platforms.

The draft amendments to Rule G-18 on best execution provided a clarification that dealers need not necessarily put a bid-wanted out on multiple ATSs to fulfill their obligations to use “reasonable diligence” in seeking the best deal for their customer.

The amended language states that use of ATSs and brokers’ brokers can create exposure to multiple dealers, each of which can constitute a separate market. However, the amendments state, if a dealer uses only one ATS or brokers’ broker then its policies and procedures should be clear about the facts and circumstances that make that one venue sufficient to comply with the firm’s obligations under the rule.

Securities Industry and Financial Markets Managing Director, Associate General Counsel, and Co-head of Municipals Leslie Norwood said SIFMA would be responding to the requests and appreciates the amendments on best execution.

“SIFMA and its members believe it is important for all market participants to be able to rely on fair and efficient markets,” Norwood said. “With that in mind, SIFMA is reviewing the request for comment in anticipation of submitting a comment letter. Further, SIFMA believes that an unintended consequence of the best execution rule was an increase in firms believing it was necessary to put the same bond offering out to multiple ATSs and broker’s brokers to comply with that rule. We appreciate the clarification that a single ATS or broker’s broker captures offers/bids from multiple dealers, each of which can constitute a separate market.”

By Kyle Glazier

BY SOURCEMEDIA | MUNICIPAL | 09/07/18 07:07 PM EDT

['Flipping' Cases Raise Systemic Muni Market Questions.]

WASHINGTON – Activities like the flipping and kickback scheme regulators brought to light in California last month could undermine the integrity of municipal offerings, though one market participant suggests such conduct may be an unintended consequence of efforts to police priority order periods.

The Securities and Exchange Commission took administrative actions earlier this week to bar or suspend several more employees of RMR Asset Management, a California-based firm that allegedly participated in a years-long scheme that the SEC is continuing to investigate.

It is unclear how pervasive such conduct is in the muni market, but the Municipal Securities Rulemaking Board is concerned enough with what it calls “pre-arranged” trading that it plans to issue a request for comment regarding the practice.

The actions announced late Tuesday included orders against RMR and seven individuals charged with posing as retail investors in order to gain priority access to new-issue munis that were then “flipped” for profit to their own customers as well as the customers of other broker-dealers. In addition to sanctioning the firm, the SEC barred or suspended RMR owner Ralph Riccardi as well as “independent contractors” David Luttbeg, Philip Weiner, David Frost, Timothy McAloon, Douglas Derryberry, and Dewey Tran.

Taken together with previous actions, nearly the entirety of RMR has now settled with the Commission following separate judgments levied against them in federal court, while neither admitting nor denying the SEC’s findings. Others continue to face litigation.

According to the SEC’s complaint, the men operated as unregistered brokers from 2009-2016 when they used fake business names linked to local zip codes in order to fool issuers of muni bonds into thinking they were local retail investors. This alleged ruse gave them priority to purchase bonds, which they then sold to customers who had indicated interest in them. This was usually “at a price of one dollar above the initial offering price, without negotiation and irrespective of market value,” the SEC said in its complaint.

The case also involved another firm allegedly operating as an unlicensed broker-dealer, Core Performance Management, and the former head of municipal underwriting, sales and trading at registered New Jersey-based broker-dealer NW Capital Markets Inc.

LeeAnn Gaunt, chief of the SEC Enforcement Division’s Public Finance Abuse Unit said last month that the conduct alleged in the complaints “prevented true retail investors from receiving priority in municipal bond offerings.”

The SEC is not alone in its concerns, according to MSRB Chief Regulatory Officer Lanny Schwartz and MSRB General Counsel Michael Post. The two men noted that the MSRB amended its Rule G-11 on primary offering practices in 2013 to require dealers to report to underwriters whether orders they received in a retail order period met the issuer’s requirements for that order period.

MSRB rulemaking over the years has aimed to give the issuer considerable power to make determinations about retail order periods and other preferences, Schwartz and Post said, and conduct undermining those efforts troubles the board.

“Yes, we are concerned,” Schwartz said Wednesday.

The MSRB had been planning to ask the market to weigh in on whether it should issue new guidance under Rule G-17 on fair dealing that would address so-called “pre-arranged trading” that in some cases can look like the conduct alleged in the SEC’s complaints against RMR and Core Performance Management. But because the SEC has brought this enforcement action and is continuing to investigate, Schwartz said, the MSRB is now “waiting for the dust to settle” before returning to the idea in the future.

According to a document circulated by the MSRB, the board is concerned about situations in which a dealer contractually agrees to buy bonds from an investor at a markup in order to have a better chance of getting those bonds into its inventory. The dealer compensates the investor with that mark-up because it believes it will be able to sell those bonds at an even higher price in the secondary market. The MSRB said in that document it has concerns about customer orders being given less priority because orders appearing to be for an investor but which in reality are dealer stock orders get priority.

Such arrangements are often made through institutional investors, rather than retail investors, although some sources said retail investors can also figure into such arrangements.

The MSRB wanted to know, according to the document, whether such conduct was fair and whether or not the MSRB’s concerns were valid. A lawyer who asked not to be identified said there appears to be a roughly equal split on those questions.

Dee Wisor, an attorney at Butler Snow in Denver, said he was not aware of any pervasive problem with “flipping” or pre-arranged trading. But he said issuers would probably care if retail order periods were being flouted.

“That’s where they’d be concerned,” Wisor said. “If somehow bonds weren’t ending up with people in their local communities, if that’s what they want.”

Another lawyer said that pre-arranged trading and flipping are incentivized by the MSRB’s efforts to crack down on the historically more loosely-regulated area of retail and other priority order periods. While the lawyer agreed that colluding to subvert the issuer’s stated criteria for orders was wrong, he said he thought an investor could legitimately purchase bonds to sell to an interested dealer at a profit so long as such activity was not frequent enough to become his or her “business,” as they might then become an unregistered broker dealer because the law defines a dealer as one “engaged in the business” of buying and selling securities.

“How tightly one should define and enforce retail order periods is a question in itself,” the lawyer said. “Are we just going to be chasing our tails for years?”

By Kyle Glazier

BY SOURCEMEDIA | MUNICIPAL | 09/06/18 07:05 PM EDT

Early Navigation of Opportunity Zone Waters Leaves Many Questions.

Opportunity Zones provide investors a new method to defer or eliminate tax on gains that is more flexible than Section 1031 exchanges. While I.R.C. §1031 like-kind exchanges now only permit delaying capital gains recognition for real estate investments, the 2017 Tax Cuts and Jobs Act created a new program that permits temporary and sometimes permanent deferral of capital gains for certain private investments in businesses and property in low income areas for the purposes of economic revitalization and community development. There is also no cap on the amount of money that may be invested pursuant to this program.

To qualify for this tax treatment, the investment must be in certain low-income areas designated as Qualified Opportunity Zones ("O Zones"). The investment is made via a Qualified Opportunity Fund ("O Fund") which is an investment vehicle that must hold at least 90% of its assets in Qualified Opportunity Zone Property, which may be stock or a partnership interest in a business located in an O Zone ("O Zone Business"), or other property located in an O Zone ("O Zone Property"). O Zone Property has three prongs and is defined as: 1. tangible property used in a trade or business of the O Fund if such property was acquired by the O Fund by purchase after December 31, 2017; 2. the original use of such property in the O Zone commences with the O Fund or the O Fund substantially improves the property; and 3. during substantially all of the O Fund's holding period, substantially all of the use of such property was in an O Zone.

Depending on the length the Opportunity Zone investment is held, the existing gain invested may be deferred, up to 15% of that gain may be cancelled via a stepped-up basis, and additional capital gain on the appreciation may be exempt. O Funds offer investors a means of deferring built in gain (or a portion of the gain) from sales of existing assets. Investors may defer paying taxes on gains from the sale to, or exchange with, an unrelated person of any property held by the investor if those gains are invested within 180 days in an O Fund. Use of a qualified intermediary is not required. As long as the O Fund is certified, (i.e., holding at least 90% of its assets in O Zone Property), the gain qualifies for favorable tax treatment.

Qualifying gain can be deferred until the earlier of December 31, 2026, or the date the investment in the O Fund is sold or exchanged. The amount of gain includible is the lesser of the amount of gain originally deferred, or the excess of the fair market value of the investment over the investor's basis in the investment.In addition, the law provides for the possible reduction of the amount of gain realized while invested in the O Fund through a step-up basis adjustment if the investment in the O Fund is held beyond five and seven years, and the possible permanent exclusion of gain on the appreciation for the interest in an O Fund if the investment is held in the O Fund for 10 years or more.

Despite growing interest in O Funds and investing in O Zones, the law does not address many practical issues of how O Funds will operate and the timing for compliance measures. Very little guidance has been given to date, however, it is expected that additional guidance will be provided by the Treasury Department by the end of summer 2018. Additional guidance from the Treasury Department is needed most notably on the following provisions:

Initial O Fund Investments

The statute provides that an O Fund must hold at least 90% of its assets in Qualified Opportunity Zone Property, which includes stock or partnership interests in an O Zone Business, and O Zone Property acquired by the O Fund after December 31, 2017. The 90% requirement is determined twice a year, on the last day of the first 6-month period of the taxable year of the O Fund, and on the last day of the taxable year. Assuming the O Fund has a January to December taxable year, then the O Fund must satisfy the 90% requirement on June 30 and December 31 of each year. The statute does not provide for a grace period for initial investments to meet these deadlines, and this is needed, especially now as the tax benefits for investors in O Funds are time-sensitive.

Valuation of the 90% Asset Requirement

The statute is silent on how to value an O Fund's assets for purposes of satisfying the 90% requirement. Because there are various ways to value an asset, such as fair market value, adjusted tax basis, and original cost basis, guidance will be needed from the Treasury Department on how to meet this requirement.

Definition of a Qualified Opportunity Zone Business

An O Zone Business is defined in part as a business in which substantially all of the tangible property owned or leased by the taxpayer is Qualified Opportunity Zone Business Property. There is no additional information in the statute regarding what "substantially all" means and the Treasury Department should provide a percentage threshold amount to give that term substantive meaning. Additionally, while the statute is intended to provide for investments in both existing businesses and new businesses located in an O Zone, an existing business may have difficulty meeting the "substantially all" test if the definition of O Zone Business Property is interpreted to require that the property owned by the business had to have been purchased after December 31, 2017. Accordingly, some clarification is needed to ensure that existing businesses operating in an O Zone meet the qualifications of an O Business.

Definition of Qualified Opportunity Zone Business Property

It is unclear from the definition of Qualified Opportunity Zone Business Property what property will satisfy the original use test versus the substantial improvement test in the second prong. If an O Fund purchases vacant land and proceeds to develop the land by constructing an apartment complex, will this be considered "original use"? What if the land holds abandoned single family homes and the O Fund demolishes the homes first and then proceeds to construct the apartments? As the statute does not answer those questions, clarification is needed to determine what constitutes original use and what constitutes substantial improvement. Further, guidance is needed on how funds are treated during the substantial improvement phase of the O Zone Business Property. The statute provides that property will be treated as substantially improved if during any 30-month period beginning after the date of acquisition of such property, additions to basis with respect to such property in the hands of the O Fund exceed an amount equal to the adjusted basis of such property at the beginning of such 30-month period. It is unclear from the statute whether property which is in the process of substantial improvement qualifies as O Zone Business Property. Additionally, it is also unclear from the statute whether funds used for the substantial improvement of the property qualify as O Zone Property for purposes of the 90% asset requirement. The Treasury Department will need to issue guidance on this matter since a large portion of investments in O Funds will likely be used for new construction and development.

Definition and Certification of Opportunity Funds

The statute defines O Funds as any investment vehicle organized as a corporation or partnership. It's unclear whether an O Fund can be organized as a limited liability company ("LLC"). While a LLC with more than one member can be treated as either a corporation or a partnership for tax purposes, the Treasury Department should clarify whether an O Fund can be organized as a LLC. The statute also requires that the Treasury Department prescribe regulations for the certification of O Funds. The IRS has issued guidance indicating that O Funds will be able to self-certify on their tax returns, however, no certification form has been issued to date. There is also confusion over whether the O Fund must satisfy the 90% asset requirement before it may be certified. Until the self-certification form is published, it’s unclear what is required.

Opportunity Zone tax incentives provide an innovative investment device for favorable gain tax treatment to spur investment in distressed areas. Investing in O Zones is a promising way to defer gains and stimulate the economy in distressed areas across the U.S. Interested stakeholders have addressed the statute’s deficiencies with the Treasury Department and with the right regulatory guidance, O Funds and O Zones could rise to meet their intended potential.

AZBIGMEDIA.COM

ECONOMIC DEVELOPMENT | 3 Sep | JENNIFER DELGADO AND DOUG WOOD

Jennifer Delgado is an attorney with the law firm of Burch & Cracchiolo. Jennifer represents and advises her clients on real estate transactions, including purchase and sale agreements, financing arrangements, commercial and residential leases, and landlord/tenant issues. Jennifer also advises and represents individuals, small and medium-sized businesses as to business entity structure, corporate formation, compliance matters and day to day operations, including buy sell agreements, non-compete agreements and mergers and acquisitions.

Doug Wood is an attorney with the law firm of Burch & Cracchiolo. Doug practices in the areas of Business and Corporate law, Estate Planning and Probate, and Tax Controversy. Doug joined the Firm in July 2015. Prior to joining the Firm, Doug practiced as a certified public accountant with a large national accounting firm focusing his practice on taxation.

Tax Increment Finance (TIF) - Innovation & Trends

September 18, 2018 @ 1:00 PM Eastern

The results of TIF have been compelling since its inception as a development finance tool. Lending itself to flexibility and creativity, TIF has perennially supported diverse projects across diverse communities throughout the U.S. During this installment of the CDFA // BNY Mellon Webcast Series, expert speakers will share the latest updates in TIF, discuss interactions between cities and other taxing bodies when developing a TIF district together, and explore the innovative ways communities are utilizing this tool to meet their ever-changing needs.

Speakers:

Rena Nakashima, Moderator
Senior Product Manager
The Bank of New York Mellon

Alan Ferguson
Senior Vice President, Community Development
InvestAtlanta

Fran Rood
Senior Vice President
SB Friedman

Register in advance to confirm your participation and receive login information. Registration is free and open to all interested stakeholders.

Register

Disaster Recovery Bond Financing: Considerations for Congress.

Read the paper.

National Association of Bond Lawyers

9/5/2018

SIFMA Research Quarterly, Second Quarter 2018

Long-term securities issuance totaled $1.97 trillion in 2Q'18, an 8.4 percent increase quarter-ove--quarter (q-o-q) from $1.82 trillion in 1Q'18 and a 2.5 percent increase year-over-year (y-o-y) from $1.92 trillion in 2Q'17.

