Bond Case Briefs

Municipal Finance Law Since 1971

SCHOOLS - FLORIDA

Fernandez v. School Board of Miami-Dade County, Florida

United States Court of Appeals, Eleventh Circuit - August 10, 2018 - F.3d - 2018 WL 3801616

Public school administrators, who served as principal and assistant principal, brought action against public school board, alleging that they were retaliated against for exercising their First Amendment rights to free speech and association.

The District Court granted the board's motion for summary judgment. Administrators appealed.

The Court of Appeals held that administrators spoke pursuant to their official duties when they advocated for their school to convert into charter school.

Public school administrators spoke pursuant to their official duties, as principal and assistant principal of public school, when they advocated for their school to convert into charter school, and thus their speech was not protected by First Amendment; administrators' job duties as listed in their job descriptions included "developing and implementing" educational plans and "providing effective education leadership," principals were expressly included in school officials who were authorized to apply for charter conversion under Florida statute, administrators held numerous staff meetings about charter conversion, and principal described his conversion efforts in memoranda as "an official request" and part of his "official duties."

IMMUNITY - ILLINOIS

Monson v. City of Danville

Supreme Court of Illinois - August 2, 2018 - N.E.3d - 2018 IL 122486 - 2018 WL 3650216

Pedestrian filed a complaint against city after she tripped and fell on city sidewalk.

The Circuit Court granted city summary judgment and pedestrian appealed. The Appellate Court affirmed. Pedestrian appealed.

The Supreme Court of Illinois held that:

- Provision of the Local Governmental and Governmental Employees Tort Immunity Act that set forth a general duty on the part of a local public entity to maintain its property in a reasonably safe condition under certain circumstances did not operate to override or supersede the discretionary immunities afforded city under other provisions of the Act;
- No evidence existed to demonstrate that city's decision not to repair section of sidewalk on which pedestrian tripped and fell constituted an exercise of discretion, as required to entitle the city to discretionary immunity; but
- A genuine issue of material fact existed as to whether alleged sidewalk defect was so minimal that no danger to pedestrians could be seen, precluding summary judgment.

EMINENT DOMAIN - NEVADA

Clark County v. HQ Metro, LLC

Supreme Court of Nevada - August 2, 2018 - P.3d - 2018 WL 3655607 - 134 Nev. Adv. Op. 56

Electric utility filed eminent domain complaint to obtain permanent easement for installation of electrical transmission lines on landowner's property that had been leased to county but then later sold to county after entry of order granting utility immediate occupancy but before utility physically entered property to begin construction.

The District Court ordered apportionment of just compensation proceeds for landowner. County appealed.

The Supreme Court of Nevada held that right to compensation vested upon entry of order of immediate occupancy, and thus landowner was entitled to compensation.

Order granting immediate occupancy to electric utility as condemnor constituted a taking of landowner's property rights, and the right to compensation vested at that time, and therefore landowner, and not county as landowner's former lessee that purchased property before utility physically entered property to begin construction, was entitled to compensation for the permanent easement for electrical transmission lines, where the order authorized utility to permanently occupy the easement area and restrained and enjoined landowner from interfering with that occupancy and performance of the work required for the easement.

INSURANCE - NORTH CAROLINA

Hunter v. Town of Mocksville, North Carolina

United States Court of Appeals, Fourth Circuit - July 26, 2018 - F.3d - 2018 WL 3579678

Three town police officers brought action against town and town officials, alleging that they were terminated in violation of their free speech rights in violation of federal and North Carolina Constitutions, and that they were terminated against public policy in violation of North Carolina law.

After summary judgment on some First Amendment claims was granted and after jury found for officers on remaining claims, the United States District Court granted in part and denied in part officers' motion to reconsider court's decision to award front pay in lieu of reinstatement, and found that town's liability insurance limited officers' aggregate recovery to $1 million.

The Court of Appeals held that:

- Meaning of term "interrelated" in town's employment liability insurance policy was ambiguous;
- Town manager was final policymaker of town with respect to officers' terminations;
- Town police chief was not final policymaker of town with respect to officers' terminations;
- District court did not abuse its discretion in awarding front pay in lieu of reinstatement; and
- District court did not abuse its discretion in reducing front pay award.

Under North Carolina law, meaning of term "interrelated" in town's employment liability insurance policy, under which per-claim recovery limit of $1 million applied to claims based on "same or interrelated employment wrongful acts," was ambiguous, and thus term would be construed in favor of three town police officers to allow them to each recover up to $1 million from town in their wrongful discharge action; policy did not define “interrelated,” and courts and other insurance policies did not define “interrelated” in a uniform matter.

EMINENT DOMAIN - SOUTH CAROLINA

South Carolina Department of Transportation v. Powell

Supreme Court of South Carolina - August 8, 2018 - S.E.2d - 2018 WL 3748876

The Department of Transportation (DOT) filed a condemnation notice.

The Circuit Court granted partial summary judgment and determined that landowner was not entitled to compensation for any diminution in value of his remaining property due to the rerouting of a major highway which previously was easily accessible from his property. Landowner appealed. The Court of Appeals affirmed. Landowner appealed.

The Supreme Court of South Carolina held that a genuine issue of material fact existed as to the amount of compensation landowner was entitled to for any diminution in the value of his remaining property as a result on the State’s taking of property through condemnation action.

A genuine issue of material fact existed as to the amount of compensation landowner was entitled to for any diminution in the value of his remaining property as a result of the State’s taking of property through condemnation action, precluding summary judgment in action to determine just compensation for landowner following a taking to reroute major highway, which eliminated landowner’s easy access to highway.

CONTRACTS - WASHINGTON

Specialty Asphalt & Construction, LLC v. Lincoln County

Supreme Court of Washington - July 26, 2018 - 421 P.3d 925

Licensed contractor that performed paving and maintenance work and its female owner brought action against county, asserting claims for gender discrimination, negligent misrepresentation, and breach of contract arising out of county’s bidding and contracting process for paving project that was awarded to contractor.

The Superior Court granted partial summary judgment in favor of county on discrimination and negligent misrepresentation claims and dismissed breach of contract claim as moot. Contractor and owner appealed. The Court of Appeals affirmed. Contractor and owner petitioned for review, which the Supreme Court granted.

The Supreme Court of Washington held that:

- Reasonable but competing inferences of both discrimination and nondiscrimination supported gender discrimination claim, as required to defeat summary judgment motion;
- Contractor showed that it suffered reliance damages as result of county’s purported clerical error in project’s bid proposal that stated no bond was required, as required for contractor to prevail on negligent misrepresentation claim;
- County and contractor formed special relationship, and thus, public duty doctrine did not bar

- contractor’s negligent misrepresentation claim; and
- Injunctive relief was contractor’s exclusive remedy for its breach of contract claim.

ZONING & LAND USE - WASHINGTON

Maytown Sand and Gravel, LLC v. Thurston County

Supreme Court of Washington - August 9, 2018 - P.3d - 2018 WL 3765517

Gravel company and port brought action against county for tortious interference, negligent misrepresentation, and a violation of substantive due process, based on county’s handling of company’s special use permit to mine gravel.

After county’s motions for summary judgment were denied and after a jury trial, the Superior Court entered judgment in favor of gravel company and port. County appealed and gravel company and port cross-appealed. The Court of Appeals affirmed and remanded for a trial on attorney fees. County’s petition for review was granted.

The Supreme Court of Washington held that:

- County’s allegedly tortious actions were not “land use decisions” subject to administrative exhaustion requirement;
- Gravel company had constitutionally protected property right to mine;
- County’s actions shocked the conscience, as required to support § 1983 due process action;
- As a matter of first impression, gravel company and port were not entitled to prelitigation attorney fees as damages;
- Attorney fees are not recoverable as damages under the tort of wrongful use of civil proceedings, abrogating *Davis v. Cox*, 183 Wash.2d 269, 351 P.3d 862;
- Bad faith exception to the American rule does not apply to prelitigation attorney fees; and
- Reverse-Erie doctrine does not bar application of state appellate rule to § 1983 and § 1988 requests for appellate attorney fees.

Some States Sitting on Piles of Cash, and Cities Want a Cut.

States like Ohio are placing their surpluses in rainy-day funds, but cities that have suffered because of cuts since the recession say it is time to loosen up.

LORAIN, Ohio — Welcome to Lorain, where the mayor, Chase Ritenauer, would like to show you around.

The police car over there? It broke down during a pursuit not long ago, leaving the officer to continue the chase on foot. The new high school? It is part of a school system so badly underfunded that it is now overseen by the state. Traffic signals are kept operating with parts recycled from discarded traffic lights.

This city of 63,000 is in such dire financial straits that it has ceded part of an administrative building to raccoons; repeatedly calling the exterminator was too costly.

Continue reading.

THE NEW YORK TIMES

By Timothy Williams

Aug. 17, 2018

Environmental Impact Bonds Can Help Make Coastal Communities Safer, Sooner. Here's How.

Last year's hurricane season was the most destructive disaster season in U.S. history, causing $265 billion in damage and forcing more than one million Americans from their homes.

As climate change causes weather to get more extreme, coastal communities across the country are struggling to find cost-effective solutions to enhance their resiliency to storms and develop new ways to finance that work.

How can we help make coastal communities more resilient more quickly? How can we engage the private sector in coastal resiliency efforts and generate a financial return for investors?

Together with my EDF colleagues and partners, I set out to explore how one innovative financing mechanism – environmental impact bonds – might help.

Continue reading.

The Environmental Defense Fund

By Shannon Cunniff

August 14, 2018

Louisiana Beefs Up Statutory Lien in Rewrite of Local Bond Financing Law.

In a revamp of Louisiana's public financing laws, state legislators strengthened the statutory lien on local governmental bonds, a move prompted by high-profile municipal bankruptcies such as Detroit's.

Clarifying the lien wasn't the Legislature's primary goal in revising the state's bond laws, which was the result of a comprehensive effort to modernize and consolidate financing regulations, according to those who spearheaded it.

"The reorganization and new laws put into place will provide additional confidence to investors," said Sen. Eric LaFleur, D-Ville Platte. "It may mean savings to issuers in the form of lower rates."

LaFleur sponsored Senate Bill 426 – the Consolidated Local Government Public Finance Act – which lawmakers approved unanimously earlier this year and was signed into law by Gov. John Bel Edwards.

The new law was the result of a two-year project led by LaFleur, who consulted with a group of about 20 volunteer public finance officials across the state – bond attorneys, financial advisors and underwriters – who agreed to participate in a process LaFleur said was necessary to eliminate old rules and modernize the bond statute.

Among the many changes, the act clarifies that the statutory lien on bonds issued by local governments “shall be secured debt entitled to the highest possible protection and priority afforded by the bankruptcy laws of the United States and this state.”

The old law said nothing about protection of the lien in bankruptcy.

“It wasn’t clear how strong the lien was on the revenue stream that secured the debt,” said LaFleur, a bond attorney and partner at Mahtook & LaFleur in Lafayette. “So we went in and clarified that.”

LaFleur, 54, is also chairman of the Senate Finance Committee and a member of the State Bond Commission, which by law approves bonds issued by the state and local agencies. LaFleur says he recuses himself from voting when his clients appear before the commission.

Many of Louisiana’s local municipal finance laws had been on the books since the early 1980s and needed to be updated or rewritten, according to LaFleur.

Some regulations were placed into various statutes in a piecemeal fashion, he said, while others required more clarification to provide uniformity in nomenclature and some needed to be deleted.

SB 426 became Act 569 in state law. It clarifies things such as when issuers can use bond resolutions or ordinances, deletes the requirement that issuers register sales tax bonds with the secretary of state, and provides for less ambiguity, LaFleur said.

The law also clarifies that school districts can issue all kinds of revenue bonds. The previous law was more narrowly interpreted.

The new law also clarifies the definitions of general obligation bonds, limited tax bonds, sales tax revenue bonds, and more.

“Deals are cleaner, and [easier] to understand,” LaFleur said.

This is not the first time LaFleur has tackled Louisiana municipal bond issues.

In 2014, he got SB 384 passed requiring that municipal securities issuers in Louisiana comply with the Securities and Exchange Commission’s Rule 15c2-12, as well as maintain a list of securities, continuing disclosure agreements, and current ratings.

SB 384 also requires that auditors make sure issuers are fulfilling recordkeeping duties, and that they review a sample of filings on the Municipal Securities Rulemaking Board’s EMMA filing system to determine if they comply with disclosure agreements.

If issuers don’t comply with the state’s disclosure requirements, they are “flagged” but not penalized.

The disclosure law is working, LaFleur said in an interview Tuesday. “Now [issuers] are regularly updating disclosures, at least that’s what I’m finding,” he said.

This year’s new bond law applies to traditional local governmental bonds.

It doesn't apply to New Orleans because it operates under a charter, and it doesn't apply to conduit issuers, 501(c)(3) tax-exempt nonprofit organizations, or exempt activity and multifamily bonds.

The new law says bondholders "have a statutory lien on and a security interest in such taxes, income, revenues, net revenues, monies, payments, receipts, agreements, contract rights, funds, or accounts as are pledged to the payment of such bonds," and any pledge or grant of a lien or security interest shall be valid, binding, and perfected from the time when the pledge or grant of lien or security interest is made.

The lien will have first priority and will be binding as against all parties having claims of any kind in "tort, contract, bankruptcy, or otherwise against the governmental entity," the law says.

Extreme diligence is warranted when investors consider whether a statutory lien exists, Municipal Market Analytics Managing Director Lisa Washburn wrote Monday in a comment about the financial struggles of Puerto Rico.

"There should be no optionality or action required for the lien to attach within the statute that is the basis for determining the existence of a statutory lien," Washburn wrote in MMA's Weekly Outlook. "If the language is unclear or leaves doubts, consultation with an experienced attorney may be needed."

LaFleur said Louisiana's original law on statutory liens was not clear or uniform, and that the law was rewritten in part because of Detroit's Chapter 9 bankruptcy case.

Detroit exited bankruptcy in December 2014, shedding $7 billion of its $18 billion in debts, which included losses for holders of the city's unlimited tax general obligation bonds.

Presiding U.S. Bankruptcy Judge Steven Rhodes questioned whether Michigan's law created a statutory lien on Detroit's ad valorem taxes because the statute didn't include the word "lien," according to a 2015 report by Breckinridge Capital Advisors on "The Changing Status of Statutory Liens."

Detroit defaulted on all its bond debt, highlighting the need for there to be precise statutory language regarding liens in order to benefit bondholders, the Breckinridge report said.

In Louisiana, the state's statutory lien law is now "more explicit than it was before" Act 569 was passed, said David M. Wolf, a bond attorney who worked with LaFleur on changes to the local public finance law.

Wolf said the old state law language on the lien was enacted in the early 1980s.

"I thought it would be better to write something that was written specifically with a bankruptcy case and a bankruptcy judge in mind," said Wolf, who is special counsel for Adams and Reese LLP based in the firm's New Orleans office. "There were uncertainties about the nature of bondholders' rights," he said.

"We were in a position of redrafting the law and one thing we wanted to do is think about changes in case law and practices," he said. "We also made sure that same kind of language would apply to all municipal bonds."

In Louisiana, cities and parishes can file for bankruptcy with the approval of the State Bond Commission and the governor.

Wolf said he was not aware of any municipal bankruptcies in Louisiana since he began practicing 36 years ago, but before that there may have been Depression-era Chapter 9 cases and some water district defaults on USDA loans.

The precise wording in Act 569 came about because of difficulties lawyers faced in places such as Michigan, he said.

“You never know when a bankruptcy is going to come about,” Wolf said.

“Because in Louisiana almost all debt is secured by a specific stream of revenue, we now have a uniform place to go once it’s decided what the source of security will be,” he said. “You come to this statute.”

One new feature of the financing law, he said, is the authorization that a limited revenue bond can be secured by parcel fees or service charges. Fire departments, for example, can leverage a fee charged for fire services.

“We just tried to make [the new law] consistent with the way the markets and regulations have evolved the last 30-40 years,” he said. “We consolidated, modernized and streamlined. I hope it’s an approach other states adopt.”

LaFleur said the state has been proactive about updating bond laws, and he expects some tweaks to Act 569 to be made during next year’s legislative session.

The new public financing act will make it easier for bondholders to understand Louisiana’s laws, said LaFleur, who believes the State Bond Commission will consider approving local bond issues under the law as early as the panel’s meeting on Thursday.

“I’m hoping someone out there will say Louisiana is trying to be progressive,” he said.

The Bond Buyer

By Shelly Sigo

Published August 15 2018

Chicago Has Another Bond for You.

The city may try to paper over its pension woes with new debt.

If Chicago politicians applied as much cunning to solving their fiscal problems as financially engineering their way out of them, the city would be a triple-A credit.

Last year we wrote about Chicago’s scheme to reduce its borrowing costs by floating low-interes--rate bonds securitized by sales tax revenue. Investors snapped up the bonds, which fetched a triple-A rating from Fitch and yields as low as 2.22%. By comparison, Chicago’s junk-rated general obligation bonds landed above a 6% yield.

But junk by any other name is still junk, and Chicago’s finances have continued to erode even as property taxes soar to pay for pensions that remain woefully underfunded. Last year the city smacked homeowners with a 10% increase and this year they will have to pay 2.75% more. Mayor

Rahm Emanuel is preparing to run for re-election next year, and he'd rather not raise taxes again.

So he's now considering a plan by Michael Sacks, CEO of asset management firm GCM Grosvenor, to issue $10 billion in bonds to backfill the city's pension funds. The details will have to be worked out, but the idea is to transfer the investment risk from workers and retirees to creditors while exploiting interest-rate arbitrage.

Chicago would presumably issue the bonds at a lower rate than the 7% expected return on its pension fund assets. Over time this would supposedly add to pension fund assets. In the short term, dumping $10 billion into the pension funds would also reduce the city's annual pension payments since liabilities would appear to be smaller.

Caveat, creditors. The cities of Detroit and Stockton and San Bernardino in California defaulted on their pension obligation bonds in Chapter 9 bankruptcy. Stockton's bond insurers got 50 cents on the dollar. Puerto Rico in 2008 issued $3 billion in pension bonds. But Congress in 2016 passed legislation allowing the commonwealth to wriggle out of those obligations. Hedge funds have sued the federal government and are demanding that U.S. taxpayers bail them out.

Like those other pension bonds, Chicago's version would also have to be financed every year out of city revenues. A chunk of sales tax revenue is already earmarked for other bonds. If revenues shrink in the next recession, pension bondholders would compete with city services for payment priority. Who do you think wins if the city has to start laying off police officers to pay bondholders who have been getting 5% or 6% a year?

Investors might be willing to take these political risks if they can snatch a hefty enough interest-rate premium. And if they haven't learned from the experience of Detroit and Puerto Rico, they will deserve whatever political haircut they eventually get.

THE WALL STREET JOURNAL

By The Editorial Board

Aug. 17, 2018

MSRB Seeks Input on Draft FAQs on Use of Social Media in Advertising.

Washington, DC – The Municipal Securities Rulemaking Board (MSRB) today sought comment from regulated entities and other stakeholders about draft answers to frequently asked questions (FAQs) addressing the use of social media in advertising by municipal advisors and municipal securities dealers and their associated persons.

"As social media becomes a more common communication tool, developing effective compliance policies and procedures for digital interactions is increasingly important for municipal market participants," said MSRB President and CEO Lynnette Kelly. "The MSRB recognizes that municipal advisors, in particular, need guidance as they prepare to comply with newly established advertising regulations."

New MSRB Rule G-40, on advertising by municipal advisors – together with amendments to MSRB Rule G-21, on advertising by municipal securities dealers – becomes effective on February 7, 2019. The MSRB has committed to providing guidance in advance of the effective date to assist regulated entities as they develop their compliance policies and procedures. In addition to today's draft guidance on social media, the MSRB has sought feedback on draft FAQs on the use of municipal advisory client lists and case studies under Rule G-40. Next month, the MSRB plans to seek input on draft guidance related to Rule G-40's content standards.

The MSRB developed today's draft FAQs to enhance market participants' understanding of permissible and impermissible uses of social media in the context of MSRB advertising regulations and certain other MSRB rules. The draft guidance was crafted with the purpose of maintaining consistency with the guidance of other regulators under comparable advertising regulations.

Read the request for comment. Comments should be submitted no later than September 14, 2018.

Date: August 14, 2018

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

MSRB Requests Comment on Draft FAQs Related to the Use of Social Media under Advertising Rules.

The MSRB is seeking public comment on a draft set of frequently asked questions (FAQs) related to the use of social media in advertising by municipal advisors and municipal securities dealers applicable under Rule G-21 and Rule G-40.

The draft FAQs can be viewed here.

In May, the SEC approved the MSRB's proposed Rule G-40, on advertising by municipal advisors, and amendments to MSRB Rule G-21, on advertising by municipal securities, despite opposition from almost all broker-dealer groups. Both new Rule G-40 and amendments to G-21 are set to be effective on February 7, 2019.

In July, the BDA submitted a comment letter to the MSRB concerning a draft set of frequently asked questions (FAQs) related to the use of municipal advisory client lists and case studies under Rule G-40. The final comment letter can be viewed here.

Bond Dealers of America

August 14, 2018

BDA Continues to Be Leading Voice in Opposition to Michigan Senate Bill Restricting Negotiating Underwriting.

WASHINGTON – Municipal bond market players in Michigan are at odds over a bill pending in the state Senate would require localities to sell municipal bond issues over $500,000 on a competitive or public basis to the underwriter offering the lowest interest cost. The municipalities also would have to publish a notice of sale at least seven days before the sale under amendments to the Revised

Municipal Finance Act (Senate Bill No. 1054), which was drafted by John Axe, senior counsel at Clark Hill in Detroit. The measure was introduced on June 7 by Senate Finance Committee Chair Jack Brandenburg, a Republican from the eighth district in Harrison Township.

Axe, who said his clients include the Detroit Legal News, said the bill is an attempt to go back almost 20 years ago when the Municipal Finance Act required local governments to sell bonds competitively with public notices of the sales. In 2001, he said, the Michigan Legislature revised the Municipal Finance Act to allow municipalities to sell bonds on a negotiated or a competitive basis. At the time, state lawmakers promised to revise the new law if it didn't work, Axe said. During the last four years, fewer than 10% to 15% of bond issues have been sold on a competitive basis, which saves issuers money, Axe said, adding, "We even require competitive bidding for a garbage truck." "It's changed dramatically," said Axe. "But there's no way of tracking it because there's no public sale notice requirement." But Patrick McGow, a principal at Miller Canfield and head of its public finance group, said the earlier bill, which dated back to the 1940s, only required certain bond issues to be sold competitively and contained many exceptions. The Revised Municipal Finance Law was passed in 2001 to allow local governments to decide how to sell their bonds, he said. The pending bill would amend that law. "From my perspective, we oppose [the bill] because the legislation would restrict the ability of local governments and school districts to select the best method to sell bonds at the lowest rate and cost to the taxpayer," he said. "There are many issuers, credits, financial structures, and programs where a competitive sale is not the best choice." McGow also noted the bill would treat state and local issuers differently.

Mike Nicholas, chief executive officer of the Bond Dealers of America, warned the bill "would create unintended consequences by increasing debt cost for municipalities and schools, reducing timely access to the capital markets, and isolating municipalities from much of the municipal securities market and advisors in that market." Nicholas stressed that BDA is not taking a position in the long-standing debate over whether competitive or negotiated underwritings are more cost-effective for municipal issuers. "However, what is beyond debate is that categorically eliminating the ability of Michigan municipalities to access the marketplace through negotiated underwritings will limit their ability to respond to market conditions, create unnecessary hurdles to market access, and diminish the cost-effectiveness of their bond issuances," Nicholas said. "The end result will be increased costs to the taxpayer, especially for those constituents of issuers whose bond offerings are more complex, whose credit quality is less than ideal, or who sell public debt in distressed or volatile market environments."

"We call on the Senate to reject Senate Bill No. 1054 and allow municipalities to be able to continue to issue debt in the manner that works best for them, and not to force a one-size-fits-all methodology that will cost taxpayers more of their hard-earned money," he said. Some legislative observers in Michigan said the bill doesn't have much of a chance of passage because the Legislature is currently out on summer recess and there are not many legislative days left in the session.

"At this point I don't think it has much legs," said one source who did not want to be identified. But Axe said, "I think we've got a good chance of getting it passed." Brandenburg is term-limited and must leave the Michigan Senate at the end of the session. State senators are limited to two four-year terms, sources said. Brandenburg would like this bill to be part of his legacy, they said.

Bond Dealers of America

August 15, 2018

By Lynn Hume

[BDA Submits Comment Letter on CFTC's Proposed Amendments to the De Minimis Exception to the Swap Dealer Definition.]

Today, August 13, 2018, the BDA submitted a comment letter to the Commodities Futures Trading Commission (CFTC) in response to its request for comment on proposed amendments to the de minimis exception within the swap dealer definition. You can review a copy of the BDA's draft letter here.

BDA Comment Letter Summary-Primary Areas of Focus:

- The aggregate gross notional amount threshold for the de minimis exception should be set at $8 billion in swap dealing activity or an amount in excess of $8 billion
- An exception should exist for swaps entered into by insured depository institutions in connection with originating loans
- An exclusion should exist for swaps entered into to hedge financial risk
- Wholesale changes to the calculations of notional amounts should be subject to market comment and review
- The CFTC should clarify Risk Participation Agreements as "swaps" or to be excluded as "dealing activity"

Additional Documents:

You can read more of the proposed changes from the CFTC here.

Bond Dealers of America

August 13, 2018

SIFMA and ISDA Comments to De Minimis Exception to the Swap Dealer Definition.

Summary

SIFMA and ISDA provided comments to the CFTC on the Notice of Proposed Rulemaking regarding the De Minimis Exception to the Swap Dealer Definition published by the U.S. Commodity Futures Trading Commission. The Associations support the Proposal to set the aggregate gross notional amount threshold ("AGNA") at $8 billion in swap dealing activity. Maintaining the de minmis threshold is the right outcome to ensure that banks and dealers can continue meeting their clients' risk management needs. As we have stated in the past, decreasing the size of the de minimis threshold would lead to a reduction in the number of swap market participants willing to engage in swap dealing activity with commercial end-users for fear of going above a lower threshold and triggering the SD registration requirement.

See also:

De Minimis Exception to the Swap Dealer Definition

[Preston Hollow Capital Brings Private Debt to Municipal Market.]

- **Dallas firm has raised more than $1 billion from investors**
- **New Orleans convention center hotel would be biggest deal yet**

The agency that runs New Orleans' convention center may build a 1,200-room Omni Hotel attached to the exhibition hall, a project that local tourism officials say is needed to boost business in the Big Easy.

If the project is given the go ahead, the $516.5 million needed to finance it won't come from selling tax-exempt bonds to mutual-fund managers and individual investors in a public offering, as is typically done. It will come from a loan from Preston Hollow Capital, a little known company that's looking to shake up the $3.8 trillion state and local government bond market with a direct-lending model that's ballooned in corporate America.

Since its founding four years ago, Preston Hollow has extended $2 billion of loans. It has financed a hotel in a Dallas suburb, hospitals in California and New York, student housing in Pennsylvania, and roads, sewers and other infrastructure for economic redevelopment projects in the suburbs of New York City, Cleveland and Atlanta.

In New Orleans, it's pitching its biggest deal yet, a little more than month after closing an equity commitment of more than $225 million from investors, including funds managed by HarbourVest Partners, Stone Point Capital LLC and Pathway Capital Management, bringing its permanent equity capital to more than $1.3 billion.

Preston Hollow occupies a niche between banks that lend to municipalities with strong credit ratings — a market that exploded after the financial crisis — and individuals and mutual funds that buy traditional bonds. Preston Hollow lends over the long-term, as much as 40 years, to projects that banks won't finance because they're too risky, require more time to repay — or both. It stands to get an 8.2 percent interest rate on the New Orleans loan if it goes through, more than twice the yield on benchmark 30-year municipal bonds.

"There was this wide gap between the bank market and the capital markets marketplace for a committed buyer," said Ramiro Albarran, managing director at Preston Hollow.

Banks Retreat

Outside of the municipal market, lending by private equity funds and asset management firms to companies has ballooned to more than $600 billion as stiffer regulations led banks to pull back, according to researcher Preqin Ltd. The corporate-tax cut law has also made state and local government debt less lucrative to banks, leading them to cut their holdings during the first three months of the year for the first time since 2009, according to the Federal Reserve.

Loans are attractive to investors because they're immune from the price swings of publicly traded assets, said Albarran, while borrowers can cut out the fees for lawyers and credit rating companies associated with bond offerings.

"Often there's a lack of risk appetite from the borrower's standpoint to go through all the steps necessary for doing a capital markets transaction and hoping the buyer will be there at the end of the day," said Albarran.

Preston Hollow Capital was founded by Jim Thompson, who worked at Orix USA, a subsidiary of Japan's Orix Corp., for 22 years, including 10 years as chief executive officer. He invested $100 million of his own money in Preston Hollow Capital, named after the wealthy Dallas neighborhood where he lives.

Thompson, an avid pilot who owned a Czech-made military training jet and flew his Cessna Citation CJ3 to Europe, built Orix USA from a company that securitized mortgage-backed securities into a 1,400-employee firm with $5 billion in assets.

'Wasn't Ready'

Orix invested in energy, real estate, and municipal projects and acquired Mariner Investment Management and mergers adviser Houlihan Lokey.

"I wasn't ready to stop working," Thompson said in an email.

Thompson's departure from Orix wasn't amicable. Orix sued Thompson, accusing him of planning the new firm while still at there and poaching its employees. Thompson, who said his compensation included a five percent share of Orix's value, sued after the company denied the options existed and didn't pay him, according to the lawsuits. The cases were settled and terms are confidential.

Thompson brought along 10 of his Orix colleagues to his new firm. Now, Preston Hollow and its 32 employees focus on sourcing deals — "where public policy and private capital intersect — rather than purchasing companies," Thompson said in an email.

And while Preston Hollow started with a focus on financing infrastructure for economic development projects, it's diversified into higher education and healthcare investments.

In April, Preston Hollow closed a $125 million loan with El Centro Regional Medical Center in California's Imperial Valley near the Mexican border to bring the city-owned hospital into compliance with seismic safety standards and refinance existing debt. About a quarter of El Centro's residents live in poverty and suffer from high rates of diabetes and cancer.

Preston Hollow bought the hospital's tax-exempt bonds yielding 5 percent to 6.38 percent. "They gave us terms better than what we would have had seeking the markets," said hospital Chief Executive Officer Dr. Adolphe Edward.

The New Orleans hotel deal has attracted scrutiny from a non-partisan research group, which estimates the development team is seeking cash and subsidies with a present value of $330 million. These include tax rebates of 10 percent of room revenue, 4 percent of food and beverage revenue, and a property tax exemption until the debt is repaid in 40 years.

On August 9, New Orleans Mayor LaToya Cantrell, wrote a letter to the chair of the the Ernest N. Morial New Orleans Exhibition Hall Authority opposing the proposed deal and saying she had "grave concerns" about the size of the public subsidy, future implications of the project on tax revenue and the plan's scant details.

The mayor also said she was concerned about the interest rate on the tax-exempt bonds Preston Hollow would purchase. Thompson declined to comment.

Bloomberg Markets

By Martin Z Braun

August 17, 2018, 7:50 AM PDT

— With assistance by Alan Levin

[Louisiana Bans Bank of America, Citi from Bond Sale Over Gun Policies.]

- **Commission votes to exclude top U.S. underwriters from deal**
- **Bank policies seen 'infringement on the rights' of residents**

Louisiana is using the bond market to stick up for the Second Amendment.

The state's bond commission voted 7 to 6 Thursday to ban Bank of America Corp. and Citigroup Inc. from working on its upcoming debt sale because of the banks' "restrictive gun policies," the state treasury said in a statement. Bank of America and Citigroup are the two top-ranked underwriters of long-term municipal debt, according to data compiled by Bloomberg.

"I personally believe the policies of these banks are an infringement on the rights of Louisiana citizens," Treasurer John Schroder said in a statement. "As a veteran and former member of law enforcement, I take the Second Amendment very seriously."

The ban is the latest example of how corporate America has been drawn into the nation's polarizing debate over gun control. Earlier this year, Chicago Mayor Rahm Emanuel proposed using the city's business to push for stricter gun controls by limiting work with Wall Street firms that didn't cut ties with companies that sold firearms to people under the age of 21 or dealt in high-capacity magazines.

The decision by Louisiana comes after Bank of America in April said it would stop making new loans to companies that make military-style rifles for civilian use. At the time, the bank said at least 150 of its employees had been affected by gun violence over the years. Bill Halldin, a spokesman for Bank of America, declined to comment.

Citigroup was the first major banking institution to set restrictions on the firearm industry in March, when it announced plans to prohibit retailers that are customers of the bank from offering bump stocks or selling guns to people who haven't passed a background check or are younger than 21. The restrictions applied to companies that rely on the bank for store credit cards, lending and other services.

"Citi adopted this policy because we believe it is a positive and balanced step to promote gun safety without undermining free markets or Second Amendment rights," spokesman Scott Helfman said in an emailed statement. "It is disappointing that the taxpayers of Louisiana will be deprived from competitive bidding for necessary public works because the process has been politicized."

Second Amendment

During 90 minutes of deliberations during a state bond commission meeting on Thursday, Louisiana legislators discussed the merits of the ban. The state said it received solicitations from 19 banks interested in underwriting the $600 million sale of so-called Garvee bonds, which would finance interstate improvements and tunnel replacements.

The exclusion won't be a major hit to Bank of America or Citigroup, which together underwrote about $110 billion of municipal bonds last year, about 27 percent of those that were issued, according to data compiled by Bloomberg.

Louisiana state senator Jay Luneau voiced concern that the state would no longer get the best rate on the bond sale if it were to exclude the biggest underwriters. Luneau also asked the commission whether the state would also prohibit the bank awarded the bond deal from re-selling some of the debt to Bank of America and Citigroup on the secondary market.

“What I’m trying to point out is they could still be involved — even if we did this — in the secondary market,” said Luneau, a Democrat. “Some of our intent is to do business with who is best for the state of Louisiana from a financial perspective with these bonds because we’re talking about a lot of money here.”

Other state officials took Bank of America and Citigroup to task on Thursday over the gun policies, delivering a simple message: Stick to banking.

“Do you realize how important the second amendment is to the people of Louisiana?” Blake Miguez, a Republican member of Louisiana’s House of Representatives, asked Citigroup’s Brandee McHale, the company’s head of corporate citizenship.

Bloomberg Markets

By Amanda Albright and Jennifer Surane

August 17, 2018

[SEC Says Muni Bond Firm in Boca Raton Committed Fraud.]

A Boca Raton company improperly diverted municipal bonds at the expense of retail investors, [the Securities and Exchange Commission said] Tuesday.

The SEC alleges that from 2009 to 2016, two agents of Core Performance Management LLC of Boca Raton lied about their identities to cut in line in bond allocations.

The SEC says Core Performance Management’s representatives bought new-issue muni bonds by posing as retail investors to gain priority in bond allocations. The defendants then flipped the bonds to broker-dealers for a fee. The SEC also alleged a municipal underwriter took kickbacks from one of the flippers.

The SEC names as defendants James Scherr of Boca Raton, the owner of Core Performance Management, and Deborah Dora of Lighthouse Point and Sharlene Mesite of Port St. Lucie, who are accused of using phony identities.

Also named in the SEC’s suit is James O’Neil of Jupiter, who’s accused of acting as an unregistered broker.

“My clients cooperated cooperated fully with the SEC investigation, and they’re happy to put this behind them without protracted litigation,” said James Sallah, the defendants’ attorney.

As part of the scheme, the defendants lied about their Zip codes, because investors who live in the jurisdiction issuing the bonds often can move to the front of the line. The defendants also used phony business names to disguise their true intentions, the SEC said.

"By improperly placing retail orders on behalf of broker-dealers, we allege the flippers prevented true retail investors from receiving priority in municipal bond offerings," said LeeAnn G. Gaunt, chief of the SEC Division of Enforcement's Public Finance Abuse Unit.

Core Performance Management ceased operations in 2016, the SEC said.

Palm Beach Post

By Jeff Ostrowski

August 14, 2018

SEC Alleges Firms Conspired in 'Flipping' Deal With Muni Bonds.

- **Two investment firms, 18 people charged in bond trading case**
- **Related SEC case targets former employee of underwriting firm**

The U.S. Securities and Exchange Commission said two investment firms and an underwriter settled charges of conspiring to make quick profits by trading newly issued municipal bonds, a practice known as flipping.

The agency Tuesday said that Core Performance Management LLC, based in Boca Raton, Florida, and Chula Vista, California-based RMR Asset Management Co. used fictitious business names and posed as individual investors to get newly offered securities that were then immediately resold at higher prices. The SEC said the former head of municipal underwriting for NW Capital Markets purchased securities from Core Performance at above-market prices in exchange for a cut of the profits.

"More than a dozen of the individuals charged today are alleged to have engaged in plainly deceptive conduct," said Stephanie Avakian, co-director of the enforcement division. "We are committed to investigating and charging individuals, especially where, as here, the alleged misconduct by many of these industry professionals harmed retail investors."