Long-term public municipal issuance volume including private placements for 2Q'18 was $99.3 billion, up 51.9 percent from $65.4 billion in 1Q'18 and down 8.9 percent from $109.0 billion in 2Q'17.

The U.S. Treasury issued $662.5 billion in coupons, FRNs and TIPS in 2Q'18, up 14.2 percent from $580.0 billion in the prior quarter and 16.1 percent above $570.8 billion issued in 2Q'17.

Issuance of mortgage-related securities, including agency and non-agency passthroughs and CMOs, totaled $461.0 billion in the second quarter, a 2.8 percent increase from 1Q'18 ($448.6 billion) and a 2.1 percent increase y-o-y ($451.5 billion).

Corporate bond issuance totaled $392.5 billion in 2Q'18, up 1.9 percent from $385.0 billion issued in 1Q'18 but down 1.3 percent from 2Q'17's issuance of $397.7 billion.

Long-term federal agency debt issuance was $180.6 billion in the second quarter, up 3.1 percent from $175.2 billion in 1Q'17 and up 6.4 percent from $169.7 billion issued in 2Q'17.

Asset-backed securities issuance totaled $114.2 billion in the second quarter, an increase of 14.2 percent q-o-q ($100.1 billion) but a 33.1 percent decline y-o-y ($170.6 billion).

Equity underwriting declined by 5.5 percent to $60.6 billion in the second quarter from $64.1 billion in 1Q'18 but increased 13.2 percent from $53.5 billion issued in 2Q'17. Of the total, IPOs accounted for $14.4 billion, down 11.0 percent from $16.2 billion in 1Q'18 but up 62.1 percent from $8.9 billion in 2Q'17.

Read the Report.

September 6, 2018

Water Shutoffs in Detroit Schools are Symptoms of a Bigger Infrastructure Challenge.

The start of the school year usually marks a hopeful beginning for many communities, but reports of contaminated water in Detroit schools are just the opposite. After testing for elevated levels of lead and copper in drinking water, sixteen schools exceeded safety guidelines, which resulted in shutoffs across the entire district. And just this week, more reports have surfaced on several other districts across the country with similar water quality challenges. Over the coming months, students, teachers, and their families must contend with bottled water, dry water fountains, and lingering health concerns.

These school districts are just another example of where inadequate testing and decades of underinvestment have resulted in water infrastructure that is aging or susceptible to widespread failure (or both). By now, stories of cities like Flint and New Orleans are etched in our national consciousness, as pipes and other facilities struggle to provide safe, affordable, and reliable service, let alone be prepared to stand up to a mounting number of climate pressures.

Continue reading.

The Brookings Institute

by Joseph Kane

September 6, 2018

Six Steps for Metro Areas to Prioritize Global Markets.

In an increasingly economically integrated world, local leaders are recognizing that regional economic development strategies must create environments in which firms and industries can compete internationally to generate sustained growth and quality jobs. Since 2012, the Global Cities Initiative (GCI), a joint project of Brookings and JPMorgan Chase, has helped metropolitan areas strengthen their international competitiveness and connections through research, problem-solving, and exchange, including development of trade and investment strategies with more than 30 regions around the world.

About 40 percent of global economic activity now comes from cross-border trade and capital investment, containing tremendous potential to generate wealth locally.[1] Increasingly, economic development leaders are looking to realign traditional economic strategies with global opportunities by helping local companies export to global markets, promoting their metro areas as sites for foreign investment, and cultivating exchanges of innovation and talent. This global economic engagement takes various tactical forms, including:

- Conducting trade missions abroad and hosting foreign delegations;
- Launching export grant competitions;
- Facilitating supply chain mentorships;
- Establishing “soft landing” accelerators to minimize investment risk;
- Providing global fluency training; and
- Forming long-term economic partnerships with international counterparts.

Continue reading.

The Brookings Institute

by Max Bouchet, Marek Gootman, and Joseph Parilla

September 5, 2018

[Michigan Public Finance: Election Do's and Don'ts for School Districts]

The Act –

School district board members, administrators and employees are required to abide by the Michigan Campaign Finance Act. The Act prohibits the contribution of public funds or resources to a campaign for a candidate or ballot proposal while permitting the dissemination of objective factual information and permitting employees to volunteer services or express their views on their own time. Board members and policy-making administrators (at least the superintendent) may engage in advocacy at any time as long as no district resources are used to disseminate those views.

Please see full Article for more information.

Miller Canfield

September 6, 2018

[Florida Blazing the Trail for P3 Legislation: Bilzin Sumberg]

We have previously blogged about the many recent legislative developments in Florida and the Miami area, with a focus on legislation that is designed to facilitate public/private development projects (P3). Although an increasing number of P3 projects are now in various stages of development, the success of Florida's legislative effort can also be seen in the positive reaction by other jurisdictions.

Earlier this month, the State of New Jersey adopted comprehensive P3 legislative that largely mirrors Florida's recent P3 law, including the broad authorization to units of local governments to deliver public facilities and services using the P3 model. Like Florida's P3 law, the New Jersey law also permits governments to accept unsolicited proposals from the private sector. (Unsolicited Proposals have been used to jumpstart several P3 projects throughout Florida, including the Seminole County government center and the recently proposed extension of Brightline from Tampa to Orlando.)

We have also mentioned the recent expansion of Miami-Dade County's Rapid Transit Zone, or RTZ, which facilitates the development of mass-transit infrastructure and adjacent private or public/private transit-oriented development by granting zoning jurisdiction to the County, even for property located in cities, and permitting more development near transit stations than would often otherwise be the case. This month, the California Senate adopted a bill that would similarly grant zoning jurisdiction to the Bay Area Rapid Transit Authority (BART), with the goal of increasing housing density near stations. The bill previously passed the California State Assembly, but the

Senate made amendments that will need to be adopted by the Assembly before the bill becomes law.

Imitation is the sincerest form of flattery, as the saying goes, and the recent legislative activity in New Jersey and California should give state and local leaders in Florida and Miami some additional comfort that they are on the right path.

Bilzin Sumberg

September 4, 2018

Pennsylvania's Imminent Report on Investment Fees: What's Coming Next?

The schedule for review of the investment strategies of the Public Employees' Retirement System and School Employees' Retirement System just became accelerated.

At its hearing on July 30, 2018, Pennsylvania's Commission—tasked with looking into the costs and benefits of actively managed investment strategies—noted that it expects to deliver its findings on the topic to the governor and the state legislature "prior to November 30th." We previously discussed this subject in our *Alerts*, "PSERS Takes Action to Reduce Fees Paid to External Investment Managers" and "PA Commission Scrutinizes Active Management of Public Pension Assets."

Pennsylvania's Auditor General Eugene DePasquale decided not to wait until November 30 to chart his path forward. On August 23, 2018, he announced that he will conduct a review to assess whether PSERS and SERS have done enough to implement his recommendations from his 2017 audits, which focused generally on reducing fees and increasing transparency. This work, which is part of DePasquale's much broader review, will "begin in 2020."

Increased litigation seems to be a possibility as well. At its recent hearing, the Commission's chairman recognized the lurking possibility of litigation:

> One of the things that I notice in the marketplace and our practice is that you have got participants that are suing people in fiduciary capacities of 401k plans. It's not uncommon today. And I kind of always look, you know, when is the day going to occur when defined benefit participants start going back after, or taxpayers start going back after the fiduciaries of defined benefit plans?

We will continue to monitor the proceedings and provide updates as warranted.

Jones Day

September 5, 2018

Emerging Plan Would Rework Payments for Forest Counties.

Two senators are working on a proposal meant to get local governments in logging country

off a funding “rollercoaster.”

WASHINGTON — U.S. Sen. Ron Wyden told county officials here on Thursday that he’s working on a plan to remake a program that provides payments to counties that have seen their finances weakened by diminished logging on federal forestlands.

The Oregon Democrat said he’s developing the proposal with U.S. Sen. Mike Crapo, an Idaho Republican. Wyden says they’re aiming to find a way to free local governments that depend on payouts from what’s known as the Secure Rural Schools program from the unpredictability in both timber markets and the congressional appropriations process.

“I want to get these rural communities off the rollercoaster,” he told reporters.

Secure Rural Schools provides an important funding source for some rural counties, particularly those in the west. Despite the name of the program, local governments can use money from it not only for schools, but also for costs like public safety and road upkeep.

For instance, Joel Bousman, a commissioner in Sublette County, Wyoming, said Thursday that his county uses much of the roughly $700,000 it receives to support a contract helicopter service for search and rescue activities in wilderness areas.

“Without SRS, my county would face budgetary issues,” he said.

Secure Rural Schools dates back to 2000 and Wyden was one of the co-authors of the original law that created it.

The program was designed to aid local governments that were seeing their budgets take a hit because logging had declined on nearby federal lands and the federal government was sharing less timber harvest revenue with them as a result.

Logging proponents often point to federal protections for the northern spotted owl and the old growth forests that provide its habitat as a key reason for declines in logging in the Pacific Northwest.

A spending package lawmakers approved earlier this year authorized two years of Secure Rural Schools payments to be applied for fiscal years 2017 and 2018. The fiscal 2017 payments provided $256 million to over 700 rural counties, parishes and boroughs across the nation, according to the National Association of Counties.

But in recent years, funding for the program has been unstable.

Local governments did not receive Secure Rural Schools payments for about two years leading up to the passage of the recent spending measure, and congressional lawmakers have resorted to budget gimmicks like tapping the nation’s helium and petroleum reserves to cover the program’s cost.

Wyden and Crapo have not publicly released a draft bill text or a detailed outline of their plan.

But Wyden said at the heart of the proposal would be a new permanent endowment, with an initial investment made by the federal government. The principal would be invested, and the interest would be used to make payments to counties. Payments would be set so they do not drop below first-year levels.

Route Fifty

By Bill Lucia,
Senior Reporter

SEPTEMBER 6, 2018

California Utility Frets on Fire Costs as State Dodges Action.

- **Lawmakers passed legislation that helps corporate utilities**
- **Municipal-owned utilities didn't get the help they wanted**

As California's lawmakers debated late Friday night under the statehouse capitol dome in Sacramento, the city's utility district kept the lights on for them. But the legislators fell short for the electricity provider.

Officials at the Sacramento Municipal Utility District had wanted legislators to support Governor Jerry Brown's proposal to give all utilities relief from strict liability rules. That didn't happen. Instead, they passed a bill on the last day of session that benefits publicly-traded competitors such as PG&E Co. by allowing new customer fees to help pay fire damages.

California Approves Bill to Help PG&E Pay for Wildfire Costs

Under California law, a utility can be held liable if its equipment caused a fire — even if the company followed safety rules. So if a tree limb outside the Sacramento Municipal Utility District's right of way blows into its power line and sparks a fire, the agency, which has about $2 billion in municipal bonds outstanding, could be on the hook.

Utilities are pressing the issue with increasing urgency after deadly fires last October destroyed large swaths of California wine country, including thousands of homes, and killed 44 people. California investigators have already named PG&E power lines and other equipment as the source of 16 fires last year.

Subject to Damages

"We're subject to damages that we have no control over,"said chief legal officer Laura Lewis in an interview Friday before the vote. "This legislation does nothing to help mitigate that potential risk, which we don't feel is equitable."

Unlike PG&E, the district, which earns 48 percent of its revenue from residences, has no shareholders. "We have no other recourse than to pass along costs to our customers," Lewis said.

The utility estimates that if saddled with $1.5 billion in damages, it would increase rates by 25 percent. That would hurt those with limited budgets — already, the district offers a low-income discount to 15 percent of its residential customers, bond documents show.

Lewis said the utility, along with its peers, will continue to raise the issue with lawmakers next year. It's becoming more significant as the climate changes. The average area burned by fires statewide would increase by 77 percent by 2100 if greenhouse gas emissions rise unchecked, according to California's Fourth Climate Change Assessment released in August.

"Extreme weather is going to continue," Lewis said. "That's going to fuel more wildfires down the road."

Bloomberg Business

By Romy Varghese

September 4, 2018, 8:37 AM PDT

— With assistance by Mark Chediak

S&P Medians And Credit Factors: California Municipalities

California municipalities' credit quality remains very strong, in S&P Global Ratings' view, supported by a dynamic economy that has been one of the nation's top performing for the last several years, generally strong budgetary performance facilitated by steady revenue growth, and financial management often supported by formal policies and regular budget monitoring.

Continue Reading

Sep. 6, 2018

A Public Bank for LA: Instead of Sending Hundreds of Millions to Predatory Finance, Angelenos' Taxes Can Fund Community Development

The City of Los Angeles sends the nation-wrecking finance industry more than $100MM/year in the form of fees and penalties for its banking business, supporting the institutions whose racist lending practices, financial engineering and mortgage fraud have wreaked untold harm on the city's residents.

This November, Angelenos will get to vote on a proposition to create a public bank that will back LA's smaller community banks and do the city's business without lining finance's pockets. This bank will be able to fund community projects from housing to transit to health-care, and will be able to take deposits from the city's burgeoning cannabis industry, which is presently shut out of the federally guaranteed bank system and relies on safes in entrepreneurs' homes or businesses to stash millions in cash.

The finance industry hates and fears this proposal and is spreading FUD about how a bank that is under democratically elected political control will inevitably become corrupt — while the discipline of the market will supposedly keep banks on the straight and narrow. Tell that to the millions of Americans whose suffered from Wells Fargo's corruption.

> And those are not the only benefits of a public bank, backers claim. A public bank would enable the city to loan money for badly needed affordable housing development. They believe a city-owned bank could extend the credit lines of community banks and credit unions to offer loans to low-income residents and help bankroll affordable housing.
>
> Another benefit touted by bank promoters: badly needed investment in infrastructure. They hold out the example of Costa Rica's public bank, Banco Popular. Advocates claim that this bank has been the financial linchpin behind the financing of water supply

systems, residential solar panels, and hydroelectric generators.

> "A public bank could make some investments that in the long-term would be profitable for LA… [investments that] no bank focused on short-term profit would dare to invest in," Baradaran asserted.
>
> A public bank is also seen by many as a means to local self-determination and bypassing high Wall Street interest rates. For example, LA public bank advocates estimate Los Angeles pays $3.14 billion in debt service, the cost to borrow money, from Wall Street. They argue a municipal bank would allow the city to recapture that money and give Los Angelenos a say in redirecting this funding toward local projects.

boingboing.net

[Arizona Opportunity Zones & Opportunity Funds Conference.]

September 27, 2018 | Tempe, AZ

[Click here] to learn more and to register.

[This Data Shows Who Grabs the Mic at Public Planning Meetings.]

Andrew DeFranza has seen it countless times: An affordable housing project proposed in a mostly white, well-off community goes before the zoning board or the planning commission. A vocal minority of homeowners, themselves mostly white and well off, show up to oppose it. The project is killed, shrunk or delayed by litigation for years.