The case provides a window into how professional investors may seek to game the $3.8 trillion state and local-government bond market to make short term profits, not unlike those that can be reaped by getting in on initial stock offerings. It is part of a broader push by the SEC to crack down on fraud in the state and local government debt market and marks a departure from recent cases that largely focused on misleading disclosures by borrowers.

The SEC said the investigation is ongoing, indicating that it may bring more cases.

"We are continuing our investigation to determine whether other market professionals had a role in these improper practices," said LeeAnn Gaunt, the head of the agency's Public Finance Abuse Unit.

While prices of municipal bonds are far less volatile than newly issued stocks, the debt offerings can be heavily sought after because many governments seek to ensure that some of them are sold to individuals, rather than just investment firms. Those small buyers are often given special priority.

The SEC said that Core Performance and RMR posed as so-called retail investors to purchase the newly issued bonds that were then resold to other firms at a profit.

They did that by using fictitious business names, falsely linking their orders to zip codes in the area where the bonds were being issued and dividing up its orders among dozens of accounts. Once the bonds were purchased, they were typically resold to dealers at a pre-arranged price, according to the SEC. The agency said 18 individuals were involved.

Core Performance and managing director James Scherr, RMR and its president, Ralph Riccardi, and 13 of their associates settled the SEC's charges without admitting or denying the allegations, the SEC said in a statement. NW Capital and its former underwriting head, Charles Kerry Morris, also settled without admitting or denying the charges.

A phone number listed for Core Performance in Boca Raton was disconnected. Loren Washburn, a lawyer for RMR, said the firm fully cooperated with the SEC and is glad to have resolved the matter. A message left with NW Capital's James Fagan, who supervised Morris and agreed to the settlement, wasn't immediately returned.

Bloomberg Markets

By William Selway

August 14, 2018

[S&P Extra Credit: U.S. Not-For-Profit Health Care, Medians And Trends And Disruption. Oh My!]

In this Extra Credit Lisa Schroeer talks with S&P Global Ratings' not-for-profit health care industry experts Martin Arrick and Cynthia Keller about the sector's median performance, overall trends, and potential disruptors.

[Listen to Audio]

Aug. 13, 2018

[Muni Market Recap: Slow & Steady Wins the Race.]

Municipal bond markets have been slowly and steadily grinding to lower yields and lower ratios over the summer. As a reminder, when yields are lower prices are higher due to the inverse relationship between yields and prices. Ratios represent the yield of the U.S. Government bond divided by the yield of the Municipal bond. Municipal front end yields, observed by bonds maturing in 2020, have declined from 1.65% to 1.62%, and 10 year yields have declined from 2.50% to 2.43% (based on MSRB trade data). Ratios in the front end of the yield curve (2 year) declined, 65% to 63%, and 10 year ratios have been steady at 85% (based on MSRB trade data). The long end of the muni curve has remained around 3.00% at 99% ratio to US Government 30 year debt (based on MSRB trade data).

The steady market has benefited large issuers trying to bring bonds to market. The demand has been relatively steady and has, at times, allowed large issuers to price deals in excess of $1 billion with no new issue discount. New issue discount is usually a function of a sudden increase in supply for a given issuer results in a widening of spreads or higher yields to compensate for the increased supply. The most recent example is the Denver Airport transaction that was brought to market this week: Denver Airport planned to raise $2.3bn and the deal had enough demand to issue $5 billion in bonds. The airport has a $3.5 billion capital program to expand the capacity of travellers coming into Denver. Miami Dade Aviation also sold $790 million of bonds this week to refund a past deal.

In a year with lower overall municipal bond issuance, down 11% relative to 2017, airports issuance is up 49 percent (source: Bloomberg) so far in 2018 with over $11 billion of bonds coming to market.

Posted 08/17/2018 by Homero Radway

Neighborly Insights

[The Fast Lane – Demography, Regional Competitiveness, City Finances.]()

Demography is destiny, goes the old saying. In the United States, a changing and growing population may help spare our society from the workforce shortfalls afflicting many other industrialized countries. Yet the transition to a more diverse America, including the first recorded decline in the country's white population, is causing palpable anxiety in our politics and reigniting core tensions around race. In the San Francisco Chronicle, Bill Frey explains why America's growing minority youth population is good news for the nation's future, building on the second edition of his book, Diversity Explosion.

At the same time, it's clear that demographic margins alone won't automatically translate into broadly shared opportunity. Writing in The New York Times from his fast-changing majority-black hometown near Pittsburgh, Andre Perry urges investors and technology companies to bridge the gaps that too often separate diverse communities from the urban tech boom.

[Continue reading.]()

The Brookings Institute

by David Lanham and Rachel Barker

August 14, 2018

TAX - FLORIDA

[Andrews v. City of Jacksonville]()

District Court of Appeal of Florida, First District - June 18, 2018 - So.3d - 2018 WL 3015264 - 43 Fla. L. Weekly D1370 - 2018 Employee Benefits Cas. 214, 374

Citizens brought action against city council challenging referendum on whether to adopt a one-hal--cent sales surtax to address underfunded pension liability.

After the surtax was approved in the election, the Circuit Court granted city's motion for summary judgment. Citizens appealed.

The District Court of Appeal held that:

- Ballot title and summary were not misleading and clearly articulated chief purpose of referendum, and
- Ordinance setting date of referendum was within city council's legal authority, such that referendum was not void ab initio.

Ballot title and summary were not misleading and clearly articulated chief purpose of referendum, which was to reduce or eliminate city's unfunded pension liability through the use of a sales surtax, though summary did not contain every detail or ramification of proposed surtax; summary declared what state law would require of city in order to levy surtax, summary allowed voters to comprehend the sweep of measure, and summary could not and was not required to contain every detail of proposed tax, as state statute limited length of summary to 75 words.

Ordinance setting date of referendum on surtax for purposes of reducing or eliminating unfunded pension liabilities was within city council's legal authority, such that the referendum was not void ab initio, though city council passed ordinance prior to effective date of statute authorizing counties to levy surtax; statute did not prescribe date that ordinances could be passed to set referendum, ordinance merely authorized vote on whether to adopt surtax and did not attempt to levy a premature surtax, several preconditions still had to be met before the surtax could go into effect, and the ordinance recognized the requirement to meet those preconditions by providing for future "separate legislative action" before actually levying the surtax.

TAX - CALIFORNIA

Johnson v. County of Mendocino

Court of Appeal, First District, Division 2, California - August 8, 2018 - Cal.Rptr.3d - 2018 WL 3750338 - 18 Cal. Daily Op. Serv. 7881

Objectors brought declaratory judgment action against county, challenging validity of county ballot measure imposing tax on commercial cannabis businesses.

The Superior Court dismissed action. Objectors appealed.

The Court of Appeal held that:

- Tax imposed was a general tax rather than a special tax that would require two-thirds majority, and
- County was not required to prove that so-called tax was in fact a tax rather than a fee.

Tax imposed on commercial cannabis businesses by county pursuant to ballot measure was a general tax rather than a special tax, and therefore simple rather than two-thirds majority was required for approval of tax, even though ballot measure listed certain types of services for which tax might be allocated; funds from tax were not earmarked or dedicated to any specific project but rather were described as being for support of general county services, and measure did not in any way limit county's ability to spend proceeds collected under tax.

Pursuant to Proposition 26, which had amended constitution to define a tax as opposed to a fee, county was not required to prove that so-called tax, which was imposed on commercial cannabis businesses pursuant to ballot measure, was in fact a tax rather than a fee disguised as a tax; Proposition 26 was concerned with requiring government to prove that a fee was not in fact a tax, rather than the other way around.

[SEC Forces Cities to Reveal Wall Street Loans With Holdings Surging.]

- **Step aimed at addressing concerns bondholders left in dark**
- **Loans to states, localities have nearly tripled since 2010**

The U.S. Securities and Exchange Commission moved to require states and local governments to disclose bank loans and privately placed debt, seeking to address concerns that bondholders are being left in the dark about a fast-growing segment of public finance.

The SEC adopted amendments to a rule, known as 15c2-12, that obligates securities dealers to ensure that municipalities report updated financial information and material events to bondholders. The amendments will force the disclosure of loans incurred by municipalities, loan defaults and changes to financial covenants that affect bondholders within 10 business days.

“Disclosures required by these rule amendments will better equip investors and intermediaries to make informed investment decisions about municipal securities,” SEC Chairman Jay Clayton said Monday in a statement.

Direct lending by banks has proliferated since the financial crisis as states, local governments and non-profits found they could borrow at rates comparable to those on bonds, without the fees or disclosure requirements associated with public-debt offerings. Commercial bank loans to municipalities nearly tripled to $190.5 billion by the first quarter of 2018 from $66.5 billion at the end of 2010, according to the Federal Deposit Insurance Corp.

While investors may eventually learn about a locality’s loans through annual financial reports, the obligations often aren’t reported to regulators or made public immediately. The lag has meant that investors have had to wait months before finding out about new debt. The loan terms can favor banks over other investors and add to a borrower’s financial risk.

The compliance date for the amendments to rule 15c2-12 is 180 days after they are published in the Federal Register.

Bloomberg News

By Martin Z Braun

August 20, 2018, 10:49 AM PDT

— With assistance by Benjamin Bain

[The Dos and Don’ts of Leasing Property Owned by a Municipality.]

Most municipalities own at least some real property and often such property is underutilized. An effective way for a municipality to monetize that asset, and raise extra revenue, is to lease the property to a tenant. However, the successful completion of a municipal lease—like any commercial lease—requires that municipalities think carefully, and negotiate thoroughly, regarding a number of legal issues.

1. Written Lease Agreement

“Get it in writing.” You’ve undoubtedly heard this advice countless times, and for good reason—it is critical to spell out with specificity the rights and obligations of each party in a written lease agreement. While a lease agreement does not necessarily need to be in writing to be enforceable by a court, having a well-defined lease in place with your tenant is a good way to avoid having to go to court in the first place. As with any business relationship, things will go wrong, mistakes will be made, and misunderstandings will happen in the course of a landlord/tenant relationship. Having a comprehensive lease in place, which covers issues such as how much rent is due and when, who is responsible for damages and repairs, and how long a lease term lasts, along with a host of other issues, can help municipalities ensure beneficial and amicable relationships with tenants.

2. Term

Every lease agreement should clearly define the length of the lease, as well as specific start and end dates. Depending on the terms of a lease deal struck by a municipality and tenant, a lease agreement may have several start dates, including when a tenant can enter the premises to set up, when rent is due, when the tenant must secure insurance, and when business may commence. In addition, the lease agreement should identify under what conditions the parties may terminate the lease, and the parties’ respective rights and obligations upon lease termination. Events of default, triggering the rights of a party to terminate the lease, as well as any opportunities to cure defaults, should also be spelled out in the lease.

3. Insurance

To the extent a municipality becomes a landlord, it should ensure, and require documentation in the lease agreement, that its tenant has sufficient insurance for its business. Once a municipality allows another party to operate on its property, it must concern itself with the types of activities that the tenant is engaging in, and whether such activities put the property or people at risk. As discussed below, in a typical lease scenario, risks are divided between landlord and tenant for repairs, maintenance, and damages to the property. If a municipal landlord doesn’t require coverage, it may have to bear the full cost of repairs. Further, requiring insurance is simply good business. If a tenant doesn’t have sufficient insurance for its business, it may choose to use its next rent payment for an expense, such as damage or an accident that would otherwise have been covered by insurance.

4. Use Clause

To the extent that a municipality is concerned about how a tenant may use its leased property, it should include a “use clause” that limits and defines permitted activities in the space. The limitations can be broad or narrow, and should be tailored based on concerns related to risks of liability related to certain kinds of businesses, and/or if the municipality has an aversion to certain kinds of business activities.

5. Taxes

While property owned by a municipality for a “public purpose” may be exempt from taxes, if such property is leased to a for-profit business for a non-public purpose, such exemption does not apply. Specifically, MCL 211.181(1) provides:

Except as provided in this section, if real property exempt for any reason from ad valorem property taxation is leased, loaned, or otherwise made available to and used by a private individual, association, or corporation in connection with a business conducted for profit, the lessee or user of the real property is subject to taxation in the same amount and to the same extent as though the lessee or user owned the real property.

Accordingly, a lease agreement should make clear that a tenant is responsible for all taxes and should be listed on the tax rolls as the taxpayer.

6. Repairs, Maintenance, and Improvements

A lease agreement should identify whether the municipal landlord or tenant is responsible for major and minor repairs and maintenance for the leased building or space within a building. Typically, tenants are also responsible for paying a proportionate share of common area maintenance within a building. In addition, a lease should address the parties' agreement about any improvements that the tenant intends to make to the space, including who is responsible for the work, when it must get done, and who must pay for it.

7. Miscellaneous Expenses and Obligations

Many other issues can and should be addressed in a lease agreement between a municipality and a tenant. For example, the agreement should document who is responsible for procuring and paying for janitorial services, how utilities should be apportioned in a multi-tenant building, who is responsible for exterior maintenance such as landscaping and snow plowing, and what dedicated parking, if any, is available to the tenant.

These issues must also be considered when a municipality leases space from a private landlord or a municipal landlord.

In sum, municipalities that intend to lease space to tenants should not simply rely on a "boilerplate" lease agreement when negotiating and memorializing terms with a tenant. Each term of the lease must be carefully considered and reduced to a written agreement. By working with experienced legal counsel to craft an agreement, municipalities can avoid hidden, onerous traps that can result in expensive and time-consuming litigation.

Foster Swift Collins & Smith PC

by Scott H. Hogan

August 15, 2018

Climate Change AG Investigations and Municipal Litigation.

Increasing Challenges for Energy Producers

Several state attorneys general ("state AGs") recently have undertaken high-profile investigations into energy producers' research and public statements about the potential effects of climate change. Thus far, energy companies like ExxonMobil ("Exxon") have encountered limited success challenging these investigations. In addition, a number of cities and municipalities have filed lawsuits against major energy producers, alleging that these companies knowingly contributed to the harmful effects of climate change.

This article surveys recent developments in these state AG investigations and municipal lawsuits against energy companies. Although these investigative and litigation trends remain in their early stages, it appears that energy producers may continue to face increasing climate-change government investigations and related litigation.

[Continue reading.](#)

King & Spalding

by John C. Richter, Brandt Leibe, William S. McClintock

August 15, 2018

IRS Issues Guidance on ITC Eligibility for Solar Projects in Notice 2018-59 Including Methods for Establishing Beginning of Construction and Eligibility of Transferred Energy Property.

On June 22, 2018, the IRS issued Notice 2018-59 (the "ITC Notice"), providing guidance as to how a taxpayer establishes that construction has begun with respect to solar facilities qualifying for the Internal Revenue Code Section 48 investment tax credit (the "ITC"). The ITC provides a credit to taxpayers equal to a percentage of the basis of qualifying energy property, which percentage varies depending on the type of such property, the year in which construction begins, and the year in which the property was placed in service. In general, the ITC Notice is similar to guidance provided for wind facilities qualifying for the ITC or the Internal Revenue Code Section 45 production tax credit and promulgated in Notice 2013-29, as clarified and modified by later notices.

Construction has begun when a taxpayer establishes either of the following:

1. Physical work of a significant nature has begun and the taxpayer maintains a continuous program of construction. Work performed for the taxpayer pursuant to a binding written contract entered into prior to the manufacture, construction or production of the energy property or components of energy property for use by the taxpayer in the taxpayer's trade or business (or for the taxpayer's production of income) is taken into account in making this determination. This test depends on the relevant facts and circumstances and is focused on the nature of the work performed rather than the amount or the cost; it is not subject to a fixed minimum amount of work or cost threshold. The test includes both on-site and off-site work, such as off-site manufacture of components and on-site installation of racks or other structures to attach photovoltaic panels to a site. Preliminary activities, such as clearing a site, are not physical work of a significant nature under this test.

A continuous program of construction involves continuing physical work of a significant nature, as determined based on the facts and circumstances. Certain disruptions beyond the taxpayer's control, such as severe weather conditions and natural disasters and delays in obtaining permits and licenses, are treated as excusable and will not cause a taxpayer to fail to satisfy the continuity requirement. Notwithstanding the foregoing, if a taxpayer places an energy property in service by the end of a calendar year that is no more than four calendar years after the calendar year during which construction of the energy property began, the continuity requirement will be deemed satisfied with respect to the energy property.

2. The taxpayer has paid or incurred five percent (5%) or more of the total cost of the energy property and makes continuous efforts to advance toward completion of the energy property. All costs properly included in the depreciable basis of the energy property are taken into account to determine whether this test is met. The total cost of energy property does not include the cost of land or any property not integral to the energy property. If the total cost of an energy project that is a single project comprised of multiple energy properties exceeds its anticipated total cost such that

less than 5% of the total cost of the project at the time it is placed in service was in fact paid or incurred at the time the 5% standard is tested, the five percent safe harbor is not met with respect to the entire project but may met with respect to some of the energy properties comprising the project so long as the total aggregate cost of such energy properties is not more than twenty times greater than the amount the taxpayer paid or incurred. This relief is not available where a single project is not comprised of multiple energy properties.

The determination of whether multiple energy properties are operated as part of a single energy project is made during the calendar year during which the last of the properties is placed in service and depends on the relevant facts and circumstances, including whether the properties have a common intertie, share a common substation, were financed pursuant to the same loan agreement, and other non-exclusive factors. However, the taxpayer may disaggregate such property for purposes of applying the continuity requirement.

The five percent safe harbor test also includes a continuity requirement that, based on the relevant facts and circumstances, a taxpayer make continuous efforts to advance towards completion of an energy property. This may generally include paying or incurring additional amounts, entering into binding written contracts for future work to construct the energy property, obtaining necessary permits, or performing physical work of a significant nature. As with the physical work test, certain disruptions beyond the taxpayer's control are considered excusable for purposes of the continuity requirement and the continuity requirement is deemed met if certain timelines are met, as described above.

With respect to facilities that are transferred, a fully or partially developed energy property that satisfies the "begun construction" qualification will continue to satisfy such qualification with respect to a transferee acquiring such property before the facility is placed in service. However, in the case of a transfer of solely tangible personal property to an unrelated transferee, amounts paid or work performed by the transferor with respect to such transferred property will not be taken into account to determine whether construction has begun.

The IRS also advised in the ITC Notice that it will not issue private letter rulings to taxpayers regarding the application of the ITC Notice or the beginning of construction requirement of Internal Revenue Code Section 48.

Locke Lord LLP

August 13, 2018

In Opportunity Zones, Good Things Come to Those Who Hustle.

An important milestone in America's economic recovery was reached last month when the Treasury Department approved the last round of Opportunity Zone designations.

The Tax Cuts and Jobs Act of 2017 created a new financial product called "Opportunity Funds," which allow investors to defer and reduce their capital gains tax bills in exchange for investing in projects located in economically distressed areas referred to as Opportunity Zones.

An initial review of the 8,700 designated Opportunity Zones reveals just how far removed these communities are from the national economic recovery. The average unemployment rate is a stubbornly high 14.4 percent. These communities typically have 38 percent of prime age adults out of the workforce — nearly 10 points higher than the country as a whole. Median household income is lower, and these areas are twice as likely as other communities to be located in a county where (at the very least) 20 percent of the population has been living below the poverty line for 30 years.

Continue reading.

e21

by John Bailey

August 14, 2018

The Public Finance Opportunity.

If you're a certain age, it's likely that you've never given a second thought to buying a municipal bond or the process of bond buying, even if you've intuited, rightly, that's it's an intentionally opaque business.

Yet there could be a big opportunity for startups, and for people looking for places to invest, and for cities with crumbling infrastructures, in disrupting the status quo.

First, there's a strong case for buying bonds. Late last year, the Trump administration capped at $10,000 the amount that taxpayers can deduct in property tax and local and state income tax. Most people with hefty tax bills are benefiting in other ways from that same new tax bill, but this aspect of it isn't so great for them, and municipal bonds can help. The reason: interest income paid on muni bonds is exempt from federal tax. (Bonds issued within one's state can also be free of state tax.)

Continue reading.

Tech Crunch

by Connie Loizo

Your Tax Dollars At Play: How Stadium Tax Scams Pick Fans' Pockets.

Tax dollars build sports stadiums far more often than they should, which is going to make this entire column possible.

Stadium finance is so awash in public money that it is difficult to imagine how stadiums and arenas are built *without* tax dollars. Occasionally, a city and its taxpayers get a freebie: Anschutz Entertainment Group and MGM Grand covered the cost of T-Mobile Arena in Las Vegas. The New York Jets and Giants built their Met Life Stadium without tax dollars. Los Angeles Rams owner Stan Kroenke so desperately wanted to drag his team out of St. Louis that he's footing the bill for a stadium for both the Rams and the Chargers. The Golden State Warriors, meanwhile, are privately funding a new arena in San Francisco's Mission Bay.

Continue reading.

Forbes

by Jason Notte

Aug 17, 2018

Can States Tax Gas Stations on Tribal Lands?

After years of fights between Washington state and the Yakama Nation, the debate is heading to the U.S. Supreme Court.

The Yakama Nation and Washington state have been fighting over governance issues ever since the tribe signed its 1855 treaty with the federal government. Recently, those fights have involved fees on cigarettes and rules for logging trucks. But the biggest dispute over the years has been about fuel taxes. And now the U.S. Supreme Court is stepping in.

Washington state lawmakers have tried repeatedly to impose fuel taxes on Indian tribes, and the tribes have repeatedly fought back. The Yakama have been especially adamant in their resistance, arguing that the fuel taxes violate a provision of their treaty that guarantees them the right to travel freely on public highways.

The Yakama convinced the Washington Supreme Court to uphold their exemption even though lawmakers crafted the current tax in 2007 to avoid the legal pitfalls of previous fuel tax levies that Native Americans were able to avoid. The state high court's decision in March was such a jolt to state taxing authority that Idaho, Kansas, Nebraska, North Dakota, South Dakota and Wyoming supported Washington's last-ditch effort to get the U.S. Supreme Court to reverse the ruling and reimpose the tax.

In general, states cannot tax Native Americans for activity on reservations, but they can for most activities that occur off tribal lands. Courts determined that Washington's previous fuel taxes, which were collected at gas stations, didn't apply to those on tribal lands.

That's why the state legislature changed the tax scheme in 2007. It imposed a per-gallon fuel tax on suppliers, blenders, distributors, exporters and importers of motor fuels. Whoever owned the fuel first inside Washington state's borders had to pay it. Because the Yakama fuel stations imported their fuel from Oregon, the state said, they would have to pay the tax.

States, though, don't have the last word on the matter. The federal government does. Treaties with Indian tribes are part of federal law. Under the 1855 treaty with the Yakama Nation, the federal government guaranteed that the tribe would have the "right, in common with citizens of the United States, to travel upon all public highways." The state Supreme Court relied on that language to determine that the right to travel meant the Yakama shouldn't have to pay the fuel tax, since it's impossible to import fuel without traveling on public highways.

The state isn't buying this. "The challenged law does not restrict [a Yakama-owned company's] right to travel on Washington public highways," according to the state's brief. It simply asks them to pay for importing fuel the way every other business does.

Other states, specifically those that have joined the case, have reason to be concerned. Idaho, for example, has tribes within its borders whose treaties with the U.S. government include the same "right to travel" language that the Yakama have in Washington. Now that the U.S. Supreme Court has taken the case, those states will soon find out whether the Yakama's fuel tax exemption applies more broadly or not at all.

GOVERNING.COM

BY DANIEL C. VOCK | AUGUST 2018

S&P: New Jersey's Revised School Funding Formula Leads To Mixed Results For Districts.

S&P Global Ratings believes about 5% of the New Jersey school districts it rates are left with aid awards significantly lower than amounts included in districts' adopted budgets due to changes to state aid allocations in the adopted fiscal 2019 state budget, and this could pressure ratings.

Continue Reading

Aug. 10, 2018

A Huge Win for Keeping Water Systems under Public Control.

Baltimore is poised to become the first major U.S. city to prohibit privatization of its water system and the first to do so by amending its city charter.

"Water privatization is simply unethical, immoral, and dangerous," said Rianna Eckel, Maryland organizer with Food and Water Watch and convener of the Right to Water Coalition Eckel, at a press conference at City Hall on August 6, 2018. Behind her stood Baltimore Mayor Catherine Pugh, City Council President Jack Young, and dozens of members of the Right to Water Coalition.

An hour later, Baltimore City Council overwhelmingly voted to approve the measure. Council President Young, who introduced the amendment, fast-tracked the bill through the legislature. Mayor Catherine Pugh signed it earlier this week. It will now go before voters on the November ballot, where it is expected to pass.

Continue reading.

NEXT CITY

BY DHARNA NOOR | AUGUST 17, 2018

Proposed Infrastructure Plan Would Increase WIFIA Appropriations.

As part of a draft infrastructure bill released last week by House Transportation and Infrastructure Committee Chairman Bill Shuster (R-Pa.), the U.S. Environmental Protection Agency's (EPA) Water Infrastructure Finance and Innovation Act (WIFIA) program would be reauthorized at $250 million over five years.

According to the Association of Metropolitan Water Agencies (AMWA), Shuster's bill is not expected to advance through Congress in its entirety this year. However, the WIFIA component and other water-related provisions could lay a marker ahead of the House's anticipated negotiations with the Senate later this year over another water resources bill that includes a controversial SRF WIN provision that proposes to create a new version of WIFIA exclusively for state infrastructure finance agencies.

According to AMWA, Shuster's draft legislation features a number of water, transportation and infrastructure policies "intended to further the national conversation about the current state of America's infrastructure" and set a course for effective reforms.

In addition to authorizing Congress to appropriate up to $50 million for WIFIA in each of the next five years, the bill would make a number of relatively modest changes to improve operation of the program. These include allowing EPA to aid the U.S. Army Corps of Engineers in standing up its own version of WIFIA (a concept featured in legislation earlier endorsed by AMWA); increasing from 49 percent to 80 percent the maximum amount of a project's cost that may be financed through a WIFIA loan; and requiring applicants to produce a final credit rating opinion letter from only one rating agency, rather than two.

According to AMWA, absent from Shuster's bill are major provisions that resemble components of the controversial SRF WIN Act, legislation incorporated into a Senate water resource bill that would establish a separate version of WIFIA – with preferred loan terms – exclusively for state infrastructure financing authorities.

AMWA has strongly opposed the SRF WIN Act due to its potential to undercut the leveraging ability of the current WIFIA program and its unequal interest rate treatment of different states. The lack of SRF WIN language in Shuster's proposal indicates that House Republican leaders share these concerns. Shuster's draft bill does include some streamlining for WIFIA applications compiled by states – such as helping them avoid duplicative environmental reviews, allowing EPA to offset some processing fees and establishing an expedited application review timeline – but these fall well short of the numerous preferences given to state-compiled projects under the SRF WIN proposal.

RELATED: Senate hearing avoids SRF WIN details, AMWA says

Other parts of Shuster's bill would reauthorize the Clean Water State Revolving Fund (SRF) at $15 billion over five years and create a new EPA technical assistance program for small and rural treatment works. The bill does not contain any policy reforms or reauthorizations related to the Drinking Water SRF, as that program falls outside the authority of Shuster's committee.

Although Shuster's bill is not expected to receive a vote in the House before the end of the year, Congressional staff have indicated that its water infrastructure provisions may serve as the House's starting point when the time comes for the House and Senate to negotiate SRF WIN and a number of other changes to EPA programs proposed by a Water Resources Development Act (WRDA) reauthorization bill pending in the Senate.

Separate WRDA legislation approved by the House in May left EPA programs untouched, so Shuster's draft bill may be viewed as his initial counteroffer to changes proposed in the Senate's WRDA bill.

JULY 30, 2018

BY WFM STAFF

Department of Agriculture Funds Wastewater Infrastructure For Rural Communities.

Federal funding of rural wastewater infrastructure projects is often assumed to predominantly flow through the Environmental Protection Agency (U. S. EPA)'s Clean Water State Revolving Fund created in 1987 under the Clean Water Act. However, in an interesting development, Anne Hazlett, Assistant to the Secretary for Rural Development at the U.S. Department of Agriculture (USDA), recently announced that the USDA would make a historic commitment to upgrade and rebuild rural wastewater infrastructure.

USDA is providing the funding through its Water and Waste Disposal Loan and Grant Program. It can be used to finance drinking water, stormwater, and wastewater systems for rural communities with 10,000 or fewer residents. The commitment follows the findings of President Trump's Interagency Task Force on Agriculture and Rural Prosperity which recommended investing in rural infrastructure as a means to support and sustain rural communities.

"USDA is committed to being a strong partner to rural communities in building their futures," Hazlett said. "All people — regardless of their zip code — need modern, reliable infrastructure to thrive, and we have found that when we address this need, many other challenges in rural places become much more manageable."

According to the Rural Community Assistance Program (RCAP), 51,356 water systems in the U.S. serve less than 3,500 customers (83 percent of all systems) and of that number, 65 percent serve less than 500. In FY 2018, Congress provided a historic level of funding for water and wastewater infrastructure through the USDA with the 2018 Omnibus spending bill including $5.2 billion for USDA loans and grants, up from $1.2 billion in FY 2017. The bill directs Agriculture Secretary Sonny Perdue to make investments in rural communities with the greatest infrastructure needs.

As many of the water and wastewater treatment industry are aware, EPA officials have been working with the States to shed or share responsibilities, under the pressure of proposed cuts to its budget. However, this move suggests that offsetting funding for wastewater infrastructure may flow through the USDA. Ironically, it's the non-point source runoff from agriculture that wastewater industry professionals often point to as the main source of nutrients causing harmful algal blooms (HABs) in the Country's lakes, oceans and gulfs. The investment in wastewater infrastructure for rural communities can only help the agricultural community to focus in on efforts to reduce non-point source nutrient pollution.

wateronline.com

The $1.4 Billion Transit Fund the U.S. Government Won't Release.

From El Paso to Minneapolis, local rail and bus projects are waiting on federal money that should have arrived by now.

Remember the $1 trillion federal infrastructure bill? Heavily touted by President Donald Trump on the campaign trail and in his first year of office as a plan to “build gleaming new roads, bridges, highways, railways, and waterways all across our land,” the idea is all but dead in Congress 18 months into his administration.

Like a nasty pothole, Trump’s unkept promises on road-and-rail dollars have given transportation fans a mild case of whiplash. But there may be worse harm in another infrastructure lapse on the part of this administration, this one more basic: $1.4 billion promised to transit projects across the U.S., still unallocated by the Federal Transit Administration for no clear reason.

From New York to Los Angeles, El Paso to Minneapolis, 17 rail and rapid bus projects are awaiting grants promised by the federal appropriations bill signed into law by Trump in March 2018. But the funds have still not been delivered nearly five months later. Make that 144 days, 20 hours, and 15 minutes later, as of this writing, according to a splashy countdown clock built by Transportation For America, a progressive transportation policy organization.

Here’s the full list of projects counting down the minutes, from TFA:

- Albuquerque, NM Central Avenue BRT
- Dallas, TX DART Red & Blue Line Platform Extensions
- El Paso, TX BRT Extension
- Jacksonville, FL Southwest BRT
- Los Angeles, CA Purple Line Extension (LRT), Section 3
- Minneapolis, MN Blue Line (LRT) Extension
- Minneapolis, MN Green Line (LRT) Extension
- Minneapolis, MN Orange Line BRT
- New York City, NY Canarsie (L) Line Improvements
- Orange County, CA Streetcar
- Reno, NV Virginia Street BRT
- Sacramento, CA Riverfront Streetcar
- Seattle, WA Lynnwood LRT extension
- Seattle, WA Madison Street BRT
- South Shore (IN/IL) Commuter Rail Double Tracking
- St. Petersburg, FL Central Avenue BRT
- Tempe, AZ StreetcarContinue reading.

NEXT CITY

LAURA BLISS AUG 15, 2018

The Rust Belt Needs Capital to Turn Talent and Innovation Into Jobs.

Since Rust Belt voters tipped the results of the 2016 election, interest in effective strategies for supporting new business and job growth in this important region has intensified.

Such interest recognizes that the states of the upper Midwest share more than their swing state status. A unique economic and social development storyline unites the industrial heartland, extending across all or part of 12 states from Minnesota and Missouri in the West, through the Great Lakes and up the Ohio River Valley to Western New York, and to Pennsylvania and West Virginia in the East. The region has many economic challenges, but also boasts important economic strengths, perhaps none as important as the tremendous innovation and talent emerging from its companies and universities.

Yet a lack of risk capital in the Rust Belt has held back the region's capacity to translate its formidable innovation and talent assets into new businesses and jobs. That's beginning to change, but public policies could do much more to accelerate the development of a robust innovation infrastructure equal to the Midwest's potential.

Continue reading.

The Brookings Institute

by John C. Austin

August 14, 2018

An Exception to an Exemption: Michigan's Lessee-User Tax

Under various statutes, certain types of property, owned by certain entities, and used for certain purposes, are exempt from paying property taxes in Michigan. But there is an exception to this exemption meant to address situations where the property is exempt based on ownership, but is leased to a non-exempt entity.

In order to deal with this scenario, the Michigan legislature created the "Lessee-User Tax" under MCL 211.181. The Lessee-User Tax provides:

If real property exempt for any reason from ad valorem property taxation is leased, loaned, or otherwise made available to and used by a private individual, association, or corporation in connection with a business conducted for profit, the lessee or user of the real property is subject to taxation in the same amount and to the same extent as though the lessee or user owned the real property.

For example, if an exempt hospital or medical facility leases space to for-profit doctors, it's likely that the leased real property owned by the exempt hospital/medical facility is taxable to the lessee. However, there is an exception to the Lessee-User Tax (you might call it an exception to the exception on exemption – quite the tongue twister): it does not apply to property that is used as a concession at a public airport, park, market, or similar property and that is available for use by the general public.

The issue of what constitutes a "concession" has been the subject of considerable litigation over the years. One of the more recent appellate decisions dealing with the issue is the 2005 case of *Services System Assoc v City of Royal Oak*, also known as "The Detroit Zoo" case.

The case involved a for-profit company providing food and catering services to the public at the Detroit Zoo (an exempt non-profit). Royal Oak sought to tax the company for its equipment, buildings, and other improvements, and the company claimed to be a concession. It was undisputed that the zoo was a "public park" open to the public, so the court looked to the agreement at issue between the zoo and the company, and found that the zoo retained control over the company's operations – a fact that weighs in favor of a concession.

Ultimately, the court found that the company was a concession, in light of its agreement that “imposes standards of service, minimum hours of operation, and oversight of petitioner’s concession stand at the Detroit Zoological Institute” and “infringes on the control of petitioner’s rights, the hours that can be worked, the foods that can be sold, and provides for unilateral termination by the Detroit Zoo.”

Property tax exemptions are an important issue for both those claiming exemptions, as well as municipalities and their assessing departments who rely on property tax revenue to fund community operations and services. Therefore, understanding the nuances of the statutory framework – such as when the Lessee-User Tax applies – that gives rise to these exemptions is critical.

Foster Swift Collins & Smith PC

by Laura J. Genovich

USA August 16 2018

[Florida Banks and Mortgage Servicers: Claims Following Tax Deed Sales Must Now be Filed Early]

While banks and other mortgage holders have recently been obtaining windfalls on dormant mortgages, recent changes to Florida Statute Section 197.582 will require early filing of claims following tax deed sales.

What does this change mean?

The new rules apply the same procedure to tax deed sales that now apply to ordinary foreclosure sales: lienholders must make a timely post-sale administrative claim or it’s lost. The new amendments still require administrative notice to go to all lienholders. From there, recipients have “120 days from the date of the notice to file a written claim with the clerk for the surplus proceeds.” Fla. Stat. § 197.582 (3). The most important change, however, is that “[e]xcept for claims by a property owner, claims that are not filed on or before close of business on the 120th day after the date of the mailed notice as required by Section 197.582(2), are barred. A person, other than the property owner, who fails to file a proper and timely claim is barred from receiving any disbursement of the surplus funds.” Fla. Stat. § 197.582(5).

What do banks and servicers need to know about the new system?

Under the new system, the clerk still has the right to institute an interpleader action in the case of competing claims, but this is likely to occur much less often, because competing claims will appear less often because many will be barred by the failure to file a timely administrative claim. Fla. Stat. § 197.582(6). While the legacy procedures will apply for a short while longer, the new statutory bar applies to “tax deed application filed on or after October 1, 2018.” 2018 Fla. HB 1383 § 4. This change does not allow mortgagees to passively await a clerk’s interpleader action, as they might have in recent years. If they fail to institute new procedures to monitor and respond to notices related to tax deed surpluses, they will lose and the owners, who long ago defaulted on the record, will get the last laugh, as they do not face the same 120 bar as lienholders and could obtain the entire surplus for themselves.

Background on Florida’s tax deed surplus law

In the deepest depth of the economic crisis of 2008–2012, many banks and mortgage servicers in Florida abandoned their residential foreclosure lawsuits, often dismissing a case before, or even after, a final judgment was obtained. Frequently, economics dictated the course. More than being merely undersecured—"upside down"—certain assets were negative value when the cost of repairs, taxes, curing code violations and past-due homeowners' assessments were taken into account. Under these circumstances, a successful foreclosure would be a Pyrrhic Victory at best.