"We hear a lot of, 'I'm in support of affordable housing, just not here,'" says DeFranza, who's the executive director of Harborlight Community Partners, a community development corporation in southern Essex County in Greater Boston.

He wasn't surprised to hear the findings in "Racial Disparities in Housing Politics: Evidence from Administrative Data," a new paper by Boston University researchers. As the [Boston Globe reported last week], the study of public meetings in nearly 100 Greater Boston cities showed that white people accounted for 95 percent of participants. In the same area, white people make up 80 percent of the population. Using an analysis of last names and geographic data from public meetings, the researchers concluded that "whites overwhelmingly dominate zoning and planning board meetings." (Details on how the BU researchers determined the race of participants are in the "Estimating Race" section of [the paper].)

[Continue reading.]

NEXT CITY

BY JARED BREY | SEPTEMBER 6, 2018

NIMBYs Dominate Local Zoning Meetings.

A study of the Boston area shows that those who participate in planning and zoning board meetings are older, wealthier, and much more NIMBYish.

The late Jane Jacobs never much liked forums for community participation in zoning and housing issues. She thought they were usually a sham to harness community sentiment in ways that benefitted powerful government and development interests. She personally told me the story of how Robert Moses dismissed her and her colleagues at one critical meeting as “nobody but a bunch of mothers!”

But the reality today is that community participation is effective—as a mechanism for creating and reinforcing NIMBYism and the accompanying restrictive zoning and land use policies.

That’s according to a new study by Katherine Einstein, Maxwell Palmer, and David Glick, political scientists associated with Boston University’s Initiative on Cities. People who oppose creating more multifamily housing development tend to speak at public meetings much more often than those who support it.

Continue reading.

NEXT CITY

RICHARD FLORIDA SEP 6, 2018

- **Ed. Note:** Just a (not particularly friendly) reminder that all of the items contained in the newsletters are archived on bondcasebriefs.com, which serves as a fully-searchable database. We are fully aware that we routinely publish items that may not be immediately relevant to your current practice. The idea is that we’ll be here for you in event that you need to get up to speed on recent developments (e.g. micro-bonds, opportunity zones, and that blockchain nonsense all the kids are talking about these days.)
- Task Force on Climate-Related Financial Disclosures Releases Three Key Documents that Serve as Building Blocks to Describe and Support Implementation of the Task Force’s Recommendations.
- The California Heat Assessment Tool.
- **Ed. Note II:** The two bullet points above represent sources of both macro and micro information regarding climate-related risk factor disclosures. We’ll work to keep you apprised of additional such sources as they become available.
- S&P: SEC Disclosure Rule Changes Will Improve Transparency, But Municipal Bank Loan Structures Can Still Carry Hidden Risks.
- Houston Eyes Designer Bonds to Pay for $15 Billion Ike Dike.
- And finally, When “Insult to Injury” Just Won’t Cut It is brought to you this week by, *Lopez v. City of Grand Junction*, in which the Lopez family was just a tad aggrieved when the city ruptured a gas line, resulting in an explosion inside their home. Oh, but it gets so, much worse. The gas entered the home via, yes, their sewer line. We now invite you to lean back, close your eyes, and luxuriate in the many delightful ways to describe the combination of exploding hydrocarbons and fecal matter. You’re welcome.

DEVELOPMENT AGREEMENTS - CALIFORNIA

Center for Community Action and Environmental Justice v. City of Moreno Valley

Court of Appeal, Fourth District, Division 1, California - August 23, 2018 - Cal.Rptr.3d - 2018 WL 4025516 - 18 Cal. Daily Op. Serv. 8650

Objectors petitioned for writ of mandate, challenging city's adoption of initiative to approve a development agreement.

The Superior Court denied petitions, and objectors appealed.

The Court of Appeal held that development agreement statute, providing that a development agreement is a "legislative act" that is "subject to referendum," exclusively delegated the approval of development agreements to the local legislative body, even though statute did not expressly state that adoption of a development agreement by initiative was barred.

Development agreement scheme was of statewide concern, legislature could reasonably have found it appropriate to limit only initiative or referendum but not both, and initiative process was inconsistent with fundamental concept of development agreement as negotiated contract.

ZONING & PLANNING - CALIFORNIA

Citizens Coalition Los Angeles v. City of Los Angeles

Court of Appeal, Second District, Division 2, California - August 23, 2018 - Cal.Rptr.3d - 2018 WL 4026019 - 18 Cal. Daily Op. Serv. 8557

Objectors filed separate petitions for writ of mandate against city and permit applicant, alleging deficiency in city's environmental impact report (EIR) for new subzone for large commercial development, prepared under California Environmental Quality Act (CEQA), and asserting that city council's grant of variances were not supported by substantial evidence and thus violated municipal code.

The Superior Court granted petition. City and permit applicant appealed.

The Court of Appeal held that:

- Prior EIR pertaining to specific development of retail store precluded supplemental or subsequent EIR for current project dealing with more generalized program of amending ordinance to create new subzone and to place store in that subzone;
- Evidence was sufficient to support city's finding that no large-scale commercial developments beyond a planned retail store were a reasonably foreseeable consequence of ordinance's creation of zoning subarea, as would support finding that there was no need for major revisions in previously-promulgated EIR following passage of ordinance; and
- Even if creation of new zoning subarea amounted to spot zoning, it was not impermissible.

IMMUNITY - COLORADO

Lopez v. City of Grand Junction

Colorado Court of Appeals, Division I - July 12, 2018 - P.3d - 2018 WL 3384674 - 2018 COA 97

Plaintiffs brought action against city on claims of negligence and vicarious liability to recover for personal injuries and property damage when an independent contractor doing maintenance work on utility lines that powered a traffic light allegedly ruptured a natural-gas line, which allegedly caused gas to enter house through a sewer line and explode.

The District Court dismissed. Plaintiffs appealed.

As a matter of first impression, the Court of Appeals held that:

- As to negligence claim regarding maintenance work on the traffic light, plaintiffs' injuries resulted, in the context of the Colorado Governmental Immunity Act (CGIA), from independent contractor's conduct;
- As to negligence claim regarding maintenance work on the traffic light, independent contractor's conduct was attributable to city for purposes of waiver of immunity under the CGIA; but
- As to negligence claim regarding the sewer line, sufficient evidence supported finding that sewer main was in the same general state of repair as when it was installed.

REDEVELOPMENT AGREEMENTS - NEW JERSEY

MEPT Journal Square Urban Renewal, LLC v. City of Jersey City

Superior Court of New Jersey, Appellate Division - August 9, 2018 - A.3d - 2018 WL 3763433

Urban renewal entities, after deciding not to go forward with redevelopment projects, brought declaratory judgment action against city, asserting that prepayment agreements were ultra vires and void, and seeking refund of contributions made to affordable housing trust fund and refund of prepayment.

The Superior Court, Law Division, entered summary judgment in favor of urban renewal entities. City appealed.

The Superior Court, Appellate Division, held that:

- Prepayment agreements were contrary to redevelopment procedural scheme set forth in Long Term Tax Exemption Law (LTTEL) and thus were void, but
- Provision of financial agreements between urban renewal entities and city requiring contribution to affordable housing trust fund was permissible under LTTEL.

Prepayment agreements entered into between city and urban renewal entities, providing for renewal entities to pay a $2,000,000 sum characterized as portion of annual service charge that entities would pay in lieu of property taxes after redevelopment project was completed, were contrary to redevelopment procedural scheme set forth in Long Term Tax Exemption Law (LTTEL) for financial agreements between a municipality and an urban renewal entity, and thus prepayment agreements were void; LTTEL set forth detailed, specific requirements for financial agreements, from which was conspicuously missing any allusion to a municipality's ability to condition grant of tax abatement upon prepayment.

Financial agreements entered into between urban renewal entities and city with regard to redevelopment project, requiring renewal entities to pay initial contribution to city's affordable housing trust fund, was permissible under redevelopment procedural scheme set forth in Long Term Tax Exemption Law (LTTEL) for financial agreements between a municipality and an urban renewal entity, where city adopted three ordinances that incorporated trust fund contribution requirement, and contribution requirement was based on set rate of $1.50 per square foot of gross, not leaseable, space, pursuant to LTTEL standard of $1.50 per square foot for commercial construction.

PUBLIC UTILITIES - OHIO

Duke Energy Ohio, Inc. v. City of Hamilton

Court of Appeals of Ohio, Twelfth District, Butler County - July 16, 2018 - N.E.3d - 2018 WL 3428727 - 2018 -Ohio- 2821

Natural gas and electric utility brought action against city, seeking declaratory judgment that city could not provide natural gas or electric services to entities in particular area.

The Court of Common Pleas dismissed territorial exclusivity claim. Utility appealed.

The Court of Appeals held that:

- Judgment dismissing territorial-exclusivity claim was final, appealable order, and
- Claim fell within exclusive jurisdiction of Public Utilities Commission of Ohio (PUCO).

Judgment dismissing, for lack of subject matter jurisdiction, a natural gas and electric utility's territorial-exclusivity claim against city, as asserted in utility's declaratory judgment action, was a final, appealable order; a declaratory judgment action was a special proceeding, dismissal affected utility's substantial rights, and trial court certified there was no just cause for delay.

Claim by natural gas and electric utility, seeking declaratory judgment that it had exclusive right to provide natural gas and electric services within particular territory, fell within exclusive jurisdiction of Public Utilities Commission of Ohio (PUCO); claim was a service-based claim that required PUCO's administrative expertise to resolve.

REFERENDA - OHIO

State ex rel. McCann v. Delaware County Board of Elections

Supreme Court of Ohio - August 21, 2018 - N.E.3d - 2018 WL 4026314 - 2018 -Ohio- 3342

Protestors filed petition for writ of prohibition, seeking to prevent county board of elections from placing a township zoning referendum on the general election ballot.

The Supreme Court of Ohio held that:

- County board of elections exercised quasi-judicial power, as would support petition for writ of prohibition;
- Protesters lacked adequate remedy at law, as would support petition for writ of prohibition; and
- Part-petition failed to comply with statute governing signing of referendum petitions, and thus signatures were invalid.

County board of elections exercised quasi-judicial power, as required for protesters to obtain writ of prohibition preventing board from placing township zoning referendum on general election ballot, when board denied protest to referendum petition after a hearing that included sworn testimony.

Protesters lacked adequate remedy at law, as required for them to obtain writ of prohibition preventing county board of elections from placing township zoning referendum on general election ballot, due to proximity of election, which was less than four months from filing of prohibition action.

Part-petition for placement of township zoning referendum on general election ballot, on which fellow circulator, not actual circulator, wrote number of witnessed signatures, failed to comply with statute requiring that "the circulator shall indicate the number of signatures contained on" each petition paper, and thus signatures were invalid, though fellow circulator wrote number of signatures in actual circulator's presence, with his knowledge, in response to his request for assistance, and before part-petition left his possession; part-petition did not strictly comply with statute, and even if statute could be liberally construed, part-petition form issued by Secretary of State, which was entitled to deference, stated that it "[m]ust be completed and signed by the circulator."

PUBLIC PENSIONS - WASHINGTON

Fowler v. Guerin

United States Court of Appeals, Ninth Circuit - August 16, 2018 - F.3d - 2018 WL 3893114 - 18 Cal. Daily Op. Serv. 8230

Public school teachers brought putative class action against Director of the Washington State Department of Retirement Systems (DRS) to return interest that was allegedly skimmed from their state-managed retirement accounts in violation of Fifth and Fourteenth Amendments.

The United States District Court denied teachers' motion to certify a class and granted Director's motion for summary judgment. Teachers appealed.

The Court of Appeals held that:

- Teachers' claim was a claim for a per se taking, rather than a regulatory taking, and thus prudential ripeness test did not apply;
- Core property right for purpose of Fifth Amendment Takings Clause covers interest earned daily;
- Teachers' action was not barred by doctrine of issue preclusion or *Rooker-Feldman* doctrine;
- Teacher's claim was not foreclosed by Eleventh Amendment sovereign immunity; and
- Class could properly be certified as an injunctive relief class.

Public school teachers' claim that Washington State Department of Retirement Systems (DRS) took their property without providing just compensation by withholding interest accrued on their retirement accounts was a claim for a per se taking, rather than a regulatory taking, and thus prudential ripeness test requiring a plaintiff to have sought compensation through state procedures prior to bringing a takings claim in federal court did not apply to teachers' putative class action against DRS, where interest earned on funds in interest-bearing accounts was the private property of the owner of the principal, such that withholding of such interest was a direct appropriation of private property.

The core property right recognized in *Schneider v. California Department of Corrections*, 151 F.3d 1194, for purpose of Fifth Amendment Takings Clause, which is defined by reference to traditional background principles of property law, covers interest earned daily, even if payable less frequently, and regardless of whether a state legislature purports to authorize a state officer to abrogate such common law property right.

Washington Court of Appeals' decisions in public school teachers' action against Washington State Department of Retirement Systems (DRS) challenging DRS's interest rate calculations in their retirement accounts did not resolve issues presented in teachers' federal takings claims, which was whether DRS's refusal to pay daily interest constituted a taking, and thus teachers' federal action was not barred by doctrine of issue preclusion or Rooker-Feldman doctrine; state court expressly declined to reach the merits of teachers' constitutional takings claim, its discussion of teachers' entitlement to daily interest turned solely on state statutory law, and its ruling on teachers' claim that DRS rulemaking regarding interest calculation method would effect a taking simply found such claim premature.

Public school teachers' takings claim against Washington State Department of Retirement Systems (DRS), which claimed that DRS took their property without providing just compensation by withholding interest accrued on their retirement accounts, was not foreclosed by Eleventh Amendment sovereign immunity, where teachers were actually seeking an injunction ordering DRS to return savings taken from them, which would have involved applying a computerized formula to DRS electronic records to correct the amount of interest credited to members' accounts, rather than requiring payment of funds from the state's treasury.

Public school teachers' putative class action against Washington State Department of Retirement Systems (DRS) challenging DRS's interest rate calculations in their retirement accounts was not a claim for individualized monetary damages, but rather, sought an indivisible injunction benefiting all class members at once, and thus class could properly be certified as an injunctive relief class; relief sought by class would have required DRS to apply a single formula to its electronic records to correct the amount of interest credited to class members' accounts.

Task Force on Climate-Related Financial Disclosures Releases Three Key Documents that Serve as Building Blocks to Describe and Support Implementation of the Task Force's Recommendations.

On June 29, 2017 the Task Force released three key documents that serve as building blocks to describe and support implementation of the Task Force's recommendations.

Final Report: Recommendations of the Task Force on Climate-related Financial Disclosures
Provides context, background, and the general framework for climate-related financial disclosures and is intended for broad audiences.

Annex: Implementing the Recommendations of the TCFD
Provides the next level of detail to help companies implement the recommendations and is a "living" document that will likely be refined as companies gain more experience preparing climate-related financial disclosures. Includes information on applying the recommendations, guidance for all sectors, and supplemental guidance for select financial sectors and non-financial groups.

Technical Supplement: The Use of Scenario Analysis in Disclosure of Climate-Related Risks and Opportunities
Provides a further level of detail that can be helpful for companies in considering scenario analysis.

It describes key publicly available scenarios and resources on scenario analysis.

Task Force on Climate-Related Financial Disclosures

The California Heat Assessment Tool.

As California's climate warms, residents increasingly endure extreme heat events that adversely impact public health. This exacerbates existing risks and will bring new challenges for different regions in the state, threatening the efficacy of traditional intervention strategies. Current thresholds for heat alerts are based on temperatures that exceed historical statistical thresholds, rather than temperatures that cause public health impacts. These 'health-neutral' thresholds may underestimate the health risks for the most sensitive populations. The new California Heat Assessment Tool (CHAT) is based on research that establishes local, health-based thresholds for extreme heat that help public officials, health professionals and residents understand what changing conditions mean for them. CHAT is part of California's Fourth Climate Change Assessment, a state-mandated research program to assess climate change impacts in California, and was developed by Four Twenty Seven, Argos Analytics, the Public Health Institute and Habitat 7 with technical support from the California Department of Public Health.

FourTwentySeven

by Nik Steinberg
Director of Analytics

August 27, 2018

Houston Eyes Designer Bonds to Pay for $15 Billion Ike Dike.

- **Twist on catastrophe insurance partners with private industry**
- **'Resilience bonds' would help fund 60-mile levee system**

A massive dike to hold back storm-driven floods surging in from the Gulf of Mexico was first proposed after Hurricane Ike devastated the Houston-area coast a decade ago.

Last year's Hurricane Harvey disaster brought fresh enthusiasm for the languishing project – along with a wave of investor interest.

Now city and state officials in Texas are studying a possible partnership with private industry to create a new kind of bond to help pay for a $15 billion system of seawalls and floodgates, as a warming climate piles more storm risk on the nation's fourth-largest city. They're examining the market for catastrophe bonds, in which investors assume the risk for calamities like hurricanes in exchange for above-market returns and portfolio diversification.

"This is why we have financial markets, to come up with this type of solution,'' said Flavio Cunha, an economics professor at Rice University. "People love when markets can come and help construct some of these projects.''

At stake: the welfare of $500 billion in industry, including the nation's largest concentration of oil refineries and chemical plants. The dike could prevent countless homes and lives from being swept away in the 20-foot storm surge that would accompany a direct hit from a major hurricane -- a potentially worse cataclysm than Harvey.

Harvey flooded hundreds of thousands of homes and businesses, wreaking $125 billion in damages, a reminder of how vulnerable one of the nation’s most important economic centers remains. After a decade of indecision, officials have rallied around a plan for a seawall almost 60 miles long fitted with massive floodgates at the center to protect Galveston Bay and the industry lining the Houston Ship Channel.

The Dutch proved long ago that it can be done; Much of the Netherlands would be swamped if not for its network of levees and floodgates holding back the sea. Houston’s plan is modeled after those engineering marvels.

The Coastal Spine, also known as the Ike Dike, is the largest civil works project under consideration in the U.S., according to the Texas General Land Office. It would be a landmark deal for financial markets, too. If Houston can bring together the public and private sector, the new financing model could be replicated to reinforce communities from Florida to California against Mother Nature’s wrath.

Catastrophe Bonds

The U.S. Army Corps of Engineers in July committed $1.9 million for a study, and the state is seeking federal funding for construction. But under Corps rules for such projects, local governments would still need to shoulder 35 percent of the cost -- perhaps $5 billion — plus ongoing maintenance and repairs.

To raise the money, project backers are studying catastrophe bonds, which trade on public markets and have been adopted by companies and cities as a more cost-effective way to supplement or replace conventional insurance.

“Infrastructure finance related to resilience or risk reduction, that is probably the most dynamic area where we are seeing innovation at the moment,’’ said Daniel Stander, managing director at Risk Management Solutions, a consultant.

Following Hurricane Sandy in 2012, Amtrak obtained $275 million of natural-disaster protection for its railway from fixed-income investors, and New York’s MTA tapped the market twice for a total $325 million for its subway system.

Texas would put its own twist on the concept, pioneering a new instrument called “resilience bonds” that would both insure against flood damage and help fund construction of the Ike Dike, said Marvin Odum, Houston’s chief recovery officer and a retired president at Shell Oil Co., a unit of Royal Dutch Shell Plc.

How It Works

Here’s how money for the Ike Dike could be raised from the financial markets: Oil companies, chemical makers, railroads and others with assets exposed to flood risk would collectively issue resilience bonds to replace their traditional insurance.

When the storm barrier is complete after perhaps three years, payments to the bond investors would drop to reflect the lower risk of flooding. The companies would continue paying the higher, pre-dike rate, and the difference would go toward paying off the project.

Odum has pegged the value of industry along the Texas coast at $500 billion, giving companies plenty of incentive to help fund the Ike Dike campaign. The cost of paying investors interest on the bonds shouldn't be any greater than the cost of insurance, said Shalini Vajjhala, chief executive officer of re:focus partners, a firm that brokers public-private partnerships for sustainable infrastructure.

A Houston nonprofit has organized a panel to discuss the project on Sept. 12.

Texas Twist

So-called resilience bonds were conceived in 2015 by re:focus in collaboration with Goldman Sachs, Risk Management Solutions, and Swiss Re, but Texas's Ike Dike project would be the first to use them.

The concept relies on local governments collaborating with business and industry, and could be replicated across the country in areas at high risk from natural disaster. Miami could sell resilience bonds to help finance seawalls to protect hotels, condominiums and other pricey real estate lining its coast, Vajjhala said.

"The market is overcapitalized at the moment so there is lots of hungry capital looking for a home,'' RMS's Stander said. "This is a good time to be thinking about innovative risk finance and project finance."

Even so, Houston would be betting big on an untested model, and many obstacles remain before a deal is done, including getting industry on board.

Evolving Project

Companies generally support the idea of a coastal barrier. But even DowDuPont Inc., which operates the largest chemical complex in the western hemisphere on the coast south of Houston, remains noncommittal about pitching in on the financing: "We look forward to actively engaging in discussions about the project as they evolve," said Rachelle Schikorra, a company spokeswoman.

Other experimental financing models could still emerge. One possibility: a hybrid that blends catastrophe and municipal bonds to help finance infrastructure like the Ike Dike while eliminating the city's obligation in the event of a major hurricane, said Rowan Douglas at Willis Towers Watson Plc, a risk management consultant.

"It's a concept that is gaining quite a bit of traction," he said. "There is almost certainly going to be a movement in this direction relatively soon."

The Ike Dike has already spent almost a decade on ice, and even if financing is arranged, an army of environmentalists and Nimbys are likely to line up against the project. Houston is determined to press ahead. Harvey's floods only confirmed that governments need to start preventing disasters instead of just cleaning up after them, said Bob Mitchell, president of the Bay Area Houston Economic Partnership.

Meanwhile, Houston voters on Aug. 24 approved issuing $2.5 billion in debt to pay for hundreds of small flood-control projects, from property buyouts to storm water control. Odum, the Houston recovery chief, said the region may need to spend as much as $30 billion for flood mitigation in the coming decades.

Despite the daunting costs and technical challenges, the coastal spine "is not fiction," Houston

Mayor Sylvester Turner said in an interview. “It’s a project that should take place.”

Bloomberg Economics

By Jack Kaskey

August 30, 2018

— With assistance by Joe Carroll, and Katherine Chiglinsky

The Week in Public Finance: Tax Hike for Teachers Kicked Off Arizona Ballot.

In an unexpected decision, the Arizona Supreme Court ruled that the ballot measure’s wording was misleading to voters.

In a surprise ruling in Arizona, a proposed income tax hike to restore education funding has been knocked off the November ballot. Had the measure gone before voters and passed, it would have nearly doubled the state’s income tax rates on the wealthy and made Arizona the first red state to pass a millionaire’s tax.

Instead, the Arizona Supreme Court ruled this week that the wording in the petition to get the measure on the ballot was misleading because it termed the tax increase as a 3.4 percent and 4.4 percent hike. A more accurate portrayal would have been to say the tax rate would be raised by those amounts in percentage points. “When you go from 4.5 percent to 9 percent, that’s a 98 percent increase,” says Garrick Taylor of the Arizona Chamber of Commerce. “Had that been disclosed to voters, I’m not so sure it would have [as much] support.”

Backers of the measure, which largely includes teachers and administrators, called the decision an “utter outrage.” In a statement issued hours after the ruling, the Invest in Education Committee, which collected signatures for the measure, characterized it as a politically motivated move to protect the elite. “Any politician who has been part of this effort to stifle the will of the voters will be held accountable and pay the consequences in November,” said committee co-chair, Joshua Buckley. “Our school children deserve better and our fight will continue.”

Continue reading.

GOVERNING.COM

BY LIZ FARMER | AUGUST 31, 2018

The Risks and Rewards of High-Yield Municipal Bonds.

Amid low interest rates, clients looking for a tax break and more income may be tempted to consider high-yield municipal bonds.

The yield for a 10-year muni bond rated BAA was 3.27% as of Aug. 10, and yields for 10-year-plus BBB-rated munis were well past 4%. The bonds are exempt from federal, local and state taxes, pushing the effective yield higher for investors in upper tax brackets.

Although high-yield munis may be the right move for some clients, advisors should help them carefully weigh the benefits and risks before taking the plunge.

“High-yield munis can play a role in a diversified portfolio for those investors who are in higher tax brackets,” says Chris Zaccarelli, chief investment officer at Independent Advisor Alliance in Charlotte, North Carolina.

Gregory Hahn, CIO and president at Winthrop Capital Management in Indianapolis, agrees, but cautions that advisory clients look before they leap.

“Municipal bonds are one of the safest fixed-income investments you can make, but when a bond trades cheap, it trades cheap for a reason,” he says. “So, it’s important to understand what that reason is.”

Advisory clients should know where the revenue from a high-yield muni bond is coming from, bond experts say.

“Is the tax revenue going to be enough to support the project?” Hahn asks.

Bonds backed by a dedicated revenue stream, such as bridge tolls, parking authorities, sewers or water are often viewed more favorably than general obligation bonds coming from municipalities relying on anticipated revenue from budgets, he says.

“Tax revenue from multiple sources is a red flag,” Hahn says.

What’s more, municipalities may not get the revenue they intended, and budgets may not get approved or renewed annually, bond experts say.

Advisors should also make sure that clients considering high-yield munis carefully research bonds backed by projects such as hotels, nursing homes or sports stadiums.

Factors to consider include demand for the service, local demographics, management’s track record and whether the project is part of a national chain or a local one-off, bond experts say.

Another caveat: high-yield muni bonds are unlikely to be insured. And even if they are, the underlying risk is not completely mitigated, Hahn says.

Zaccarelli cautions advisors to be wary of private-activity bonds, which are subject to the alternative minimum tax.

“These bonds may be federal- and state tax-free, assuming you are taxed in the state that issued the bonds, but they are still counted as taxable income for AMT purposes,” he says. “While this only applies to those taxpayers in higher tax brackets who are subject to the AMT, they are the ones most often looking for municipal-bond income.”

The high-yield muni market was jolted by the Puerto Rico debt crisis this year, when ripple effects from the biggest muni bankruptcy in U. S. history shook investor confidence in lower-rated bonds.

Especially upsetting was a judicial ruling that issuers of several Puerto Rican special revenue bonds under Chapter 9 bankruptcy protection were not required to continue paying bond holders.

In a report issued by Franklin Templeton Investments, “Fundamental Changes That No Muni Investor Should Ignore,” the company said that as a result of Puerto Rico’s default, it would not purchase “general fund appropriation debt from cities, counties or states that in our view are facing unsustainable structural budget situations.”

Specifically, Franklin Templeton said that it divested its holdings in bonds from Chicago public schools, the city of Chicago and the state of Illinois.

The market has since recovered, but a number of investors, including Zaccarelli, remain wary of Puerto Rican bonds.

“Personally, I would avoid Puerto Rico, as that is more of a distressed situation and not just a notch or two below investment-grade,” he says. “However, other high-yield municipal bond opportunities, such as those from Illinois or Connecticut, are likely to work out better.”

Hahn is bullish on a taxable high-yield bond issued by the Casino Reinvestment Development District of Atlantic City (New Jersey), backed by the Hard Rock Casino. Rated BB by Standard & Poor’s, the bond yields 5.46% and is due in 2025.

“Because of the downturn in Atlantic City gaming over the past 10 years, revenue, including sales tax, liquor and gaming are down sharply, and the city was close to bankruptcy,” Hahn says.

“The Hard Rock Casino just opened in the old Taj Mahal, and Atlantic City is going through a resurgence,” he says. “This issue is backed by parking revenue and trades around par, offering a good relative value for investors.”

Financial Planning

By Charles Paikert

August 31, 2018

MSRB Requests Information on Municipal Market Indicators.

Washington, DC – The Municipal Securities Rulemaking Board (MSRB) today published a request for information on the accessibility, methodology and utility of the yield curves and other benchmarks currently available in the municipal market.

Market indicators can provide sector-specific or broad market information about the general level of municipal interest rates. The MSRB is seeking information to help support its long-term vision to enhance the Electronic Municipal Market Access (EMMA®) website and provide increased access to information and tools that help municipal bond investors, issuers and others make more informed decisions. The MSRB is not seeking information as a precursor to any rulemaking proposal.

“This request for information is designed to help the MSRB better understand the current landscape of municipal market indicators,” said MSRB Executive Director Lynnette Kelly. “We hope to learn more about how these important benchmarking tools are developed and used by the diverse participants in our market, including issuers, retail investors, institutional investors and market professionals.”

Answers to questions posed in the request for information and any supporting data should be submitted to the MSRB no later than November 27, 2018. Read the request for information.

Since 2012, the MSRB has worked to enhance understanding of the methodologies, mechanics and functions of municipal market indices, yield curves and other benchmarks by providing educational resources for investors and state and local governments. It has also made benchmarks more widely available by incorporating several third-party yield curves and indices into the MSRB's Electronic Municipal Market Access (EMMA®) website.

Date: August 27, 2018

Contact: Jennifer A. Galloway, Chief Communications Officer
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The Muni-Bond Market Loves You When Google Is Your Top Taxpayer.

- **Mountain View district sells some bonds for below AAA yields**
- **Sale illustrates the strong demand for scarce California debt**

You can get a good deal in the municipal-bond market when Google is your biggest taxpayer.