Following dismissals, the moribund, defaulted mortgages remained public records and valid liens. They provided an opportunity for compensation to the mortgage holder if the homes were ever sold. In the meantime, homeowners often remained in their homes, because Florida is a "lien theory" state, where the homeowner's rights of ownership and possession usually continue until the finalization of a foreclosure.

The "free house" deal usually came to an end. When homeowners stop paying their mortgages, they typically defaulted on tax obligations as well. The normal procedure is straightforward. After paying past due taxes, outside investors obtain tax certificates, which can be sold at a judicial sale after two years; the winning bidder obtains the property through a tax deed. The tax deed wipes out nearly all other liens, including first position mortgages and homeowners association liens. *See A to Z Props. v. Fairway Palms II Condo. Assoc.*, 137 So. 3d 453 (Fla. 4th DCA 2014)

After the tax certificates and accrued interest are paid at the tax deed judicial sale, the remainder is deemed a tax deed surplus. The mortgagee (or other lienholders) historically were entitled to that tax surplus in their order of lien priority; their liens, which formerly attached to the property, now attached to the surplus, while the property itself would be owned free and clear by the winning bidder.

Historically, when there were competing liens in a property generating a tax deed surplus, parallel and slightly contradictory mechanisms were set in motion for asserting lien rights. Initially, the tax collector was supposed to send out notice of the surplus to all the known and possible lienholders, who would then file a claim within 90 days. Fla. Admin. Rule 12D-13.065(4). However, in the case of competing liens—including overlapping mortgages, judgment liens, and homeowner association lien claims—the clerk of the court was obliged to begin an interpleader action and send notice again to the lienholders.

In these lawsuits, regardless of whether or not a claim had earlier been filed, lien priority controlled. *See generally DeMario v. Franklin Mortg. & Inv. Co., Inc.*, 648 So. 2d 210, 214 (Fla. 4th DCA 1994) (holding that in spite of failure to file administrative claim, mortgagee "as superior lienholders, their claim must be recognized and they are entitled to the excess proceeds of the tax sale."); *Kerr v. Broward Cnty.*, 718 So.2d 197 (Fla. 4th DCA 1998). This lien priority rule allowed lienholders to obtain recompense, even though they had not responded within the 90 day administrative claim filing deadline and may have otherwise sat on their rights for many years.

The changes to the statute now require swift action at the administrative level in order to secure the benefits of the rising housing market.

Adams and Reese LLP

byChristopher A. Roach

August 20, 2018

Environmental Impact Bonds Could Help Pay for Louisiana Coastal Restoration.

Environmental impact bonds can help restore Louisiana’s coast more efficiently than previous methods of funding, according to a report released Tuesday by the Environmental Defense Fund.

The bonds are a financing tool in which repayment to investors is linked to the achievement of a desired environmental outcome. In this case, the outcome is sustained wetlands that help curb land loss and provide risk reduction for coastal residents and businesses. The bonds can be scaled and replicated to support efforts across Louisiana and beyond to help areas coping with sea level rise, land loss and damaging storms.

In the study, the EDF and Quantified Ventures will pilot the program on restoration efforts near the Belle Pass-Golden Meadow Marsh Creation project adjacent to Port Fourchon.

The organization said the bonds will allow coastal projects to be constructed more quickly than waiting on other money sources. The bond would be repaid through future BP oil spill settlement payments.

“Using environmental impact bonds provides Louisiana the opportunity to put more capital to work now and to find new sources of capital,” said Steve Cochran, associate vice president for coastal resilience at EDF. “Those are great outcomes for Louisiana’s coastal communities and can provide a model for other coastal areas around the world.”

The state will lose 4,000 square miles of land in the next 50 years if nothing is done, according the EDF. That would add to the 2,000 square miles of land loss that has occurred since the 1930s. The state has a vision for restoring and protecting its coast through its $50 billion Coastal Master Plan, but it has identified only $9 billion to $12 billion of the money needed to fully implement the plan.

The director of coastal resilience at EDF, Shannon Cunniff, said that the bonds work like other bonds but come with a bonus.

“These bonds are a new form of pay-for-success debt financing,” said Cunniff. “The big difference is that the repayment of the bond depends on the extent to which the desired environmental benefits are achieved.”

The director said a third-party will be used to help define exactly what would qualify as meeting the desired benefits. The investors will get a bonus if the project exceeds the defined goals.

“Environmental impact bonds can be a big-time game changer for Louisiana’s disappearing coastline. This (bond) will have major implications for coastal restoration efforts around the world,” said Eric Lestinger, founder and CEO of Quantified Ventures.

To help assess the feasibility of using the bonds for Louisiana’s coastal restoration efforts, EDF brought in Quantified Ventures. The firm was instrumental in designing the nation’s first environmental impact bond, which financed the restructuring of the Washing, D.C., Water and Sewage Authority.

“We looked at 31 coastal restoration projects across the coast at their potential economic benefit,” said Cunniff.

The EDF representatives said they picked the Port Fourchon area because of the site's role in the offshore oil industry.

"It's a great port in terms of the local, regional and national economy," said Cunniff. "All of these factors made it an ideal location for facilitating the piloting of the partner payer transaction."

The bonds would allow the state to use its money more efficiently by building wetland restoration projects sooner, involve local owners who benefit from restoration and reward high-performing wetland projects and the contractors who build them, according to the EDF.

"Environmental impact bonds provide the state of Louisiana with another outcome-based performance tool that can help us speed up coastal restoration while lowering costs and involving local partners in financing those efforts," said Johnny Bradberry, the Louisiana Governor's Executive Assistant for Coastal Activities. "This approach to bonding shows that (the state) is looking to innovate on all sides of our business: the projects, the procurement and the financing."

The report outlines the next steps the state has to take to test the bonds, noting that many steps – including establishing credit rating, resolving any issues with Gulf oil spill money and determining the bonds' tax-exempt status – are the same as those necessary to pursue a more traditional bond.

By Scott McLendon

Aug 14, 2018

New Jersey Governor Murphy Signs New Public-Private Partnership Law.

A bill signed into law by Governor Murphy expands the use of public-private partnerships to develop essential projects and grow the state's economy.

Senate President Steve Sweeney says those partnerships helped colleges get private capital to build new facilities, and the bill he sponsored will give the state, county, and local governments more flexibility to advance critical infrastructure projects.

"Public-private partnerships are the most important thing we could be doing in the state. As the governor calls for a stronger fairer economy, this is one the pieces that will actually build that. With private sector ingenuity, technology they can do it better."

Jack Kocsis is CEO of the Associated Construction Contractors of New Jersey. He says the law has the potential to spur development of much needed public works projects and create additional work opportunities.

"It really has the ability to advance New Jersey's economy. It really demonstrates that New Jersey is serious about working with private entities to actually attract capital to improve our infrastructure."

Governor Murphy expects the new law will enable vital projects to replace water lines and upgrade the transportation infrastructure without putting a burden on taxpayers.

"Many of them would stretch government entities far beyond the ability of taxpayers to pay, but this newfound ability and flexibility will go a long way to allowing us to get vital statewide and community-focused improvements off the drawing boards and into reality."

The legislation provides for financial oversight and approval of the partnership agreements by the State Treasurer.

WBGO.COM

By PHIL GREGORY • AUG 14, 2018

[New Jersey Governor Signs Bill Modifying Sewer and Water Connection Fee Calculations Into Law.]

On August 10, Governor Murphy signed into law S1247/A2779, which amends the sewer and water connection fee law in several ways to address existing inequities regarding connection fees (or tapping fees) (the Law). Then-Governor Christie previously pocket-vetoed a substantially similar bill earlier this year, but the bill made it back through the legislature and onto Governor Murphy's desk. The Law establishes certain credits and reductions for sewer and water connection fees, including for all affordable housing.

New Jersey sewer and water laws have frustrated developers for many years because they are outdated and charge connection fees based on math that is not transparent. Sewer and water connection fees are typically an important line item in a developer's pro forma. This Law will be welcomed by both residential and commercial developers.

Most notably, under the prior statute, public housing authorities and non-profit organizations building affordable housing projects (but not for-profit developers) were entitled to a 50 percent reduction in sewer and water connection fees for new affordable unit connections to the sewer and water system. The Law amended this section of the statute to expand to all affordable housing (including for-profit developers) the 50 percent reduction in new connection fees for affordable units and the credit against the connection fee for affordable units previously connected to the sewer and water system that were demolished or refurbished.

Additionally, the Law generally allows for credits to be applied to connection fees for a reconnection of certain disconnected properties that were previously connected to the sewer or water system for at least 20 years and have not been disconnected for more than five years. The credit is calculated based on several factors, including but not limited to, whether the reconnection does not require any new physical connection or increase the nature or size of service or expand the use of the system, or whether a connection fee was previously paid for the existing use.

For properties already connected to the sewer and water system, the Law allows local or regional authorities to charge a new connection fee for an addition, alteration or change in use that "materially increases" (as defined in the Law) the level of use and imposes a greater demand on the utility system, but does not involve a new physical connection of the property to the system. The connection fees for any new or additional connections are still imposed.

This Law is a first step in addressing some of the shortcomings of the existing sewer and water laws. This alert serves only as a summary of the Law. For more information or questions, please contact the authors or any member of the Day Pitney real estate team.

Day Pitney Alert

August 14, 2018

Day Pitney Author(s) Craig M. Gianetti Nicole M. Magdziak

- GASB Proposes Improvements to Reporting of Conduit Debt Obligations.
- How GASB Might Change Conduit Debt Reporting.
- BDA Submits Comment Letter on MSRB Retrospective Review of Underwriter Disclosures to Issuers.
- MSRB Notes Compliance Risks of Issuer-Solicited Charitable Donations: Skadden
- Evaluating Municipal Debt Instruments Using Muni Bond Indices.
- Fitch: Rating Normalcy Awaits U.S. NFP Hospitals After Rating Criteria Rollout.
- The World Bank is Betting Big on Blockchain-Based Bonds.
- NFMA Advanced Seminar on the Impact of ESG & Resiliency Issues on Credit Analysis.
- And finally, BCB's Department of Unfortunate Optics is this week proud to present *Michigan Gun Owners, Inc. v. Ann Arbor Public Schools*. We most assuredly will not be wading into the substance of this issue, for fear of blundering into someone's sights, be they literal or figurative. But I believe we can all agree that something like Very Nice People vs. Other Very Nice People Who Don't Agree With the First Group of Very Nice People would look a little better.

EMINENT DOMAIN - COLORADO

City of Lafayette v. Town of Erie Urban Renewal Authority

Colorado Court of Appeals, Division VI - June 14, 2018 - P.3d - 2018 WL 2976324 - 2018 COA 87

City, a home rule municipality, filed petition in condemnation and motion for immediate possession of parcel of land owned by statutory town.

The District Court granted town's motion to dismiss. City appealed.

The Court of Appeals held that home rule city's condemnation of property that statutory town was planning to develop was motivated by bad faith and thus was not for lawful purpose.

Home rule city's condemnation of property that statutory town was planning to develop was motivated by bad faith and thus was not for lawful purpose; stated public purpose of open space buffer was valid, but blocking town's planned development that predated city's condemnation petition was not lawful, city had no interest in property until it learned of town's proposed development, city presented no evidence showing why setback incorporated in town's development plans would have been insufficient to serve as community buffer, and city's public officials were highly motivated to keep potential tenant within city.

ANNEXATION - ILLINOIS

Chicago Title Land Trust Company v. County of Will

Appellate Court of Illinois, Third District - May 18, 2018 - N.E.3d - 2018 IL App (3d) 160713 - 2018 WL 2277764

Landowner whose property was acquired by village through involuntary annexation brought a quo warranto action against the village, alleging that village had acquired the adjacent property through a sham transaction in order to force annexation of landowner's property.

The Circuit Court granted summary judgment for village. Landowner appealed.

The Appellate Court held that annexation of the adjacent property was a sham transaction, precluding village's acquisition of landowner's property.

Village's annexation of property adjacent to landowner's property, pursuant to the adjacent property owner's petition for voluntary annexation, was a sham transaction to allow village to acquire the landowner's property by involuntary annexation, and therefore, both annexations were invalid; the adjacent owner had no independent interest in becoming part of the village, but only petitioned for voluntary annexation because village proposed it, and parties' annexation agreement contained village's promise not to tax the adjacent owner or subject it to enforcement of village regulations and zoning requirements, and also allowed adjacent owner to disconnect from the village within one year.

SCHOOLS - MICHIGAN

Michigan Gun Owners, Inc. v. Ann Arbor Public Schools

Supreme Court of Michigan - July 27, 2018 - N.W.2d - 2018 WL 3614337

Gun owners association and holder of concealed pistol license brought actions challenging school district's policy banning possession of firearms in schools and at school-sponsored events.

In one action, the Circuit Court granted district's motion for summary disposition. In second action, the Circuit Court granted summary disposition to plaintiffs. Plaintiffs appealed. The Court of Appeals affirmed in former case, and the Court of Appeals reversed in latter case. Plaintiffs sought leave to appeal.

In lieu of granting leave to appeal, the Supreme Court of Michigan held that state statutes excluding school districts from an otherwise precise list of "local units of government" which were prohibited from regulating firearms resulted in school district regulation of firearms not being field-preempted; overruling *Mich. Coalition for Responsible Gun Owners*, 256 Mich. App. 401, 662 N.W.2d 864.

REFERENDA - MICHIGAN

Citizens Protecting Michigan's Constitution v. Secretary of State

Supreme Court of Michigan - July 31, 2018 - N.W.2d - 2018 WL 3635832

Objectors brought action for a writ of mandamus ordering Secretary of State and Board of State Canvassers to reject an initiative petition to amend the state constitution to reestablish a commission to oversee legislative redistricting.

After organizations supporting the proposed amendment intervened as defendants and filed a cross-complaint for a writ of mandamus requiring the proposed amendment to be placed on the ballot, the Court of Appeals denied objectors' request for relief and ordered the placement of the proposed amendment on the ballot. Objectors sought leave to appeal.

The Supreme Court of Michigan held that:

- When determining whether an initiative amendment significantly alters or abolishes the form or structure of state's government in a manner equivalent to creating a new constitution, it is not necessarily the impact on the operations of government that matters; abrogating *Sch. Dist. of City of Pontiac v. City of Pontiac*, 262 Mich. 338, 247 N.W. 474, and
- Proposed amendment did not significantly alter or abolish the form or structure of state's government in a manner that was tantamount to creating a new constitution.

SCHOOLS - MINNESOTA

Lapenotiere v. State

Supreme Court of Minnesota - August 1, 2018 - N.W.2d - 2018 WL 3637374

Defendant petitioned for postconviction relief after he was convicted of second-degree sale of a controlled substance in a school zone.

The District Court denied petition. Defendant appealed. The Court of Appeals affirmed. Defendant appealed.

The Supreme Court of Minnesota held that:

- Entire area of a city block that is kitty-corner to school property is included in the school zone when the area surrounding school property is organized in a city-block system, and
- Evidence was sufficient to prove the school-zone element of the offense.

ZONING & PLANNING - NEW JERSEY

Cherokee LCP Land, LLC v. City of Linden Planning Board

Supreme Court of New Jersey - August 2, 2018 - A.3d - 2018 WL 3650226

Objectors brought action challenging approval of developer's land use application. The Superior Court, Chancery Division, dismissed the complaint with prejudice. Objectors appealed.

The Superior Court, Appellate Division, affirmed, and objectors petitioned for certification.

The Supreme Court of New Jersey held that:

- Objectors may qualify as interested parties with standing to challenge planning board's approval of land use application of neighboring property owner, and
- The Municipal Land Use Law's (MLUL) statutory notice requirement had no bearing on whether objectors, as tax lienholders, would qualify as "interested parties" to challenge planning board's action.

Tax lienholders, who had the right acquire title to the property, and to use the property in a limited manner in order to make repairs, or abate, remove or correct any condition on the property harmful to the public health, safety and welfare, may qualify as interested parties with standing to challenge planning board's approval of land use application of neighboring property owner; lienholders alleged that the proposed land use project would eliminate certain points of access to the neighboring property, interfere with an existing easement, and substantially modify storm water management on the property, which would affect their limited possessory interest in the property.

The Municipal Land Use Law’s (MLUL) statutory notice requirement had no bearing on whether tax lienholders would qualify as “interested parties” to challenge planning board’s action in approving neighboring property owner’s land use application; if the Legislature had intended for only parties required to be notified to have standing, it would have said so and restricted the standing requirements accordingly, but instead, the Legislature allowed for any “interested party” to appeal a board action, which was discrete from a noticed party under the MLUL.

ZONING & PLANNING - NEW JERSEY

Montclair State University v. County of Passaic

Supreme Court of New Jersey - August 6, 2018 - A.3d - 2018 WL 3716020

State university brought action against county, seeking an order directing county to issue permits or declaring university exempt from local permitting requirements or approval for its desired road improvements, and city intervened.

The Superior Court dismissed the action. University appealed. The Superior Court, Appellate Division, reversed. City’s petition for certification was granted.

The Supreme Court of New Jersey held that:

- University enjoyed qualified immunity from local land use controls;
- City and county raised legitimate public safety concerns for public traveling on county road; and
- As a matter of first impression, a state entity must reasonably address public safety concerns, if raised, to receive immunity.

State university was state entity that enjoyed qualified immunity from local land use controls with respect to management of its own land and property; university’s board of trustees was statutorily granted broadly autonomous governmental powers, and university acted for state when, in furtherance of its overall statutory educational mission, it determined to improve its campus roads to better manage intra-campus traffic concerns.

City and county raised legitimate public safety concerns for public traveling on county road based on state university’s planned changes to campus road intersecting with county road, and therefore for university to be immune from local land use regulations it must make showing and receive judicial determination that it has reasonably addressed safety concerns; city and county raised safety issue with planned curve and speed limit, and university was not legislatively authorized to act on issues of public safety on county roads.

Where a facially legitimate public safety concern is raised about a state entity’s planned improvement to lands, which would have a direct impact on non-state-owned property, a showing by the entity that its planning has reasonably addressed the public safety concern, and a judicial finding as to the reasonableness of the action, are required to grant immunity to the entity from local land use regulations.

BANKRUPTCY - PUERTO RICO

In re Financial Oversight and Management Board for Puerto Rico

United States Court of Appeals, First Circuit - August 8, 2018 - F.3d - 2018 WL 3751014

In debt adjustment case of the Puerto Rico Electric Power Authority (PREPA), a public corporation and government instrumentality of the Commonwealth of Puerto Rico, under Title III of the Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA), holders and/or issuers of $5.3 billion of the $8.3 billion of bonds issued by PREPA moved for stay relief to commence litigation against PREPA for the appointment of a receiver to manage the utility and seek electricity rate increases to protect bondholders' economic rights.

PREPA and the Financial Oversight and Management Board for Puerto Rico (Oversight Board) opposed motion. The United States District Court for the District of Puerto Rico denied motion. Bondholders appealed.

The Court of Appeals held that:

- The section of PROMESA governing limitation on jurisdiction and powers of court did not prohibit the district court, as a Title III court, from lifting the automatic stay to enable another court to take action interfering with the debtor's property, and
- The section of PROMESA giving the Title III court exclusive jurisdiction over the debtor's property does not prevent a Title III court from, after a determination of "cause," lifting the stay to allow a creditor to seek the appointment of a receiver in another court.

EMINENT DOMAIN - WASHINGTON

Central Puget Sound Regional Transit Authority v. WR-SRI 120th North LLC

Supreme Court of Washington - August 2, 2018 - P.3d - 2018 WL 3655879

City brought four actions against regional transit authority to contest authority's condemnation of city's electrical transmission line easements.

The Superior Court ruled in favor of authority and entered public use and necessity judgments. City appealed, and the parties' request for consolidation was granted.

The Supreme Court of Washington held that:

- Authority had power to condemn city-owned property;
- Authority's condemnation of city's easements met public use and necessity requirements;
- Prior public use doctrine applied to limit authority's ability to condemn city's easements;
- Substantial evidence did not support finding that authority's use was compatible with city's use; and
- When two public uses are incompatible, remedy is restricting prospective use to an extent that it is compatible with current use, abrogating *State ex rel. Washington Boom Co. v. Chehalis Boom Co.*, 82 Wash. 509, 144 P. 719.

Transit authority had power to condemn property owned by city, including electrical transmission line easements, as such power was express or, at the least, necessarily implied by statutes; authority was granted the power to acquire by condemnation "all" lands, rights-of-way, and property necessary to build light rail system, and legislature implied right to condemn city property by specifically requiring consent only to acquire city's public transportation facilities.

Transit authority's condemnation of city's electrical transmission line easements to build light rail system met public use and necessity requirements; public transportation was a public use, there was no evidence of fraud or arbitrary and capricious conduct by legislature's determination of necessity, and authority adopted resolutions authorizing condemnation as needed for extension of light rail system.

City's easements that were previously acquired for purpose of distributing electricity, but some of which were not currently being used for that purpose, were being put to public use, and thus transit authority's ability to condemn city's easements was limited by prior public use doctrine; even though easements were acquired 86 years prior and there were no immediate plans to begin building transmission lines on currently unused easements, electrical utilities had to plan long term for future needs, and there were complex logistics to building electric transmission corridor.

Substantial evidence did not support trial court's finding that transit authority's use of property to build light rail system was compatible with city's prior public use of holding property for future electrical transmission lines, and thus prior public use doctrine may have limited authority's condemnation of city's property; authority and city submitted competing declarations, there was no trial for court to weigh credibility of competing declarations, and issue of compatibility was highly technical and there was a factually correct answer.

In situations where the prior public use doctrine applies and the two public uses on the property to be condemned are found to be incompatible with one another, the remedy is an order that the prospective public use be restricted to an extent that the current public use would be compatible with it; abrogating State ex rel. Washington Boom Co. v. Chehalis Boom Co., 82 Wash. 509, 144 P. 719.

PUBLIC UTILITIES - WASHINGTON

Port of Tacoma v. Save Tacoma Water

Court of Appeals of Washington, Division 2 - July 25, 2018 - P.3d - 2018 WL 3582419

Sponsor of local initiative measures that would have required voter approval for large water utility service requests appealed from declaratory judgment and permanent injunction issued by the Superior Court preventing it from placing the measures on the municipal ballot.

The Court of Appeals held that:

- Pre-election review of the proposed initiatives to determine if they were beyond the scope of the initiative power did not offend separation of powers principles;
- Initiatives related to an administrative matter and thus were beyond the scope of the local initiative power;
- Initiatives impermissibly conflicted with statute placing a duty on city to provide retail water service if its requirements were met;
- Invalid provisions of the initiatives were not severable from any remaining valid provisions;
- Sponsor did not have a First Amendment free speech right to place the initiatives on the ballot; and
- Injunction did not violate sponsor's right to free speech under the state constitution.

Chicago’s Fiscal Storm.

The deeply indebted city, with bonds already rated as junk, considers borrowing billions to cover its pension costs.

When Chicago issued half a billion dollars in new bonds late last year, some investors balked, though the offering was designed to protect them by guaranteeing that they would be paid with tax revenues that Illinois sends to its biggest city. “It’s an untested model,” the research head at Gurtin, a municipal bond firm, said of the offering—Chicago’s first under a new state law. Ominously, he worried that if Chicago defaults, it was unclear how much protection holders of the new debt would really get.

Even as Chicago grapples with nightmarish violent crime, the city faces imposing fiscal challenges. The city, which says that it will collect about $8.5 billion in local revenues this year, is burdened by an astounding $28 billion in unfunded pension liabilities and another $9 billion or so in money that it owes to general-obligation bondholders, as well as billions more in other debts. Chicago’s bonds, graded as “junk” by analysts, are among the lowest-rated of any major municipality. That forces the city to stretch the limits of municipal finance, seeking innovative techniques that might get new borrowers on board, but at the potential expense of taxpayers and holders of Chicago’s other debts. It’s becoming increasingly difficult to see how this ends well in the Windy City.

Chicago’s latest fiscal scheme is already making headlines at home and in municipal-finance circles. Late last week, Chicago’s chief financial officer and a financier close to Mayor Rahm Emanuel proposed the idea that the city would borrow $10 billion through a bond offering to shore up its pension system, using a dedicated revenue stream in order to persuade investors to come on board. The plan would seek to offset the pressure that the city faces from accelerating pension payments that it must make in coming years. Chicago’s pension costs have doubled in the last decade—from $416 million in 2008 to $1 billion last year—and that’s just 42 percent of what it should be paying to fund new retirement credits that workers are earning, and to wipe out its debt. Under a long-term plan, the city must double its pension payments again over the next five years, and then keep increasing payments steadily every year for the next 30 years. Even then, the plan would get the system back to only 80 percent funded, if everything else about the system’s projections stays on course.

Chicago’s bond offering would raise money for the pension system, where the money can then be deposited in financial markets to earn returns. The idea sounds simple. Chicago could borrow the cash, officials predict, by issuing bonds that pay between 5 percent and 5.5 percent annually. The city’s pension system, meanwhile, projects that it will earn between 7 percent and 7.5 percent annually in the market over the long term. By simple math, earning 7 percent on money that costs you just 5 percent is a winner. “It would be irresponsible for me not to look at it,” Chicago CFO Carole Brown told the press last week.

The problem is that those kinds of returns are far from a sure thing. That’s why pension bonds have been behind some of the biggest fiscal meltdowns in recent years. Stockton, California, for instance, borrowed $125 million in 2007 to bolster its underfunded retirement plans and gave the money to California’s public-pension system to invest. The system’s investment professionals promptly lost more than a quarter of the principal, exacerbating an already-emerging crisis, which provoked city officials to file for bankruptcy. Detroit, eyeing the same kind of sharp increases in pension payments that Chicago faces, created a complex pension-financing scheme in 2005 to raise money by circumventing Michigan’s limits on municipal debt. After the market crashed in 2008, the deal blew up. A financial manager brought in to clean up the mess took one look at Detroit’s retirement obligations and hauled the city into federal bankruptcy court.

Brown justified considering the maneuver because the city can't reasonably dig its way out of its pension mess with taxpayer dollars. She's right: Chicago has already raised taxes by more than $800 million in the last few years to bolster pension payments. Even so, the system's funded ratio keeps dropping. If the $28 billion that Chicago is missing from its pension system existed, and was earning 7 percent in the market, the city would be garnering nearly $2 billion a year in new capital. That's money that—based on the design of the pension system—it's supposed to be earning. The missing investment returns, however, amount to far more than taxpayers can make up, so despite Chicago's best efforts, its pension situation keeps deteriorating. Brown said that the city needs to replace some of that missing money; if it can't, then Chicago's pension-funding status will fall even lower when the next market downturn occurs. But the Detroit and Stockton examples illustrate how things can get even worse with a big loan and a bad market bet.

The big losers in all this may be taxpayers and borrowers of previous Chicago debt, who should be looking with panic at the city's maneuvering. Chicago is now guaranteeing the debt of its newest bondholders by dedicating specific tax dollars to repay them. Detroit did the same thing, pledging revenues from casino taxes to reimburse some lenders. Those lenders did get paid in full during the bankruptcy, but other Detroit bondholders, including some who held Detroit's general-obligation debt, previously thought to be among the most secure forms of municipal debt, took a big loss, or "haircut," when the city went bust. With every new, secured deal that Chicago engineers, the risks for holders of the city's older debt grows.

Taxpayers face their own risks. Loans secured by dedicated revenue streams tie up tax proceeds. The more a municipality borrows in these kinds of transactions, locking up future revenues, the more it reduces its fiscal flexibility. Detroit eventually wound up in what fiscal experts call "service insolvency," that is, it didn't have enough money left over to spend on basic municipal services. Chicago has a far more vibrant economy than Detroit's, but it also has more pension debt, and Illinois judges have granted public workers extraordinary pension protections. The city isn't even allowed to reduce the rate at which workers earn benefits for work that they haven't done yet, so the pension system just keeps racking up new debt at alarming rates.

There's little precedent for what's happening in Chicago, and no clear path out. Illinois doesn't let cities file for federal bankruptcy protection, and that's unlikely to change because the municipal unions that have so much political power in the Land of Lincoln hate bankruptcy, where contracts can be busted and pension debt cancelled. Still, as economist Herb Stein famously observed, "If something cannot go on forever, it will stop." But when, and how?

City Journal

by Steven Malanga

August 9, 2018

How GASB Might Change Conduit Debt Reporting.

WASHINGTON — The Governmental Accounting Standards Board is proposing to standardize the way issuers of municipal bonds report conduit debt that is repaid by a third-party borrower.

The proposal, released last week by GASB, which is seeking comments, seeks to create uniformity in the way conduit issuers report information. There has been confusion over what constitutes a conduit debt obligation and GASB hopes to improve the quality of disclosure by clarifying that definition and making clear that such obligations are the responsibility of the conduit borrower rather than the issuer.

Bonds sold by issuers for borrowers in conduit transactions often support such revenue-producing infrastructure such as higher educational facilities and hospitals. The bonds are issued to allow such projects to access capital more affordably than would otherwise be possible.

The draft would define a conduit debt instrument as one that includes an issuer, an obligor, and a trustee, where the obligor receives the proceeds of the bonds and is responsible for their repayment, among other things.

The issuer would not recognize such an issuance as a liability, but would recognize related liabilities and expenses if it appears “more likely than not” that the issuer will support debt service payments.

The draft provides a list of factors that could be involved in such an analysis, including litigation that would negatively affect the project being financed or the conduit borrower entering into bankruptcy.

GASB first dealt with conduit obligations in Interpretation 2 in 1995. Under Interpretation 2, issuers were permitted to report conduit issuances as their own liabilities if they chose to do so. The new draft would improve disclosure by ending “significant diversity in practice.” The proposal would not only provide better information, according to GASB, but also would allow for better apples-to-apples comparisons of different government financial statements.

“The clarified definition would resolve stakeholders’ uncertainty as to whether a given financing is, in fact, a conduit debt obligation,” GASB said in the draft.

The National Association of Health and Educational Facilities Finance Authorities, which represents conduit issuers, suggested it would submit comments to GASB.

“NAHEFFA will take a careful look at this draft and respond to GASB as required,” the group’s counsel and Mintz Levin member Charles Samuels told The Bond Buyer. “We will consider whether any real problem is being solved and new regulatory burdens are being imposed without justification.”

Samuels said that while his group would be reviewing the proposal, it is not clear to him that it would apply to NAHEFFA members.

GASB standards are not binding on state and local governments but they must be adhered to in order for governments to receive clean opinions on audits of financial statements. The board periodically publishes updates to its reporting standards, and did so earlier this year with respect to reporting of bank loans and private placements of municipal debt.

Comments on the proposed statement governing reporting of conduit obligations are due by Nov. 2. If approved, it would take effect for reporting periods.

The Bond Buyer

By Kyle Glazier

August 07 2018

Retrospective Review of 2012 Interpretive Notice Concerning the Application of MSRB Rule G-17 to Underwriters of Municipal Securities.

SUMMARY

SIFMA provided comments to the MSRB on existing interpretive guidance that addresses the application of the MSRB's fair-dealing rule to underwriters of municipal securities. The guidance, adopted in 2012, established obligations for underwriters, including requirements to disclose information to issuers about the nature of their relationship and risks of transactions recommended by the underwriters, among other information. Some market participants have indicated that underwriters' disclosures are duplicative, often boilerplate and burdensome for issuers to review.

View the comments.

See also: MSRB Notice

GASB Proposes Improvements to Reporting of Conduit Debt Obligations.

Norwalk, CT, August 6, 2018 — The Governmental Accounting Standards Board (GASB) has proposed revised guidance that would provide a single method for government issuers to report conduit debt obligations and related obligations. This proposed guidance would eliminate diversity in practice associated with these issues.

Conduit debt obligations are debt instruments issued by a state or local government to provide financing for a specific third party that is primarily liable for repaying the debt instrument. Third parties sometimes seek this kind of financing for projects such as not-for-profit hospitals and universities and qualifying private businesses.

The GASB's review of the existing standards—Interpretation No. 2, Disclosure of Conduit Debt Obligations—found variation in practice among governments that issue conduit debt obligations, which adversely affects the comparability of financial statement information. The variation arose from (1) the option in the standards that allowed government issuers to recognize conduit debt obligations as their own debt or just disclose the transactions and (2) diversity in how additional commitments associated with these transaction are reported by governments..

The GASB is proposing in the Exposure Draft, *Conduit Debt Obligations*, to address the variation in practice by:

- Clarifying what is a conduit debt obligation
- Eliminating the option for government issuers to recognize conduit debt obligations, thereby providing a single method of reporting
- Clarifying accounting and financial reporting guidance for (1) additional commitments extended by government issuers and (2) arrangements—often characterized in practice as leases—associated with conduit debt obligations
- Enhancing note disclosures.

The Exposure Draft is available on the GASB website, www.gasb.org. The GASB invites stakeholders to review the proposal and provide comments by November 2, 2018.

BDA Submits Comment Letter on MSRB Retrospective Review of Underwriter Disclosures to Issuers.

Today, August 6, 2018, the BDA submitted a comment letter in response to the MSRB's request for public comment on existing interpretive guidance on the application of MSRB Rule G-17.

The letter can be viewed here.

The comment letter requests that the 2012 Guidance:

- Should be modified to allow for the timing of some of the Rule G-17 Disclosures to vary depending on the circumstances; and to
- Allow for the timing of some of the Rule G-17 Disclosures to vary depending on the circumstances; and to
- Clarify that only material, actual conflicts of interests should be disclosed; and to
- Clarify that co-managers usually have no requirement to deliver Rule G-17 Disclosures.

The MSRB issued a notice requesting comment on existing interpretive guidance on the application of MSRB Rule G-17 that addresses the application of the MSRB's fair-dealing rule to underwriters of municipal securities. The guidance, adopted in 2012, established obligations for underwriters, including requirements to disclose information to issuers about the nature of their relationship and risks of transactions recommended by the underwriters, among other information.

August 6, 2018

Digital Innovation in Public Finance.

By Mark Howard, Global Administration Segment Lead, Public Service, Accenture

If you attended recent NASACT or NASC events, you may have heard my colleague, Bill Kilmartin, or me discussing digital innovation in finance. We highlighted the potential of digital technologies and shared insights gained through Accenture's experience with commercial organizations. I've also written extensively about the opportunity to use digital technologies to transform the government back office into a Center of Innovation. That includes realigning the finance function around its true mission: creating a performance-focused organization that is financially sustainable.

We're eager to continue the conversation at next month's NASACT Annual Conference, where instead of *telling* you about digital innovation—we'll be ***showing*** how it's already underway within state governments. One state is testing a chatbot to guide users through its procurement process. Another is applying automation tools to perform massive reconciliation on 100% of records rather than sampling at a fraction of the time previously required, freeing substantial 'human' time to focus on resolving issues rather than compiling data.

These are no longer futuristic concepts. Today digital innovations are within reach for state agencies—and these examples are only the beginning of what's possible.

How can your agency tap into here-and-now digital innovation? Consider a recent Accenture study of government innovation. Spanning nearly 600 government executives in 10 countries, the survey set out to understand what it takes to be innovative—in other words, what an agency must do culturally and operationally to transform itself into a Center of Innovation.

Using the five pillars of the Accenture Innovation Framework—Strategy, Ideation, Execution, Impact & Benefits, and Absorption—we asked about the "what" and "how" of innovation within respondents' government agencies. While our analysis revealed that just 8 percent of agencies can be considered government innovation leaders, it also pointed to some practices and habits that set these leaders apart from the crowd. That includes insights about execution—the important work of turning creative ideas into real-world results.

At the core, executing government innovation requires a sound process and the right skills for evaluating ideas, using a Proof of Concept (POC) to test the highest-potential ideas, rigorously assessing the results of the POC, and, finally, scaling the innovation and continually evaluating performance.

Our study found that for about three-quarters (77 percent) of agencies, moving from pilot to broad implementation at scale remains a significant challenge. Why? The most-cited barriers were budgetary constraints and lack of technological capabilities (cited by 82 percent and 83 percent, respectively). About three-quarters of respondents also pointed to a risk-averse culture (77 percent) and a lack of support from leadership and key decision-makers (73 percent) as barriers to executing innovation at scale. In addition, respondents identified lack of skills as a key obstacle. Sixty-two percent reported that they need more access to user experience (UX) design skills, design thinking skills and research skills—competencies that have become essential to serving digital citizens.

The good news: These obstacles can be overcome. Based on our findings about government innovation leaders and what we've seen in the real world—including the innovative work we'll be highlighting at the NASACT Annual Conference—Accenture has identified four steps to better execution:

- **Go talk with citizens (your "customers").** Set up a structured mechanism for uncovering customers' needs. Be disciplined and consistent in asking customers what's working—and what's not—with your existing services.
- **Put a process in place.** Be rigorous in managing execution, with a strong tie to the impact and benefits of government innovation. Establish a strong practice for each step of execution—evaluating ideas, executing POCs, assessing POC results, scaling quickly to production and evaluating results once in production.
- **Think like entrepreneurs.** Embrace iterative, agile methods, including willingness to rapidly change course. Build the discipline to end at any point in the cycle based on how well or poorly benefits are realized.
- **Assess skills (technical and "soft").** Perform an objective evaluation of your skills gap. Where gaps exist, determine if you truly need those skills. Where you need skills but have gaps, fill them through partners.