The Mountain View-Los Altos Union High School District, which operates schools for more than 4,400 students in Silicon Valley, sold $100 million in AAA rated bonds backed by property taxes in the wealthy enclave. But some of the securities sold for higher prices than even its gilt-edged rating suggests: Those due in 2022, for example, were priced for a yield of 1.5 percent, 37 basis points less than the rate charged the most credit worthy municipal borrowers, according to data compiled by Bloomberg.

Investors have gobbled up tax-exempt bonds issued by governments in California to drive down their tax liability, either because of their sizable fortunes or to offset the effect that the limit on state and federal tax deductions will have on their federal returns. At the same time, the securities have been hard to come by, with debt sales by issuers in the state dropping by 30 percent this year.

In the case of Mountain View, the headquarters of Google parent Alphabet Inc., the school district may have benefited from the massive wealth in its own backyard.

The median home value in Mountain View has risen by about 22 percent over the past year to $1.9 million, according to Zillow Inc. The assessed valuation of property in the district rose 9 percent to $48.4 billion in fiscal 2018, almost double what it was a decade ago, according to bond offering documents.

The bonds will be used to help teach future coders and software engineers by modernizing science and technology classrooms for “21st-century learning” and to accommodate growing enrollment at the district. It’s the first installment of a $295 million sale approved by voters in June.

Bloomberg Business

By Amanda Albright

August 30, 2018, 9:19 AM PDT

It’s Trump, Not Just the Fed, Driving the Short-Term Muni Frenzy.

- **One trader says investments timed for 2020 presidential vote**
- **Democrat victory could trigger rollback to Trump’s tax changes**

It’s not just rising rates. It’s Trump, too.

That’s what Jason Ware, head of trading at 280 CapMarkets in San Francisco, offers as an explanation of short-term municipal bond yields, some of which are holding near a four-year low relative to Treasuries.

The high demand for debt maturing within three years is typical at a time when the Federal Reserve is raising interest rates and investors are seeking a refuge from price declines.

But many buyers are timing their investments to what they expect to be the end of Trump’s presidency after the 2020 election, Ware said in an interview. They think that Trump’s policies affecting municipal bonds, such as the limit on state and local tax deductions and the ban on a type of refinancing, would be vulnerable to rollbacks. The short maturities mean they will get their cash back to invest elsewhere.

“If Trump is out of office and a Democrat is elected, some of this will be reversed,” he said, adding that he doesn’t necessarily share that view. “There is a thought out there that will take place.”

Bloomberg Markets

By Romy Varghese

August 31, 2018, 6:27 AM PDT

— With assistance by Amanda Albright

New Jersey Authorizes Expanded Use of P3s.

Dive Brief:

- New Jersey Gov. Phil Murphy has signed into law a new bill that expands the use of public-private partnerships in the state to buildings and highway infrastructure projects. State and county colleges, under the Higher Education Institution Public-Private Partnerships Program, were already allowed to enter into such agreements as long as the private party provided 100% financing and the public entity retained ownership of the land.
- Projects under the new law can be wholly or partially financed by a private partner but the public entity still will have rights to certain financial and land-use controls. If the private partner seeks to lease any publicly-owned asset as part of the P3, the lease period cannot exceed 30 years if it’s in exchange for financing. In addition, workers on these projects must be paid a prevailing wage, the P3 must incorporate a project labor agreement and all private participants — including contractors and subcontractors — must be registered with the state.
- The state treasurer will provide oversight and must approve all P3 agreements under the new measure. The treasurer’s office will also post the status of each new P3 agreement — proposed, under review or active — on its website. Murphy said the new regulation was a bipartisan effort by

lawmakers to “give state, county, and local officials the much-needed flexibility they need to improve their communities while creating good-paying new jobs — and, in most cases, good union jobs — while leveraging private capital to invest in public infrastructure.”

Dive Insight:

Contractors are just one piece of a P3 construction project, which also see some combination of design, financing, maintenance and operation components as well.

While P3s can be used for most any project, there is a growing demand for transportation-related P3s, according to a report earlier this year from law firm Husch Blackwell. This is because public agency budgets are such that these entities have started to explore other ways to get their projects done. Husch said that the agencies taking on P3s are not just using the full-on version in which the private partner takes on design, build, finance, operations and maintenance duties — but various permutations of that model.

As far as opportunities in P3s, public respondents to Husch’s annual survey of registrants of the annual Public-Private Partnership Conference and Expo said that they were most likely to pursue public-facility (62.5%), government-facility (57.5%) and transportation (52.5%) P3s during the next three years. Those in the private-sector responded that they would most likely pursue those projects in the transportation (69%) sector.

Construction Dive

by Kim Slowey

Aug. 27, 2018

Amazon HQ2: How Did We Get Here? What Comes Next?

Sometime in the coming weeks Amazon will announce a short list of U.S. cities in which it will consider placing its new $5 billion, 50,000-person second headquarters. It is likely that these finalist cities will be large, prosperous, and located in the eastern part of the country.

Even in cities of a significant size and wealth, the arrival of what Amazon calls HQ2 will be transformative, even explosive. One only needs to look at the impact of HQ1 on Seattle to see why. Commentators in Seattle have taken to calling Amazon’s expansion the “prosperity bomb,” reflecting both the massive impact of the company’s growth and the heat of the ensuing fights about how that growth should be managed and distributed across the city.

With the prospect of a second “prosperity bomb” being dropped in a major American city, it’s not surprising that Amazon debates are raging. In fact, the Amazon HQ2 competition has focused the attention of a uniquely broad and diverse cadre of leaders across media, politics, business, and advocacy. Nationally, it has become a signpost for public policy issues ranging from antitrust to tax incentives to the need for policies that better support struggling communities. Locally, in each bidding city the response to HQ2 has simultaneously united a broad array of institutions around a shared economic development prize, and at the same time exposed fissures between elite-driven organizations and grassroots advocates about how bids should be executed, if at all.

Continue reading.

The Brookings Institute

by Joseph Parilla
Metropolitan Policy Program Fellow

August 28, 2018

[The World Bank Just Issued a Bond That Relies On Blockchain Technology From Start to Finish.]

The World Bank has launched a blockchain-only bond. The so-called bond-i—for "blockchain operated new debt instrument" and perhaps also for Sydney's famous Bondi Beach—is a two-year bond that was arranged by Commonwealth Bank of Australia and raised 110 million Australian dollars ($80 million.)

Investors included several Australian banks and state treasuries. Arunma Oteh, the World Bank treasurer, mentioned in a statement the additional help of King & Wood Mallesons, Mark-it, Microsoft and Toronto Dominion Securities.

The World Bank said the bond was the first in the world to be "created, allocated, transferred and managed through its life cycle using distributed ledger technology." However, that may not be quite accurate.

Continue reading.

FORTUNE

By LUCAS LAURSEN

August 24, 2018

[Brightline Rail System Wins Approval to Issue Tax-Exempt Bonds. Not Everyone is Cheering.]

All Aboard Florida got the go-ahead Wednesday from a state board to issue $1.75 billion in federal tax-exempt bonds for its Brightline passenger-rail system, as officials and residents from the Treasure Coast and Central Florida fought over a planned northern extension.

The Florida Development Finance Corp. Board of Directors backed issuing what are known as "private activity" bonds needed to extend Brightline north from West Palm Beach.

The approval came after board members asked Brightline officials for assurances that the Treasure Coast region wouldn't be hurt economically. Many residents and officials in Treasure Coast areas such as Martin and Indian River counties have long objected to the rail service.

But Central Florida officials, with the backing of the Florida Chamber of Commerce and other business-lobbying groups, view the passenger trains as an alternate link from South Florida that would complement the existing SunRail system in the Orlando area.

Florida Development Finance Corp Chairman Daniel Davis, whose agency has the authority to approve the federal bonds, said after the vote he hoped outstanding issues between Treasure Coast leaders and All Aboard Florida could be worked out.

The board approved a new series of $1.15 billion in bonds and the refinancing of $600 million in previously approved bonds, which helped set up the existing southern portion of the service.

Brightline, which started running between West Palm Beach and Miami this year, is looking to extend north to Orlando in 2021. Brightline has also started to work with the state on pursing an Orlando-to-Tampa route.

Officials representing Martin and Indian River counties, which have brought lawsuits against the service, raised questions about safety and potential economic and quality-of-life impacts of higher-speed trains running through their communities.

Brightline officials said they have approached Treasure Coast communities to consider stops and have taken similar steps for Cocoa in Brevard County.

Indian River County Attorney Dylan Reingold was among critics pointing to low ridership numbers — 74,780 people collectively paid $663,667 for tickets in the first three months of this year — for the service running between Miami and West Palm Beach, as he forecast little chance of the service becoming a financial success.

Brightline Chief Executive Patrick Goddard responded that the service was running between West Palm Beach and Fort Lauderdale in the first quarter.

Reingold also joined opponents — including state Sen. Debbie Mayfield, R-Rockledge, and state Rep. MaryLynn Magar, R-Tequesta — in requesting the bond decision be delayed, as federal litigation in pending about environmental impacts and as members of Congress have been looking into the proposal.

Reingold also said if the bonds were approved, conditions should have been added to limit the fiscal impact on what taxpayers must cover to maintain rail crossings that will have to be upgraded from freight service.

“It’s a private company owned by a Japanese hedge fund,” Reingold said. “It expects Indian River County taxpayers to pay for the maintenance of their (rail crossing) improvements for eternity.”

All Aboard Florida is owned by Fortress Investment Group LLC, a global investment management firm acquired last year by Toyko-based SoftBank Group Corp.

Ruth Holmes, a Martin County attorney, said Brightline should also be required to use an alternative route or to double-track the single-rail drawbridge north of downtown Stuart over the St. Lucie River. Otherwise, Holmes said, the constant opening and closing of the spans — from existing freight traffic and Brightline planning 16 daily round trips between Miami and Orlando — would hinder maritime traffic and business in the downtown area.

“That draw closure and opening is going to happen about 52 times a day,” Holmes said. “That effectively shuts down that bridge.”

Indian River County Commission Chairman Peter O’Bryan noted a number of deaths that have occurred in the past year with the new rail service in South Florida and warned that approving the issuance of the bonds would equate to giving “a license to kill for All Aboard Florida.”

Countering those arguments, Central Florida lawmakers urged support for the bonds as they envision Brightline bringing economic growth to the state by removing cars from the highways and giving tourists more travel options.

Rep Jason Brodeur, R-Sanford, said Brightline is seen as a link to South Florida for the SunRail service, and he joined others in pointing out that most of the rails for Brightline have been in place since the late 1890s, when industrialist Henry Flagler brought passenger trains south.

“I have 500,000 people who are really looking forward to this,” Brodeur said of the people he represents in Seminole County, north of Orlando.

Rep. Mike Miller, R-Winter Park, said the expansion of the service means jobs at both ends of the line.

“One of our jobs as legislators is to create an environment where there are jobs,” Miller said. “This not only creates 2,000 jobs, and $2.4 billion worth of economic impact, directly because of Brightline, but it creates billions of dollars in jobs and job opportunities in Miami, West Palm, Orlando and throughout our state.”

Rep. Tom Goodson, R-Rockledge, said residents in Brevard County are “enthused” at the prospect of a station in Cocoa that could serve the space industry and Port Canaveral.

Dennis Grady, President and CEO of the Chamber of Commerce of the Palm Beaches, said since being introduced in January, Brightline has made the Miami-Dade, Broward and Palm Beach region a “smaller, more manageable place to live and work.”

But he added, for the state goal of a viable inner-city rail system, Brightline must be able to expand to Orlando.

News Service of Florida

by Jim Turner

August 29, 2018

S&P: SEC Disclosure Rule Changes Will Improve Transparency, But Municipal Bank Loan Structures Can Still Carry Hidden Risks.

The SEC’s amendments to the municipal securities disclosure rule 15c2-12, announced Aug. 20, will improve disclosure of risks associated with many bank loan structures.

Continue reading.

Aug. 28, 2018

Muni Market Recap: Hope for the New York MTA

The New York Metropolitan Transit Authority, NY MTA, has had a busy summer raising capital through the municipal bond market to improve a massive system that has suffered from underinvestment for many years. The NY MTA operates New York City's subways and buses, the Long Island and Metro-North commuter railroads, and several bridges and tunnels, and is one of the largest issuers in the muni market with approximately $39 billion in debt, according to the Bond Buyer.

Growing up as a New Yorker, the subway was an important infrastructure asset that gave me access to all New York City has to offer. My father-in-law drove a NYC Bus for 25 years and many other family members of mine worked or still work for the MTA. New Yorkers take the subway to work, to school, to the beach, to the airport, to the park, to visit the Bronx Zoo and so many other places. We have an amazing subway system that spans many neighborhoods and runs all night long.

When I lived in West London I remember the first time I missed the last tube back to West Ealing and had to ride around on the late bus which was less than ideal. It reinvigorated my appreciation for the New York City subway system. But over the past 10 years the subway has become more and more crowded, with greater and greater delays. On a recent morning, it was 90 degrees on a very crowded platform and I started thinking more deeply about investment in the system.

Continue reading.

Neighborly Insights

Posted 08/31/2018 by Homero Radway

TAX - SOUTH CAROLINA

PBBM-Rose Hill, Limited v. Commissioner of Internal Revenue

United States Court of Appeals, Fifth Circuit - August 14, 2018 - F.3d - 2018 WL 3853450 - 122 A.F.T.R.2d 2018-5471

Limited partnership petitioned for redetermination of final partnership administrative adjustment (FPAA) which determined that it was not entitled to charitable contribution deduction for its donation of a conservation easement to a land trust and penalty for overvaluing the conservation easement. The United States Tax Court entered decision for IRS. Partnership appealed.

The Court of Appeals held that:

- In determining whether public-access requirement for qualified conservation easements was fulfilled, Tax Court was required to focus on terms of the deed and not on actual use of the land after donation;
- Terms of easement fulfilled public-access requirement for partnership to be able to claim charitable contribution deduction;
- Terms of easement did not fulfill the perpetuity requirement for partnership to be able to claim charitable contribution deduction;
- Fair market value of property before partnership donated it, based on its highest and best use, was IRS expert's estimate of $2,400,000 rather than taxpayer's expert's estimate of $15,680,000, so that total amount that could be deducted was $100,000 instead of the $15,160,000 claimed by partnership;
- Managerial signature on cover letter of report sent prior to issuance of FPAA satisfied IRS's obligation to obtain written managerial approval of initial determination of gross valuation misstatement penalty; and

- Gross valuation misstatement penalty applied to penalize partnership's overstatement of the deduction, but not to decision to claim deduction which it was not entitled to claim.

TAX - SOUTH CAROLINA
[Olds v. City of Goose Creek]
Supreme Court of South Carolina - August 8, 2018 - S.E.2d - 2018 WL 3749764

Taxpayer appealed decision of city council regarding computation of gross income under business license tax ordinance, and further asserted claims against city for violation of equal protection, violation of procedural due process, abuse of process, violations of state and federal constitutions, and violation of the South Carolina Freedom of Information Act, against city administrator and city finance director for conspiracy, and against city's department of public works for breach of contract.

The Circuit Court affirmed the city council's decision regarding the meaning of gross income under city ordinance, and granted city summary judgment on taxpayer's other claims. Taxpayer appealed. The Court of Appeals affirmed. Taxpayer petitioned for writ of certiorari.

The Supreme Court of South Carolina held that city erroneously required taxpayer's business license fee to be calculated on "gross receipts"/"sales price" derived from his dealings in property, rather than a properly calculated "gross income."

While city was permitted by statute to levy a business license tax on gross income, the city ordinance went from broadly defining gross income as the "total revenue of a business" to narrowly mandating that the gross income figure reported to city conform to the gross income reported to the State Tax Commission, which, under the federal tax code would be defined as gains derived from dealings in property.

TAX - CALIFORNIA
[Citizens for Fair REU Rates v. City of Redding]
Supreme Court of California - August 27, 2018 - P.3d - 2018 WL 4057226 - 18 Cal. Daily Op. Serv. 8613

Taxpayer organization, individuals, and company hired to recover refunds of government fees filed petition for writ of mandate and complaint for declaratory and injunctive relief against city, asserting that payment in lieu of taxes transferred from city electrical utility to city's general fund was unlawful tax.

Organization, individuals, and company filed second complaint against city, seeking declaration that new two-year budget violated requirement that any special taxes for cities be approved by voters. Actions were consolidated. Following bench trial, the Superior Court denied petition for writ of mandate and issued memorandum of decision in favor of city. Organization, individuals, and company appealed, and the Court of Appeal reversed and remanded with directions. The Supreme Court granted review, superseding the opinion of the Court of Appeal.

The Supreme Court of California held that:

- Payment in lieu of taxes was not a "tax" requiring voter approval, and

- Rate utility imposed on ratepayers did not exceed the reasonable costs of providing electrical service and thus was not a “tax” requiring voter approval.

Payment in lieu of taxes transferred from city electrical utility to city’s general fund was not a “tax” requiring voter approval under Proposition 26; as utility had more than enough non-rate revenue to cover the payment, the payment was not necessarily passed through to and imposed on ratepayers.

Rate city electrical utility imposed on ratepayers did not exceed the reasonable costs of providing electrical service and thus was not a “tax” requiring voter approval under Proposition 26; revenue realized from rate payments was insufficient to cover utility’s other operating expenses, all rate revenues went to covering utility’s uncontested operating costs, remaining unpaid shortfall and payment in lieu of taxes to city to cover costs of services that other city departments provided to utility had to be satisfied from utility’s other sources of income, and that budgetary transfer was not paid out of rate revenues.

Disney Walks Away From Millions in Economic Incentives.

Is one of corporate America’s savviest companies reconsidering its reliance on subsidies, or is it seeking to avoid further regulation?

Earlier this month, the Walt Disney Company presented the city of Anaheim with a surprising request: It asked the California city to terminate two agreements that provide Disney with hundreds of millions of dollars in economic assistance.

The request comes as Disney’s relationship with Anaheim has grown increasingly strained in recent years. Critics, led by Anaheim Mayor Tom Tait, a libertarian-leaning Republican businessman who was elected in 2010, have criticized the city for agreeing to a 45-year moratorium on a gate tax and a $267 million economic assistance package for a new luxury hotel in the Downtown Disney District. Tait has argued that the money should instead be used to shore up the city’s bottom line.

In a letter to the mayor and city council, Disneyland Resort President Josh D’Amaro acknowledged “an unprecedented and counterproductive” level of animus between the company and the city that has hosted Disneyland since the theme park first opened in 1955. As a result, wrote D’Amaro, Disney had decided to ask the Anaheim “to join us in terminating” the two agreements at the center of the controversy.

On Tuesday, the Anaheim City Council acted on this request. It voted unanimously to revoke the two agreements. Tait described the vote as one that would boost city finances and serve as an example for other corporations to follow. “I think this type of move is bold, and I think it’s an example for other corporations out there,” he says. “Maybe there is a realization that long-term, it’s in their best interest that they are in a healthy vibrant community. I think there is a chance here that Disney could be a trendsetter.”

But not everyone is applauding the move. Some saw another reason for the company’s change of heart — a ballot initiative that will go before Anaheim voters in November. Unions representing Disneyland workers championed the ballot initiative, which, if it passes, will raise the minimum wage for businesses that accept economic assistance from the city to $15-an-hour and then increase it by another dollar per year until 2022, after which workers would receive a yearly cost-of-living adjustment.

Disney has insisted that their decision to terminate the two economic assistance packages was not an effort to sidestep the new ballot initiative. Yet that is precisely what critics of the company such as Vermont Sen. Bernie Sanders, who recently joined Disneyland workers to push for the measure, have accused it of doing. “Disney is so nervous that the living wage ballot initiative in Anaheim is going to pass,” Sanders told The Guardian, “it would rather end some of the corporate welfare it receives from local taxpayers than pay all 30,000 of its workers’ decent wages.”

Ada Briceño, co-president of UNITE HERE, which represents 3,000 Disneyland employees and is currently in the middle of contract negotiations, insists the fight is not over. “Subsidies or no subsidies,” she says, “we are adamant that Disney has to give its workers a dignified way of life.”

Greg LeRoy, who heads Good Jobs First, an organization that monitors corporate subsidies and has been critical of economic assistance packages, says companies such as Disney that employ large numbers of low-wage workers have historically gone to great lengths to avoid regulations that would require them to raise wages. “It would not be unusual for Disney to withdraw from a tax break package because of the wage standards,” he says. “[They] don’t want anyone telling them what to pay. They don’t want to set the precedent.”

As for Tait’s hope that Disney’s change of heart could set a precedent for corporate America’s dealings with other cities, LeRoy is skeptical. He says there has been a reduction in the number of economic assistance packages approved by state and local governments over the past 10 years. However, it’s not because corporations are asking for less, or that states and localities are taking a harder line. It’s because there are fewer deals to be had overall.

What is on the rise is extremely expensive “mega-deals,” such as Wisconsin’s $4.7 billion assistance package to Foxconn or the current competition for Amazon’s second headquarters. LeRoy sees the intense pursuit of mega-deals as another sign of what some economists have described as the winner-take-all economy. “Even at a time when unemployment is really low,” he says, “state and local governments appear desperate to spend to get jobs.”

As for Disney, it seems to view its decision to terminate its two most recent agreements with Anaheim as a one-off decision. In a statement released to Governing after the city council vote on Tuesday, Disney spokeswoman Liz Jaeger defended the practice of negotiating economic assistance packages. “These tax incentive policies, which are successfully and widely used across the country to stimulate economic growth and development,” she says, “unfortunately became counterproductive in Anaheim, prompting our decision to step away from them.”

GOVERNING.COM

BY JOHN BUNTIN | AUGUST 31, 2018

A Blueprint for Financing Green Stormwater Infrastructure.

This is Part 1 of a two-article series. The second article will be published in September.

In a few Rust Belt cities that are seeking economic and social benefits, Greenprint Partners – formerly known as Fresh Coast Capital – is breaking new ground by financing fresh solutions for green stormwater infrastructure. It is using a combination of municipal, private and government resources. Its goals are to create a replicable model and expand the market.

According to a case study from The Kresge Foundation, "While science supports the use of green stormwater infrastructure, many municipalities remain reluctant to adopt these practices due to a lack of capacity, expertise and/or capital."

In an interview, Nicole Chavas, CEO and cofounder of Greenprint Partners, described the growth her company hopes to catalyze in this emerging market. It is currently working in Peoria, Youngstown, and St. Louis. It is considering a new project in Philadelphia.

Continue reading.

Conservation Finance Network

by Kat Friedrich

August 27, 2018

Public-Private Partnerships: When Will Reality Meet the Promise?

The promise of public-private partnerships (P3s) seems irresistible. The $4.5-trillion that the American Society of Civil Engineers says the U.S. must spend on at-risk infrastructure by 2025 is a backlog beyond the collective means of local, state and federal governments to fund and deliver.

Eyeing both need and return, the private sector is fast developing the required financing and capability, with U.S. and global investment funds looking for placement in physical assets. Dedicated infrastructure funds are raising hundreds of billions of dollars, sourced from pension and sovereign wealth funds and other investors "craving stable returns," said Bloomberg in a report last month.

Such funds had assets under management that totalled $450 billion at the end of 2017, up from just $7 billion in 2000, according to data provider Preqin.

But capital invested in infrastructure has lagged this year as investment deals dropped, says Pitchbook, which tracks them.

More than halfway through 2018, there have been just 19 transactions in the sector worth about $7.6 billion compared to last year, when investors completed 94 deals totalling about $36.6 billion, Pitchbook says.

Most investment is not channeled to U.S public infrastructure most in need, says Bloomberg, contending that assets already in private hands, such as electric utilities, gas pipelines and cell towers, are the biggest beneficiaries.

While 36 states have legislation that enables P3 projects, there have only been five P3 greenfield deals in 2017, mainly in transportation. according to Inframation Group, the London-based on line infrastructure finance analysis provider.

New Jersey is set to boost the numbers with Gov. Phil Murphy signing a bipartisan bill on Aug. 15 that broadens P3 investments beyond colleges and universities to other infrastructure including some statewide road projects. But other public owners remain reticent. Baltimore officials voted Aug. 6 to add to November ballots a measure that would make the city the first in the U.S. to amend its charter to preserve public ownership and control over its water and sewer systems and the largest to ban any sale or lease.

What's stopping the world's leading economy from becoming the world's biggest P3 market?

There are many barriers, but risk, both technical and commercial, is the main one. Many funds see it as risky to invest in greenfield projects under a complex legal and regulatory framework. Significant differences in requirements between jurisdictions result in high bid costs and high bars for market entry.

The lack of concerted federal action has not helped. While President Donald Trump's infrastructure program, once touted as a $1-trillion investment, would depend on outside private investment, the effort that might have included partial matching funds as state and local project incentives, has fallen to back-burner status until well into next year.

DJ Gribbin, the former Trump Administration infrastructure advisor who recently joined private equity firm Stonepeak Partners LP as a partner, said governments need to find ways to make it easier for the private sector to invest.

Public sector owners need to provide globally reasonable terms and streamline both regulations and the bidding process to attract private sector participants. Like their counterparts in Australia, they should be open to unsolicited proposals from private sector investors.

If the private entities will own or operate the asset for the long term, they should have incentive to create designs and outcomes that go beyond the brief and create additional benefits for the bidder—and for the wider community. Even under more traditional bidding arrangements, participants should be encouraged to move beyond conforming to a reference design by seeking added value through innovation.

The concept of 'asset recycling' offers another way to reduce risk and free up capital for governments to invest in a greenfield development. Using this approach, a government entity develops a project using design and build input from the private sector. When the asset is completed and/or operating, it is leased to the private sector over a longer tax-effective term.

Proceeds from the lease (perhaps 50 to 100 years paid in one installment) then fund the next wave of infrastructure projects. If the re-investment is close to the recycled asset, it can reduce taxpayer concern over the loss of public asset ownership.

Clear communication is key to success. Long-term leases of ports in New South Wales, Australia, have enabled the state government to invest in significant road and rail transportation projects near those ports.

But asset recycling needs a very critical element. By developing the project, the government assumes risk in the construction phase and some of the early stage demand. Past toll road projects in Australia placed this risk onto the private sector, which relied on self-developed traffic forecasts, with the wider road network economics outside proponents' control.

In a number of cases, this approach overestimated user demand for the new infrastructure and generated major pressure on the financiers, not to mention headline-grabbing lawsuits. Since P3 projects require the goodwill of private entities, risk allocation must be equitable and provide incentives for all parties to meet their obligations.

Maintaining transparency and simplicity is essential—not only for ethical reasons, but also to change assumptions and reallocate risk before the project fails. Project complexity could further shrink by separating contracts into specific delivery packages.

On a passenger rail project, hard-build infrastructure such as track foundations and stations can be split from signal technology systems and from customer service and maintenance operations to enable different companies to focus on what they do best.

While the private sector tends to provide greater service efficiency, communities have higher expectations for P3 projects and are likely to pounce on profit-making entities for any shortcomings or disruption in delivery. So it is important to acknowledge that infrastructure projects are not just financial instruments, but a way to support social and economic activities.

The business case for the project and the community engagement process should take into account those outcomes across the long-term.

Singapore relies on P3 to deliver water treatment and desalination infrastructure, growing the local industry into a global supplier of water technologies, with exports contributing more than $1 billion annually to the country's GDP. If each of the 50 states develops one P3 project annually, what industries would spring up as a result?

Municipalities and states understand the stresses their infrastructure is under, and should be given a guiding hand in matching local needs with global investors' demand for infrastructure assets.

If communities understood how they could have new hospitals, schools, bridges or water treatment plants with better service and without additional taxes or user charges that also could boost employment, what would they choose?

Engineering News-Record

by Richard Fechner, GHD

August 30, 2018

Richard Fechner, global leader of infrastructure investment & economics at GHD Advisory, part of consulting firm GHD, has led and supported asset transactions valued at more than $80 billion. He can be reached at Richard.Fechner@ghd.com

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Norton to Introduce Bill Affording New Way for D.C. to Secure Private Funding for Public Infrastructure Projects.

WASHINGTON, D.C.—Congresswoman Eleanor Holmes Norton (D-DC) today announced that she will introduce a bill that clarifies the District of Columbia's authority to enter into public-private partnerships (P3s). The District recently began the procurement process for its first-ever P3s: rehabilitating the Metropolitan Police Department headquarters (Daily Building) and modernizing streetlights. The bill makes it clear that the federal Anti-Deficiency Act (ADA), which uniquely applies to D.C., does not prohibit the District from entering into P3s. The bill provides legal certainty that D.C. may enter into multi-year contracts to design, construct, improve, maintain, operate, manage and/or finance projects procured pursuant to a local D.C. law, the Public-Private Partnership Act of 2014.

"Federal law potentially limits the authority of only one jurisdiction, the District of Columbia, to enter into public-private partnerships," Norton said. "The federal government, many states and other countries have used P3s. There is no reason that the District should not be able to take advantage of this option. Among other benefits, P3s will free up District funds that would otherwise be spent on infrastructure for other pressing needs, such as education and health care."

The federal ADA prohibits the federal and D.C. governments from obligating or expending funds in advance or in excess of an appropriation. A critical benefit bestowed by P3s is that the District would not have to appropriate all the funds upfront, freeing up funds for the District to spend on other matters. An ADA violation may occur if the District terminates a P3 contract. Under P3 contracts, the District would make payments on an annual basis over the life of a contract, and the District would appropriate the funds for such payments annually. However, upon termination, the District would have to pay all costs incurred up to that point, but would not yet have appropriated all the funds for such payments, potentially causing an ADA violation.