We look forward to expanding on our frontline experience and research findings next month at the NASACT Annual Conference. We hope to inform, inspire and learn from you as we all work to turn digital innovation ideas into actions that make a real impact for agencies and the people they serve.

To learn more about how to bring the back office to the forefront of government innovation visit us here.

MARK HOWARD is the global lead for Accenture's public administration/regulatory industry group. His team focuses on helping clients implement leading practices, systems and organizational designs in government administrative and regulatory agencies. He spent four years as Accenture's global program director for government finance and performance management. His clients in the U.S. include cities, counties, states, special districts, universities and federal agencies. Overseas, he has worked with the French Ministry of Finance and several United Nations agencies. He helped develop and lead with Bill Kilmartin Accenture's participation in the performance benchmarking program of NASACT. Prior to joining Accenture, Mark spent 10 years in city management in various roles with cities in Texas, Colorado and Wisconsin. He has a master's in public affairs from the LBJ School of Public Affairs at the University of Texas-Austin and a bachelor of arts in history from Northwestern University.

What If Banks Were Publicly Owned? In LA, This May Soon Be A Reality.

Voters will decide in November whether to take city money out of the hands of big banks.

Trinity Tran is a powerful speaker. Addressing a rally in downtown Los Angeles for New York congressional nominee Alexandria Ocasio-Cortez, the 33-year-old activist and organizer thundered, "We are witnessing the emergence of a solution, from profit and greed to collective prosperity. We can empower our community from the ground up. It's time to take our power back."

Tran's organization, Public Bank LA, is leading the revival of an idea that had largely been discarded until the financial crisis. In November, Los Angeles voters will have the opportunity to approve a public bank for the city. If the measure passes, it would become the first government-owned bank developed in the United States since 1919.

The term "public bank" may confuse some into thinking that Los Angeles is about to create a bunch of branch offices where residents can open a free checking account. The idea is much more ambitious. Public bank enthusiasts want to finance local improvements in housing, infrastructure, and community development by employing the money citizens already pay to state and local governments for services. To them, it's about democratizing the financial system.

Continue reading.

The Huffington Post

By David Dayen

8/10/18

Huntington Buys Chicago-Based Public Finance Investment Bank.

Huntington Bancshares is buying Chicago-based Hutchinson, Shockey, Erley & Co., a public-finance investment bank and broker-dealer with a focus on municipal securities.

The purchase price was not disclosed. The deal is expected to close before the end of the year.

Founded in 1957, the company serves state and local government and nonprofits. It underwrites and structures debt that funds school construction, infrastructure development and other capital projects.

The company has 11 offices in nine states with 51 employees.

The current management team will continue to be led by CEO Ton Dannenberg. The company will continue to operate under the same name and remain in Chicago.

The Columbus Dispatch

by Mark Williams

Wells Fargo Public Finance Hires Two Ex-Morgan Stanley Bankers.

Wells Fargo Securities, the investment banking and capital markets business of Wells Fargo, has hired two former Morgan Stanley investment banking leaders: Randy Campbell heads the Public-Private-Partnership (P3) and Sports Financing group, and Jim Perry leads the Southern regional group.

Edward Boyles will continue to serve as head of the Atlantic region. Kevin Carney, managing director, and Julie Burger, director, will continue to work on transportation-related P3 financings.

"As we continue to invest in our public finance business, hiring Randy and Jim — both leaders in the industry — will bring additional experience and increased capabilities that we can offer to our clients," said Stratford Shields, head of Public Finance. "Wells Fargo offers full-service financial capabilities, including underwriting and balance sheet solutions through an integrated Government and Institutional Banking platform, which few other firms offer." All report to Shields.

Campbell has 30 years of public and corporate finance experience, working on sports-related, general infrastructure and P3 advisory and financing transactions. He previously headed the sports finance investment banking practice at Societe Generale. As head of Public-Private-Partnership and Sports Financing, Campbell will work on buy- and sell-side advisory and financing opportunities in the P3 business, covering municipal entities, infrastructure firms and other sponsors. He also will oversee the firm's investment banking efforts related to both sports team and stadium financing and will be based in New York.

Perry, a 10-year veteran of public finance, worked as deputy chief of staff and policy director to Mississippi Governor Haley Barbour prior to becoming an investment banker. Perry oversees the seven-state Southern Region, with a focus on complex financing structures for a variety of state and local government entities. He will also be a part of the P3 investment banking team. His territory includes Alabama, Mississippi, Louisiana, Texas, Oklahoma, Kansas and New Mexico and he will be based in Jackson, MS.

Wells Fargo Government & Institutional Banking supports more than 4,000 government, education, nonprofit and healthcare clients across the U.S. The firm organizes specialized commercial banking and capital markets teams under one business, offering an integrated approach to provide the most value for its clients. Government Banking serves federal, state, county and city governments, government agencies and authorities, municipal utilities, school districts and specialty public sectors such as public power, housing, finance and transportation. The Education and Nonprofit group serves colleges, universities, 501(c) organizations, foundations, endowments and national nonprofits.

Healthcare Financial Services serves nonprofit hospitals systems, nonprofit healthcare insurers and academic medical centers.

AUG 7, 2018

Airports Find a New Source of Revenue: Attaching Hotels to Terminals.

- Recently, Twin Cities officially cut the ribbon on a new four-star hotel at the Minneapolis-St. Paul International Airport (MSP).
- A growing number of travel hubs gives flyers new accommodations that let them skip a hectic commute to a hotel, and go straight to a comfortable room with all the perks.

Recently, Twin Cities officially cut the ribbon on a new four-star hotel at the Minneapolis-St. Paul International Airport (MSP). It gives travelers new accommodations that let them skip a hectic commute to a hotel, and go straight to a comfortable bed with all the perks.

Designed with the corporate traveler in mind, the 12-story, 300 room InterContinental Minneapolis-St. Paul Airport Hotel is connected to Terminal 1 via a sky bridge and has a spa, conference center and its own security checkpoint, offering quick access to the gates for those flying with just hand baggage.

"At-the-airport hotels are particularly convenient to the business traveler who stays only a few days – a demographic in abundance at MSP," said airport spokeswoman Melissa Scovronski.

Continue reading.

CNBC

Harriet Baskas | @hbaskas

Published 9:01 AM ET Sun, 5 Aug 2018

California Becomes First State to Pledge to Use 'Green' Financing to Combat Climate Change.

SACRAMENTO – California's treasurer has signed on to a document committing to to fight climate change through a strategy using green financing.

"President Trump may dial up his efforts to mislead the American people into believing climate change is a hoax created by the Chinese, but we Californians laugh at such lunacy because we know – without doubt or reservation – that the fate of the planet is at stake. Building critical public infrastructure and a future that does not depend on fossil fuels is now deadly serious business," California Treasurer John Chiang said to a gathering of policymakers and top-level executives at the Milken Institute California Policy Summit in Sacramento on Tuesday.

While speaking with attendees, Chiang signed the "Green Bond Pledge." A declaration with broad and far-reaching impact, states and cities across the nation are being urged to take the pledge that would commit them to a strategy that will finance infrastructure and capital projects that meet the challenges of climate change with “green bonds,” or green financing.

“Treasurer Chiang is taking smart action to strengthen the market for climate-friendly bonds,” said California Governor Edmund G. Brown Jr., who is hosting the Global Climate Action Summit in San Francisco in mid-September. The summit will showcase actions – including the Green Bond Pledge – states and regions, cities, companies, investors, and individual citizens are taking to realize the goals of the historic 2015 Paris Agreement.

Those signing the green bond pledge agree that climate change poses an existential threat and that the rapid growth of a green bonds market will not only meet the unique challenges the world faces, but will do so while making communities more economically competitive, prosperous, and productive.

“As the world’s fifth largest economy, California will lead the way and help finance as much new clean infrastructure as we possibly can,” said Chiang. “While Washington continues to deny the irrefutable science that proves climate change, the Golden State has embarked on an unstoppable path to reduce the dangerous effects of greenhouse gases and build a future that is climate resilient.”

Next, the governor and treasurer are establishing a working group to develop and implement a green bonds strategy to fulfill the commitments outlined in the Green Bond Pledge.

Green bonds may be sold by governments, as well as by private entities, to finance projects that have positive environmental or climate attributes. The projects can range from clean transportation to renewable energy.

The American Society of Civil Engineers estimates the U.S. currently has a multi-trillion dollar shortfall in funding its infrastructure needs in the coming decades. In California alone, independent reports estimate the shortfall will exceed $400 billion over the next 10 years.

The green bond market started in 2007 with bonds issued by the World Bank and the European Investment Bank. By 2017, both California and New York had issued more than $4 billion in bonds to finance such things as clean water projects, green schools, mass transit, land preservation, and green housing. The state is now looking to build on that start and help grow a much more robust market for green bond financing.

The Green Bond Pledge aims to help establish the market and accelerate its growth. The pledge was developed and designed by international climate finance and environmental groups.

Treasurer Chiang has devoted considerable energy and time to unlocking the potential of the green bond market. His office has handled more than $2.2 billion in green bonds for mass transit, clean water, and pollution control projects, as well as for Kaiser Hospital green buildings, and a rice-straw fiberboard plant. The treasurer’s senior team will also be discussing green bonds with Chinese provincial government officials in the fall.

In 2016, Treasurer Chiang conducted a five-city, national listening tour, meeting with market experts and investors to identify barriers and challenges to growing the green finance market. In February 2018, he convened a green bond symposium with the Milken Institute and tasked its blue-ribbon Financial Innovations Lab® with developing actionable paths to creating a more robust green bonds market. The result was two ground-breaking studies. The first, issued in 2017, identified the barriers and challenges to growing the green bond market. The second was unveiled today.

Chiang added, “Today’s report provides strategies and solutions aimed at turbocharging a new and growing financial market that can help provide more affordable capital to not only meet California's growing infrastructure needs, but also steel ourselves against wildfires, rising sea levels, and extreme weather."

The report issued today includes, among its suggestions, improving market standardization, defining what is green, and streamlining pricing. It concludes that, "Because California is widely recognized as a leader in environmental sustainability, pioneering efforts to streamline the green bond market can serve as a model for other states and countries.Building public infrastructure with future generations in mind is a must, not just in California, but everywhere on the planet."

A copy of the Green Bonds Pledge can be found here.

CALIFORNIA TREASURER'S OFFICE | POSTED ON WEDNESDAY, 08 AUGUST 2018 02:15

CDFI Fund Releases Application Demand for 2018 Round of NMTC Program.

The U.S. Department of the Treasury's Community Development Financial Institutions Fund (CDFI Fund) announced today that it received a total of 214 applications under the 2018 round of the New Markets Tax Credit Program (NMTC Program). The NMTC Program advances economic development in economically distressed communities by making tax credit allocations available to Community Development Entities (CDEs) for targeted investments in eligible areas.

The CDEs that applied under the 2018 round are headquartered in 43 states, the District of Columbia, and Puerto Rico. These applicants requested an aggregate total of $14.8 billion in NMTC allocation authority, over four times the $3.5 billion in authority available for the 2018 round.

The NMTC Program was established by Congress in December of 2000 and permits individual and corporate taxpayers to receive a credit against federal income taxes for making qualified equity investments in CDEs. The credit provided to the investor totals 39 percent of the cost of the investment and is claimed over a seven-year period. Substantially all of the taxpayer's investment must be used by the CDE to make qualified investments in low-income communities. Successful applicants are selected only after a competitive application and rigorous review process that is administered by the CDFI Fund.

Through the first fourteen rounds of the NMTC Program, the CDFI Fund has made 1,105 awards totaling $54 billion in tax credit allocation authority. This $54 billion includes $3 billion in Recovery Act Awards and $1 billion of special allocation authority to be used for the recovery and redevelopment of the Gulf Opportunity Zone.

For more information about the NMTC Program, visit the CDFI Fund's website.

Wednesday, August 8, 2018

Incentives Watch: State Tax Incentive Review Programs Come of Age.

State governments across the country have fallen in love with the use of credits and incentives to spur economic growth and social progress. The last twenty years have seen an explosion of state tax credit programs, including historic rehabilitation/preservation credits, economic development credits, and even individual credits to assist first responders and veterans. But growing with this expansion is concern that states have no way of knowing whether a particular program is working. Reform in this area is picking up steam, and seeks not just to understand the bald dollar value of credits offered but also evaluate the return on investment the state receives. Though most evaluation is done in monetary terms, some states are beginning to look past finances to determine a credit's effect on homelessness, poverty rates, and educational access. Several recent pieces of legislation seek to obtain this information in order to guide policy makers toward programs that are worth the public's time and resources.

Credit Evaluation: Flying Blind?

Current state evaluation of credit offerings is uneven and incomplete. Just 10 states have an established method in place of reviewing major tax incentives, according to a report by Pew Charitable Trusts in 2017. The evaluation was based on three criteria: 1) well-designed plans for regular reviews, 2) experience in producing quality evaluations, and 3) a process for informing policy choices. Too often states merely collect information on the total value of credits offered in a given year, and perhaps the identities of the recipients. States rated as "leaders" in the Pew report seek to understand efficacy, through both achieving the desired result and understanding the cost.

Continue reading.

Bloomberg BNA

Aug 7, 2018 / by Kevin Thayer

House Bill to Expand Tax Credit Program Would Target Rural Areas.

Legislation introduced in late July would add authority to the New Markets Tax Credit program.

Two lawmakers in the U.S. House are proposing to expand the size of a tax credit program, in an effort to drive new investment in rural America.

Reps. Jason Smith, a Missouri Republican, and Terri Sewell, an Alabama Democrat, in late July introduced legislation dubbed the Rural Jobs Zones Act. They're both members of the tax-writing Ways and Means Committee. Their bill would provide $500 million annually in 2018 and 2019 in additional New Markets Tax Credit authority, specifically aimed at rural areas.

The tax credit program was enacted in 2000 and is designed to draw investment capital to low-income communities. Through 2017, Treasury made awards totaling $54 billion in New Markets Tax Credit authority, according to a July report from the department.

Continue reading.

Route Fifty

by Bill Lucia

AUg 6, 2018

[S&P State Brief: South Dakota]

South Dakota boasts a structurally balanced budget, diverse economy, and growing population. Thanks to strong financial and budgetary management through the recession, the state continues to fund its reserves according to its policy to maintain 10% of budgeted expenses.

Continue Reading

Aug. 3, 2018

TAX - ILLINOIS

Keystone Montessori School v. Village of River Forest

United States District Court, N.D. Illinois, Eastern Division - July 17, 2018 - F.Supp.3d - 2018 WL 3438940

Primary and secondary school with tax-exempt status, which was a not-for-profit Illinois corporation, brought action in state court against village, alleging claims including a class-of-one equal protection claim regarding development permit which required school to forfeit its right to a property tax exemption to operate on property that zoning ordinance otherwise prohibited.

Village removed case to federal court and moved to dismiss for failure to state a claim.

The District Court held that:

- Unconstitutional conditions doctrine did not apply, and
- Allegations did not raise a plausible inference that village targeted school for less favorable tax treatment than it accorded other not-for-profit entities.

Payment of property taxes to village did not implicate the Takings Clause, and thus unconstitutional conditions doctrine did not apply to claim by primary and secondary school with tax-exempt status that village violated the federal and Illinois constitutions by conditioning a development permit on school's payment of property taxes; right to seek a property tax exemption was rooted in the Illinois tax statute.

Allegations in class-of-one equal protection complaint by primary and secondary school with tax exempt status did not raise a plausible inference that village targeted school for less favorable tax treatment than it accorded other not-for-profit entities in violation of the Equal Protection Clause by granting development permit requiring school to forfeit tax exempt status; permit singled out school for favorable treatment by authorizing it to operate at a location where it was otherwise prohibited by village's generally-applicable zoning ordinance, and no other not-for-profit entity operated in an area where its activities were otherwise prohibited by zoning ordinance, or owned and occupied a presumptively tax-generating property, but still exercised its statutory right to property tax exemption.

TAX - WEST VIRGINIA

Charleston Area Medical Center, Inc. v. United States

United States Court of Federal Claims - July 31, 2018 - Fed.Cl. - 2018 WL 3629294

Two nonprofit medical centers brought putative class action against the United States, seeking to recover statutory interest paid at higher, standard rate, rather than lower corporate rate, for their tax refunds.

The government moved for judgment on the pleadings, and medical centers moved for summary judgment.

The District Court held that nonprofit medical centers were "corporations" subject to lower corporate interest rate on tax refunds.

Nonprofit medical centers, which were incorporated under provisions of state law, were "corporations" within meaning of the Internal Revenue Code (IRC), and were thus subject to lower corporate interest rate on refunds of the employer portion of Federal Insurance Contributions Act (FICA) taxes they paid for medical residents whom IRS subsequently determined were students exempt from such taxes; common usage and definition, IRC's own definition, structure of the specific statutory provision at hand, and use of the term in the IRC as a whole, all indicated that term "corporation" in interest rate provision of the IRC plainly encompassed both for-profit and not-fo--profit corporations.

District court would decline to look to Treasury regulations that formerly set forth IRS's views on the essential characteristics of a corporate entity, so as to find that nonprofit medical centers were not "corporations" subject to lower corporate interest rate on refund of employer portion of Federal Insurance Contributions Act (FICA) taxes they paid for medical residents whom IRS subsequently determined were student exempt from such taxes; medical centers were unambiguously "corporations" under the definition in Internal Revenue Code (IRC) section governing statutory interest on tax refunds, regulations upon which medical centers relied were repealed and superseded by "check the box" regulations that harmonized with the foregoing interpretation of the statutory interest provision, and even if the now-superseded regulations had remained in effect, they would not apply to medical centers, since they were incorporated under state law.

More Counties Join PILT Class-Action Lawsuit Against the Feds.

STATE AND LOCAL ROUNDUP | Fact-checking Trump's claims on Calif. wildfires … a big N.M. groundwater ruling … and Detroit's dismal rental inspection compliance.

Good morning, it's Wednesday, Aug. 8, 2018. Budget and finance news leads Route Fifty's state and local government news roundup but there's a lot more. Scroll down for more news from places like Wilmington, North Carolina; Utah County, Utah; and the Plains of St. Augustin in New Mexico.

Continue reading.

Route Fifty

By Michael Grass,
Executive Editor

August 8, 2018

Evaluating Municipal Debt Instruments Using Muni Bond Indices.

Like other capital markets, municipal debt markets are made up of a wide array of debt instruments and serve investors from all walks of life. Whether you are a conservative investor looking for principal protection while earning enough to keep up with inflation or a moderate risk taker who might be looking for high returns on your municipal debt portfolio, you'll find many debt instruments to fit your profile.

Similarly, these various debt issues are unique in their own way with differing characteristics like the risk profiles associated with their credit quality and the duration of their potential returns. To help investors compare and evaluate their potential investments, these characteristics are summed up into benchmarks and market indices.

These benchmarks are quite helpful for issuers and investors in evaluating a debt instrument's yield and comparing that to a particular sector or the municipal debt markets as a whole.

In this article, we will take a closer look at a bond index, its composition, its uses and how it can provide a competitive edge to an informed investor.

Continue reading.

municipalbonds.com

by Jayden Sangha

Aug 08, 2018

Fitch: Rating Normalcy Awaits U.S. NFP Hospitals After Rating Criteria Rollout.

Link to Fitch Ratings' Report(s): U.S. Not-for-Profit Hospitals and Health Systems Rating Criteria Update: Implementation Complete

Fitch Ratings-Austin-07 August 2018: The 'Rating Watch' is officially over for Fitch-rated U.S. not-for-hospitals and health systems with most systems performing as expected and upgrades outpacing downgrades, as detailed by Fitch Ratings in a new report.

Fitch completed its hospitals and health systems criteria rollout mid-July. Of the 16 issuers placed on Rating Watch Negative at the start of its rating review, Fitch affirmed six and downgraded 10. Conversely, Fitch affirmed five and upgraded nine issuers of the 14 it placed on Rating Watch Positive. That said, the overarching theme of the rating review is the majority of hospitals are performing up to par as Fitch had initially projected (52% ratings affirmed, another 28% upgraded). Still, that upgrades occurred more frequently than downgrades was somewhat of a surprise according to Senior Director Kevin Holloran.

"Upgrades generally came from long-time consistent performers that benefited from a 'new look' through the lens of our updated criteria,' said Holloran. 'Conversely, downgrades were more varied with balance sheet strength an overarching need over size or market share, asserting our view that balance sheet strength translates into more predictable credit stability."

While more than 93% of Fitch's rating changes were subtle in scope (one to two notches), there were two extreme outliers. The first was a provider, Lexington Medical Center, which Fitch downgraded six notches due to a GASB 68 pension liability factored into its analysis. On the opposite end of the rating spectrum was a seven-notch upgrade Fitch took on Presence Health Network, due to an MTI substitution.

So the logical question now is 'What does the future rating trajectory look like for NFP hospitals going forward?' With Fitch's criteria implementation resulting in what it called a 'normalized distribution curve', the short answer appears to be 'normalcy'. 'The short term volatility that criteria change often brings, will result in longer term rating stability,' said Holloran. The sector, however, is dealing with various operational challenges so far this year, some of which could persist into 2019. As a result, Holloran concluded that 'numerous external factors could dictate how frequently Fitch takes future rating actions on select hospitals and health systems.'

Fitch's 'U.S. Not-for-Profit Hospitals and Health Systems Rating Criteria Update' is available at 'www.fitchratings.com' or by clicking on the above link.

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Fitch Ratings: Demographic Volatility A Risk for Some States in Downturn

Fitch Ratings-New York-06 August 2018: US states with the strongest and most stable demographic and economic factors are generally expected to be less impacted by a cyclical downturn than those with strong but more volatile underlying trends, Fitch Ratings says.

We recently reviewed eight factors to assess demographic and economic trends at the US state level. The trends and absolute levels for these factors, and others, can provide insight into states' resilience against cyclical stresses to general economic forces, or more narrow secular trends in some cases. Demographic growth has been strong for many states in the West Coast, Plains and Rocky Mountain regions whereas weakness has been evident in the Great Lakes, New England and Middle-Atlantic regions. Some states that have exhibited relative strength over the intermediate to longer-term, with regard to population trends and various economic and wealth measurements, include Texas, the State of Washington, North Dakota and Wyoming.

Continue reading.

Muni-Bond Manager Buys Treasuries as Rally Erodes the Tax Breaks.

- **AllianceBernstein sees value in Treasuries in lieu of munis**
- **“Very happy” their strategies allow this type of flexibility**

Terrance Hults, a portfolio manager at AllianceBernstein Holding LP, is paid to invest money in state and local government bonds. But lately, he’s been moving into Treasuries instead.

That’s because the clamor for munis that mature in two years or less — driven by rising interest rates — has pushed the securities to their most expensive level relative to Treasuries in nearly four years. The dwindling yield has wiped away much of the tax benefit that investors get by buying state and local debt instead of other securities.

As a result, AllianceBernstein., with $40 billion in municipal bonds under management, has shifted some of cash in mutual funds and privately run accounts into short-dated Treasuries instead of municipals.

“We’re very happy that most of our strategies tend to have flexibility to not only invest across different areas of the muni market but also, when it makes sense on an after-tax basis, to own a modest amount of taxable securities,” Hults said. “In certain short maturities, municipals in general are expensive, so we think it makes sense to take advantage of that flexibility to have a small position in Treasures in the very short end.”

Yields on two-year tax-exempt bonds have declined to about 1.6 percent, some 62 percent of what investors receive on similarly dated Treasuries. That ratio, a key measure of relative value, has dropped 15 percent since May 31 and is only up slightly from the 60 percent hit late last month — the lowest since Sept. 2014.

The difference between after-tax yields on short-term Treasuries and tax-exempt municipals is “only a couple of basis points,” Hults said. Historically, that figure has been about 30-40 basis points, he said.

“You pick up liquidity to go into a small weight — for context, about a 5% weight in a top tax-bracket account — to go into Treasuries.”

Bloomberg Business

By Danielle Moran and Amanda Albright

August 7, 2018, 10:30 AM PDT

The Week in Public Finance: Is Your City Positioned to Weather the Next Recession?

A new report identifies the different factors affecting a city’s ability to respond to a fiscal crisis — and what policymakers can do about it.

What’s true for one city isn’t always true for another. Demographics and state policies say a lot about a city’s ability to respond to a fiscal crisis.

A new report, published by the Brookings Institution's Metropolitan Policy Program, looks at these factors, as well as how state and federal policies may influence how a city weathers a recession or other major disruption in revenue. "Part of what we're trying to understand here," says Michael Pagano, dean of the College of Urban Planning and Public Affairs at the University of Illinois at Chicago and a coauthor of the report, "is if there's a shock to the system, [how will] cities respond to those changes."

The report focuses specifically on the different limits cities have on their taxing power, such as the kinds of taxes a city is authorized by the state to levy, limits on raising the rates of those taxes and how a city's taxing structure aligns with its overall economy.

Continue reading.

GOVERNING.COM

BY LIZ FARMER | AUGUST 10, 2018

BDA 3rd Qtr Advocacy Priorities 2018

Read the Priorities.

Bond Dealers of America

August 9, 2018

MSRB Notes Compliance Risks of Issuer-Solicited Charitable Donations: Skadden

Recently, the Municipal Securities Rulemaking Board (MSRB) noted in its quarterly compliance newsletter dated June 8, 2018 that it has "compliance concerns" regarding issuer-solicited charitable donations. The MSRB's quarterly newsletter does not have the force of formal agency guidance, however, it does offer insight into how the MSRB may view issuer-solicited charitable donations.

Though charitable donations do not implicate the MSRB's pay-to-play Rule G-37, the MSRB notes that the donations may have implications under other rules, as described below.

- **Rule G-17:** This rule requires dealers acting as underwriters in a negotiated underwriting to disclose actual or potential material conflicts of interest with respect to the issuance. The MSRB noted in its newsletter that it would be a violation of Rule G-17 for an underwriter to compensate any undisclosed third party in order to secure municipal securities business. Thus, if an underwriter makes a charitable donation for these purposes, the underwriter must disclose the donation to the issuer as a conflict of interest.
- **Rule G-42:** This rule generally prohibits municipal advisors from making payments for the purpose of obtaining or retaining an engagement. The MSRB noted that if a municipal advisor makes a charitable donation for these purposes, it would violate Rule G-42.
- **Rule G-20:** This rule prohibits, with some exceptions, any regulated entity or its associated

persons from directly or indirectly giving any thing or service with value in excess of $100 to a person if such payments or services are in relation to the municipal securities or municipal advisory activities of the recipient's employer. The MSRB noted that, where a regulated entity makes a directed donation to a charity that is closely aligned with the third party requesting the donation, it may be deemed an indirect gift or gratuity under Rule G-20. Therefore, if that person is an official of an issuer and the donation is in excess of $100, the regulated entity may be in violation of Rule G-20.

Please note that the Financial Industry Regulatory Authority (FINRA, then known as the National Association of Securities Dealers), issued a similar cautionary notice to its members in 2006. However, FINRA expressed these concerns only to prevent a conflict of interest. The new MSRB guidance is notable in that it, for the first time, indicates that an issuer-solicited charitable donation also may be considered a gift under Rule G-20.

In light of this new guidance, it is more important than ever for municipal securities dealers and municipal advisors to have a robust company policy concerning charitable donations. For assistance in developing such a policy, please reach out to your usual Skadden contact.

The newsletter is available here.

Skadden Arps Slate Meagher & Flom LLP

by Kenneth A. Gross, Ki P. Hong, Matthew Bobys, Melissa L. Miles, Charles M. Ricciardelli, Samuel Levor, Shayla K. Parker, Jeremy F. Regan and Tyler Rosen

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NFMA Advanced Seminar on the Impact of ESG & Resiliency Issues on Credit Analysis.

Registration is open for the NFMA's Advanced Seminar on The Impact of ESG & Resiliency Issues on Credit Analysis, to be held at the Westin Copley Place, **Boston, on October 11 & 12**.

To view the program, click here.

To register, click here.

Puerto Rico Sends Costlier Reconstruction Plan to U.S. Congress.

(Reuters) – Puerto Rico submitted a recovery plan to the U.S. Congress on Wednesday that carries an estimated price tag of $139 billion, which is 47 percent more than the bankrupt U.S. commonwealth requested in November.

The economic and disaster recovery plan allocates the money to housing, water and energy systems, education, transportation, public buildings, communications, planning, municipalities, as well as to the economy and environment, according to Governor Ricardo Rossello's office.

Puerto Rico's severe financial problems, which led to bankruptcy court in May 2017 to restructure about $120 billion of debt and pension obligations, were compounded by destructive hurricanes that hit the island in September.

“Puerto Rico has a unique opportunity to innovate and rebuild in order to become that Puerto Rico we all want,” Rossello said in a statement.

He added that the initiatives were aimed at “making us stronger and resilient, while guaranteeing a long-term economic recovery.”

Last November, Rossello requested $94.4 billion from Congress to rebuild the island’s infrastructure, housing, schools and hospitals devastated by Hurricanes Maria and Irma.

That so-called Build Back Better plan contained a preliminary assessment of damages and an initial estimate of money the island needs to rebuild, according to the statement.

The final plan, which was submitted on the deadline day set in the 2018 U.S. budget act, expanded the scope of the November request and was developed with input from federal agencies, the governor’s office said. It was also posted on the internet and subjected to public hearings prior to its submission.

Near-term priorities for the money include restoring Puerto Rico’s ailing electrical system, which was devastated by Hurricane Maria, improving emergency preparedness, and repairing public facilities. Long-term objectives include stopping emigration and boosting economic growth.

By Reuters

Aug. 8, 2018

(Reporting By Karen Pierog in Chicago; Editing by Daniel Bases and Alistair Bell)

World Bank Taps Australia's CBA for Blockchain Bond.

MELBOURNE (Reuters) – Commonwealth Bank of Australia (CBA.AX) has won a mandate from the World Bank to arrange a pioneering bond issue to be created and run using only blockchain, aiming to simplify capital raising and trading.

The World Bank and CBA said on Friday indicative interest in the blockchain operated new debt instrument, nicknamed “bond-i” after Australia’s iconic beach, had been strong.

No size or date was given for the issue, a first for the World Bank using blockchain technology, but the two said it would be launched after a period of consultation with more investors.

Using distributed ledger technology, best known as the technology underpinning the bitcoin crypto-currency, would help simplify capital raising and trading and improve regulatory oversight, the World Bank and CBA, Australia’s biggest bank, said.

The World Bank issues between $50 billion and $60 billion a year in bonds to back development in emerging economies.

“This pioneering bond is a milestone in our efforts to learn how we can advise our client countries on the opportunities and risk that disruptive technologies offer,” World Bank chief information officer Denis Robitaille said in a statement.

CBA said it had found solutions to technical and legal issues to make the transaction work.

CBA's blockchain push come as the Australian Securities Exchange plans to switch to using the distributed ledger technology to clear and settle equities trades from 2020 to help cut costs.

Reporting by Sonali Paul; Editing by Shri Navaratnam

AUGUST 9, 2018

The World Bank is Betting Big on Blockchain-Based Bonds.

The World Bank has announced that it has hired one of Australia's biggest banks to manage what it calls the "first bond globally to be created, allocated, transferred and managed" using a blockchain—one of the clearest signs yet that the technology is going mainstream.

The "bond-i": The World Bank, which issues between $50 billion and $60 billion annually in bonds to fund sustainable development in emerging economies, believes that blockchain technology can make the process more efficient by reducing the number of necessary intermediaries. The bank did not say when the new "blockchain operated new debt instrument" (apparently named after a famous Australian beach) will launch, but investor interest "has been strong," according to a press release.

Not like Bitcoin: There aren't many details available yet on how this will actually work from a technical or logistical standpoint. But unlike Bitcoin, where anyone can engage in mining, the process of verifying new transactions, the World Bank will use a private version of Ethereum in which validators must have permission. The computing infrastructure will run on Microsoft's Azure cloud platform.

An emerging trend: The idea of using blockchains to manage bonds is gaining traction. Last year, a company in the UK issued a bond using Ethereum's public blockchain. The city government of Berkeley, California, is exploring the use of blockchain technology to issue municipal bonds. The World Bank's endorsement of the idea is the highest-profile one to date.

MIT Technology Review

August 10, 2018

World Bank Mandates Commonwealth Bank of Australia for World's First Blockchain Bond.

WASHINGTON/SYDNEY, August 9/10, 2018—The World Bank (International Bank for Reconstruction and Development, IBRD rated Aaa/AAA) has mandated the Commonwealth Bank of Australia (CBA) as the sole arranger of the first bond globally to be created, allocated, transferred and managed through its life cycle using distributed ledger technology.

Indicative investor interest in bond-i (blockchain operated new debt instrument) has been strong. The World Bank and CBA expect to launch the transaction following a period of consultation with a broader set of investors.

Blockchain has the potential to streamline processes among numerous debt capital market intermediaries and agents. This can help simplify raising capital and trading securities; improve operational efficiencies; and enhance regulatory oversight.

The World Bank issues between US$50-US$60 billion annually in bonds for sustainable development. It has a 70-year track record of innovation in the capital markets. Among its pioneering issuances are the first bond in global format—a globally traded and settled bond issued in September 1989; and the first e-bond, a fully integrated electronic bond issued in January 2000. As a frequent issuer in the Australian dollar market, it has since 1986 raised nearly A$60 billion from investors globally.

Arunma Oteh, World Bank Treasurer, said: "Since our first bond transaction in 1947, innovation and investor satisfaction have been important hallmarks of our success with leveraging capital markets for development. Today, we believe that emerging technologies, equally offer transformative, yet prudent possibilities for us to continue to innovate, respond to investor needs and strengthen markets. We are therefore delighted that after working with our information technology colleagues and the Commonwealth Bank of Australia over several months, that we are now in a position to launch our first blockchain bond transaction. CBA's commitment and Microsoft's wealth of experience have been instrumental to achieving this historic milestone.

Our sincere appreciation to our pioneer blockchain bond investors, who are partnering with us on this transaction because of our common desire to champion greater efficiency, and transparency as well as more robust issuance processes.

Our goal is to continue to harness innovation for the benefit of markets and our mission of ending poverty and boosting shared prosperity."

Denis Robitaille, World Bank Group Chief Information Officer, said: "Helping countries transition to technology-led development is key to our goals of reducing poverty and promoting lasting development. This is at the heart of the World Bank's Innovation Lab—and this pioneering bond is a milestone in our efforts to learn how we can advise our client countries on the opportunities and risk that disruptive technologies offer as we strive to achieve the Sustainable Development Goals."

James Wall, Executive General Manager of International, CBA said: "We take a collaborative approach to innovating and have a track record of partnering with other leading financial institutions, government bodies and corporates to innovate through blockchain. We believe that this transaction will be ground breaking as a demonstration of how blockchain technology can act as a facilitating platform for different participants. We are delighted to have partnered with the World Bank and fully support its vision of making innovative use of technology such as blockchain to increase the efficiency of financing solutions to better achieve their goal to end extreme poverty."

The bond-i blockchain platform was built and developed by the CBA Blockchain Centre of Excellence. Since 2009, CBA has acted as lead manager for a number of IBRD bond issuances in the Australian and New Zealand capital markets. CBA's dedicated blockchain team has taken a lead role in applying blockchain technology to capital markets.

Sophie Gilder, Head of Blockchain, Innovation Labs, CBA said: "We know blockchain has the potential to revolutionize financial services and markets, and this transaction is a significant step towards that future state. By working collaboratively with the World Bank, we were able to find solutions to technical and legal considerations to make this ground-breaking transaction a reality. This project further solidifies CBA's position at the forefront of blockchain technology and we are excited to build on this, in partnership with our clients."

The development of this offering has been conducted with the support and input of the investor community including Northern Trust, QBE and Treasury Corporation of Victoria.

World Bank infrastructure for the bond will run in Washington, D.C. on the Microsoft Azure cloud computing platform. Microsoft validated the system's operational capabilities, security and scale.

Matt Kerner, general manager, Azure Blockchain Engineering at Microsoft, said: "Microsoft's mission to empower every person and organization on the planet aligns well with the noble work of World Bank."

The law firm of King & Wood Mallesons acted as deal counsel on the bond issue and advised on the legal architecture for its implementation.

For Puerto Rico, Dream of Financial Recovery Masks Grim Reality.

- **Island has reached two crucial agreements with bondholders**
- **Recession, power grid failures continue to plague the island**

Slowly and painfully, Puerto Rico is inching toward what passes for a financial recovery on the bankrupt and devastated island.

Eleven months after Hurricane Maria, Puerto Rico has reached two crucial agreements with some creditors — key steps toward emerging from what was, even before the storm, the largest municipal bankruptcy in U.S. history. A tentative agreement announced Wednesday sent the price of certain Puerto Rico bonds soaring as much as 30 percent, a boon for anyone who'd bought them at rock-bottom prices only months ago.

Yet for many thousands of ordinary people on the island, recovery — financial and otherwise — remains elusive. Just this week, key stretches of its rickety power grid failed once again; the U.S. Army had to send 13 soldiers to help deal with a backlog of corpses at the island's morgue. And the economy remains mired in a decade-old recession that's sent hundreds of thousands fleeing to the mainland, including many young and educated workers.

"The future of Puerto Rico looks sad and depressing," said Flor de Oro Quinones, a Puerto Rican retiree from the nearby municipality of Trujillo Alto, who was walking through San Juan's business district Thursday. "This is going to be an island of the old and poor."

She's worried regular Puerto Ricans will shoulder the cost of the settlement with bondholders, and that the ongoing debt burden — reduced as it may be — will ultimately accelerate the brain drain.

Painful Austerity

What's more, a court ruling Monday had the island bracing for painful new austerity measures that some economists argue could accelerate a mass exodus to the U.S. mainland. U.S. District Court Judge Laura Taylor Swain sided with a federal oversight board installed by Congress to look after the island's spending, affirming its right to give binding recommendations about the budget. Governor Ricardo Rossello portrayed the decision as an attack on democracy, saying it gave the board the power to unilaterally overrule elected representatives.

The latest preliminary debt-restructuring deal announced late Wednesday involved bonds backed by revenue from sales-tax collections. It was a feature that was supposed to have made them more secure investments than other bonds, and it ultimately made them easier to sell when they went to market over the past decade or so.

Now, with the island short of cash, owners of the debt with top claim to the revenue would recoup 93 percent of their investments under the latest agreement, while subordinated bondholders would get 56 percent. While the securities surged on the news, they still hovered below the proposed deal prices, suggesting the market didn't see the transaction as a done deal.

Late last month, Puerto Rico's beleaguered electric utility struck a deal with its bondholders to reduce its $9 billion of debt.

Just about everyone — including bondholders, who would get new Puerto Rican securities in the latest restructuring agreement — has a stake in seeing Puerto Rico emerge from its decade-old recession. But opinions differ drastically on the most effective path, and whether it's even possible to return to growth amid an austerity campaign.

Steeper Discount

"I'm a little skeptical of sort of the long-term economy and ability to pay debt service," said Craig Brandon, co-director of municipal investments at Eaton Vance Management, which owns some insured Puerto Rico sales-tax bonds, which are known as Cofinas. "I don't think economically things have gotten any better on the island."

Many islanders think the government should have negotiated a steeper discount, and some had held out hope that Puerto Rico's debt could be wiped out completely.

"The more money that goes to debt payment, the less there is for operations and investment here," said Gustavo Velez, a Guaynabo, Puerto Rico based economist and head of consulting firm Inteligencia Economica. "By the looks of it, that agreement is quite generous with the Cofina bondholders, based on the money available and the sustainability of economic growth."

But the deals aren't all about Wall Street profiting at residents' expense. For starters, the sales-tax bonds had been popular among residents themselves, including many working-class retirees who stood to take sharp losses under a less favorable accord.

Rossello held the pact out as good for all parties. He touted it as an example of his commitment to consensual dealmaking — as opposed to pricey and divisive litigation — and said it moved Puerto Rico one step closer toward accessing capital markets again, a key goal for full economic recovery.

"The public policy of my administration has always been to reach consensual agreements with our creditors that do not affect the services that the government provides to the most vulnerable," Rossello said.

Bloomberg Business

By Jonathan Levin and Yalixa Rivera

August 10, 2018, 3:00 AM PDT

— With assistance by Amanda Albright

Puerto Rico’s Biggest Bond Challenge Is Yet to Come.

It’s still unknown how much the island’s full-faith-and-credit pledge is worth.

Puerto Rico has been gradually moving along with its debt-restructuring efforts for months. On Wednesday, the beleaguered commonwealth took a big leap forward, announcing a deal with its sales-tax bondholders.

Make no mistake: This is a significant step. Investors in the bonds, known by the Spanish acronym Cofina, have more money at stake than any of the other groups of creditors that have come to an agreement with Puerto Rico. According to Governor Ricardo Rossello, the deal would save the commonwealth $17.5 billion in interest payments over the life of the securities. While that sounds like a victory, bondholders come out quite nicely, too. Owners of senior Cofinas, with the highest claim on sales taxes, would recoup 93 percent of their investment, while subordinated securities get a 56 percent recovery.

That’s way better than what the market was indicating (the bonds soared in price Thursday). And for the senior Cofinas, which traded at less than 40 cents on the dollar at the start of the year, it’s an even bigger windfall than what Moody’s Investors Service thought way back in July 2015. The credit rater set the expected recovery rate at 65 percent to 80 percent.

Nothing is easy when it comes to Puerto Rico. By all accounts, this was a hard-fought compromise. It’s the second significant deal for the island in as many weeks, following an agreement with its power company’s bondholders in late July.

But the most-scrutinized deal for the commonwealth — and the $3.8 trillion municipal market as a whole — is still to come.

The fate of Puerto Rico’s roughly $18 billion general-obligation bonds, backed by the island’s full faith and credit, remains firmly in limbo. In theory, because Cofina securities will now have the first right to 53.65 percent of collected sales taxes, that should free up cash for G.O. debt. Court documents filed in June essentially said as much, adding that the extra funds could also cover essential services.

It’s telling, though, that Puerto Rico’s benchmark general-obligation bond is still trading at 50 cents. On the one hand, that’s the highest price since Hurricane Maria devastated the island more than 10 months ago. But for debt that’s perceived to have at least equal standing to senior Cofinas, it has an awfully long way to go to catch up to the announced recovery rate.

It speaks to the uncertainty around what a general-obligation pledge means in times of deep distress. In Detroit, holders of “unlimited-tax” G.O. debt received 74 cents, while “limited-tax” G.O. bonds recovered 34 percent. There really isn’t a robust playbook.

Many investors in Puerto Rico counted on two things. First, the commonwealth’s constitution, which guaranteed G.O. payments before all else. But in reality, elected officials were always going to provide essential services to its citizens before accommodating Wall Street. Second, that the territory couldn’t file for bankruptcy protection and potentially cram down a debt deal. That didn’t last, either.

The past year of ultra-depressed prices gives Puerto Rico an advantage. My Bloomberg Opinion colleague Joe Nocera wrote recently about Aurelius Capital Management LLP, which owns $558 million of Puerto Rico's general obligation bonds and wants to get paid in full. But would Mark Brodsky — or any investor, for that matter — really quibble with a 93 percent recovery, like the senior Cofinas? Remember, the benchmark debt was issued in March 2014 at precisely 93 cents on the dollar.

General obligations have always had one chief flaw: there's no clear revenue steam for investors to point to and claim as their own. By contrast, Cofina investors will have a senior lien on the agreed upon portion of sales taxes. A term sheet from Citigroup Inc. projects that revenue will cover debt service more than 2.6 times over, placing the bonds in a similar tier as double-A rated issuers like the Massachusetts School Building Authority and Utah Transit Authority.

The G.O. investors are going to want a similar deal, with all the legally enforceable structures they can get. Because for all the talk of recovery rates, Puerto Rico has a massive recovery of its own ahead. The commonwealth just now conceded that Hurricane Maria killed more than 1,400 people on the island last year, far greater than the 64 in the official death toll. Add that to the mass population exodus that was already taking place, and there's no guarantee that projections about the commonwealth's future will pan out.

In that sense, it seems comparatively easy to dole out various revenue streams. But judging how much Puerto Rico's full faith and credit is worth, after the constitutional guarantee was all but eviscerated? That will be the biggest challenge yet.

Bloomberg Opinion

By Brian Chappatta

August 9, 2018, 8:54 AM PDT

Brian Chappatta is a Bloomberg Opinion columnist covering debt markets. He previously covered bonds for Bloomberg News. He is also a CFA charterholder.

Investing In Qualified Opportunity Zones.

The new tax law created a new investment vehicle called " qualified opportunity funds" that have tax advantages. The rationale for the tax benefits is to direct resources to low-income communities – "qualified opportunity zones." Each state nominates communities as qualified opportunity. Qualified opportunity zones can be found by going here.

"A qualified opportunity fund is an investment vehicle that can be organized as a corporation or a partnership that holds at least 90% of its assets in qualified opportunity zones," says John Bowen, cofounder of BSW Inner Circle and author of *Elite Wealth Planning: Lessons from the Super Rich*. "From the date of sale of an appreciated asset, the investor has 180 days to invest in a qualified opportunity fund. The investor receives either stock or an interest in the fund."

According to Edward Renn, an internationally acclaimed tax lawyer at WithersBergman, "There are a number of tax incentives of qualified opportunity funds including (1) the deferral of capital gains taxes from the sale of appreciated assets until the earlier of December 31, 2026 or the disposition of the qualified opportunity fund, (2) possibly lowering of the capital gains tax up to 15% because of an increase in the basis of the appreciated assets used to buy the fund interest, (3) possibly eliminating capital gains due on the appreciation in a qualified opportunity fund if it is held for 10 years or longer."

Example: Sale of a Business

John sold a business for a $12 million capital gain in June of 2018. John located three properties in two Qualified Opportunity Zones with a total purchase price of $12 million. John formed a limited partnership as his Qualified Opportunity Fund and his attorney made sure the partnership agreement contained appropriate language to be treated as a Qualified Opportunity Fund.

If John holds the Qualified Opportunity Fund until December 31, 2026 instead of paying $671,000 in federal tax by April 15, 2019, $570,000 of tax will be due by April 15, 2027.

The tax reduction is attributable to the 10% basis bump after holding the Qualified Opportunity Fund for five years and an additional 5% basis bump for holding the Qualified Opportunity Zone for seven years.

If John waits at least ten years to sell the three properties consisting of the Qualified Opportunity Fund investments, any gain on the properties will escape tax.

John gets eight years of federal tax deferral, a reduction of 15% on the deferred gain, and tax-free proceeds on the sale of the Qualified Opportunity Zone property.

Forbes

by Russ Alan Prince

I am president of R.A. Prince & Associates, Inc. I consult with family offices, the ultra-wealthy and select professionals.

Aug 6, 2018, 05:33am

Figuring Out If 'Opportunity Zones' Can Revitalize Struggling Neighborhoods.

In two Alabama cities, those laying groundwork for the new tax incentive program see both promise and risks in the investments it could spur.

BIRMINGHAM, Ala. — Boarded-up houses and vacant storefronts dot the streets of Woodlawn.

They're are a reminder of the uphill economic battle the community is fighting, and of its history as a place that had a freeway carved through it, and that saw white families move away in the years after school desegregation began in Alabama in the 1960s. The neighborhood is also located in a county that underwent one of the biggest municipal bankruptcies in U.S. history.

But Perry Macon, pastor at the First Baptist Church of Woodlawn, warns against portraying the neighborhood in too harsh a light. "As you drive through, you will see some deterioration in housing and business. But see, in my mind, I wouldn't see that as a negative," he said.

Continue reading.

Route Fifty

by Bill Lucia

Aug 5, 2018

[Opportunity Zones: Moving Toward a Shared Impact Framework.]

Introduction

The tax bill passed in 2017 includes a provision creating various benefits for investors that move capital gains into designated low-income census tracts, known as Opportunity Zones, through special investment vehicles known as Opportunity Funds.

This tax benefit has captured the attention of a wide range of stakeholders—from investors attracted by a new tax incentive to community development practitioners drawn by the promise of increased investment in low-income areas.

Many elements of this new investment tool are uncertain, including if and how Opportunity Funds will manage and report on the social and environmental impact of their investments. Yet even amid this uncertainty, investors are looking to take advantage of the benefit.

Continue reading.

Federal Reserve Bank of New York

[S&P State Brief: Alaska]

The passage of Alaska's 2019 operating budget marks an important shift in fiscal reform for the state. For the first time, the state approved a $2.7 billion transfer from the Permanent Fund Earnings Reserve Account (ERA) to the unrestricted general fund (UGF) for the year.

Continue Reading

Aug. 3, 2018

[Reactivating Abandoned Buildings through Local Ownership in Smaller Cities.]

The funeral home at 13-15 Chambers Street in Newburgh, N.Y., had already died by the time the Newburgh Community Land Bank formed in 2012.

Two commercial spaces on the ground floor and three apartments on the upper levels had been abandoned for long enough that the city had managed to acquire the property through tax foreclosure. Newburgh is a small city of 30,000 people, about 60 miles north of New York City on the western bank of the Hudson River. When the land bank formed, it decided to focus its energy on a portion of the downtown area — a historic district close to the hospital and the community college, walkable to transit, and packed with vacant properties that the city already owned.

“There hadn’t been much development in the neighborhood we were targeting in many, many years,” says Madeline Fletcher, executive director of the Newburgh Community Land Bank. “So we wanted to do a project that showed how these things could really get done.”

Continue reading.

NEXT CITY

BY JARED BREY | AUGUST 9, 2018

Principles for Open Access Community Broadband Networks.

Secure, stable access to information via the internet — our global brain — is the fresh water equivalent of our time. A reliable, affordable Internet connection has become an essential public good for communities fighting to keep pace with the ever-changing economic, social and environmental landscape.

Broadband networks are the 21st century bridges between our communities and economic opportunity.

Even with significant federal and state subsidy throughout the decades since the birth of the internet, incumbent Internet Service Providers (ISPs) have failed to provide equitable and affordable broadband access.

We believe communities can and should own their own broadband networks by leveraging the hidden economic engine that for centuries has defined our nation as a rich tapestry of self-reliant places: the humble municipal bond.

Where We’re At
We the people financed nearly every road in our nation’s vast network of federal, state, municipal and neighborhood roadways. Now imagine if Detroit’s automakers were heavily subsidized to build and operate the onramps and driveways, for which they bill on a monthly basis and sometimes maintain. That is of course insane, but that’s also more or less how most internet access takes place in the United States today.

A New Way
We believe community-owned networks can help boost economic resilience and quality of life. Despite years of fear, uncertainty and doubt cast by incumbents who seek to control access to the infrastructure the public initially financed, a powerful model for building networks is beginning to take root: the Open Access Network.

An Open Access network follows the principle of common carriage: we all benefit from rules that ensure critical infrastructure is available to everyone on the same terms. In other words, it’s an essential check against monopoly power.

In this model, revenue can be generated through user subscriptions to the network and “leasing” fees from ISPs who also pay for the right to use the infrastructure. In comparison to public private partnerships, this model keeps all revenue from those cash flows, and from additional investments in the network, inside the community. In addition, public ownership, and the self-determination that comes with it, ensures the best alignment of incentives between communities building networks, ISPs and investors supplying capital.

To ensure ubiquitous broadband access — the same standards we pioneered worldwide for the delivery of water — communities can turn to the same hidden economic engine that built our our waterworks. Communities can harness the power of public finance to build their own networks from the ground up.

At Neighborly, we work to make it easier and less expensive for communities to secure their own access to information by making public finance work harder for the people who need it. We believe communities can make the most of their investment by adhering to the following principles meant to guide the ownership, construction and operation of open access community broadband networks.

I. We own our network.
II. ISPs compete to serve us.
III. We leave no neighbor in the dark: access is universal and affordable
IV. We don't need to raise taxes to build our network.

I. We own our network.
We don't need complicated private ownership arrangements where interests and incentives may not be aligned with those of our community. We can own our infrastructure from day one. Broadband infrastructure, like water pipes, roads and the electricity grid, leans toward natural monopoly. As a result, broadband networks should be organized to ensure universal access and the best interests of our community — along with fair, full returns to our investors — are the only incentives.

II. ISPs compete to serve us.
Infrastructure should be separate from the provision of service so we are no longer tied to a single Internet Service Provider. ISPs will compete for our business, giving us more choice and better service: the very spirit of American-style free market competition. Increased options and better service lead to more resilient and affordable access. With a separate service layer, there is also tremendous potential for a full competitive marketplace to thrive on top of our community-owned infrastructure, generating more revenue for the community. The private sector can openly and easily deliver services, from Internet to telehealth, with lower barriers to entry and across geographic boundaries.

III. We leave no neighbor in the dark.
Our network serves all of us, and no community-member is left behind. We don't cherry-pick who has access and who doesn't. The Internet delivers unprecedented opportunities for economic development, education, public health and safety, civic engagement and greater social equality. Access is essential, so a community broadband strategy must be bigger and more ambitious than the mere provision of faster Internet. Access should be ensured in all corners of our community, and the network should not dictate or limit services offered to our users — in this case, the members of our community. In addition, with the best alignment of incentives, and the benefits of an open platform for competition, we can ensure that connectivity is affordable for every member of the community.

IV. We don't need to raise taxes to build our network.
While it's an option, we know the utility-grade revenue stream our network supplies means we have choices when it comes to financing. Revenue bonds, unlike general obligation bonds, pledge network revenues to repay debt without necessarily placing additional burden on taxpayers, or relying on elaborate private partnerships to finance and build our network.

Neighborly Issuer Brief

Posted 08/09/2018 by Jase Wilson

Learn more about building your own broadband network at neighborly.com/broadband

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Let's Restart the Hidden Economic Engine.

Why we must rewire, recast and reclaim the multi-trillion dollar market that funds bold public works.

Public finance was designed to serve community visionaries — the builders who sought better lives for themselves, their communities and future generations. Financing more than two centuries of impactful public projects — schools, parks, libraries and the roads connecting them — the humble municipal bond is the original impact investment, and it helped build our nation.

The multi-trillion dollar market touches our lives in countless ways every day: directly via the roads and bridges we use; the sewers and water pipes upon which we build our cities; the connections within and between our communities and the global economy. And in subtle, though no less direct, ways through the fabric and strength of our public institutions: the quality and quantity of public school education; the ways we generate and consume energy; the ways we create and capture value from the resources of the Commons.

Continue reading.

Neighborly

Posted 08/07/2018 by Jase Wilson

Recognizing Infrastructure's Role As a Local Economic Anchor.

In the race to grow their economies and create new jobs, localities frequently look far beyond their borders. Too often, they try to lure new firms through costly incentives and subsidies with questionable economic returns, a trend that is only gaining more national spotlight during the search for Amazon's second headquarters. But looking closer to home in support of their core industries and employment opportunities could more directly build off localities' existing economic strengths.

Investing in infrastructure is foundational to these efforts. Not only does infrastructure serve as a platform to support industries and broader regional growth, but it can also be a driver of more equitable and enduring growth for individuals.

After all, constructing and maintaining reliable roads, ports, pipes, and other systems is essential to all types of businesses and households. Whether moving passengers and goods or ensuring that water, electricity, and broadband is available to everyone, both the public and private sector have a shared responsibility to oversee these various systems. Yet even beyond this supportive role, many local leaders overlook another significant opportunity: Infrastructure can also represent a key economic anchor.

The Brookings Institute

by Joseph Kane

Friday, August 10, 2018

Novel Watershed Permit Issued for Cape Cod towns.

The Massachusetts Department of Environmental Protection has issued a first-of-its kind "watershed" permit. Instead of issuing individual permits, the Cape Cod towns of Brewster, Chatham, Harwich and Orleans were issued a joint permit that addresses water quality concerns. None of the towns has a municipal public sewer system, and most homes rely on septic systems. The towns have grown, and the additional septic systems installed have leaked excess nitrogen to the point where fish and their habitats are being harmed.

The 20-year permit, issued after consultation with the Environmental Protection Agency (EPA), allows the towns to reduce nitrogen pollution through efforts like fertilizer reduction and improved aquaculture. Each town has its own nitrogen removal target, and the towns must meet and show progress through reports every five years.

Sidley Austin LLP

by David F. Asmus, Samuel B. Boxerman, Terence T. Healey, Kenneth W. Irvin, Michael L. Lisak and Judah Prero

August 13, 2108

Pennsylvania Supreme Court Continues Rulings Against Municipal Zoning Authority.

On August 3, 2018, the Pennsylvania Supreme Court vacated another municipal zoning decision favorable to oil and gas development. In its per curium order of *Delaware Riverkeeper Network v. Middlesex Township* (N0. 270 WAL 2017), the Supreme Court directed the Commonwealth Court to reconsider its previous decision upholding a local zoning ordinance that permitted oil and gas development in agricultural and some residential areas. This order, accompanied by the Supreme Court's recent decisions in *Gorsline v. Fairfield Township* and *Environmental Defense Foundation v. Commonwealth*, indicates a willingness by the Supreme Court, including four of its newly elected justices, to limit (or perhaps prohibit) drilling in agricultural and residential zoning districts premised upon the Environmental Rights Amendment to the Pennsylvania Constitution.

Here, the Commonwealth Court had upheld the zoning ordinance based upon a three-part balancing test, which was subsequently revoked by the Supreme Court. As such, the Commonwealth Court must now decide the case based upon different criteria. [Interestingly, several unconventional wells have already been drilled pursuant to the challenged ordinance.]

The challengers, like those in the other cases noted above, are strong anti-fracking advocates, who seek to limit unconventional drilling to industrial zoning districts. However, such districts are oftentimes not available for leasing or applicable parcels are too small for the construction of well pads. Further, such restrictions limit the extraction of natural gas from a miniscule portion of the subsurface area within the municipality. On a favorable note to exploration and production companies, the Supreme Court specifically claimed that its recent decisions "should not be misconstrued as an indication that oil and gas development is never permitted in residential/agricultural districts or that it is fundamentally incompatible with residential or agricultural use."

Vorys Sater Seymour and Pease LLP

by Michael K. Vennum

August 8, 2018

State and Local Taxes in Indiana: Ice Miller

Recent developments

Have there been any notable recent developments concerning state and local taxation in your state, including any regulatory changes or case law?

Indiana recently passed legislation in response to the federal Tax Cuts and Jobs Act (TCJA). The legislation conforms to the TCJA in part and decouples from it in part. Historically, Indiana has not taxed foreign earnings and decoupled from some of the foreign provisions within the TCJA. Further, Indiana has generally decoupled from capital expensing provisions and thus decoupled from the interest expense limitations. Indiana has had a net operating loss carryforward limitation and preserved its own approach. Other adjustments included Indiana decoupling from the income recognition changes to Internal Revenue Code § 118 in order to enhance its economic development tools. The legislature may look to make further adjustments when it next meets in early 2019. Indiana recently published an information bulletin that sets out its interpretation of this new law.

Indiana also recently passed legislation with respect to the taxability of software as a service. In general, the legislation provides that remotely accessing computer software is not subject to Indiana sales and use tax. Indiana is now one of only a few states taking this business-friendly approach. Indiana recently published an information bulletin that sets out its interpretation of this new law.

Continue reading.

Ice Miller LLP

by Mark J. Richards

August 6, 2018

What Can the Local Government Do About This Land Use Ordinance Violation?

We spend a lot of time in this space talking about land use ordinances. But what about the tools deployed in the event of a violation of those ordinances? State law provides that municipal and county governments may avail of different remedies in the enforcement of local ordinances, including (and our focus) land use ordinances. NCGS 160A-365, 160A-175 (as to municipalities), NCGS 153A-123, 153A-324 (as to counties). The three main remedies we often see employed, sometimes in conjunction with each other, are injunctive relief, civil fines, and criminal proceedings. In this post, we'll discuss each in turn.

First, injunctive relief is always available to the local government for a violation of a land use ordinance, even if not expressly provided for in the local ordinance. See New Hanover County v. Pleasant, 59 N.C. App. 644 (1982). Most commonly, injunctive relief is used to prohibit the completion of work that violates an ordinance or to cease a use that violates an ordinance. It is also possible for a court order to compel an act in order to comply with a land use ordinance, the so-called affirmative injunction. Violation of an injunctive order carries contempt possibilities, whether civil or criminal. Unlike civil fines and criminal proceedings, the very nature of injunctive relief limits the local appeal remedies available to the alleged violator; accordingly, ordinance interpretation and enforcement issues are almost certain to be fought in State court.

Second, civil fines are available where the local ordinance enables the fine or penalty and only in the amounts specified within the local ordinance; there is not a State-wide standard. The fine amount cannot exceed an amount reasonably related to the amount of harm caused by the violation and the local government's cost of remediation. Moreover, if the ordinance provides for a process before the assessment of civil fines and penalties can be assessed, then that process must be followed; an evidentiary hearing is not required unless provided for in the local ordinances. However, a civil penalty is appealable to the local board of adjustment, just as any adverse land use ordinance interpretation, which is an evidentiary proceeding. Also, an appeal will automatically stay the ordinance enforcement as a matter of State law. In the event a fine is assessed but not paid – and an appeal is not timely made or is otherwise lost – the local government may pursue civil action to collect the debt; in such a lawsuit because the board of adjustment appeal avenue has closed, there are no defenses to the fine.

Third, any "violation of a city [or county] ordinance is a misdemeanor or infraction as provided by G.S. 14-4", unless the board of county commissioners or municipal council shall otherwise provide. NCGS 153A-123 (as to counties), 160A-175 (as to municipalities). NCGS 14-4 sets the penalty for violation of a local ordinance as a Class 3 misdemeanor. Practically, local prosecutors are oftentimes too (and understandably) busy with violent offenses to press the pursuit of land use violations; this gives the alleged violator the opportunity to pursue appeals or favorable ordinance interpretations as defenses, if available.

Finally, attorney fees are generally not recoverable by a municipality or county in the enforcement of a land use ordinance. However, that is not a two-way street. If a local government is determined to have exceeded its powers or abused its discretion, in enforcing the ordinance, attorney fees may be awarded against the local government.

Funny Aside

As noted, by State law, any "violation of a city [or county] ordinance is a misdemeanor or infraction as provided by G.S. 14-4", unless the board of county commissioners or municipal council shall otherwise provide. NCGS 153A-123 (as to counties), 160A-175 (as to municipalities). Well, in June 2018, the North Carolina General Assembly adopted Session Law 2018-69, which is entitled, "An Act to Assist the Criminal Law Recodification Working Group". That law provides, in pertinent part, "Every county, city, town, or metropolitan sewerage district that has enacted an ordinance punishable pursuant to G.S. 14-4(a) shall create a list of applicable ordinances with a description of the conduct subject to criminal punishment in each ordinance … [and submit] no later than December 1, 2018.” Of course, as noted in NCGS 160A-175 and NCGS 153A-123, any ordinance violation “is a misdemeanor or infraction as provided by G.S. 14-4” unless the local governing board so provides. So, basically, compliance with Session Law 2018-69 requires local government submission of “a list of” all ordinances, because all local ordinances are punishable “as provided by G.S. 14-4”. That’s a big paper dump for the State government, I’d think.

Womble Bond Dickinson (US) LLP

by John C. Cooke and Michael C. Thelen

August 3 2018

California Accidentally Posts Draft Tax Collection Rules for Online Retailers -- Legal Challenges Possible if Draft Rules are Adopted.

Background

The California Department of Tax and Fee Administration (CDTFA) inadvertently posted on its website a draft notice containing new tax collection rules for retailers, indicating that California may adopt use tax collection thresholds for remote vendors similar to the thresholds adopted under South Dakota’s law effective August 1, 2018. In response to the recent U.S. Supreme Court decision in *South Dakota v. Wayfair, Inc.*,1 the draft notice stated that certain retailers are required to register with the CDTFA and to collect California use tax starting August 1, 2018, if they meet one of the following thresholds during the preceding or current calendar year:

1. The cumulative sales price of the retailer’s sales of tangible personal property for delivery in California exceeds $100,000, or
2. The retailer sold tangible personal property for delivery in California in 200 or more separate transactions.

The draft notice continued to state the following:

Continue reading.

Reed Smith LLP

by Shail Shah, Mike Shaikh and Yoni Fix

August 10 2018

- S&P: Blockchain is Coming to Muniland, and the Changes Could Be Significant.
- Chapter 11 or Chapter 9: Investors Beware.
- For Muni Bond Sales, Brand Matters.
- LA County Uses P3 Lease Revenue Bonds for 21-Story, $295 million Office Tower.
- S&P U.S. State Ratings And Outlooks: Current List
- Landmark Towers Association, Inc. by EWG-GV, LLC v. UMB Bank, N.A. – Court of Appeals holds

that special district's levy was a "special assessment," despite argument that it was imposed on real property according to a uniform mill rate, and thus imposing it on condominium in the district violated the due-process rights of condominium's homeowners association, where the levy funded purely local improvements directly and specially benefiting only a planned development in the district.

- Trafalgar Woods Homeowners Association, Inc. v. City of Cape Coral – District Court of Appeal holds that credits against special assessments for irrigation water pursuant to planned development ordinance extended to homeowners association and property owners of individual lots as successors in interest to project developer, rather than only to developer.
- And finally, Is Our Children Learning? is brought to us this week by *Freedom From Religion Foundation, Inc. v. Chino Valley Unified School District Board of Education*, in which school board member Andrew Cruz articulated the board's position on beginning meetings with a prayer thusly, "I think there are very few districts of that powerfulness of having a board such as ourselves having a goal." Let us all now bow our heads and offer up a prayer for the poor children of the Chino Valley Unified School District. Amen.

CONTRACTS - ALABAMA

Ex parte Carter

Supreme Court of Alabama - July 27, 2018 - So.3d - 2018 WL 3598913

Objector, who was the State Auditor, brought action in his individual capacity as a taxpayer to challenge amendments to a contract between a software company and the state on the basis that the amendments violated the state's competitive-bid law.

After declining to grant a preliminary injunction, the Circuit Court dismissed all counts except the one seeking a declaratory judgment that the amendments were void. Software company and state's Director of Finance sought writs of mandamus.

The Supreme Court of Alabama held that completion of performance under the amendments rendered objector's action moot.

Action brought by State Auditor in his individual capacity as a taxpayer, seeking declaratory judgment that amendments to contract between software company and state were void on the basis that the amendments violated the state's competitive-bid law, was moot, where performance pursuant to the amendments was complete.

SPECIAL ASSESSMENTS - ALASKA

Fink v. Municipality of Anchorage

Supreme Court of Alaska - July 20, 2018 - P.3d - 2018 WL 3488272

Property owners sought review of special assessments levied by municipal assembly. The Superior Court affirmed. Owners appealed.

The Supreme Court of Alaska held that:

- Imposition of special assessment for utility projects benefiting property owners' lots did not violate municipal charter provision requiring that revenues collected within a special assessment district

- be applied only to costs incurred with respect to that assessment district, and
- Discrepancy between special assessments and increase in appraised property value did not establish gross disproportionality of assessments.

PUBLIC MEETINGS - CALIFORNIA

Freedom From Religion Foundation, Inc. v. Chino Valley Unified School District Board of Education

United States Court of Appeals, Ninth Circuit - July 25, 2018 - F.3d - 2018 WL 3552446 - 18 Cal. Daily Op. Serv. 7430

Non-profit advocacy organization and public school students, parents, and employees brought action against local public school board and its members, alleging that board's policy and custom of opening board meetings with prayer, and its policy and custom of including Bible reading and preaching in meetings, violated First Amendment's Establishment Clause.

The United States District Court granted partial summary judgment in favor of advocates, enjoined board members from conducting prayers in board meetings, and entered declaratory judgment that prayers, Bible readings, and proselytizing in board meetings violated Establishment Clause. Board and its members appealed.

The Court of Appeals held that:

- Board and former member of board lacked standing to appeal;
- Board's policy and practice of starting open-to-public portion of board meetings with invocation did not fall under legislative-prayer tradition;
- Board's policy and practice of starting open-to-public portion of board meetings with invocation violated Establishment Clause;
- Injunction did not violate First Amendment right to free speech; and
- Board waived right to appeal declaratory judgment.

SPECIAL ASSESSMENTS - COLORADO

Landmark Towers Association, Inc. by EWG-GV, LLC v. UMB Bank, N.A.

Colorado Court of Appeals, Division III - May 31, 2018 - P.3d - 2018 WL 2436817 - 2018 COA 100

Homeowners association, which represented condominium owners whose properties were included in special district, brought action against district and investors to invalidate district's creation, to invalidate approval of bonds and taxes, and to recover taxes paid to district.

Following a bench trial, the District Court ordered a partial refund of taxes paid and enjoined district from assessing future taxes on owners in order to pay its obligations under the bonds. All parties appealed. The Court of Appeals affirmed in part, reversed in part, and remanded. District and investors sought certiorari review. The Supreme Court, 408 P.3d 836, reversed and remanded.

On remand, the Court of Appeals held that:

- The 30-day limitations period to challenge the authorization or issuance of securities by a public

entity did not apply to action;
- Imposition on condominium of special district's levy, which was a special assessment and which specially benefits a planned development elsewhere in the district, violated homeowners association's due-process rights;
- Trial court did not abuse its discretion in balancing the equities when deciding to issue an injunction prohibiting special district from levying against condominium;
- Injunction prohibiting special district from levying against condominium did not violate state constitution's requirement for uniform property-tax levies;
- Special district could not impose a real-property levy of 59.5 mills;
- Special district's property owners were not entitled under the Taxpayer's Bill of Rights (TABOR) to refunds of district's allegedly misappropriated bond proceeds; and
- State constitution's prohibition on mingling public funds with private funds did not entitle special district's property owners to a refund of district's allegedly misappropriated bond proceeds.

The 30-day limitations period to challenge the authorization or issuance of securities by a public entity did not apply to homeowners association's challenge to special district's assessments, where association's challenge was a due-process challenge to district's creation to include the condominium associated with the homeowners association and the associated levies.

Special district's levy was a "special assessment," despite argument that it was imposed on real property according to a uniform mill rate, and thus imposing it on condominium in the district violated the due-process rights of condominium's homeowners association, where the levy funded purely local improvements directly and specially benefiting only a planned development in the district.

District court did not abuse its discretion in balancing the equities when deciding to issue an injunction prohibiting special district from levying against condominium, which was a special assessment that violated due-process rights of condominium's homeowners association due to its lack of benefit from the assessment; although purchaser of special district's bonds argued that it did nothing wrong and would suffer millions of dollars in losses if the condominium could not be levied, owners of units in the condominium, who suffered violations of their due-process rights, would collectively lose millions of dollars, and bond purchaser was a sophisticated, institutional investor that had a full opportunity to evaluate district's service plan.

Purchaser of special district's bonds could not raise for the first time in its motion for reconsideration its argument that trial court's injunction prohibiting special district from levying against condominium, which was a special assessment that violated the due-process rights of owners of units in the condominium due to their lack of benefit from it, violated state constitution's requirement for uniform property-tax levies, where condominium's homeowners association sought injunctive relief from the beginning of its action challenging the levy, and association always sought a refund of amounts paid to the district.

Trial court's injunction prohibiting special district from levying against condominium, which was a special assessment that violated the due-process rights of owners of units in the condominium due to their lack of benefit from it, did not violate state constitution's requirement for uniform property-tax levies, even if purchaser of special district's bonds had timely raised the issue; constitutional requirement did not apply to special assessments, injunction did not require district to impose taxes on anyone or on any property, and the due-process violation entitled unit owners and association to the injunctive relief sought as a matter of law.

Special district could not impose a real-property levy of 59.5 mills, where the bond financing plan, which the district's service plan indicated was intended to have binding effect, called for a debt service mill levy of no more than 49.5 mills, and district did not obtain municipality's approval to impose the 59.5-mill levy.

Proceeds from special district's bond issue were not "revenue" within scope of provision state constitution's Taxpayer's Bill of Rights (TABOR) that provided for refunds of revenue collect, kept, or spent illegally, and thus district's property owners were not entitled under TABOR to refunds of allegedly misappropriated bond proceeds; bond proceeds were borrowed funds.

State constitution's prohibition on mingling public funds with private funds did not entitle special district's property owners to a refund of allegedly misappropriated proceeds from special district's bond sale; prohibition was limited in its application to state, counties, cities, townships, and school districts, but the special district was none of those, but rather a district that by law was a quasi-municipal corporation and political subdivision, solely responsible for its own debts.

SPECIAL ASSESSMENTS - FLORIDA

Trafalgar Woods Homeowners Association, Inc. v. City of Cape Coral

District Court of Appeal of Florida, Second District - June 8, 2018 - So.3d - 2018 WL 2749778 - 43 Fla. L. Weekly D1313

Homeowners association brought declaratory judgment action against city stemming from dispute over credits against special assessments for irrigation water.

The Circuit Court dismissed action with prejudice. Association appealed.

The District Court of Appeal held that credits against special assessments for irrigation water extended to homeowners association as successor in interest to project developer.

Credits against special assessments for irrigation water pursuant to planned development ordinance extended to homeowners association and property owners of individual lots as successors in interest to project developer, rather than only to developer; under ordinance, the credit was to reduce any proposed special assessment when irrigation water became available, credit was to apply to special assessments levied against individual lots, and property owners were to be assessed only for off-site improvements.

ZONING & PLANNING

Town of Mount Vernon v. Landherr

Supreme Judicial Court of Maine - July 24, 2018 - A.3d - 2018 WL 3543368 - 2018 ME 105

Town filed land use violation and complaint against landowners, seeking a permanent injunction and an order for removal of a generator that was installed without a permit in violation of land use ordinance.

Following a bench trial, the District Court found landowners in violation of the ordinance, and assessed a penalty and attorney fees. Landowners appealed.

The Supreme Judicial Court of Maine held that issue preclusion made binding decision of the town board of appeals affirming the town's code enforcement officer's determination that landowners' generator was a structure.

In action by town against landowners, in which town sought a permanent injunction and an order for removal of a generator that had been installed without a permit, issue preclusion applied to make decision of the town board of appeals affirming the town's code enforcement officer's determination that landowners' generator was a structure that was required to meet the requirements of town's land use ordinance binding on landowners; landowners had a fair opportunity to litigate the issue before the board of appeals, assertively advocating for their position that the generator was not a structure that required a permit, after the board issued its decision, it became a valid final judgment when landowners let the appeal period pass without filing an appeal, and the issue, whether the generator was a structure, was the same in both proceedings.