Under D.C. law, "a 'public-private partnership' means the method in the District for delivering a qualified project using a long-term, performance-based agreement between a public entity and a private entity or entities where appropriate risks and benefits can be allocated in a cost-effective manner between the public and private entities in which:

(A) A private entity performs functions normally undertaken by the government, but the public entity remains ultimately accountable for the qualified project and its public function; and

(B) The District may retain ownership or control in the project asset and the private entity may be given additional decision-making rights in determining how the asset is financed, developed, constructed, operated, and maintained over its life cycle."

August 29, 2018

Municipalities May Regulate the Local Impacts of Pipelines Without Violating the Commerce Clause: Foley Hoag

Foley Hoag Secures Victory for City of South Portland in Lawsuit Challenging its Clear Skies Ordinance

Federal Court Rules Statute Banning the Bulk Loading of Crude Oil Is Constitutional

Foley Hoag LLP successfully represented the City of South Portland, Maine in a federal lawsuit aiming to overturn the City's Clear Skies Zoning Ordinance. The U.S. District Court for the District of Maine issued its decision on Friday, August 24, 2018, finding that the local zoning ordinance, which prohibits the bulk loading of crude oil onto ships in South Portland's harbor, does not violate the Commerce Clause of the U.S. Constitution. The victory comes after three years of litigation.

In its decision, the Court concluded that "the City Council enacted an ordinance that would block a tar sands project like the one PPLC proposed because it had concerns about the air quality, water quality, aesthetics, and redevelopment risks of crude oil loading in general, and the transporting and coastal loading of crude oil derived from tar sands in particular." This is one of the first times that a federal court has ruled that cities and towns can prohibit crude oil pipeline and loading facilities through local zoning without being preempted by any federal statute or violating federalism principles in the Constitution.

South Portland prohibited the loading of bulk crude oil into ships on its waterfront in 2014, as domestic demand for imported oil was declining and production in the oil sands of western Canada was increasing. In December 2017, the Court ruled in the City's favor on eight of nine counts – that the ordinance was not preempted by the federal Pipeline Safety Act, the federal Ports and Waterways Safety Act, or the Maine Oil Discharge Prevention Law; it was not preempted by federal powers over foreign affairs or maritime commerce; it did not violate Portland Pipe Line's due process or equal protection rights; and it was not inconsistent with the City's Comprehensive Plan – but found that a trial was needed on the Commerce Clause claim. After five days of testimony, the Court has now ruled in the City's favor on the final claim, finding that that the ordinance "does not discriminate against interstate or foreign commerce on its face, in effect, or in purpose."

"Faced with the prospect of hundreds of thousands of barrels of crude oil being loaded onto marine vessels in the City and threatening the health of the residents and preventing redevelopment of the waterfront, the City Council prohibited this new activity. We are pleased that the Court upheld the ordinance," said Linda Cohen, Mayor of South Portland.

"The District Court conducted a painstakingly thorough review of the evidence, including hearing live testimony over five days, and concluded that the Clear Skies Ordinance was constitutional and not preempted by either federal or state law," said Jonathan Ettinger, a partner at Foley Hoag. "The Court appropriately recognized that this case was about protecting the health, safety and welfare of the residents of South Portland under its broad zoning powers and not about whether the oil came from Alberta or Augusta."

Foley Hoag is a Boston-based law firm with a leading environmental law practice. The team representing the City of South Portland was led by Ettinger and comprised of partner Euripides Dalmanieras and associate Jesse Alderman. Sally Daggett and Mark Bower of Jensen, Baird, Gardner & Henry in Portland served as co-counsel.

About Foley Hoag LLP
Foley Hoag provides innovative, strategic legal services to public, private and government clients across the globe. We have premier capabilities in the life sciences, healthcare, technology, energy, professional services and private funds fields, and in cross-border disputes. The diverse backgrounds, perspectives and experiences of our lawyers and staff contribute to the exceptional senior level service we deliver to clients ranging from startups to multinational companies to sovereign states. For more information, visit www.foleyhoag.com or follow @FoleyHoag on Twitter.

August 27, 2018

SEC Adopts Rule Amendments to Improve Municipal Securities Disclosure: Orrick

On August 20, 2018, the Securities and Exchange Commission adopted amendments to Rule 15c2-12 of the Securities Exchange Act in order to enhance transparency in the municipal securities market. The adopted changes focus on material financial obligations that could impact an issuer's liquidity, overall creditworthiness or an existing security holder's rights. The amendments add two new events to Rule 15c2-12 of the Securities Exchange Act, which requires brokers, dealers and municipal securities dealers that are acting as underwriters in primary offerings of municipal securities to reasonably determine that the issuer or obligated person has agreed to provide to the Municipal Securities Rulemaking Board timely notice of certain events.

Press Release.

Final Rule.

August 30, 2018

Treasury Releases Guidance on Permissibility of State Legislation to Circumvent SALT Deduction Cap.

On Aug. 23, 2018, the Department of the Treasury (Treasury) and the Internal Revenue Service (IRS) issued proposed regulations under Section 170 of the Internal Revenue Code (Code) addressing the federal income tax treatment and characterization of state legislation allowing certain charitable contribution payments made by taxpayers in exchange for a corresponding credit against state and local taxes (SALT).

Continue reading.

Brownstein Hyatt Farber Schreck

August 29, 2018

US Federal Reserve Board, OCC and FDIC Issue Interim Final Rule with Respect to the Treatment of Certain Municipal Obligations as High-Quality Liquid Assets: Sherman & Sterling

The U.S. Board of Governors of the Federal Reserve System, U.S. Office of the Comptroller of the Currency and U.S. Federal Deposit Insurance Corporation jointly issued an interim final rule and request for comment to treat "liquid and readily-marketable," investment grade municipal obligations as level 2B high-quality liquid assets (HQLAs) for purposes of the liquidity coverage ratio rule. The interim final rule implements Section 403 of the Economic Growth, Regulatory Relief, and Consumer Protection Act, which amends Section 18 of the Federal Deposit Insurance Act and requires the Federal Reserve Board, OCC and FDIC to treat qualifying municipal obligations as high-quality liquid assets (i.e., level 2B liquid assets) for purposes of the LCR rule and any other regulation that incorporates the definition of "high-quality liquid asset" or similar term. For purposes of the LCR rule, the term "municipal obligation" is defined to mean "an obligation of a state or any political subdivision thereof or any agency or instrumentality of a state or any political subdivision thereof. In order for a municipal obligation to qualify as a HQLA, it must be liquid and readily-marketable and investment grade at the time of calculation. With respect to the definition of liquid and readily-marketable, the interim final rule harmonizes the definition across the three agencies and adopts the Federal Reserve Board's definition, which defines the term as a security that is traded in an active secondary market with: (i) more than two committed market makers; (ii) a large number of non-market maker participants on both the buying and selling sides of transactions; (iii) timely and observable market prices; and (iv) a high trading volume. Section 403 also provides that the term "investment grade" has the meaning given in 12 C.F.R. Part 1, which requires that the issuer of a security has adequate capacity to meet financial commitments (meaning that the risk of default is low and full and timely repayment is likely) under the security for the projected life of the asset or exposure. In addition, consistent with the EGRRCPA, the Federal Reserve Board is rescinding its 2016 amendments to the LCR rule, which treated a narrower range of municipal obligations as HQLAs. With respect to FDIC- and OCC-regulated financial institutions, municipal obligations were not previously permitted to be treated as HQLAs. The interim final rule will take effect upon its publication in the Federal Register, with comments due within 30 days of publication.

View full text of the interim final rule.

Shearman & Sterling LLP

August 30, 2018

Developing with Other People's Dollars: Leveraging Public Property in NC for Private Development

Downtowns across the country are seeing an increase in population and North Carolina is no exception.

From 2016-2018, 45% of North Carolina’s population growth occurred in its seven largest municipalities. During that same time, rural areas in the state saw their populations decrease.

This “urbanization,” or flow of people from small towns and counties into North Carolina’s cities, is increasing the need for development projects and opportunities for developers. In an already competitive development environment, public-private partnerships (“PPP’s”) can offer developers opportunities that would not otherwise exist, including the chance to collaborate with municipalities on large-scale projects that can result in cost savings and a competitive advantage.

Continue reading.

Ward and Smith, P.A.

August 30, 2018

A New Accelerator for Community-Owned Broadband Networks.

Some of the communities selected will be able to begin building within a matter of months.

A San Francisco-based online investment platform plans to launch a Community Broadband Accelerator in the coming months to help localities quickly establish community-owned networks.

In November, Neighborly will announce its first cohort of communities, which will have access to its financing at a discount.

With 19 million Americans, 6 percent of the population, lacking access to broadband at minimum speeds, networks aren’t being built fast enough, Garrett Brinker, Neighborly’s product manager, told Route Fifty.

“We really see community broadband networks as the 21st century’s bridges that spur economic development," Brinker said.

But the conversation about financing projects often occurs too late in the process, he added.

Once a participating community decides to build a network, it can use Neighborly's mapping, demand aggregation and marketing tools to funnel in capital.

For its first cohort, the accelerator is looking for communities already seeing movement on broadband from local government or local advocacy groups. Brinker anticipates some of the communities selected will be able to begin building within a matter of months.

"That's where we see the power of a community-owned model," he said. "We believe that access to the internet should be equal by design."

By building an open-access network much like Ammon, Idaho—a city of about 15,300 people—communities will incentivize private internet service providers using it to provide faster service at low cost. That's opposed to a single private operator lacking the financial motivation to align their infrastructure anywhere other than the most affluent neighborhoods in a community.

The deadline for communities to apply to be a part of the accelerator is Sept. 28.

CBA wants to scale broadband networks across communities big and small by working with partners like Axiom, Island Institute, the Local Government Commission, and Next Century Cities.

"These networks only get built if everyone is able to come to the table," Brinker said.

Route Fifty

by Dave Nyczepir

September 2, 2018

Ambac Announces Execution of COFINA Plan Support Agreement.

Advances Resolution of COFINA Title III Proceedings

NEW YORK, Aug. 30, 2018 (GLOBE NEWSWIRE) — Ambac Financial Group, Inc. (Nasdaq:AMBC) ("Ambac"), a holding company whose subsidiaries, including Ambac Assurance Corporation ("AAC"), provide financial guarantees, announced today that AAC, the Financial Oversight and Management Board for Puerto Rico (the "Oversight Board"), the Puerto Rico Sales Tax Financing Corporation ("COFINA"), Puerto Rico Fiscal Agency and Financial Advisory Authority, Bonistas Del Patio, Inc., other bond insurers, and certain holders of senior and junior COFINA bond claims have executed a Plan Support Agreement (the "COFINA Plan Support Agreement") for the restructuring of all senior and junior COFINA bonds.

AAC insures $808.5 million of the initial principal amount of Senior COFINA Capital Appreciation Bonds (approximately $1,325.4 million of accreted value as of, but not including, the May 5, 2017 petition date (the "Petition Date") in the COFINA Title III proceeding). AAC also owns approximately 58% of AAC-insured senior COFINA bonds.

The COFINA Plan Support Agreement furthers the agreement-in-principle announced by the

Oversight Board on August 8, 2018. Under the COFINA Plan Support Agreement, the creditor parties agree, among other things, to support the filing of a plan of adjustment with respect to COFINA that provides for a distribution of Plan consideration comprised of new COFINA bonds and cash, with a face amount in the aggregate equal to approximately 93% (plus accrual, as of August 2018) of senior COFINA bond holders' Petition Date claim amounts, without taking into account AAC's insurance policy for the AAC-insured bonds, and a face amount of approximately 56% (plus accrual, as of August 2018) of junior COFINA bond holders' Petition Date claim amounts. The contemplated Plan of Adjustment, once confirmed by the court overseeing COFINA's Title III proceeding, will also finally resolve all COFINA-related litigation and validate the COFINA structure.

Under the COFINA Term Sheet (attached as an exhibit to the COFINA Plan Support Agreement), holders of AAC-insured senior COFINA bonds would have the option to elect to either (i) commute their rights in respect of the AAC insurance policy associated with the existing senior COFINA bonds, which bonds will be cancelled, in exchange for new COFINA bonds, cash amounts to be paid by COFINA, plus additional consideration provided by AAC, or (ii) exchange their senior COFINA bonds for trust certificates issued by a custodial trust, which trust would receive distributions from COFINA under the new COFINA bonds, plus payments under the existing AAC insurance policy in respect of any shortfalls. Payments on the new COFINA bonds deposited in the custodial trust would reduce AAC's obligations on its insurance policy.

The terms of the COFINA Plan of Adjustment and related documentation which will effectuate the contemplated transactions remain subject to negotiation and court approval.

Claude LeBlanc, President and Chief Executive Officer of Ambac commented "While there is a lot of work left to be done, the execution of the COFINA Plan Support Agreement is a definitive step towards a final resolution of Puerto Rico's debt restructuring and we are pleased to be a party to the COFINA Plan Support Agreement. The negotiated settlement of the Commonwealth-COFINA litigations also provides significant value to the Commonwealth through a sharing of the sales tax revenues, and resolution of the COFINA Title III proceedings will provide clarity regarding one of Ambac's key adversely classified credits."

The COFINA Plan Support Agreement, and related term sheet can be found on Ambac's website under the heading "Information for Investors Regarding COFINA Plan Support Agreement."

About Ambac

Ambac Financial Group, Inc. ("Ambac" or "AFG"), headquartered in New York City, is a holding company whose subsidiaries, including its principal operating subsidiaries, Ambac Assurance Corporation ("AAC"), Everspan Financial Guarantee Corp. and Ambac Assurance UK Limited ("Ambac UK"), provide financial guarantees of obligations in both the public and private sectors globally. AAC is a guarantor of public finance and structured finance obligations. Ambac's common stock trades on the NASDAQ Global Select Market under the symbol "AMBC". The Amended and Restated Certificate of Incorporation of Ambac contains substantial restrictions on the ability to transfer Ambac's common stock. Subject to limited exceptions, any attempted transfer of common stock shall be prohibited and void to the extent that, as a result of such transfer (or any series of transfers of which such transfer is a part), any person or group of persons shall become a holder of 5% or more of Ambac's common stock or a holder of 5% or more of Ambac's common stock increases its ownership interest. Ambac is committed to providing timely and accurate information to the investing public, consistent with our legal and regulatory obligations. To that end, we use our website to convey information about our businesses, including the anticipated release of quarterly financial results, quarterly financial, statistical and business-related information, and the posting of updates to the status of certain residential mortgage backed securities litigations. For more information, please go to www.ambac.com.

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Source: Ambac Financial Group, Inc.

New Puerto Rico Bond Group Starts Negotiations.