ZONING & PLANNING - PENNSYLVANIA

Western Pennsylvania Annual Conference of United Methodist Church v. City of Pittsburgh

Commonwealth Court of Pennsylvania - June 11, 2018 - A.3d - 2018 WL 2769143

Property owner sought judicial review of city's purported designation of a structure as historic.

The Court of Common Pleas vacated the historic designation. City appealed.

The Commonwealth Court held that proposed designation did not receive required affirmative vote of six members of city council.

Proposal to designate structure as historic did not receive affirmative vote of six members of city council, and therefore historical designation of structure was improper, despite contention that designation was deemed approved under city code; property owner objected to proposed designation, city council never voted on proposal, and provision allowing deemed approval only applied when owner did not object.

For Muni Bond Sales, Brand Matters

Marketing is especially important for smaller local governments, and states have a role to play.

Earlier this year, Georgia sold $1.2 billion in new bonds. No news there. Like most big states, Georgia goes to the bond market at least once a year with a large new offering. And as in most big states, especially those with strong financial and economic fundamentals, investors snapped up those bonds at competitive prices.

But this time, Georgia's debt managers tried something different. Before they went to market, they put on a series of presentations and conference calls designed to convince investors that Georgia bonds are a great deal. In other words, they ran an investor road show. Such events are common in the corporate world, but are mostly new to states and localities.

Georgia has a strong credit rating and a stellar fiscal reputation. So why did it take the extra time and resources to burnish that reputation? There are three main reasons, and they collectively remind us of the policy challenges that surround brand recognition in the municipal bond market.

One big reason is December's federal tax overhaul, which lowered tax rates for corporations and individuals, meaning investors have less to gain from tax-exempt investments such as munis. A strong investor relations program can help governments attract new investors and encourage longtime investors to stay in the game.

Meanwhile, interest rates are normalizing. They've sat at record low levels for almost a decade, and during that run, municipal bonds offered a bit more yield than U.S. treasuries with effectively no additional risk. That stoked record investor demand for munis and gave governments easy access to cheap money. Now with rates back on the rise, muni borrowers need to offer up more yield to draw the same investor interest. Again, strong investor relations can help highlight the bargain that munis offer.

Finally, there is the lingering threat of severe fiscal stress. Detroit, Stockton, Calif., and other fiscally strapped cities have worked out their most pressing issues, but investors remain understandably weary of fiscal problems just beneath the surface. Better investor outreach can help investors draw their own conclusions about an issuer's actual strengths and weaknesses.

For these and other reasons, investor relations programs are becoming part of the government chief financial officer's toolkit. If you have a great brand to sell, and the resources to sell it, then why not sell it?

But what about the tens of thousands of smaller issuers who don't have that same brand recognition? Tax reform, normalizing interest rates and fiscal stress also present them with some unique challenges.

For instance, a recent paper from Kate Yang at George Washington University shows that in Alabama, in the aftermath of the Jefferson County bankruptcy, interest rates on bonds from smaller, lesser-known cities in the state increased. That's consistent with the "contagion" effect we'd expect after a major financial catastrophe. Investors unsure about Alabama governments saw them as a bit riskier. But at the same time, larger Alabama borrowers with better credit ratings actually experienced a "reverse contagion" effect. They saw their interest rates decline.

How could one of the biggest local fiscal catastrophes in history actually benefit nearby governments? To repurpose the old Tip O'Neill saying, "All muni markets are local." Alabama investors enjoy unique tax benefits from investing in Alabama governments. That pool of investor money is more or less locked into the state. So as money flowed away from Jefferson County, the other Alabama bonds it flowed to saw higher prices and lower yields. Tax policy changes and normalizing interest rates can also animate this intrastate zero sum game.

All this suggests that states ought to consider how they can facilitate better muni investor relations for all the governments within their borders. Without strong state policy frameworks, and robust private-sector investor relations solutions, many small governments could be left behind in the rapidly changing municipal bond market.

governing.com

By Justin Marlowe | Columnist
Endowed Professor of Public Finance and Civic Engagement at the Daniel J. Evans School of Public Policy & Governance at the University of Washington

August 2018

S&P: Blockchain is Coming to Muniland, and the Changes Could Be Significant.

Blockchain has become a recurring theme in today's headlines. It could be easy to dismiss it as a passing, overhyped fad. However, upon closer consideration, S&P Global Ratings believes this technology could be a meaningful part of solutions to credit risks…

Continue Reading

Jul. 30, 2018

The Week in Public Finance: Affordable Housing Shortage? Massachusetts Might Tax Airbnb to Pay for It.

The state is considering a policy that goes further than most places that tax short-term rental companies.

As Airbnb and other short-term rental companies have increased their presence in cities, so too has the struggle to provide affordable rental housing.

Massachusetts, however, is on the verge of becoming the first state to dedicate revenue generated from Airbnb and other short-term rental taxes toward affordable housing. The Bay State is considering legislation that would apply its state hotel tax to short-term rentals and require at least 35 percent of separate, local hospitality taxes on those rentals to fund investments in affordable housing or infrastructure.

The new tax was passed by the House and Senate this week. But Republican Gov. Charlie Baker has added amendments that would exclude property owners who casually rent their houses or apartments (for two weeks or less per year) from the law. The bill was sent back to the legislature and a spokeswoman for Baker said he hopes to work with lawmakers to reach an accord soon.

Continue reading.

GOVERNING.COM

BY LIZ FARMER | AUGUST 3, 2018

PG&E Bonds Belie Fear of Imminent Bankruptcy Over Wildfires.

- **Utility could face $17.3 billion in liabilities from fires**
- **State lawmakers considering whether to modify liability rules**

Fears that the company — which provides gas and power to 16 million people — could take that step have reached the highest level of California government, with Governor Jerry Brown saying "there is concern that we could lose our utilities."

But the bond market shows the talk may be premature.

Even after a report this week that PG&E hired a debt restructuring firm, prices on some of its $17.8 billion of long-term securities don't reflect a fire sale. In fact, the company sold more corporate securities Thursday. And in the credit default swaps market, where investors bet on the survival of companies, PG&E's risk has risen, but not to levels seen for those on the brink.

"They're not priced as though the world is ending," said Nicholos Venditti, who oversees about $11 billion of local government debt at Thornburg Investment Management in Santa Fe, New Mexico, of the utility's municipal bonds. "They're priced as though this thing has some hair on it. Not Cousin Itt levels of hair — but a fair amount."

PG&E may face as much as $17.3 billion in liabilities from wildfires that swept northern California wine country last fall, JPMorgan Chase & Co. estimated. California investigators have already named PG&E equipment as the ignition source of 16 of the blazes that destroyed thousands of homes and killed 44 people. The uncertainty from the ongoing probes has wiped out more than $13 billion of the company's market value.

Law Change

Under California law, utilities can be held liable for costs if their equipment is found to have caused a fire — regardless of whether they followed safety rules — based on a legal principle known as "inverse condemnation." PG&E is pushing for relief under these rules, saying that climate change is among the factors sparking blazes. It has spent $1.7 million in lobbying over just three months ending in June, three times the amount it expended the same period last year, state filings show.

With lawmakers set to adjourn Aug. 31, PG&E may be bluffing to spur action that would saddle customers and taxpayers with higher costs, said state Senator Jerry Hill, a Democrat. "PG&E will use the threat of bankruptcy to extract the best deal they can."

Rising Risk

Wall Street is closely following the company, which besides its prodigious stock capitalization has borrowed money in the corporate bond market as well as through a state agency in the municipal bond market, typically the avenue for local governments. Fitch Ratings on Thursday said it could cut the debt ratings into junk status if it has to absorb wildfire costs quickly. In a statement, PG&E said "due to uncertainties around policy solutions, we are experiencing higher costs of financing."

That meant opportunity for fixed-income investors seeking higher yields. Their demand led PG&E to increase its corporate debt offering Thursday to $800 million from $600 million, as 10-year bonds yielded 1.7 percentage points more than Treasuries. That's still cheaper than the average spread that high-yield issuers pay over Treasuries at 3.33 percentage points, according to data compiled by Bloomberg.

The company said the higher financing costs come at a "critical" time to modernize systems and meet clean energy priorities.

"To be clear, without reform, the current situation is not financially sustainable over the long term and our focus continues to be on communicating the urgent need to find policy solutions that protect victims, protect customers and protect the state's climate and clean energy goals by keeping the state's utilities financially viable," it said.

Governor Brown last week proposed legislation that would require a court to consider whether a utility acted “reasonably” when deciding whether it should end up on the hook for fire damages. Chief Executive Officer Geisha Williams told investors on July 26 that Brown’s proposal was “insufficient” and is “one of many things that need to be considered in a more comprehensive set of reforms.”

Enough Cash

Reuters reported this week that the company hired Weil Gotshal & Manges LLP to explore debt restructuring options, including putting a unit into bankruptcy. The story was met with skepticism by debt research firm CreditSights Inc., which said that even if PG&E had to pay $10 billion in claims immediately, it has enough cash to absorb it. PG&E had suspended its dividend in December to preserve cash.

PG&E has warned lawmakers that a bankruptcy like the one its electric unit filed amid the energy crisis in 2001 is possible without relief from the liability laws, Bloomberg Intelligence said Wednesday.

At the time of that bankruptcy, Moody’s Investors Service ranked the company Caa2, the fourth-lowest rung in junk. That’s much lower than its current A3 investment-grade rating, which reflects that a resolution is probable, said Moody’s analyst Jeffrey Cassella. “We’re expecting some kind of constructive outcome.”

Bloomberg Business

By Romy Varghese, Mark Chediak, and Molly Smith

August 3, 2018

U.S. Bond Funds Attract 23rd Straight Week of Inflows.

NEW YORK, Aug 1 (Reuters) – U.S. fund investors showed continued demand for bond funds in the latest week, extending a streak of inflows that dates back to mid-February, Investment Company Institute data showed on Wednesday.

Investors also increased deposits in domestic equity and commodity funds, but fixed income continued to dominate in an environment of uncertainty over tensions between the U.S. and its trading partners, according to ICI data collected over the seven-day period that ended July 25.

Bond funds attracted $4.4 billion, of which $613 million went to tax-free municipal bonds.

Domestic equity exchange-traded funds attracted $3.5 billion, the third straight week of inflows, during an earnings season in which the majority of U.S. companies have beat expectations. ETF investors deposited $1.3 billion in global equity funds.

Within long-term equity mutual funds, which have seen net withdrawals since early April, investors added $681 million to domestic small-cap equities. The category, which has benefited from tax cuts and is seen as less vulnerable to tariffs, has taken in cash for nine of the past 10 weeks.

(Reporting by James Thorne; Editing by Bernadette Baum)

Like Hartford, New Haven “Scoops & Tosses”

Governments use a practice known as “scoop and toss” when they’re desperate for cash. It brought Hartford to near-bankruptcy.

Now, financial analysts say, New Haven is resorting to the practice — while the mayor promises she has a plan to guard against fiscal blowback.

New Haven takes that step this week, as it refinances its debt for the seventh time in nine years, partly in order to plug a left-over $11.5 million debt from the fiscal year that just ended. Worth $160 million, this refinancing will be the largest in the city’s history.

Continue reading.

NEW HAVEN INDEPENDENT

by CHRISTOPHER PEAK | Jul 31, 2018

Leveraging Public Funding for Mass Transit With P3s.

We have previously written about Miami-Dade County’s proposed SMART plan, a massive, six-corridor expansion of the existing heavy rail system, and the benefits of delivering all or portions of the project as a public-private partnership (P3). This month, the County Mayor released an updated multiyear transportation pro forma that identifies $8.457 billion in available funding to implement the SMART Plan over the next 40 years. The County has estimated that this income stream could be used to borrow $2.6 billion today, or enough to construct two of the six corridors. Although the County does not have the funding to construct the entire SMART plan using a traditional, publicly financed and operated delivery, the County can utilize a P3 to stretch its financial resources as far as possible.

A key consideration in the funding of mass transit is the cost of ongoing operations and maintenance, which generally exceeds the construction cost. Notably, fares typically do not come close to covering operations and maintenance (O&M) expenses for mass transit. The percentage of O&M expenses covered by fares (what is called the “farebox recovery ratio”) is usually between 25 and 50% for U.S. mass transit systems, with Miami typically falling at the lower end of the spectrum.

Because O&M accounts for such a significant portion of the cost of a new transit corridor, total costs can be reduced by keeping O&M costs under control. A P3 utilizing the DBFOM (design-buil--finance-operate-maintain) model requires that the private partner bear the risk of any future increases in O&M costs, and because those costs are included in the bid price, the County can save total costs by selecting the private partner that can construct and operate the system at the lowest total cost to the County. P3s can also be used to encourage private innovation that increases ridership and revenues, as can be most clearly observed in Hong Kong’s mass transit system, which utilizes innovations such as first-class cars with higher fares and has a farebox recovery ratio of well over 100%.

A P3 approach cannot alone bridge the gap between two new corridors and six new corridors. The County will also need to find ways to lower costs, including using different, lower-cost technologies such as bus rapid transit (Bogota, Colombia, being the best-known BRT example), and increasing revenues (such as procuring more revenue-generating private developments on County property around transit stations). The right P3 delivery approach, however, can certainly go a long way toward bridging the funding gap and developing a world-class transit system.

By Albert E. Dotson, Jr. & Eric Singer

New Miami Blog

Monday, July 30, 2018

Bilzin Sumberg

MSRB Releases Report Card on Investor Protection Initiatives.

Washington, DC – The Municipal Securities Rulemaking Board (MSRB) today released a Report Card on Investor Protection Initiatives outlining how it has met policy recommendations contained in the 2012 U.S. Securities and Exchange Commission's (SEC) Report on the Municipal Securities Market. Over the last six years, the MSRB has further safeguarded the municipal market for investors through additional regulatory protections, improved access to disclosure information, and new tools and resources.

"Six years ago, the MSRB dedicated itself to addressing the investor protection recommendations put forth by the SEC in its report," said MSRB President and CEO Lynnette Kelly. "Our report card outlines the MSRB's substantial progress in this endeavor, summarizing initiatives that have enhanced market structure, improved disclosure practices and the efficiency of retail transactions."

Over the past two years in particular the MSRB has implemented reforms addressing the structure of the municipal market. The creation of a best-execution rule in 2016 and a mark-up disclosure rule in 2018 were designed to enhance the transparency of costs associated with municipal security transactions for retail investors and to provide them with valuable access to pricing and related information about their municipal securities. Former SEC Chairman Michael Piwowar said earlier this year that the MSRB's mark-up rule will "provide investors with clear disclosure about how much they are paying for their fixed income transactions."

The MSRB recently improved the Electronic Municipal Market Access (EMMA®) website to make it easier for investors to use, and has incorporated third-party tools into EMMA® allowing investors and municipal market participants to take advantage of market yield curves and indices, a new issue calendar and an economic calendar.

Date: July 31, 2018

Contact: Jennifer A. Galloway, Chief Communications Officer
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[Chicago Suburb to Be Title Sponsor of Bahamas Bowl Game.]

ELK GROVE VILLAGE, Ill. — A Chicago suburb is spending $300,000 to be the title sponsor for a nationally televised college football bowl game in the Bahamas.

Elk Grove Village and ESPN on Tuesday announced the bowl sponsorship for the Makers Wanted Bahamas Bowl. They said the Dec. 21 game in Nassau will mark the first time a non-tourist municipality has sponsored a bowl game.

The game, which was previously sponsored by fast-food chain Popeyes, is one of 14 owned and operated by ESPN Event. The bowl features teams from the Mid-American Conference and Conference USA.

The move is the village's latest marketing push to expand the reach of its "Makers Wanted" campaign to promote a local industrial park, which officials say has more than 5,600 businesses. The campaign was launched in 2015, and has included a website, billboards, TV and radio commercials, and print ads.

Mayor Craig Johnson said the sponsorship will be "a perfect opportunity to use college football to share our message with the entire country." Richard Giannini, the bowl game's executive director, said the unique sponsorship will allow the village to promote its message to a national audience.

Elk Grove Village is just northwest of Chicago and borders O'Hare International Airport. Village officials said they plan to host a watch party the day of the game for local businesses.

By The Associated Press

Aug. 1, 2018

[After Harvey, Houston Hopes to Boost Flood Defenses With $2.5 Billion Bond.]

Funds would allow Harris County to complete delayed flood-prevention projects

HOUSTON—A year to the day since Hurricane Harvey slammed into Texas, Houston area residents are set to vote on whether to overhaul the region's beleaguered flood-protection system, an election that local officials have cast as critical to the area's future.

On the ballot in Harris County is a $2.5 billion bond backed by property taxes that could more than quadruple the annual funding available to help shield Houston and the surrounding cities from flooding. The proposal, set for a special election on Aug. 25, is the largest bond measure ever offered in Texas' most populous county. If approved, proceeds from the bond would help fund a range of projects aimed at significantly bolstering the area's aging network of bayous, which serve as a drainage system for the flood-prone county.

At stake, public officials say, is whether Harris County can ever realistically hope to protect itself from another storm of Harvey's might.

"It is the most important local vote in my lifetime," said Judge Ed Emmett, the county's chief executive and one of the architects of the measure. "If Harvey came next week, we'd be in a world of hurt."

The storm caused 36 flood-related deaths in Harris County and flooded more than 159,000 homes, apartments and other dwellings, while also damaging thousands of commercial structures and businesses. But even before Harvey hit, some officials and experts had warned that flooding was going to worsen in the Houston area and that upgrading an antiquated drainage system would be costly.

When disaster strikes, having a safety net like flood insurance, a stable income, or savings can mean the difference between getting back on your feet, and living every day among the wreckage. We profile two families in Houston still recovering from Hurricane Harvey six months after the storm. Local officials said increased funding would allow the county to finally complete flood-prevention projects that have been slowed because of a lack of money, as well as take additional measures it otherwise couldn't afford. More than 200 potential projects have been identified including the widening of bayous, repairing flood-damaged infrastructure and buying out more than 1,000 flood-risk homes.

Matt Zeve, director of operations for the Harris County Flood Control District, said some of the projects the county could finish could have helped thousands of homes flooded during Harvey. If the proposal is approved by voters, the flood control district's annual budget could rise to more than $500 million from $120 million, he said.

There is also the possibility of getting matching federal funds for projects the county can pursue if the bond measure passes, Mr. Zeve said.

According to county estimates, the bond proposal would increase the total property tax by no more than 1.4% for most homeowners in Harris County.

Since June, county officials have fanned out across the Houston area to hold community meetings on the proposal. At those meetings, Mr. Zeve said he saw the lasting effects the days of flooding had on residents.

"There is literally a case of countywide PTSD to this day over Harvey," he said. "I will talk to someone after a meeting, and they will be visibly emotional, crying in front of me. This is very emotional topic for people here."

The measure has largely generated bipartisan support. Judge Emmett is a Republican, while Sylvester Turner, Houston's Democratic mayor, also backs the bond. Gov. Greg Abbott, a conservative Republican who has called for reducing property taxes, approved the county's request to hold the emergency special bond election, a requirement of state law.

Kaaren Cambio, whose home flooded during Harvey, said she at first had concerns that the public wouldn't be given enough of a say on how the money was spent. But after attending a community meeting, Ms. Cambio, who heads a flooding task force for the Harris County GOP, said those concerns were allayed.

"I am never for higher taxes but in this case, this bond is necessary," she said.

Roger Gingell, general counsel, for Residents Against Flooding, a Houston group that advocates for flood prevention measures, said that while he planned to vote for the bond, he had concerns about what projects the money would be used for. Mr. Gingell said he wanted the county to take a more nuanced approach to flood prevention in areas that it had not previously focused on, in addition to emphasizing some of the same bayou widening projects it had in years' past.

"It's pretty clear that we need the money to fund flood prevention infrastructure, but the government at both the city and county level has never articulated a big picture strategy for flooding in the region," he said.

Charles Goforth, president of the Brays Bayou Association, a residential group that works on flood prevention issues and represents 30,000 homes in an area of Houston hit hard by Harvey, said most people he has spoken to are supportive of the proposal.

While some are uneasy with letting local government lead the flood prevention effort, Mr. Goforth said those fears have been eclipsed by an acknowledgment that since Harvey, there's no longer much of a choice.

"We live here and this is a situation we're going to have to keep dealing with. So we have to bite the bullet," he said.

The Wall Street Journal

By Dan Frosch

Aug. 5, 2018 8:00 a.m. ET

LA County Uses P3 Lease Revenue Bonds for 21-Story, $295 million Office Tower.

Los Angeles County is using lease-revenue bonds sold through a public-private partnership to finance a 21-story office building, the first phase of a drive to bring jobs, housing, and public space to a blighted area of the second largest U.S. city.

The $295 million project will begin construction in Los Angeles' Koreatown area later this month as part of a larger development that will create new office space for county workers, additional housing and a community center that area residents say is long needed.

Los Angeles County Facilities, Inc., a private nonprofit created by the county to build the projects, is issuing $297.3 million in Series A tax-exempt lease revenue bonds and $5.1 million in Series B taxable lease revenue bonds.

The bonds priced July 26 with Barclays Capital Inc. selected as the underwriter. Orrick, Herrington and Sutcliffe is the bond counsel and Montague DeRose and Associates is the municipal advisor.

The Public Facilities Group, a Seattle-based nonprofit, is overseeing the county project and will run its facilities agency. The group previously worked with Los Angeles County to build a three-story office building for the county Community Development Commission in the nearby city of Alhambra and has worked on several public-private partnerships in Washington state and in Salinas, California and Riverside, California.

John Finke, president of the Public Facilities Group, said he's seeing more interest in California in the P3 financing model which he refers to as American Approach P3.

"This is one of the bigger ones," he said of Los Angeles County. "It's a fairly significant project."

The financing approach allows the project to be built more efficiently and at a lower cost, he said.

The county's analysis showed that the P3 financing model would save $30 million in project costs, reduce debt service payments by $66.4 million and shave 11 months off of the construction time, Finke said. "The structure is one where the development team provides a guaranteed maximum price insulating the county from cost overruns."

The agreement includes a guaranteed delivery date of October 2021 with the development team sharing in a percentage of the savings if the project comes in under-budget. And if the developers miss the deadline, they earn less in fees.

"It brings a powerful incentive to line everybody up working in the same direction," Finke said.

The bonds were rated AA by S&P Global Ratings and AA-minus by Fitch Ratings – the same rating given to the county for its own lease revenue bonds.

S&P also revised the county's outlook to positive from stable.

"The outlook revision reflects our view of the county's long-term trend of robust local economic performance from an already strong and very diverse base and an associated strengthening in revenue and tax base that have improved its capacity to meet capital and service priorities," the agency's analysts said in a July report.

The county will make lease payments to the nonprofit to pay off the bonds over a 33-year period. Once it is paid off, the county — which already owns the property — will take ownership of the building.

The rent — about $18 million a year — will cover debt service, operations and maintenance costs including taxes, utilities and capital expenditures.

County officials say the Vermont Corridor Administrative Offices Building — named for its S. Vermont Avenue location — has been long needed to reduce blight and consolidate county department employees at one location.

The building will feature an 8-story parking structure with 13 floors of office on top, providing a total of 468,000-square-feet of office space. It will also include a separate adjacent 10-story parking structure with a 9th floor sky bridge link.

The ground floor will include some retail space and a 3,597-square-foot mental health clinic.

The building, designed to house 2,167 employees, will serve as the new home for the county's mental health, workforce development, and aging and community services departments.

"This is a symbol of cutting edge and inclusive ways of delivering services in the County," said Supervisor Mark Ridley-Thomas, who represents the area and championed the project, in a statement after the project approval in May.

Ridley-Thomas said the new quarters will help in improving the delivery of mental health services. The department, which will make up the bulk of the employees at the building, has been working in dilapidated quarters for the last two decades, he said.

"We are creating jobs while positively transforming once-neglected blight into modern and robust assets," he said.

The office tower is the first of a three-phase transformation of the Vermont Corridor on three county-owned parcels.

On the second site, the existing 12-story mental health department building will be converted into market- rate housing with 172 units and a five-story parking structure. The project will be financed through private capital.

On the third site, a six-story, 72-unit senior affordable housing project with three stories of underground parking is planned. Tax credits and other financing will be used to build it.

The affordable housing site will also feature a 13,200-square-foot community center that Koreatown residents say is sorely needed. At a public hearing two years ago, many came out in support of that element of the project, saying the area is one of the most densely-populated in the city but lacks recreational opportunities.

"The lack of public space in Koreatown has profound impacts on the health of our community as residents and especially children have nowhere to recreate, exercise or interact with their neighbors," said Brady Collins, a policy analyst with the Koreatown Immigrant Workers Alliance at the meeting. "The county's redevelopment of a stretch of Vermont Avenue is the opportunity that we have been waiting for."

By Imran Ghori

BY SOURCEMEDIA | MUNICIPAL | 08/02/18 07:13 PM EDT

S&P Extra Credit: Quarterly Credit Conditions for U.S. States and Locals.

In this week's Extra Credit hear Lisa Schroeer discuss Credit Conditions with Managing Director Gabe Petek and Senior Director Jane Ridley. Hear about the economic forecast for the U.S. and how that translates to the State and Local credit environment.

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Jul. 30, 2018

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Jul. 25, 2018

Puerto Rico Power Utility Reaches Deal With Bondholders.

BlueMountain Capital, Franklin Advisers and other bondholders agree to restructuring part of utility's $9 billion debt

Investors in Puerto Rico's bankrupt electricity monopoly have struck a debt-restructuring deal, inching the largest public U.S. power utility closer to privatization.

The bondholder settlement announced on Monday would pare down the $9 billion debt owed by the public power utility known as Prepa and mark the most significant restructuring deal negotiated under Puerto Rico Gov. Ricardo Rosselló.

The federal board overseeing Puerto Rico's finances also supports the agreement, which requires court approval to become effective. The deal gives a bondholder group including Franklin Advisers Inc., BlueMountain Capital Management LLC and Knighthead Capital Management LLC a chance to exit from a roughly $3 billion combined investment that has tumbled in value since the oversight board's 2016 arrival. A frequently traded Prepa bond maturing in 2040 was trading at 44.25 cents on the dollar on Monday, according to Electronic Municipal Market Access.

Bond insurers and top-ranking lenders owed billions of dollars more by Prepa aren't on board with the proposed terms, a person familiar with the matter said. Discussions are expected to continue on the rest of the utility's debt. The partial settlement is a step toward the oversight board's goal of breaking up Prepa's monopoly structure and coaxing new investors to take over its power generation and distribution businesses.

Bondholders would surrender their claims at a discount under the deal and receive two classes of new long-dated bonds in exchange, representing 67.5 cents on the dollar and 10 cents on the dollar. Cutting legacy debt obligations helps Mr. Rosselló ameliorate politically unpopular rate hikes without further imperiling Prepa's finances.

"The restructuring of Prepa's debt and obligations is critical to completing our vision for a consumer-centric energy sector with financially viable rates that promote economic development," the governor said in a statement.

Prepa's financial problems, decades in the making, are at the center of the U.S. territory's financial crisis. High electricity bills, driven by Prepa's legacy obligations and inefficient power plants, have depressed family incomes and economic growth.

Blackouts were frequent while residents went to extreme lengths to curtail their power use. Puerto Rico's decadelong recession worsened the utility's finances as business and residential power demand declined.

The oversight board placed Puerto Rico's central government into bankruptcy last year and later voted to move Prepa under court protection as well. Ending its monopoly structure is a priority for many Republicans in Congress who have urged the oversight board and the governor to negotiate with bondholders to avoid lengthy lawsuits over debt repayment.

But creditors had struggled to come up with acceptable terms to tame Prepa's $9 billion debt load as Gov. Rosselló adopted an increasingly populist tone since taking office. The oversight board vetoed a restructuring settlement last year that would have cut bond obligations by 15%, opting instead for a bankruptcy process aimed at wringing more concessions from creditors.

The exodus of Puerto Ricans in the wake of last year's devastating hurricane season further depleted Prepa's customer base while the power grid is being repaired.

The revised agreement saves Prepa 30% more in debt payments compared with the previous version while tying bondholder payments to electricity demand, heightening creditor recoveries if Puerto Rico residents stay on the grid rather than migrate to the mainland U.S.

The deal comes weeks after a purge of Prepa's independent directors and incoming chief executive that left it leaderless at a critical moment. A majority of Prepa's board of directors resigned en masse after Gov. Rosselló demanded they scale back a $750,000 CEO compensation package.

The outgoing directors accused the governor of interfering in their decisions, fanning longstanding concerns in Congress about political meddling in Prepa. An Energy Department official last week urged Congress to depoliticize Prepa by taking board appointments out of the governor's hands.

House Republicans have discussed potential legislation installing federal oversight at Prepa, according to people familiar with the matter, though no such bill has been filed.

The Wall Street Journal

By Andrew Scurria

July 30, 2018 10:25 p.m. ET

The Pension Hole for U.S. Cities and States Is the Size of Germany's Economy.

Many retirement funds could face insolvency unless governments increase taxes, divert funds or persuade workers to relinquish money they are owed

For the past century, a public pension was an ironclad promise. Whatever else happened, retired policemen and firefighters and teachers would be paid.

That is no longer the case.

Many cities and states can no longer afford the unsustainable retirement promises made to millions of public workers over many years. By one estimate they are short $4 trillion, an amount that is roughly equal to the output of the world's fourth-largest economy.

Continue reading.

The Wall Street Journal

By Sarah Krouse

July 30, 2018

Statement by U.S. Conference of Mayors CEO & Executive Director Tom Cochran on FCC's Actions Against Local Governments and Their Property Rights.

Washington, DC — Below is a statement by U.S. Conference of Mayors CEO and Executive Director

Tom Cochran on the FCC's actions yesterday against local governments and their property rights:

"The U.S. Conference of Mayors strongly opposes actions by the Federal Communications Commission that will subordinate local governments and their property rights to the benefit of the nation's communications providers.

With little advance notice or engagement with local and state governments, the FCC action — which effectively prohibits local and state actions or policies having the effect of barring for some duration a private telecommunications company for accessing the public's rights-of-way — immediately disrupts local management regimes for the sole purpose of granting one group special federal protections and rights.

It also upends a key provision of federal law that was enacted overwhelmingly by Congress in 1996 to protect and respect local and state government property rights and their authority to manage these public assets.

For more than a century and at great cost, local governments with states have had the day-to-day responsibility for managing all aspects of this local public property, and are charged to do so in ways that benefit all citizens and businesses, not just one class of users. The FCC lacks the technical experts to facilitate broadband deployments. It also lacks the local knowledge needed to manage city streets, sidewalks and other public property. As such, the Conference respectfully calls on the Commission to reconsider this Order and urges the agency to develop a process to fairly and fully review the enormity and complexity of these issues."

Chicago Faces Lowest Budget Gap Since 2007 in Coming Fiscal Year.

- **Pension bills will more than double over next 20 years**
- **Pension debt shrank to $28 billion after stepped up payments**

Chicago next year will see its smallest budget deficit since 2007, a boost for the nation's third-largest city as it prepares to confront escalating pension bills.

The city is projecting a 2019 shortfall of $97.9 million, according to an annual financial analysis released Tuesday. That marks the eighth straight year of narrowing deficits. Chicago will pay $1.18 billion to its four retirement funds in fiscal year 2019, which is up from $1 billion last year, according to the report. Those payments will more than double over the next 20 years, reaching an estimated $2.9 billion in 2039, the report shows.

"The City of Chicago is on firmer financial footing today because of the progress we have made together to eliminate the risky financial practices of the past, address our pension challenges, and reduce our structural budget deficit," Mayor Rahm Emanuel said in a letter at the start of the report. "This low structural budget deficit is expected and manageable in a government with a nearly $4 billion operating budget."

Chicago's progress comes as municipal-credit quality overall seems to be improving. State and local governments are reaping the benefits of the second-longest economic expansion on record. Minnesota and Michigan recently won rating upgrades, and Illinois and Chicago had their outlooks lifted to stable from negative this month.

Emanuel has made progress, pushing through higher property taxes and utility levies to shore up the city's retirement funds that were on track to run out of money. His plan has the public safety pensions on track to be 90 percent funded by the end of fiscal year 2055, and the municipal and laborers pensions at that level by the end of 2058. As of Dec. 31, the four funds were only about 27 percent funded, after years of inadequate contributions.

Moody's Investors Service, which still considers Chicago junk, cited the city's tax hikes in its revised outlook. Given the levies, Chicago won't face "significant budgetary obstacles" in the next two to three years to cover its rising pension payments, according to Moody's.

The four pension funds were short $28 billion as of Dec. 31, according to the city's 2017 comprehensive annual financial report. That shortfall eased from the previous year when they were short more than $35 billion. The city's move to require higher contributions to the funds led to an increase in the discount rate. That change and other assumptions helped lower the net pension liability, the report noted.

"All in all, the city of Chicago is in a better structural position than prior years," said Laurence Msall, president of the Civic Federation, which monitors state and local finances, "but it will continue to face revenue and expenditure pressures resulting in projected growth in future deficits."

Bloomberg Markets

By Elizabeth Campbell

July 31, 2018, 3:07 PM PDT

States Target Surpluses to Rainy Day Funds, Other Priorities after Fiscal 2018 Revenues Exceed Estimates.

Most states saw stronger revenue growth in fiscal 2018 led by unusually high income tax payments from non-withholding income sources along with continued growth in the national economy. Specifically, states saw a significant uptick in their personal income tax collections in the last eight months. Information from NASBO's Spring Fiscal Survey of States shows that 39 states were seeing fiscal 2018 revenues above projections at the time of data collection, with that figure expected to rise when updated data is collected in the fall. As a result of revenues coming in above forecast, many states ended fiscal 2018 with a budget surplus. NASBO's 2015 Budget Processes in the States report details states' use of general fund budget surpluses in Table 16. Common uses of general fund budget surpluses include: transfers to budget stabilization or rainy day fund (32 states), remaining in general fund (39 states), refunded to taxpayers (7 states), earmarked (6 states), paying down outstanding debt (10 states), and one-time expenditures (14 states).

Below is a listing of state revenue totals and examples of how some states are using fiscal 2018 budget surpluses, after 46 states ended the fiscal year on June 30th:

Continue reading.

NASBO

By Brian Sigritz

Municipal Bonds Weekly Market Report: GDP Hits Four-Year High

MunicipalBonds.com provides information regarding the performance of muni bonds for the past week in comparison with Treasury yields and net fund flows, as well as the impact of monetary policies and relevant economic news.

- Treasury and municipal yields were all up big this week.
- Muni bond funds saw inflows for the third week in a row.
- Be sure to review our previous week's report to track the changing market conditions.

Continue reading.

municipalbonds.com

Brian Mathews

Jul 31, 2018

Where Bond Insurance Fits in the Push for Infrastructure.

The United States has a tremendous need for infrastructure investment, but it remains slow in adopting public-private partnerships – or P3s – compared to other countries.

President Trump's infrastructure policy plans to address these shortcomings by limiting government spending to $200 billion over the next decade, while removing red tape and making it easier for municipalities to complete P3 deals to address infrastructure underinvestment. However, there's a lot of uncertainty about Trump's ability to execute on these plans given the lack of progress in healthcare and tax reforms.

In this article, we will look at the need for infrastructure investment in the United States, as well as the role that bond insurance plays in P3 deals from the standpoint of both issuers and investors.

Continue reading.

municipalbonds.com

Justin Kuepper

Aug 02, 2018

TAX - PENNSYLVANIA

Williams v. City of Philadelphia

Supreme Court of Pennsylvania - July 18, 2018 - A.3d - 2018 WL 3455401

Objectors, including consumers, retailers, distributors, producers, and trade associations, brought action challenging city's "beverage tax" on certain sweetened beverages, seeking declaratory and injunctive relief, including declaration that tax was expressly preempted by the Sterling Act, governing city's imposition of local taxes.

The Court of Common Pleas sustained the city's preliminary objections. Objectors appealed. The Commonwealth Court affirmed.

On limited appeal by allowance, the Supreme Court held that Commonwealth's sales and use tax and city's beverage tax had distinct legal incidences, and thus city's tax was not preempted by Sterling Act.

Commonwealth sales and use tax upon soft drinks and city's beverage tax on certain sweetened beverages had distinct legal incidences, and thus city's tax was not preempted by Sterling Act, which granted city broad taxing power unless Commonwealth imposed tax having same legal incidence relevant to same subject or transaction, though objectors asserted both taxes reached retail sales; sales and use tax was imposed on retail sales, was measured by purchase price, and fell directly upon consumers, beverage tax applied to distributor/dealer level transactions for purposes of retail sale, independent of whether retail sale occurred, measure was volume of fluid ounces, and payer was distributor or dealer, but never consumer, and retail sales nexus did not convert distributor/dealer level tax into retail sales tax.

TAX - CONNECTICUT

Walgreen Eastern Company, Inc. v. Town of West Hartford

Supreme Court of Connecticut - July 24, 2018 - A.3d - 329 Conn. 484 - 2018 WL 3468411

Pharmacy tenant brought action to challenge decision of town board of assessment appeals regarding valuation of real property.

The Superior Court entered judgment in favor of taxpayer in part and determined value of property. Taxpayer appealed.

The Supreme Court of Connecticut held that:

- Court was required under the income capitalization approach to consider both contract rents and market rents;
- Court properly considered pharmacy tenant's leasehold interest as one indicator of the true and actual value;
- Evidence was sufficient to support finding that continuing use as retail pharmacy was highest and best use of property; and
- Tenant failed to establish that assessment of real property was manifestly excessive.

Court considering assessment of pharmacy property subject to 75-year lease was required under the income capitalization approach to consider both contract rents and market rents.

Trial court properly considered pharmacy tenant's leasehold interest as one indicator of the true and actual value of the owner's interest in the subject property, and consideration of actual rents did not lead to improper value of leased fee interest rather than fee simple interest; valuation under the income capitalization approach was required to consider both contract rent and market rent, and court was able to consider the value of the leasehold interest in connection with the other substantial evidence regarding the true and actual value of the subject property, and, on the basis of all of the testimony and evidence presented at trial, determined the true and actual value of the subject property.

Evidence in tax appeal was sufficient to support finding that continuing use as retail pharmacy was highest and best use of property; experts noted existence of national chain pharmacy submarket, and there was evidence of the property's special features for a national retail pharmacy, including that it was a freestanding building with a corner location and with a traffic signal at the intersection, which had been remodeled to pharmacy tenant's specifications and was under a triple net lease.

Pharmacy tenant failed to establish that assessment of real property subject to long term lease was manifestly excessive based on comparison to other properties in town; town applied the same process to valuing the other properties that it applied to the subject property, other properties were dissimilar to the subject property because they were smaller, less recently remodeled, and not stand alone buildings at a corner with a traffic signal, and town's original $5,020,000 assessment overvalued property only by $120,000.

Chapter 11 or Chapter 9: Investors Beware.

Municipalities often drive economic development through subsidiaries and affiliated entities. When these "quasi-municipalities" become distressed, however, questions arise as to whether the potential debtor qualifies as a debtor under Chapter 11 or Chapter 9. This uncertainty can lead to litigation over whether the entity may proceed as a Chapter 11 debtor or is a governmental unit that must proceed through a Chapter 9 bankruptcy filing. In states where Chapter 9 is not authorized, Chapter 11 may be the only available option for a supervised restructuring. Answering the question of "what kind of debtor" is the issuer is an important part of the due diligence process because the answer impacts whether the entity can file at all if it is a governmental entity or whether the entity can proceed in Chapter 11.

In this blog we look at two cases, one in Illinois and one in Nevada, where the primary issue was whether the debtor could proceed as a Chapter 11 debtor or was precluded from a Chapter 11 proceeding because it was a governmental unit ineligible for Chapter 11. Chapter 9 was not an option in either case because Nevada and Illinois do not authorize governmental units to seek relief under Chapter 9.

Lombard Public Facilities Corporation

The most recent case is from the United States Bankruptcy Court for the Northern District of Illinois. In *In re Lombard Public Facilities Corporation*, Lord Abbett Municipal Income Fund, Inc. – Lord Abbett High Yield Municipal Bond Fund ("Lord Abbett") and the United States Trustee (the "U.S. Trustee") separately sought to dismiss the Chapter 11 case of the Lombard Public Facilities Corporation (the "LPFC"). In support of their motions, Lord Abbett and the U.S. Trustee contended that the LPFC was not an eligible debtor under Chapter 11 of the Bankruptcy Code because it was a governmental unit.

The arguments of Lord Abbett and the U.S. Trustee centered on Bankruptcy Code section 109(d) and whether the LPFC was a "person" eligible for Chapter 11. Pursuant to Bankruptcy Code section 101(41), "[t]he term 'person' includes individual, partnership, and corporation, but does not include governmental unit." The term governmental unit includes, among other things, municipalities and the instrumentalities of municipalities. Thus, the ultimate question considered by the court was if the LPFC was an instrumentality of the municipality that incorporated it.

The LPFC was formed by the Village of Lombard, Illinois (the “Village”), for the sole purpose of acting on behalf of the Village to finance, secure a location, and construct a convention hall and hotel facility. The LPFC was incorporated by the Village as a separate public facilities corporation because it was not otherwise authorized to borrow the funds needed for the project. Under Illinois law, public facilities corporations are the business agent of the municipality, and are controlled through the municipality’s ability to appoint and remove directors and by having title to the project transferred to it upon the retirement of any bonds or other debt issued in connection with the development. The ordinance authorizing the creation of the LPFC provided for each of these activities.

The hotel and convention facility project was financed with a series of tax-exempt bond issuances. The LPFC was able to issue the bonds as tax-exempt because, as stated in the offering documents, it “constitutes an instrumentality of the Village for federal tax purposes.” The LPFC took the same position in a 2003 application for exemption from the Illinois Retailers Occupation Tax Act. After the Illinois Department of Revenue denied the application, it stated in a complaint seeking to overturn the decision that (i) it was incorporated for the sole purpose of constructing the project, (ii) net income from the project would go to the Village, (iii) title to the property would vest in the Village for no consideration upon redemption or retirement of the bonds, (iv) it was the Village’s alter ego, (v) it was formed to perform essential government functions, and (vi) everything it did was in furtherance of the Village’s benefit.

Despite the structure of the LPFC and its statements in the earlier tax litigation, the court ultimately held that the LPFC was not a governmental unit as that term is defined in the Bankruptcy Code and, therefore, that it was eligible to be a debtor in Chapter 11. In reaching this conclusion, the court reviewed a number of precedents cited by the parties but paid special attention the analytical framework used to confront a similar question in the Las Vegas Monorail case.

Las Vegas Monorail

In *In re Las Vegas Monorail*, the Las Vegas Monorail Company (the “Monorail Company”) was a nonprofit corporation formed to operate a monorail that connected certain hotels and a convention center in Las Vegas. As part of a planned expansion and the financing necessary to fund it, the Director (the “Director”) of the Nevada Department of Business and Industry (the “Department”) sponsored the issuance of approximately $650 million in municipal bonds. In connection with obtaining tax free status for the bonds, the Monorail Company signed a document that expressly stated it was an “instrumentality of the State of Nevada and controlled by the Governor of the State of Nevada.” The Governor also exercised some level of control over the management and budgeting of the Monorail Company.

The proceeds of the bonds were lent to the Monorail Company pursuant to a financing agreement with the financing agreement as the only source of repayment (other than insurance) on the bonds. After the Monorail Company failed to make the required payments and sought protection under Chapter 11, Ambac Assurance Corp., which had insured the payment of principal and interest on the bonds, moved to dismiss the bankruptcy case asserting the Monorail Company was a governmental unit and ineligible for Chapter 11.

The *Las Vegas Monorail* court surveyed applicable case law and carefully considered whether the function performed by the Monorail Company was a core governmental function, whether the entity is sufficiently controlled by the government, and how the government classifies the entity. The court concluded that the Monorail Company was not a municipality or governmental instrumentality, and therefore eligible for Chapter 11, because (i) its monorail transportation goals did not constitute traditional government functions (i.e., it had no power to tax, exercise eminent domain, or claim sovereign immunity); (ii) the control available to the state governor over budgeting and, to some extent, its management, did not rise to the level of control necessary to be a municipality because the state bore no risk of loss; and (iii) Nevada state law did not treat the debtor as a municipality or instrumentality.

LFPC Found Not to be a Governmental Unit

As set forth above, the *Las Vegas Monorail* test suggests that a court consider (i) whether the entity in question has any traditional governmental attributes or engages in traditional government functions; (ii) the extent to which the entity in question is controlled by the government; and (iii) the government's categorization of the entity. Applying that test to the LPFC, the court in Lombard found that the LPFC did not carry out a governmental function of the Village and noted that the LPFC was a commercial operation that competed with other hotel and convention centers. In other words, the court found that operating a hotel and convention center was not a core government function.

The court also found that, while the Village appointed the LPFC's directors and certain of its representatives engaged with the LPFC on minor matters, those actions alone did not rise to the level of control necessary to deem the LPFC a governmental unit. The LPFC was found to be responsible for its day to day management and operations and had an asset manager as well as separate hotel and restaurant managers that reported to the asset manager, not the Village. Finally, the court noted that the Illinois Department of Revenue previously concluded that the LPFC was not a tax-exempt instrumentality of the Village and agreed with that conclusion.

Importance of Investor Due Diligence

While the *Lombard* holding itself is not particularly earth shattering or surprising given the nature of the LPFC's business and the lack of a Chapter 9 option in Illinois, it does raise a number of important points for investors to consider when reviewing potential investments in quasi-municipal debt. Important takeaways include the following:

- The outcome of the investor's assessment of the issuing entity's status is critically important because it determines if the debt issuing entity is eligible for Chapter 11 or required to proceed in Chapter 9 (if available). In those states where the state has not authorized Chapter 9 bankruptcy filings, there is an increased likelihood that a bankruptcy court will work hard to find a way to allow a debtor to proceed in Chapter 11 given that there is no other bankruptcy option.
- Chapter 11 is often viewed as more desirable than a Chapter 9 proceeding because Chapter 11 proceedings are somewhat more predictable due to wide ranging precedent, greater certainty and greater creditor control. Chapter 9 has stringent eligibility requirements and leaves most, if not all, of the decision making power in the hands of the debtor. It also prevents the court from taking certain actions that are available to it in Chapter 11 (See 11 U.S.C. §904).
- Chapter 9 precedent is still in its infancy. Recent decisions out of Puerto Rico interpreting certain provisions of Chapter 9 that were long thought to compel post-petition payment of special revenue secured bonds, as well as rulings on the limits of the court's powers, exacerbate this concern.
- Statements in the offering documents that an entity is a governmental unit or instrumentality are not necessarily controlling and need to be reviewed carefully by both issuers and investors. If there is uncertainty as whether the issuer is a governmental unit or not, that uncertainty should be disclosed. There is a significant difference between operating as a Chapter 11 debtor and operating as a Chapter 9 debtor. Recent cases suggest that bondholders should not expect to recover as much in a Chapter 9 proceeding as they would expect to recover in a Chapter 11 proceeding given a municipality's obligation to provide a certain level of service and the challenges regarding restructuring of pension obligations.

- Making an independent assessment of an entity's legal status should be a priority item on all pre-investment diligence lists and for issuers in terms of making disclosures in the offering documents. This is not always an easy determination as many municipalities have subdivisions that issue debt and operate as independent subdivisions of a governmental unit in terms of governance and financing.

Litigation of the issues surrounding whether the issuer is a governmental unit or not can add uncertainty, delay and additional cost to the restructuring process. Both issuers and investors need to consider whether and what kind of bankruptcy process may be implemented in the event a restructuring is required.

by Travis A. McRoberts and Karol K. Denniston

July 31, 2018

Squire Patton Boggs

The Post-Wayfair Future of SALT Controversies: The Due Process Clause

This is the fourth in a series of articles written for MICPA members examining the far-reaching impact of the Supreme Court's decision in South Dakota v. Wayfair, Inc.

As discussed in a previous E-News article, (MICPA News June 26, 2018), the recent *Wayfair* decision removed the physical presence requirement of the Commerce Clause.[i] In general, a state may tax an out-of-state company if two constitutional limitations are satisfied – one under the Commerce Clause and another under the Due Process Clause. The Commerce Clause requires that a state tax does not unduly burden interstate commerce. The Due Process Clause requires that a company has at least minimal contacts with the state that seeks to impose a tax.

Although many state tax disputes previously focused on the Commerce Clause, the fact that *Wayfair* lowered the Commerce Clause's bar likely means that the Due Process Clause will be significantly more important in deciding whether a state can require out-of-state companies to collect sales tax. Companies must now consider the due process doctrine to determine if enough connection exists for the state to have jurisdiction over them.

Continue reading.

Foster Swift Collins & Smith PC

Tax Law Blog

July 26, 2018

MetLife Gets More Cautious About High-Yield Credit, Muni Markets.

- **CEO Kandarian points to surge in BBB-rated corporate debt**
- **Insurer still not sounding alarm bells, investment chief says**

MetLife Inc. is becoming wary of high-yield credit and debt sold by cities and states with pension shortfalls.

"While we do not believe a downturn is imminent, we are keeping a close eye on the evolving credit market," Chief Executive Officer Steven Kandarian said Thursday on a conference call discussing second-quarter results. "We are more cautious on general obligation bonds of states and municipalities with large unfunded pension obligations as well as certain parts of the high-yield market."

MetLife, which oversees more than $430 billion in investments, is "neutral" on U.S. investment-grade bonds and municipal bonds with dedicated revenue streams, Kandarian said.

Investment managers have been trying to gauge where the U.S. stands in the credit cycle and some, including Guggenheim Partners' Scott Minerd, have said the country could be heading toward a recession because of brewing trade tensions. Kandarian said that while economic growth is still "strong," he pointed to the surge in BBB rated corporate debt and "aggressive" issuance in the syndicated-loan market. About $2.6 trillion of BBB debt is outstanding, more than triple what it was a decade ago, according to Bloomberg Barclays index data.

Kandarian, who was the insurer's investment chief before being named CEO in 2011, also said MetLife is scrutinizing the credit cycle even more carefully as dwindling liquidity makes it tougher to find a quick exit. Investment managers have been lamenting the lack of liquidity, which can make it harder to find a buyer or seller of certain securities without drastically moving the price.

Kandarian said asset classes including private-placement credits and agricultural loans still offer opportunity, and Chief Investment Officer Steven Goulart stressed that the life insurer wasn't "sounding any alarm bells."

"We're investing billions of dollars a quarter and we're still finding sound, attractive investment alternatives," Goulart said. "It's just that market conditions remain tight, market structure is different than it was years ago, so we're spending more time just thinking about what happens in the next downturn and how do we position ourselves when we think it's coming."

Bloomberg Markets

By Katherine Chiglinsky

August 2, 2018, 8:25 AM PDT

— With assistance by Molly Smith

Largest Muni ETF Absorbs Massive Trading Amid a Drought in New-Issuance.

- **One investor traded $135 million worth of iShares MUB fund**
- **August seen as biggest month of 2018 for muni bond investors**

The summer months are heating up trading for the largest exchange-traded fund tracking municipal bonds.

Trading volume has been soaring for the almost $10 billion iShares National Muni Bond ETF, or MUB, on Monday, with 2.7 million shares changing hands as of 3:40 p.m. That's almost 10 times its

20-day average volume for this time of day and the most since June 13. The surge seems to be fueled by one massive trade shortly before noon, when an investor moved about 1.2 million shares worth $135 million.

Investors tend to clamor for municipal bonds in the summer months, when there is a high amount of redemption activity. There have been “huge” redemptions lately, according to Patrick Luby, municipal strategist at CreditSights, and August will be the biggest month of the year. About $31 billion in bonds will mature or be called in the next 30 days, roughly $22.6 billion less than the amount of bonds scheduled to sell.

ETF trading activity also may be picking up as investors seek exposure to the $3.8 trillion muni market amid a drought in new-issuance. Sales are down about 14 percent this year, making the bonds difficult to source individually. Funds offer a convenient solution.

“Supply is down and investors who want to maintain their allocations may have a hard time finding well-structured bonds in the muni market,” Luby said. “So using the most liquid muni ETFs can be a good placeholder to maintain exposure.”

Bloomberg Markets

By Carolina Wilson and Amanda Albright

July 30, 2018, 12:55 PM PDT

— With assistance by Kenneth Sexton, Kent Odina, and Tom Lagerman

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Public Pensions Are a Disaster. Here’s a Fair Solution.

Employees and governments need to share risks.

Connecticut is at the cutting edge of a crisis unfolding across the U.S.: States and municipalities have promised their employees some $4 trillion in pension benefits that they can’t afford to pay. Now the state needs to help lead the way out, by setting aside partisan politics and moving to a better system.

Thanks to decades of mismanagement by politicians from both parties, Connecticut has one of the largest pension funding deficits in the country, amounting to one fifth of its annual economic output. The burden crowds out investments in infrastructure and education, eroding the foundation for future growth.

So far, no one has offered a viable solution. Ripping up contracts would risk costly litigation. Requiring employees to make their own contributions, as in a 401(k) plan, won’t work: It could apply only to new workers, and — even if it could get existing workers to change their contracts — the state would have to borrow the money to cover what it owes them (at least $34 billion). Given that Connecticut already has the largest debt-service burden of any state, this is an irresponsible way forward.

Policy makers need to focus on reality. Legislatures made promises that they had no ability or intention to keep. Taxpayers are starting to vote with their feet, further undermining the state’s capacity to pay. The system needs a complete overhaul.

Fortunately, models exist. Consider New Brunswick, Canada, which moved to a shared-risk system in 2012. Instead of promising full, generous pensions, the government guarantees only a "base" level of benefits and pays added "ancillary" benefits if circumstances allow. Regular stress tests determine what the government can afford: If it falls short, it can increase required contributions or reduce benefits — within a narrow, agreed-upon band. If performance improves, the changes are reversed in an agreed-upon order.

To be sure, concessions must be made. Workers must agree to terms that are more in line with programs such as Social Security. This can entail, for example, calculating benefits using average career earnings (excluding overtime) rather than the last several years, capping payments at a reasonable amount and, in some cases, extending the retirement age. Politicians, for their part, must relinquish the power to make generous promises that require funding only after they've left office. Once the terms are set, professionals do the managing.

Such a system leaves everyone better off. Workers get a fair pension system with payments they can count on, rather than unrealistic promises. Government finances improve immediately: New Brunswick reduced its liabilities by 30 percent, allowing it to set a more realistic target for the return on its pension investments. Residents and businesses benefit from greater budgetary certainty.

Many ask: Why would unions agree to this? The answer is that they don't have a choice. Recent trends — such as the growing number of states with "right to work" laws and the recent Supreme Court decision outlawing mandatory fees — are highly unfavorable to them, so they would be wise to reach a deal before they are further disempowered. Connecticut's unions would do well to heed the example of Wisconsin, where risk-sharing has allowed the pension plan to remain 100 percent funded, with relatively low contribution rates and market-driven cost of living adjustments. No other major public pension plan in America can make those claims.

Connecticut can't put the issue off until 2027, when its current collective bargaining agreement expires. At this fall's election, voters must recognize the difference between realistic solutions and campaign slogans like "Tear up the contracts!" or "Convert everyone to a 401(k)!" The risk-sharing model works elsewhere and would be a game-changer for the state, improving its credit rating, delivering the budget certainty needed for economic recovery, and setting an example for the rest of the country.

Bloomberg Opinion

By Alex Bergstein and W. Gordon Hamlin Jr.

August 2, 2018, 5:00 AM PDT

Alex Bergstein is a Ph.D. candidate at Yale University and a candidate for state Senate in Connecticut's 36th District.

W. Gordon Hamlin Jr. is the founder and president of Pro Bono Public Pensions and a member of the Harvard Advanced Leadership Coalition.

[Fitch: US State Revenue Outlook is Uncertain.]

Fitch Ratings-New York-02 August 2018: Fiscal 2018 revenues for many US states were notably higher than the prior year. However, most of the increases could be one-time, making future revenue forecasts less certain, Fitch Ratings says.

States' median tax collections grew 5% yoy in fiscal 2018, nearly triple the median growth rate of 1.7% for fiscal 2017, based on data from states reporting fiscal 2018 revenue results. We reviewed all publicly available monthly revenue reports for fiscal 2018 (31 states) and fiscal 2017 (38 states). All but four of these states use a June 30 fiscal year end. Fitch used total state revenue figures if total tax collections were not specifically provided but in all cases tax revenue was by far the dominant source of collections.

Sales and use tax (SUT) collections grew faster in fiscal 2018 than last year but gains in personal income tax (PIT) grew much faster. Through June 2018, 30 states reported median yoy growth in SUT of 4% compared to 2% in June 2017 for 35 reporting states. The pickup in growth is a promising sign for states that this key revenue source could be returning to patterns more consistent with a long-standing national economic expansion. The recent decision in the '*Wayfair v. South Dakota*' U.S. Supreme Court case could add some more momentum over the long term as it expands states' ability to directly tax online retailers.

Total PIT collections, generally net of refunds, are up 7% yoy for 28 reporting states through June 2018, compared with just a 1% increase reported in June 2017 by 32 states. Policy changes including significant rate increases in Illinois and Kansas contributed to roughly 40% yoy gains in these states. Eliminating these states from the analysis does not materially affect the median yoy growth through June 2018.

We first noted a spike in PIT non-withholding collections beginning in December in many states due to House Resolution 1, the Tax Cuts and Jobs Act (TCJA) of 2017. Data since then supports our view that the well-above-trend growth in non-withholding collections since passage of TCJA is due at least partially to taxpayers accelerating state non-withholding PIT payments into tax year 2017 to avoid the cap on state and local tax deductions, among other changes in the bill. Strong 2017 capital markets performance could also be a factor as investors cash out gains. In some states, including Connecticut, New York, and New Jersey, repatriation of overseas hedge fund profits, a direct effect of Section 457A of the federal Internal Revenue Code passed in 2008, could also be a factor.

These factors, and the significant uncertainty that remains around PIT and corporate tax collections, which were arguably even more affected by TCJA, could complicate states' ongoing revenue forecasting efforts. The increase in non-withholding PIT collections for fiscal 2018 generally continued through April and into June. But several states remain wary about non-withholding trends and note in monthly revenue reports the tax collection season extends until at least October when six-month extensions expire. A significant increase in PIT refund requests then could trigger unanticipated revenue shortfalls in fiscal 2019. Generally, Fitch anticipates individuals and businesses will adjust to the significant changes in the TCJA and make adjustments over the next several years that could drive difficult- to-predict movements in tax revenue, outside of macroeconomic factors states typically focus on in forecasting. Less revenue certainty could mean more volatile budgetary management.

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

Municipal Junk Soars as Economy Roars.

Distressed state and local debt is the strongest part of a weak bond market. If growth cools, watch out!

A funny thing happens when the economy booms: Investors crawl out on thinner and thinner limbs. It's happening right now in the bond markets, where the only part that is lucrative is usually the least appealing to all but the nerviest players: distressed state and local governments with the lowest credit ratings (or none at all). Think of bankrupt Puerto Rico, tobacco settlements with diminishing revenues, and the not-yet-finished New Jersey Mega Mall.

Investors can't get enough of this junk while shunning Treasuries and similar investment-grade securities. For them, the risk remains tolerable as long as times remain good. So they watch with the most interest for hidden signs of economic weakness even when the economy expands.

That's another way of saying that times must be good if demand exceeds supply for the highest-yielding, riskiest government debt. Excluding municipal junk, the year so far is the worst two quarters in the bond market since 2013, which happened to be the turning point in the recovery from the meanest recession since the Great Depression. The Commerce Department said last month that second-quarter gross domestic product increased 4.1 percent, the most since 2014. The chairman of the White House Council of Economic Advisers, Kevin A. Hassett, predicts a four-quarter growth rate of more than 3 percent, which would be the highest in 13 years.

Such robust data helps explain why junk munis outperformed the rest of the U.S. bond market over five years, three years and during the past 12 months, according to data compiled by Bloomberg. Bondholders lost money in 2018 owning investment-grade U.S. government, corporate and municipal debt. In contrast, they have a total return (income plus appreciation) of 4 percent with junk munis. The appeal is reinforced by the record investment in the VanEck Vectors High-Yield Municipal Index ETF, the largest exchange-traded fund tracking junk munis.

Among the 62 U.S.-based high-yield mutual funds with assets greater than $1 billion and at least three years of history, eight of the top 10 performing funds this year are focusing on municipal debt. The No. 1 Oppenheimer Rochester High Yield Fund, which outperformed its peers over five and three years, is beating the market for state and local government debt by 8 percentage points with especially large holdings of Puerto Rico, Ohio, Alabama, Wisconsin and District of Columbia securities, according to data compiled by Bloomberg.

The favorite for many of the top funds are Sales Tax bonds sold by the Puerto Rico Sales Tax Financing Corp. The securities, which are in default, are rated “highly speculative” by Moody’s and have no rating from Standard & Poor’s. They’ve almost doubled in price, from 43 cents on the dollar in January to 82 cents. Tobacco debt, such as California’s non-rated $1.7 billion June sale due in 2047 and backed by its share from the state’s 1998 legal settlement with cigarette makers, similarly rallied to more than 102 cents on the dollar as soon as they traded, according to data compiled by Bloomberg.

To be sure, any evidence that the expansion is on its last legs could make high-yield municipal bonds the first casualty of the downturn. For now, the bond market isn’t forecasting that scenario.

In the meantime, the largest offering of unrated municipal bonds last year — the $1.1 billion raised to finish the American Dream complex in New Jersey’s Meadowlands (a bet against the demise of shopping malls) is among the more profitable investments in the market, trading at 115.8 cents on the dollar — better than anything rated investment-grade.

Bloomberg Opinion

By Matthew A. Winkler

August 1, 2018

(With assistance from Shin Pei)

What 4.1% U.S. Economic Growth Means to Muni Bonds: Muni Moment

Jeffrey Lipton, head of muni research and strategy at Oppenheimer, discusses the impact of 4.1 percent U.S. economic growth on state credit and municipal bonds. He speaks with Bloomberg’s Taylor Riggs in this week’s “Muni Moment” on “Bloomberg Markets.”

Watch video.

Bloomberg Markets

August 1st, 2018, 9:23 AM PDT

Muni Investor Redeems Bond ETF Amid Summer Supply Drought.

- **Trader moves about 1.2 million shares worth $135 million**
- **Muni ETFs can serve as convenient ‘new-school’ bond dealers**

You might think the first outflow in months for an exchange-traded fund meant investors were calling it quits. You might be wrong.

In the case of the $9.9 billion iShares National Muni Bond ETF, or MUB, one trader's move may simply signal how desperate for municipal bonds some people are these days.

In the summer months, the muni bonds maturing or being "called away" — redeemed early — often outweigh supply, making it harder for investors looking to put cash to work. But some MUB holders can redeem their shares and receive the underlying bonds themselves, rather than cash.

Trading volume in MUB soared to a record on Monday, fueled by one massive trade shortly before noon, when an investor sold about 1.2 million shares worth $135 million. The fund then saw an outflow of over $65 million, the first since May, as the investor likely redeemed shares of the ETF to directly hold the underlying bonds, according to Patrick Luby, municipal strategist at CreditSights.

"In the currently constrained market for blocks of well-structured bonds, redeeming ETF shares can be an efficient and quick means of establishing a large and well diversified position," Luby said in a note Tuesday.

Bondholders are set to receive about $36.8 billion from muni debt that will be paid off over the next month, about $27.8 billion more than governments and other issuers are planning to sell, according to data compiled by Bloomberg as of July 30. This "has put investors in competition for the limited supply of well-structured bonds to replace the ones that have been redeemed," according to Luby.

"In many ways, bond ETFs are new-school bond dealers and these trades are very popular because they can be cheaper and more convenient than doing it in the open market," said Bloomberg Intelligence analyst Eric Balchunas.

Bloomberg Markets

By Amanda Albright and Carolina Wilson

July 31, 2018, 8:14 AM PDT

— With assistance by Tom Lagerman

Puerto Rico Power Utility Bonds Soar on Restructuring Deal.

- **Debt swap deal with bondholder group backed by U.S. board**
- **Oversight board chief hails deal as 'important milestone'**

The Puerto Rico electric company's bonds surged after it struck a preliminary agreement with bondholders to restructure its crippling debts, marking a major advance in the government-owned utility's efforts to emerge from bankruptcy.

The pact — reached by the island's government, the territory's federal oversight board and a key group of investors — would slash the debt service bills of the Puerto Rico Electric Power Authority more deeply than an agreement the board rejected a year ago. The board said in a statement Monday that it's working to finalize the deal for the power company known as Prepa.

The company's bonds were the most actively traded municipal securities Tuesday, when investors pushed up the price of some of them by nearly 40 percent. Debt due in 2040 jumped to an average of 60.2 cents on the dollar from 43.4 cents Monday, according to data compiled by Bloomberg.

Reducing the utility’s $9 billion of debt may push the utility closer to privatization because investors would be cautious about lending needed money to the company if it continues to be run entirely by a government that steered it into collapse, said Matt Fabian, partner at Municipal Market Analytics. Puerto Rico is seeking to sell some of the utility’s assets or enter into long-term concession agreements with private operators.

“The board likes this deal because it’s going to force the issue of privatizing Prepa,” Fabian said. “Investors will always be more careful in lending a Prepa successor money.”

The step marks a major stride toward resolving years of negotiations with creditors of the territory’s electric company, which was heavily battered by Hurricane Maria last year and has been struggling with management turmoil. While the company had previously struck a deal with creditors, it was rejected over a year ago by the oversight board because of concerns it failed to do enough to modernize the utility and lower residents’ costs.

The agreement “is an important milestone and a big step forward towards Prepa’s debt restructuring process, which will support the privatization and transformation of Prepa into a modern, world-class utility,” Jose Carrion, the chairman of the oversight board said in the statement. “We are hopeful that the terms and financial concessions agreed to with this group of Prepa bondholders can lead to a fair consensual transaction that adjusts their ultimate level of recoveries with the success of the utility.”

The latest agreement would require bondholders to exchange their debt for two new classes of securities at a rate of 77.5 cents on the dollar, well above where the securities had been trading.

They would receive one type, which matures in about 40 years and pays 5.25 percent interest, at an exchange rate of 67.5 cents on the dollar. The second — so-called growth bonds that are due in 45 years and whose payments are pegged to the island’s turnaround — would be exchanged at 10 cents on the dollar. The deal that was rejected by the board would have given investors 85 cents.

Prepa is still negotiating with other creditors, including bond insurers. The agreement announced Monday included Knighthead Capital Management, Franklin Advisers, BlueMountain Capital Management, OppenheimerFunds, Silver Point Capital, Angelo, Gordon & Co. and Marathon Asset Management, according to a filing with the Municipal Securities Rulemaking Board. The bankruptcy court would also weigh in on any restructuring deal.

The utility still needs to persuade other parties to agree to the plan and it continues to face the challenge of rebuilding an electrical grid that was destroyed by Hurricane Maria. That led to some skepticism about the degree of Tuesday’s rally, which followed a run up in the price of the securities this year amid optimism about Puerto Rico’s recovery from the hurricane and progress in the island government’s own bankruptcy process.

“There doesn’t seem to be a long-term solution of addressing how to provide a stable and reliable electrical grid to the island and who is going to pay for that,” said Dora Lee, an analyst at Belle Haven Investments, which manages $7.4 billion of municipal debt, including insured Puerto Rico securities.

Prepa’s tentative deal has also boosted prices on some Puerto Rico bonds. General obligation debt that’s due in 2035 traded Tuesday at an average price of 39.8 cents on the dollar, up from 38.4 cents on Monday.

“Prepa has always been seen as the credit to reach the finish line first in the bankruptcy puzzle,” Lee said. “The closer that Prepa is perceived at reaching its conclusion, the other investors also see their own finish lines coming closer.”

Bloomberg Markets

By Michelle Kaske

July 31, 2018, 6:13 AM PDT Updated on July 31, 2018, 7:59 AM PDT

Bond Sales by Cities Borrowing to Pay for Lost Court Fights Jump.

- **Municipal debt issues for settlements hit $1.6 billion in 2018**
- **‘It’s sort of like putting your mortgage on your credit card’**

After serving 13 years in prison for a murder he didn’t commit, Chaunte Ott won a $6.5 million settlement from Milwaukee, Wisconsin, in 2015. To pay him, the city didn’t draw from its tax revenue. It sold bonds to investors.

The 595,000-resident city has issued about $28 million of debt to cover the cost of legal settlements over the past decade, adding to a wave of borrowing by governments to pay for police misconduct, contract disputes and other adverse judgments.

This year, states and municipalities have already raised $1.6 billion in the municipal-bond market for such settlements, up from $826 million in 2017 and $281 million the year before, according to data compiled by Bloomberg. Last month, Michigan State University approved a $500 million debt sale to pay more than 330 women and girls who were sexually abused by doctor Larry Nassar.

The growing use of debt to cover legal bills promises to increase the cost to taxpayers by extending the payments for years, leaving governments with interest bills that will linger long after many current leaders have left office.

“What you’re doing is you’re putting on the backs of future taxpayers the cost of an event that occurred in the past,” said Michael Belsky, executive director of the Center for Municipal Finance at the University of Chicago’s Harris School of Public Policy. Debt “is supposed to fund hard capital that’s going to serve the public over the years.”

It’s not clear whether the rise in bond sales reflects an increase in legal settlements or just a greater reliance on debt to cover them, and the data doesn’t indicate what types of cases are behind the borrowing because securities documents vary in the degree of detail they disclose.

But the practice has drawn scrutiny in the wake of the the nationwide Black Lives Matter movement, which has focused attention on police brutality and unjustified shootings. The Action Center on Race and the Economy, an advocacy group, in June released a report that found that 12 cities and counties have sold $878 million of bonds to pay police-related settlements, with about $709 million from Chicago. It estimated that will roughly double the cost to taxpayers once interest payments are included.

Ruinous Consequences

The borrowing, though, can save some governments from potentially ruinous binds. South Tucson, Arizona, went bankrupt four decades ago after it was ordered to pay $3.6 million to a man who was left paralyzed after being mistakenly shot during a police raid on his home. The resort town of Mammoth Lakes, California, filed for court protection from creditors six years ago after losing a dispute with a developer. In 2015, Hillview, Kentucky, followed suit because of a property dispute with a truck-driving school.

“You should be using financing for capital improvements and necessary items that help develop safety and welfare, but in my mind not going into Chapter 9 and using it to prevent that because you need the liquidity is a social good too,” said Jim Spiotto, managing director of Chapman Strategic Advisors.

This month, Dallas issued $58.7 million of general-obligation bonds to contend with four legal settlements over police and firefighter pay.

California has its own designation for securities sold to cover legal costs: judgement-obligation bonds. Last year, Los Angeles considered issuing up to $90 million of them to cover unanticipated settlements, though it later decided to use surplus revenue instead.

“They have no public benefit whatsoever,” said city council member Mitchell Englander, who objected to the plan. “It’s sort of like putting your mortgage payment on a credit card because you want to keep your money in your savings account — it makes no sense.”

Big City Burden

Despite criticism of the practice from some quarters, municipalities have little trouble selling debt. Richard Li, the public debt specialist for Milwaukee, said he hasn’t seen investors shy from the city’s bonds that paid for legal settlements — which are usually large bond issues that also fund other government expenses. He said the settlements aren’t generally large enough sums to be a concern to bondholders.

“These deals are in the hundreds of millions of dollars, and we line item that five or so million we are going to pay for legal settlements,” he said. “It’s not really material to the investor at that point.”

The year after Ott was exonerated by DNA evidence in 2015, Milwaukee had to pay $5 million to 74 people who were victims of unlawful body cavity and strip searches by police officers. The city issued bonds to pay for that settlement too.

Li said the $28 million that the city has issued to pay off settlements and judgments is a normal — if unpredictable — expense for large cities. “A small city that doesn’t have a very active police force doesn’t usually encounter this issue as often as a larger city like Milwaukee, which has an active police force that is always engaging with the public.”

Bloomberg Markets

By Sophie Alexander

July 30, 2018, 5:53 AM PDT

— With assistance by Danielle Moran

Colleges, Cities and Pension Funds Pressured to Cut ICE Ties.

Public institutions across the country invest in the private prison operators of immigration detention centers and contract directly with the federal immigration enforcement agency.

MacKenzie Murdoch says she was surprised to learn that her state's university system receives money from U.S. Immigration and Customs Enforcement (ICE).

The 18-year-old rising sophomore at Northern Vermont University decided to reach out to school officials to voice her concern. She also started a petition calling for the state's public colleges to end their ties with ICE.

"I didn't understand why we would have any connection to ICE," says Murdoch. "I think that the mission Vermont State Colleges has for its schools doesn't line up with any connection to family separations and the treatment of immigrants being detained."

Murdoch's campaign comes amid a sea of calls from students and immigration activists who want state and local governments, public colleges and politicians to sever their financial ties with companies and agencies involved in detaining immigrants. There is also a movement growing to abolish ICE.

Continue reading.

GOVERNING.COM

BY CANDICE NORWOOD | JULY 30, 2018

What Cities Can Unpack from the House Infrastructure Proposal.

Since the president released his infrastructure proposal this spring, city leaders across America have called on Congress to follow up with a proposal of their own. On July 23, Representative Bill Shuster (R-Pa.), Chairman of the House Committee on Transportation and Infrastructure, released a discussion bill on a transportation and water resources infrastructure investment package.

While even the chairman, who is retiring, has said the bill is unlikely to gain traction before the midterm elections, putting pen to paper on a proposal for his colleagues to react to is a major step.

Now, city leaders will also have the opportunity to respond to the discussion draft and — to make their thoughts and needs known to Congress. Here are some of our key insights as to where the chairman's infrastructure proposal is leaning, and how that may impact cities:

Continue reading.

citiesspeak.org

By Brittney Kohler

July 31, 2018

[Figuring Out If 'Opportunity Zones' Can Revitalize Struggling Neighborhoods.]

In two Alabama cities, those laying groundwork for the new tax incentive program see both promise and risks in the investments it could spur.