Funds holding about $1.9 billion in general obligation bonds split from a rival group in a bid to further broader restructuring efforts

Investment funds owning about $1.9 billion of Puerto Rico's general obligation bonds have formed a committee to negotiate a consensual restructuring with the commonwealth and the federal oversight board that manages its finances, people familiar with the matter said.

Members of the committee are seeking to differentiate themselves from a pre-existing group of general obligation bondholders that includes Aurelius Capital Management LP, which is fighting the board and the island's government in ongoing litigation, the people said

The new group organized in August after the oversight board reached important deals with Puerto Rico's two other largest classes of debt—bonds issued by its power utility and its sales-tax authority—raising hopes that general obligation creditors might also broker a settlement. The committee includes hedge funds Fir Tree Partners and Mason Capital Management LLC and mutual-fund manager First Pacific Advisors LLC, according to a bankruptcy-court filing.

The formation of the new group increases the likelihood that Puerto Rico will settle with its last large group of bond investors, potentially paving the way for a global restructuring of its finances.

Prices of Puerto Rico's $3.5 billion general obligation bond due in 2035 have risen about 33% this month to 53 cents on the dollar, according to data from the Municipal Securities Rulemaking Board.

Brokering restructurings with investment funds that own much of its $70 billion of bonds is critical for Puerto Rico because it needs to regain access to capital markets as a precondition for the removal of the oversight board. Litigation with creditors also has grown expensive for the island since it entered bankruptcy court in May 2017. Legal fees are expected to exceed $1.1 billion over six years.

Relations between Puerto Rico and general obligation creditors have been frosty for much of the past two years. Fiscal plans published by the government and oversight board last year left little to repay its $13 billion of general obligation bonds. Aurelius is suing the board, contending its appointment was unconstitutional. The committee Aurelius is part of also has argued that general obligation bondholders should have first claim on tax revenues before holders of about $18 billion of bonds issued by the island's sales-tax authority known as Cofina.

“We have participated in constructive negotiation with the [Oversight] Board, and we hope that will continue,” a spokesman for the committee that includes Aurelius said. “We’ve submitted proposals that would have achieved a consensual outcome, and we would welcome the Board’s engagement and commitment to a solution.”

The oversight board reached an agreement in early August with a committee of Cofina bondholders granting them claim on a portion of sales-tax revenues and average recoveries of 74.5% of face value.

The recent deals with other creditor groups opened the door to a possible detente for general obligation bondholders, the people familiar with the new group said. Fir Tree and the other funds in the group already had been negotiating a deal with Puerto Rico to restructure bonds they own issued by its Public Buildings Authority and saw an opening to do the same for their general obligation bond investments.

A key negotiating point will be how the oversight board and Puerto Rico calculate revenue in future fiscal plans, the people familiar said. The larger the revenue assumptions, the more cash will be left over for debt servicing, they said.

The Wall Street Journal

By Matt Wirz

Aug. 29, 2018

For Goldman, a New Tax Break Makes Helping the Poor More Lucrative.

- **Firm creates opportunity funds as rivals eye U.S. incentives**
- **Banks and investors may defer $7.7 billion in taxes by 2022**

For almost two decades, a Goldman Sachs Group Inc. unit has tended billions of dollars in bets off Wall Street, funding projects in struggling neighborhoods around New York and beyond.

Now, thanks to a new U.S. tax break, its deals could become a lot more lucrative.

The tax overhaul Republicans pushed through in December includes a lesser-known passage creating a new type of investment vehicle — “opportunity funds” — that can win steep tax breaks for supporting projects in low-income communities. Few if any banks are as well positioned to capitalize on the incentives as Goldman Sachs, which began creating funds days after the law passed. It’s now weighing whether to set up more to let clients invest, too.

“We have a big leg up,” said Margaret Anadu, who heads the bank’s Urban Investment Group. “This is investing that we’re already doing.”

Opportunity funds are both innovative and controversial. They have to focus their investments in roughly 8,700 low-income communities selected by state governors and other officials. Zones range from gritty urban neighborhoods to shrinking Rust Belt towns.

Proponents say the program will provide a much-needed jolt to areas typically avoided by developers. But detractors have warned the law is written too broadly, giving savvy investors a break on projects they might have pursued profitably anyway. There are also concerns the program may accelerate gentrification, driving out low-income residents.

Goldman Sachs, for its part, is hardly shy: It's racing to make use of the new tax break and potentially popularize it on Wall Street. Anadu said the firm wants its investments to have a positive impact.

Days after the legislation passed, Goldman Sachs created an opportunity fund to invest in a project that will add affordable housing to New York's Jamaica neighborhood. In April, it did the same for money it put toward a development in East Orange, New Jersey, that will expand a grocery store in an area short on healthy food. In June and August it did deals in Brooklyn and Baltimore.

The funds are especially attractive for firms looking for ways to redeploy capital gains — of which Goldman Sachs and its clients have plenty. Investors start by plowing those proceeds into opportunity funds, deferring taxes until 2026. And, if the funds buy and hold qualifying assets for at least five years, investors can reduce the tax they pay on appreciation, or eventually eliminate it altogether.

Hit to Tax Collections

Deferrals will let opportunity zone investors cut tax payments immediately

The deferrals are expected to cost the government $7.7 billion by 2022, an impact that will eventually wane as investors resume payments, according to the Joint Committee on Taxation. There's no limit on the ultimate benefit for investors, whose profits depend on the gains generated by their projects and how long they hold onto the assets.

Researchers and non-profits have been raising red flags since the law went into effect. A study from the Urban Institute estimated almost 4 percent of the areas picked were already attracting large numbers of wealthier, college-educated transplants. That may seem small, but investors aren't required to spread their projects evenly, potentially concentrating their efforts in areas already destined to gentrify.

Goldman's Urban Investment Group started in 2001 and pursues a strategy known as social impact investing, looking to generate profits while contributing to communities. The unit is small enough that the bank doesn't break out its results in financial reports. But over the years, its name has appeared in numerous media reports describing its piece of local revitalization projects, many supported by other tax credits.

The head of that group, Dina Powell, left the bank to join the administration last year, as did Goldman Sachs President Gary Cohn, who became Trump's top chief economic adviser. Neither was directly involved in the crafting of the opportunity zones plan, according to two congressional aides who worked on the legislation.

Publicly, the idea was long championed by the Economic Innovation Group, a non-profit founded by Sean Parker, the Napster creator and first president of Facebook Inc. The think tank proposed opportunity zones three years ago in a white paper written by Jared Bernstein, a member of the Obama administration's economic team, and Kevin Hassett, the head of Trump's Council of Economic Advisers. A roster of lawmakers from both parties, including Senators Tim Scott of South Carolina and Cory Booker of New Jersey, sponsored earlier bills to create the zones before it was tucked into the broader tax overhaul.

Mnuchin's Pitch

At first glance, the legislation looks promising for Goldman.

Anadu’s team recently reexamined the roughly $7 billion the firm has deployed since its inception. Executives found that more than $5 billion of that money went to projects in areas eligible to become opportunity zones.

For now, the firm’s ambitions are being tempered by uncertainties. The Internal Revenue Service and Treasury have yet to issue rules that will affect how investors qualify for the benefits, leaving accountants and lawyers to pore over the legislation for clues.

Late last week, Treasury Secretary Steven Mnuchin, who started his career at Goldman Sachs, talked up the tax break to a group of wealthy investors in the Hamptons. In an interview afterward, he repeated a remark by a billionaire in the room: “It’s not about the zone, it’s about the opportunity.”

Mnuchin was emphasizing that there’s an opportunity to move businesses into the zones, creating jobs and spurring the economy, a Treasury spokesman said Wednesday. While most of the people in the room had been looking at the tax break as an incentive to develop real estate, the initiative is really a chance to expand business, he said.

Mnuchin predicted guidance for investors should be available “shortly.”

The wait is a big reason why Goldman Sachs has yet to decide whether to offer opportunity funds to clients, Anadu said. In particular, there’s ambiguity over what happens if multiple investments are wrapped into a fund. So while awaiting guidance, the firm is placing each investment into a single fund.

To be sure, some of the nation’s largest banks also have programs to help struggling communities and no doubt have expertise in vetting projects. JPMorgan Chase & Co., for example, has a community development arm that provides financing for a variety of projects. The firm has also set out to help cities such as Detroit, where the bank has promised to invest $150 million by 2019. A spokesman declined to comment on its plans for opportunity funds.

Other investors are already pushing ahead. Among them, RXR Realty, which focuses on property in the New York area, is seeking to raise $500 million for an opportunity fund, a person familiar with the matter said earlier this month. Steve Case’s venture capital firm Revolution LLC recently hired two real estate executives to begin making direct investments with a focus on the zones.

PNC Financial Services Group Inc. is planning opportunity funds. And a number of banks in addition to Goldman Sachs, such as Wells Fargo & Co., have participated in calls held by the Economic Innovation Group to keep abreast of the law’s implementation, according to a person familiar with the talks.

Seeking Limits

This month, the National Housing Conference, an advocate for affordable housing, sent a letter to the Treasury pointing out what the non-partisan group sees as flaws in the legislation. The group encouraged policymakers to implement guardrails and gather data to prevent abuse. It said it would be “tragic” if higher-priced rentals replaced more affordable units because of the incentives.

Goldman Sachs says it shares some concerns raised by critics. It’s worrisome, Anadu said, that the law doesn’t require investors to align their goals with community priorities. The bank plans to do so, and voluntarily measure the outcomes of its projects, she said.

“Being thoughtful about the impact of our investments is not just positive for the communities themselves,” Anadu said, “but also meaningfully mitigates risk.”

Bloomberg Wealth

By Noah Buhayar

August 29, 2018

— With assistance by Sridhar Natarajan, Laura Davison, Ivan Levingston, Michelle Davis, Amanda L Gordon, and Saleha Mohsin

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Opportunity Zones: An Updated Overview and Look at What's Ahead

SUMMARY
Created as part of the 2017 tax reform deal, the Opportunity Zones Program is designed to drive long-term capital to distressed communities by providing tax benefits on investments in Opportunity Funds, or “O Funds”. This brief offers an updated, high-level overview of the program as of August 2018.

DESCRIPTION
The Opportunity Zones concept was originally introduced in the Investing inOpportunity Act (IIOA), and enacted in 2017 as part of the Tax Cuts and Jobs Act. At its essence, it offers special treatment on capital gains in a way that’s designed to drive long-term investment in a diverse range of low-income communities throughout the nation. Various tax incentives are provided to encourage investment through privately- or publicly-managed (or in some cases joint public-private) Opportunity Funds.

Continue reading.

Enterprise Community Loan Fund, Inc.

By Rachel Reilly

Incentives for Qualified Opportunity Zone Investments: Check Your Locations

In Short

The Background: The Tax Cuts and Jobs Act created a new tax incentive program to encourage investments in qualified opportunity zones (“OZs”). Taxpayers seeking to redeploy gains from other sources can obtain favorable tax deferral and tax reduction if the gains are reinvested in OZs.

The Development: All of the OZs have been designated, and both developers and investors should determine if their projects are in those zones, as the tax benefits can be substantial.

Looking Ahead: Taxpayers may take advantage of this new program for property disposed of through 2026.

The Tax Cuts and Jobs Act created a new tax incentive program to encourage investors to reinvest gains from other sources in qualified OZs. OZs are low-income communities identified by specific census tracts that were selected by the governor of each state and approved by the Secretary of the U.S. Treasury. There are more than 8,000 OZs in urban and rural areas. Investors, developers, investment funds, and other businesses should review the locations of OZs to determine if they encompass existing or future investment plans.

Gains from dispositions of property may receive preferential tax treatment if a taxpayer reinvests those gains in an OZ. Reinvestment must be made through a qualified opportunity fund ("OZ Fund") within 180 days of the property's disposition. A taxpayer may elect this treatment of gains for any property disposition occurring through December 31, 2026. Gains may be short- or long-term from dispositions of any type of property. Because deferred gains are reinvested, a taxpayer's initial basis in an OZ Fund investment would be zero. A taxpayer's potential tax benefits from an investment are:

- Deferral of tax on reinvested gains until earlier of disposition of the investment or December 31, 2026;
- If held five years, a step-up in basis of 10 percent of the reinvested gain, thereby reducing the tax eventually payable on the deferred gain;
- If held seven years, an additional step-up in basis of 5 percent; and
- If held 10 years, an election to have the investment's basis be equal to its fair market value, thereby potentially eliminating recognition of gain on the investment.

The value of the tax benefits may be significant. For a corporate taxpayer subject to a 21 percent marginal rate, net present value of the tax deferral for an investment made in 2018 and disposed in 2026 could be 9 percent to 11.5 percent of the deferred gain assuming a range of discount rates of 6 percent to 10 percent. For an individual whose gain is subject to a 37 percent marginal rate (e.g., on short-term capital gains), net present value could be 16 percent to 28 percent of the deferred gain assuming the same discount rates. Naturally, actual benefits would vary from these simple estimates.

If a taxpayer holds a OZ Fund investment through 2026, the taxpayer must recognize the deferred gains (after reduction for any basis step-ups) at the end of 2026 equal to the lesser of (i) the remaining deferred gain or (ii) the fair market value of the investment. Therefore, if the OZ Fund continues after 2026, the taxpayer would need sufficient funds from sources outside of the OZ Fund to pay the taxes from this recognition event.

An OZ Fund must maintain at least 90 percent of its assets in qualified OZ property. Qualified property includes specific types of real estate and other tangible property, as well as equity interests in qualified businesses in the OZ. Specific types of "sin" properties and businesses are excluded such as golf courses, country clubs, massage parlors, hot tub facilities, suntan facilities, racetracks, gambling facilities, and liquor stores. There are a number of other technical rules that apply. Failure to comply with all requirements would subject the OZ Fund to annual penalties and cause investors to lose tax benefits.

To foster new investments, qualified property must be acquired after 2017 and must either be substantially improved or used for the first time by the OZ Fund or its subsidiary. An OZ Fund's property may also qualify under other programs (such as the tax credit programs for low income housing, new markets, and historic rehabilitations) that may enhance the investment potential. An OZ Fund may receive funds that are not reinvested gains (and do not qualify for the new program's benefits), in which case the sources of capital need to be separately tracked.

Investors and business owners should consider the potential benefits of the new program for any OZ investment. Each investment should be reviewed to determine if the new program is consistent with the investment's business plan and the investors' goals. That evaluation should include a careful analysis of whether the investment qualifies under the new program and is structured to maintain compliance with the program's conditions.

But all analyses begin with a simple question of whether or not the business is located in a qualified OZ. If so, the possible tax benefits should be evaluated.

Further guidance from the IRS is expected on this program.

Two Key Takeaways

1. Evaluate all investments to determine if they are located in OZs.
2. Any project or business in an OZ that anticipates obtaining capital from taxpayers (instead of tax-exempt investors) should determine if the investment would benefit from qualifying under the program.

Jones Day

August 31, 2018