BIRMINGHAM, Ala. — Boarded-up houses and vacant storefronts dot the streets of Woodlawn.

They're are a reminder of the uphill economic battle the community is fighting, and of its history as a place that had a freeway carved through it, and that saw white families move away in the years after school desegregation began in Alabama in the 1960s. The neighborhood is also located in a county that underwent one of the biggest municipal bankruptcies in U.S. history.

But Perry Macon, pastor at the First Baptist Church of Woodlawn, warns against portraying the neighborhood in too harsh a light. "As you drive through, you will see some deterioration in housing and business. But see, in my mind, I wouldn't see that as a negative," he said.

Continue reading.

Route Fifty

By Bill Lucia,
Senior Reporter

August 5, 2018

Real Estate Funds Move Into Opportunity Zones, Raising Concerns About Displacement.

Fundrise has made its mark by democratizing commercial real estate investing. By pooling commitments of as little as $10,000 from 50,000 investors, the firm has made the asset class accessible to investors who don't necessarily have a seven-figure net worth.

Since 2012, the company has invested $500 million in equity across about 150 deals. Now, Fundrise is planning a $500 million fund to invest in so-called opportunity zones. Across the country, 8,700 mostly low-income census tracts qualify for significant investment tax benefits under the Investing in Opportunity Act that was part of last year's U.S. tax-cut bill.

"It's a promising opportunity for us," Fundrise's CEO Ben Miller told ImpactAlpha.

Funds like the one Fundrise is raising could again democratize access to the tax advantages to be offered by opportunity funds. The tax-law provision allows investors to defer taxes on capital gains for long-term investments made into fund that invest at least 90% of their capital into opportunity zones.

Continue reading.

Impact Alpha

by Jessica Pothering

August 1, 2018

Changes Keep Coming for Long-Stable Historic Tax Credit.

For a provision that's been an enduring part of the federal tax code for 40 years, the historic tax credit (HTC) has been on a bit of a roller coaster ride the past 18 months.

Back in February 2017, optimism was abound as the Historic Tax Credit Improvement Act was introduced for the second straight session of Congress. The legislation would improve the credit and received broad congressional support. But enthusiasm slowly waned as fears over the elimination of the credit took hold (to date, the legislation hasn't made it out of committee in either the House or Senate).

The concerns about elimination of the credit were real, as last winter's landmark tax legislation threatened the continuation of the credit and ultimately eliminated the 10 percent rehabilitation credit for non-historic properties placed in service before 1936 and slightly reduced the value of the credit by expanding the period over which the credit is claimed to five years. The legislation also reduced the top corporate tax rate from 35 percent to 21 percent, potentially reducing the demand for HTCs.

A few months later came bipartisan legislation to recover much of the loss in value of the credit by eliminating the basis adjustment requirement for HTC properties. Without the requirement to reduce the basis of the property by 100 percent of the HTC, investors could increase equity pay-ins to rates similar to those seen before enactment of tax reform legislation and would bring the HTC into line with the low-income housing tax credit (LIHTC), which is also claimed over multiple years.

It's been a busy 2017 and 2018 in the HTC world, requiring significant involvement from groups supportive of the credit, spearheaded by the Historic Tax Credit Coalition (HTCC).

"Certainly on the public policy front and as far as a threat to the industry, it's been an unprecedented time," said Merrill Hoopengardner, chairwoman of the HTCC.

A History of Consistency

The HTC will commemorate its 40th year as part of the tax code Nov. 6. That's the anniversary of the day President Jimmy Carter signed the Revenue Act of 1978, adding a 10 percent rehabilitation tax credit for commercial buildings that met certain requirements. Two years earlier, President Gerald Ford had signed legislation to permit owners to receive income tax deductions for charitable contributions of interest in property for conservation purposes–the launch of a tax benefit, but not a credit.

The HTC was expanded to a three-tier credit in 1981 and then switched to a two-tier credit as part of the landmark Tax Reform Act of 1986: A 20 percent credit for certified historic buildings, a 10 percent credit for non-historic buildings placed in service before 1936, which at the time meant 50 year-old buildings.

The next 31 years saw few significant changes to the federal HTC. There were alterations, including when the HTC was given a boost to help recovery in areas hit by natural disasters in the GO Zone Act of 2005 and when the Housing and Economic Recovery Act (HERA) of 2008 allowed the HTC to be taken against a taxpayer's alternative minimum tax (AMT) and added a new LIHTC qualified allocation plan selection criterion for historic properties.

Then came a series of real–and potential–changes.

HTC Improvement Act

On Feb. 16, 2017–44 days after the start of the 115th Congress–Sens. Ben Cardin, D-Md., and Susan Collins, R-Maine, and Reps. Mike Kelley, R-Pa., and Earl Blumenauer, D-Ore., introduced legislation to make significant enhancements to the HTC: The Historic Tax Credit Improvement Act of 2017.

With support from such organizations as the HTCC, similar legislation was introduced in the 114th Congress and in the 113th and 112th Congress under a different title: the Creating American Prosperity through Preservation (CAPP) Act.

Provisions in the Historic Tax Credit Improvement Act of 2017 include:

- an increase in the HTC for certain small projects,
- to allow credit transfers for certain small projects,
- to lower the expenditure threshold to qualify for the HTC from 100 percent to 50 percent of the adjusted basis,
- to reduce the depreciable basis adjustment for HTC property, and
- to modify certain tax-exempt property rules.

After the legislation was assigned to committees, it continued to pick up sponsors–by July of this year, the legislation had 82 co-sponsors in the House (43 Republicans, 39 Democrats) and 13 in the Senate (four Republicans, nine Democrats). Fourteen of the House co-sponsors are on the Ways and Means Committee, but the bill remains in committee.

Tax Reform: Major Shake-up

While the HTC Improvement Act was gaining co-sponsors, a more threatening piece of legislation was framed: H.R. 1, the Tax Cuts and Jobs Act of 2017.

The original version of the tax legislation passed by the House of Representatives repealed both the HTC and the 10 percent non-historic credit, causing consternation in the historic preservation community and igniting negotiations in the Senate to save it. Initially, Senate legislation preserved the HTC, but reduced it to 10 percent. Then an amendment by Sen. Bill Cassidy, R-La., saved the day by preserving the 20 percent credit, while making it allowable ratably over five years, beginning with the year the property is placed in service.

It was a victory, but at a cost: the loss of the 10 percent non-historic credit and the ability to claim the entire 20 percent HTC at the time property is placed in service.

It didn’t take long for legislators to begin working on legislation to offset some of the lost value.

Historic Tax Enhancement Act of 2018

With encouragement from the HTCC and other historic preservation advocates, the Historic Tax Enhancement Act of 2018 was introduced in both houses of Congress in June, with bipartisan sponsorship (Republican Sens. Bill Cassidy and Collins, Democratic Sen. Cardin; Republican Rep. Darin LaHood and Democratic Rep. Blumenauer). By early July, there was another co-sponsor in the Senate, six more in the House.

The focus of the legislation is to eliminate the basis adjustment requirement, which would allow the tax credit to reclaim much of the value lost due to the necessity of taking the credit ratably over five years. With the basis adjustment requirement eliminated, the HTC would have the same policy as the LIHTC.

In the wake of tax reform, Novogradac research indicated how much the value of HTC equity would be affected if the basis adjustment were eliminated. It would move from a range of 77-84 cents with basis adjustment to 82-97 cents without it. That would put it in line with the value of the credit before tax reform was passed.

The legislation was introduced by some of strongest supporters of the HTC in Congress and the press release announcing the bill heralded the success of the HTC program in the states and districts for each of the co-sponsors.

The HTC Enhancement Act is a logical next step for the HTC after tax reform, although it's no lock to pass. However, a logical opportunity for both pieces of legislation to pass will be the final months of the 115th Congress–the so-called lame-duck session.

The final weeks of a congressional session have historically been good to the tax credit community: that's when we got permanency for the 9 percent floor for the LIHTC and extensions of the new markets tax credit, the production tax credit and the Section 1603 cash grant program; as well as GO Zone boosts for the HTC, NMTC and LIHTC over the past decade. This year–with tax extenders and technical corrections both on the table–there is a chance for the historic preservation community to get the two major pieces of HTC legislation passed.

"We're cautiously optimistic that we'll be in the mix –if there's a mix to be gotten into," Hoopengardner said. "Particularly with the Historic Tax Credit Enhancement Act."

For those seeking a powerful argument to promote the HTC legislation, there's an obvious answer: the economic success of the program.

Powerful for Renovation, Economy

The HTC is a proven economic engine, encouraging development, creating jobs and resulting in a net financial gain for the federal government.

This year's annual report by the U.S. Department of the Interior's National Park Service (NPS) said the HTC has leveraged nearly $90 billion in private investment in rehabilitating historic properties since 1976. More than 43,000 properties completed renovation with help from the credit over the years.

Another report–put out each year by the NPS and Rutgers University–is even more impressive. Last year's Annual Report on the Economic Impact of the Federal Historic Tax Credit said that federal HTC-assisted rehabilitation has created an inflation-adjusted total of $131.8 billion in expenditures, 2.5 million jobs and almost $30 billion in federal taxes since 1978. The fiscal year 2016 totals included the creation of $1.1 billion in federal taxes.

That's an important figure for those in the HTC world: The HTC creates not only jobs and expenditures, but increases federal tax income. For instance, the NPS-Rutgers report says the historic cost of the credits to the federal government in inflation-adjusted 2016 dollars is $25.2 billion, while it brought in $29.8 billion in federal tax receipts. That's a net $4.6 billion gain due to the HTC over the history of the program.

The HTC is a revenue-generator.

As the historic preservation community recovers from last year's rescue of the credit and pushes for both the Historic Tax Credit Improvement Act and the Historic Tax Credit Enhancement Act, members will gather Sept. 27-28 at the Novogradac 2018 Historic Tax Credit Conference in Nashville. Among other topics, we will discuss how to advocate for the two major pieces of legislation.

The past 18 months have been a time of change for the federal HTC, but one thing that hasn't changed: the federal HTC is good for history and good for the federal budget. Passage of both major pieces of legislation would make it more so.

Published by Michael Novogradac on Wednesday, August 1, 2018

Philadelphia's Budget: An Example of the Revenue and Expenditure Balancing Act.

Philadelphia's fiscal 2019 budget discussions highlight what S&P Global Ratings expects will be the ongoing balancing act the city will face over the next several years. City officials will have to address ongoing operational demands, pension costs, and a desire to support the School District of Philadelphia (SDP) with what we view as potential revenue-raising pressure.

Continue Reading

Jul. 26, 2018

WIFIA Program Closes Two New Loans in California.

WASHINGTON, DC, AND CALIFORNIA, AUG 3, 2018 — The WIFIA program has issued its third and fourth loans to Orange County Water District (OCWD) and San Francisco Public Utilities Commission (SFPUC). The San Francisco Public Utilities Commission received a $699 million loan to help finance its innovative Southeast Treatment Plant Biosolids Digester Facilities Project. This is the largest loan issued under EPA's Water Infrastructure Finance and Innovation Act (WIFIA) program to date.

"Today's nearly $700 million WIFIA water infrastructure loan reflects a core Administration priority: accelerating investment in America's water infrastructure in a way that delivers a cleaner, healthier environment and supports a thriving economy," said EPA Acting Administrator Andrew Wheeler. "This WIFIA loan will enable San Francisco to modernize its wastewater treatment facilities while creating valuable jobs in the community."

The San Francisco Public Utilities Commission will replace its outdated biosolids digester facilities with modern, efficient technology. The new facilities will transform wastewater solids into high-quality biosolids and biogas. Additionally, the new digesters will be located farther away from existing residences, feature advanced odor control, and will be built to be more resilient to earthquakes.

“Rebuilding our biosolids digester facilities is crucial to realizing our vision to transform San Francisco’s largest wastewater treatment plant into a modern resource recovery facility. With the federal government’s low-cost loan program, we can realize significant savings for our ratepayers and create high quality employment and contracting opportunities in parts of the City that need it most,” said SFPUC General Manager Harlan L. Kelly, Jr.

The project is estimated to cost $1.43 billion and EPA’s WIFIA loan will help finance nearly half that amount—up to $699 million. According to the San Francisco Public Utilities Commission’s estimates, EPA’s loan is expected to save the commission up to $398 million through the WIFIA program’s low interest rates. Project construction is expected to begin in late 2018 and be completed in 2025.

Additionally, an innovative groundwater replenishment project expansion in Orange County received a $135 million loan to help finance its Groundwater Replenishment System final expansion.

The announcement was made by EPA’s Regional Administrator for the Pacific Southwest Mike Stoker at the project’s future site on Ward Street in Fountain Valley. Stoker was joined by U.S. Congressman Dana Rohrabacher, Orange County Water District Board President Denis Bilodeau, and Orange County Sanitation District General Manager James Herberg.

“This advanced water recycling and groundwater replenishment project will provide Orange County residents and businesses with an additional local drinking water supply,” said Stoker. “Not only will this project protect local water resources, it will make Orange County more resilient to future droughts.”

With EPA’s WIFIA loan, the Orange County Water District (OCWD) will purify treated wastewater from the Orange County Sanitation District to produce an additional 30 million gallons per day of drinking water, which will be stored in the Orange County Groundwater Basin. This additional drought-proof drinking water supply reduces the region’s need to import water, benefits the environment through reduced discharges into the ocean, and increases replenishment of the local groundwater source.

“WIFIA borrowing enhances the Groundwater Replenishment System’s viability,” stated Bilodeau. “The WIFIA loan program creates another tool in the proverbial toolbox to finance critical water infrastructure projects like ours. The cost of borrowing is less than the private market would have been, which helps make the cost of the final expansion feasible to ratepayers. OCWD is trying to reduce reliance on imported water from the Colorado River and become self-sufficient, but OCWD won’t make water at any cost.”

The Orange County Water District estimates the project will cost $282 million. EPA’s WIFIA loan will help finance nearly half that amount—up to $135 million. Because the WIFIA program offers loans with low interest rates, the Orange County Water District is expected to save up to $16 million compared to municipal bonds. Project construction is expected to create 700 jobs and is scheduled to begin in 2019 and be completed in 2023.

In addition to significant cost savings, a WIFIA loan permits extended repayment terms of up to 35 years, the ability to repay at any time without penalty, subordination in payment priority to other debt, flexibility when the loan is drawn with no interest accrual until funds are disbursed, and the opportunity to use the loan with other assistance like the State Revolving Fund for the remaining 51 percent of a project’s cost.

“Having been a proponent of the OCWD’s Ground Water Replenishment System project since its inception, I am pleased that the OCWD has received a $135 million Water Infrastructure Finance and Innovation Act loan. This loan will help finance the final expansion of the GWRS, which will increase our drought-proof water supply and provide for the water needs of future generations of Orange County residents," said Congressman Dana Rohrabacher (CA-48).

"Today marks a major milestone for EPA's WIFIA program," said EPA Office of Water Assistant Administrator David Ross. "With our loan to the Orange County Water District, EPA has issued over $1 billion in WIFIA credit assistance this year, thanks to the hard work and dedication of the professionals within EPA's Office of Water."

WaterWorld

August 3, 2018

[Orrick Advises Enterprise Development Authority on Senior Secured Notes Offering and Credit Facility.]

Orrick represented the Enterprise Development Authority (the "Authority"), a wholly owned, unincorporated governmental instrumentality of the Estom Yumeka Tribe of the Enterprise Rancheria (the "Tribe") in connection with its Rule 144A/Regulation S offering of $450 million aggregate principal amount of 12.000% senior secured notes due 2024 (the "Notes"). Wells Fargo Securities acted as book-running manager for the offering. Orrick also advised the Authority on its entry into a $10 million revolving credit facility (the "Credit Facility").

The Tribe is a federally recognized Indian tribe listed in the Federal Register as the Enterprise Rancheria of Maidu Indians of California. The Authority expects to use the net proceeds from the offering of the Notes to fund the costs associated with designing, developing, constructing, equipping and opening a Hard Rock branded hotel casino outside of Sacramento, to repay certain existing indebtedness and for general corporate purposes, while the Credit Facility will be used for working capital and other general corporate purposes. Hard Rock Sacramento FM, LLC will develop and manage the hotel casino, as well as license to the Authority various trademarks, service marks and commercial symbols associated with Hard Rock hotels, casinos, cafes and music venues.

The Orrick team that advised the Tribe on this transaction was led by public finance partner Townsend Hyatt and capital markets partner Stephen Ashley. Other members of the Orrick team included Lynne Hirata, Noel Pacheco, Maria Bergenhem, Grady Bolding, Thomas Mitchell and Rosalee Mahoney.

July.30.2018

[CDFA // BNY Mellon Webcast Series: Climate Change - Financing Resilient Infrastructure]

Tuesday, August 21, 2018 | 1:00 PM Eastern

[Click here] to learn more and to register.

Opportunity Zones: Maximizing Impact in Your Community

September 5-6, 2018 | Washington, DC

Click here to learn more and to register.

Standard & Poor's Increases Credit Rating for the State of Michigan from AA- to AA.

On July 24, 2018, Standard & Poor's raised its credit rating for the State of Michigan's general obligation bonds from AA- to AA. This upgrade will affect bonds issued by local governments that benefit from State credit enhancement or intercept programs, including programs such as the State School Bond Loan Fund Program and the Michigan Finance Authority's Local Government Loan Program. For local borrowers participating in one of these programs, including school districts and municipalities, such rating change will trigger a material event filing pursuant to your continuing disclosure undertaking. Financial advisors retained by local borrowers to file continuing disclosure updates on their behalf will likely file material event notices for their clients with outstanding debt issued through one of these programs, advising the Electronic Municipal Market Access system of the rating change. If you are unsure whether you have an obligation to file an update or have not retained your financial advisor to make disclosure filings on your behalf and would like assistance with such a filing.

Miller Canfield PLC – Thomas D. Colis, James Crowley, Ian F. Koffler, Donovan Cheff McCarty, Alan D. Szuma and Amanda Van Dusen

July 30, 2018

Madison to Offer Municipal 'Mini Bonds'

MADISON, WI (Wisconsin Radio Network) – Madison residents can buy in to a special mini bond issuance later this year.

A new program is lowering the price of city bonds to just $500 this fall, and Madison finance director Dave Schmiedicke says that's a good way for residents to get involved directly with city finances. "Which hopefully allow more of our residents to invest in the specific project, a renovation and expansion of the Olbrich Botanical Gardens."

Schmiedicke says that's a price that even smaller investors and city residents can take advantage of. "Here in Madison, I think we value civic action, and this is one way to express that civic action and get a return on that investment."

In all other respects, other than the price, the bonds will be the same as they normally are with a 10 year maturity. Schmiedicke says $2.1 million worth of bonds will be issued.

Interest rates will be determined this fall ahead of the sale in October.

Wednesday, August 01, 2018 10:50 a.m. CDT

[A Look at What a Public Bank Could Mean for D.C.]

As officials study the idea's feasibility, activist ire against Wells Fargo fuels proponents of a public bank

Could business owners and others in DC soon benefit from a new bank owned and operated by the DC government? With $200,000 put in the city's 2018 budget by the DC Council, officials at the Department of Insurance, Securities and Banking are studying the feasibility of a publicly chartered bank.

What's a public bank?

A public bank is a deposit-holding and loan-making institution created and run by a government — a city, county or state. Leaders of public banks are held to more direct accountability standards than private banks. Important decisions on lending and other bank operations must serve a public mission. Private banks have broadly defined regulatory requirements, such as lending to local communities, as mandated by the federal Community Reinvestment Act. Public banks have been set up to serve more specific, locally determined goals. In DC, this might take the form of loans to small businesses owned by people of color in wards 7 and 8. In California, officials say public banking can support marijuana businesses that have been denied private banking services because of the complex legal environment around the substance.

Financial assistance is already a part of economic development programs in DC, but a public bank would increase the number and complexity of services offered to stakeholders, according to a Department of Insurance, Securities and Banking overview of the feasibility study. A public bank in DC would manage all of the city's financial accounts. This wholesale banking requires the capacity to manage the multi-billion-dollar accounts of corporations and other, smaller banks. Also, a public bank in DC could provide retail products to residents such as checking accounts and auto loans. So, a public bank in DC may be deposit-taking and loan-making.

[Continue reading.]

The DC Line

By Gordon Chaffin | Aug 1, 2018

[As Amazon Enters Government Purchasing Market, Signs of a Bad Deal Emerge.]

The online retail giant's new relationship with public schools and agencies raises concerns that the company is cornering the marketplace and costing taxpayers more money.

Amazon has already helped reshape the retail landscape for books, clothes and groceries. Now the online retail giant is moving into local government procurement. This new business venture is raising concerns that cities, school districts and counties will end up spending more money than they have to on supplies.

Early last year, Amazon contracted with the Prince William County School District in Virginia and by extension earned a contract with U.S. Communities, a purchasing group with public-sector members in all 50 states. More than 1,500 public agencies have since signed on to buy products through Amazon Business, the B2B counterpart to the company's popular Prime service.

While Amazon and U.S. Communities have touted their partnership as a cost-saver for public agencies and a boon for suppliers, a new report finds that Amazon Business does not always deliver the savings it promises. The report by the Institute for Local Self-Reliance, a frequent critic of Amazon, also argues that Amazon is increasingly cornering the supply market by forcing vendors to sell their products through Amazon.

Critics say the contract between U.S. Communities and Amazon is written in a way to favor the company and makes it next to impossible for vendors not on Amazon to compete for the job.

On a press call about the report, Mike Mucha of the Government Finance Officers Association explained the contractual problems with an example of a government choosing a new type of software, in which Apple is expected to be one of the proposed vendors.

"You can structure that process so that you can truly evaluate the merits of [different companies] through a fair process. Or you can include a requirement in the RFP [request for proposal] that says, 'The logo must be in the shape of a fruit,'" he says. "It's not a real RFP."

Prince William County Public Schools created a similar bid in 2016 when it required 10 product categories in an RFP for office supplies. Of the 12 firms that submitted bids, only Amazon was able to supply all 10 of the categories requested.

Additionally, the Amazon contract differs dramatically from traditional procurement contracts between governments and businesses. While government purchases are usually based on fixed prices, the Amazon Business prices can vary by the day and even by the hour. The report analyzed purchases made by a California school district and found that buying those supplies from a local vendor as opposed to Amazon would have saved the district between 10 and 12 percent.

Amazon has added a feature that freezes the price for seven days after a product is added to a customer's online cart. But critics contend that still doesn't come with the guarantees made by a contract with fixed prices from the time of signing.

"The pricing terms in the contract are based on the dynamic pricing that is found elsewhere at Amazon and Amazon Business," says Olivia Levecchia, senior researcher at the Institute for Local Self Reliance and the report's author.

If public agencies have long-established relationships with certain vendors, they are now only allowed to continue buying from them if those vendors join Amazon's marketplace.

Adding to the list of concerns about Amazon Business is the profits the online retailer is raking in. According to the report, Amazon's dual role as both seller to government agencies and representative for third-party sellers gives the company a 15 percent cut, via a fee charged by Amazon, of all such sales. The company earned $31.8 billion in fees charged to government vendors in 2017.

In response to the report, Amazon says that its practices insure the best prices and allow public agencies flexibility in purchasing.

“The competitively solicited contract helps education and public-sector organizations purchase directly from the Amazon Business marketplace, which includes small, local and socio-economically diverse businesses,” Amazon said in a statement. “More than 90,000 public-sector organizations, from individual schools to school districts to higher education institutions across the nation, can now access multiple purchasing categories in an online marketplace, as well as be confident that they are receiving dynamic and competitive pricing.”

U.S. Communities also defends the contract with Amazon, citing the company’s track record in delivering “lower total cost of procurement” as well as “improved compliance and reporting.” The Amazon marketplace, the group says, “supports supplier diversity.”

GOVERNING.COM

BY J. BRIAN CHARLES | AUGUST 2, 2018

Washington Nationals Win Fans in the Bond Market.

Their success puts people in the seats, which has led to upgrades of D.C. stadium bonds.

The Washington Nationals may be having a down year by their current standards, but investors who bought their stadium bonds are winning more than ever.

The team is in third place in the National League East after finishing the past six seasons in either first or second. It’s been a dramatic turnaround for the former Montreal Expos, who played their first season in the U.S. capital in 2005 and failed to post a winning record until 2012. In the midst of that mediocre stretch, the District of Columbia issued $510 million in ballpark revenue bonds in May 2006.

At that time, the debt was rated 1 BBB by S&P Global Ratings, just two steps above speculative grade. Analysts said the pledged tax revenue stream was highly dependent on stadium events. Or, as Bloomberg’s municipal-bond guru Joe Mysak put it in his column: Paying stadium bonds is easier if you score more runs. In offering documents, a revenue study made the assumption that “the future owner(s) of the team will strive to maintain a competitive ball club.”

Well, the Nationals have done more than just that, with winning records in each of the last six seasons. S&P has taken notice, raising its rating on the D.C. stadium bonds this week to A-, following an earlier upgrade in March 2016. Moody’s Investors Service has also boosted the debt since it was issued. That’s a boon for investors like Franklin Resources, which, according to Bloomberg data, has held about $29 million of the bonds since 2009, before the team’s fortunes changed. Invesco appears to have purchased about $31 million of the securities.

The backdrop of all this, of course, is that public funding for stadiums has become an anathema in recent years. Consider my Bloomberg Opinion colleague Barry Ritholtz’s column from last month, for instance:

> Your tax dollars are being wasted, on an enormous scale, by uncompetitive socialist enterprises that ignore the basic rules of economics.
>
> I refer, of course, to the practice of politicians who give taxpayer dollars to subsidize the

> business of sports by paying for the construction and/or renovation of stadiums and arenas. These exercises in crony capitalism make no sense whatsoever. There has never been a decent reason to subsidize these successful businesses, which rarely produce a real return on the public's investment. Nor is civic pride a justification.

The way D.C. arranged to back the ballpark bonds is tame in comparison to some of the worst stadium deals. According to S&P, funds come from four sources: rent from the Nationals franchise; stadium taxes on tickets, food, beverages and parking; a utility tax; and a fee levied on businesses in the district that have $5 million or more in annual gross receipts. Largely, it comes down to the team's performance and whether fans fill the seats.

It's clear that winning solves that issue, too. While attendance remained below 2 million from 2009 to 2011, it jumped to 2.37 million in 2012, when the Nationals went 98-64 and finished first in their division. The team has gone on to average 2.57 million fans per year from 2013 to 2017.

Not all sports financing happens to coincide with a team's turnaround. As Bloomberg News's Amanda Albright reported earlier this week, ice rink projects are responsible for some of the rare defaults in the $3.8 trillion muni market precisely because they often depend on ticket sales and rental revenue to repay their debts. The Atlanta Braves have been known to rope small towns into bidding wars for their minor-league franchises. Sometimes, the cities pledge to cover shortfalls with their general fund revenue. That's led to credit downgrades, not upgrades.

The upward trajectory of the ballpark bonds' ratings, then, should be viewed in isolation, rather than as a verdict on stadium financing as a whole. As Mysak wrote in 2006, consultants concocted a chart of ballpark-related sales growth that "might be termed the 'happily ever after' projections." Basically, that proceeds increase at a steady pace year after year.

Well, sometimes happily ever after comes true. "We base the upgrade on a track record of strong and stable revenues, well in excess of debt service, providing flexibility to prepay existing principal and resulting in improved coverage levels," S&P analyst Timothy Barrett wrote in a July 31 report.

Indeed, a good chunk of the debt has already matured or D.C. has taken it out. More will be called at 100 cents on the dollar in a month (the securities are selected by lottery, according to Bloomberg). Even so, a smattering of bonds changed hands over the past two weeks at a price above par, speaking to investor demand.

The Nationals, meanwhile, enter the home stretch of the season five games behind the division-leading Philadelphia Phillies, and a similar distance from the top of the NL wild-card race. They've won twice this week at home, including a dominant 25-4 victory over the New York Mets that set a new team scoring record.

That kind of scoring will certainly keep the bond payments flowing.

1 Like many pre-crisis muni deals, the bonds were insured, so the enhanced rating was AAA.

Bloomberg Opinion

By Brian Chappatta

August 2, 2018, 11:43 AM PDT

- IRS Releases New "Issue Snapshot" on Single-Family Housing Bonds: Squire Patton Boggs
- IRS PLR: City Agreement to Deliver Water to Power Company Won't Result in Private Business Use of Bonds.
- Tax Exemption Offsets Lack of Competition in Municipal Bond Markets.
- SIFMA: Treatment of Municipal Securities under the Liquidity Coverage Ratio Rules.
- S&P: U.S. State And Local Government Credit Conditions Improve As Economic Growth Picks Up.
- Wells Fargo Bucks Muni-Market Herd With Push Into Local Bonds.
- In Wake of Tax Reform, Muni Bond Market Gains Footing.
- And finally, "The Marketing Folks Say Let's Hold Off On The Incest!" is brought to us this week by *Martin v. United States*, which was some kinda eminent domain yadda yadda about a mining claim. Which called to mind a horrifying revelation we recently had regarding the Americana classic, "Oh My Darling Clementine." Stick with us here. The original lyrics tell a very different story than the campfire revisionists would have you believe. Miner. Daughter. Drowning. Sure. But then this, "How I missed her! / How I missed her / How I missed my Clementine / But I kissed her *little sister* / I forgot my Clementine" [emphasis added]. We're gonna need Child Protective Services to get into the catchy folk song business. Like, now.

PUBLIC RECORDS - CALIFORNIA

National Conference of Black Mayors v. Chico Community Publishing, Inc.

Court of Appeal, Third District, California - July 25, 2018 - Cal.Rptr.3d - 2018 WL 3569376

Former mayor, as former president of national mayor conference, filed petition for peremptory writ of mandate to prevent city from disclosing certain allegedly privileged e-mails to newspaper pursuant to Public Records Act request.

The Superior Court ordered disclosure of certain emails, but denied newspaper's request for attorney's fees under the Act. Newspaper appealed.

The Court of Appeal held that newspaper did not bring an action against the city to compel disclosure under the Act and thus was not entitled to fees.

Newspaper investigating former mayor's use of city resources in the take over and eventual bankruptcy of conference of mayors was not entitled to recover attorney's fees under Public Records Act for fees incurred when former mayor, as former president of conference, filed mandamus action to prohibit city from disclosing certain allegedly privileged e-mails pursuant to newspaper's records request to city; newspaper did not bring an action against the city to compel disclosure, and although city failed to oppose mandamus petition, and former mayor initiated the proceedings, city was not required to oppose petition, and former mayor's claim of privilege stemmed from his position as conference president rather than mayor.

BALLOT INITIATIVES - MAINE

Brunswick Citizens for Collaborative Government v. Town of Brunswick

Supreme Judicial Court of Maine - July 12, 2018 - A.3d - 2018 WL 3384530 - 2018 ME 95

Town citizens filed a petition for review of town council's decision to take no action on an initiative petition, and a declaratory judgment complaint, alleging town charter permitted voters to enact, by initiative, an ordinance that would have the effect of overturning town council's decision to sell a piece of waterfront property.

The Cumberland Superior Court concluded town council had acted outside the bounds of its discretion, but determined the issue had been rendered moot by the sale of the property, and granted judgment in favor of town. Citizens appealed.

The Supreme Judicial Court of Maine held that:

- Town's sale of the property rendered initiative petition moot;
- Sale of the property rendered citizen's declaratory judgment action moot; and
- Declaratory judgment complaint did not fit within the exception to the mootness doctrine permitting review of questions of great public concern.

Citizens' initiative petition, seeking to enact ordinance to require town to retain a waterfront parcel for use as a public park and for access to shellfish harvesters, was rendered moot by town's sale of the parcel.

Town's sale of waterfront property rendered citizen's declaratory judgment action, alleging town charter permitted voters to enact, by initiative, an ordinance that would have the effect of overturning town council's decision to sell a piece of waterfront property, moot.

Town citizens' complaint for a declaration that town charter permitted voters to enact, by initiative, an ordinance that would have the effect of overturning town council's decision to sell a piece of waterfront property did not fit within the exception to the mootness doctrine permitting review of questions of great public concern; while the issue was public in nature, the authoritative nature of any ruling would be minimal, have little bearing on other town charters, and there was no evidence that the specific question would recur in a similar fashion.

OPEN MEETINGS - MINNESOTA

Funk v. O'Connor

Supreme Court of Minnesota - July 18, 2018 - N.W.2d - 2018 WL 3447688

City residents brought separate actions against mayor and city council members, alleging that mayor and council members had repeatedly and intentionally violated the open meeting law.

On motion brought by mayor and council members, the actions were consolidated. Following bench trial, the District Court found that the mayor and council members, collectively, committed 38 open meeting law violations, imposed civil penalties, but declined to remove mayor and council members from office. Residents appealed. The Court of Appeals affirmed. Residents sought further review, which the Supreme Court granted.

The Supreme Court of Minnesota held that city council members and mayor could not be removed from office for violating open meeting law, since their violations were not proven in three separate, sequential adjudications.

EMINENT DOMAN - NEW MEXICO

Martin v. United States

United States Court of Appeals, Federal Circuit - July 11, 2018 - F.3d - 2018 WL 3370814

Inholders with patented mining and homestead claims within boundaries of national forest brought suit for takings that allegedly occurred after flooding destroyed roads that they had used as means of ingress and egress, and after government refused to rebuild roads and required them to undertake special permitting process.

The United States Court of Federal Claims entered order dismissing suit as unripe, and inholders appealed.

The Court of Appeals held that regulatory takings claims asserted by inholders were not ripe for judicial review.

Regulatory takings claims asserted by inholders with patented mining and homestead claims within boundaries of national forest, following destruction in floods of roads which provided ingress and egress to and from their lands, and following government's refusal to rebuild roads, on theory that special-use permitting process suggested by government as means of ensuring that they had access to their lands would be cost prohibitive, were not ripe for judicial review until inholders had applied for a use permit or otherwise sought authorization to reconstruct roads, and until final cost of compliance with permitting requirements had been determined.

PUBLIC UTILITIES - NEW YORK

Jacobs v. Metropolitan Transportation Authority

Supreme Court, Nassau County, New York - July 9, 2018 - N.Y.S.3d - 2018 WL 3405441 - 2018 N.Y. Slip Op. 28218

Railroad commuters brought purported class action against Metropolitan Transportation Authority (MTA) and commuter railroad for breach of contract and negligence as alleged consequences of extensive infrastructure problems which needed emergency repair and construction work.

Defendants moved to dismiss.

The Supreme Court, Nassau County, held that action fell under the public interest exception to the notice of claim requirement.

Railroad commuters' purported class action against Metropolitan Transportation Authority (MTA) and commuter railroad for breach of contract and negligence arising from alleged extensive infrastructure problems which needed emergency repair and construction work fell under the public interest exception to the notice of claim requirement, where action case sought to vindicate a public interest, namely that MTA and railroad should have maintained safe and adequate facilities and service in accordance with transportation law, and the disposition of that claim would have directly affected the rights of the public.

IMPROVEMENT FEES - OREGON

Portland Metropolitan Association of Realtors v. City of Portland

Court of Appeals of Oregon - May 31, 2018 - P.3d - 292 Or.App. 163 - 2018 WL 2455034

Objectors sought a writ of review challenging, under statutes on improvement fees, aspects of city council's decision to approve an ordinance that revised the fee structure for the city's parks and recreation system development charge (SDC).

The Circuit Court granted the writ in part, but remanded the ordinance to the city for greater specificity in the categories of costs, timing, and percentage of costs eligible for SDC's for capital improvements needed to increase capacity. Objectors appealed.

The Court of Appeals held that city council's passage of ordinance amending the challenged ordinance rendered the case moot.

City council's passage of ordinance that amended a challenged ordinance on the fee structure for city's parks and recreation system development charge (SDC), which objectors claimed violated state statutes on improvement fees, rendered moot objectors' appeal of trial court's decision, in response to objectors' action for a writ of review as to the challenged ordinance, to remand to the city the challenged ordinance for greater specificity in the categories of costs, timing, and percentage of costs eligible for SDC's for capital improvements needed to increase capacity; challenged ordinance never went into effect, and fees under the challenged ordinance were never collected and would never be collected.

WATER LAW - TEXAS

League of United Latin American Citizens v. Edwards Aquifer Authority

United States District Court, W.D. Texas, San Antonio Division - June 18, 2018 - F.Supp.3d - 2018 WL 3046699

Advocacy organization and individuals brought § 1983 action against Edwards Aquifer Authority (EAA), a conservation and reclamation district, challenging apportionment plan for the single member districts used to elect EAA directors, alleging claims including violation of the Equal Protection Clause of the Fourteenth Amendment for alleged dilution of minority votes, and seeking declaratory and injunctive relief and a statutory award of attorney fees and costs.

Several governmental authorities intervened, including one city as a plaintiff, and two cities, county, and river authority as defendants. Plaintiffs moved for partial summary judgment, and defendants cross-moved for summary judgment.

The District Court held that:

- EAA was a special purpose district, rather than a general purpose governmental entity, that fell within exception to one person, one vote requirement, and
- EAA's apportionment plan by subregional water interests was rationally related to statutory objectives of EAA Act, and thus did not violate the Equal Protection Clause.

Texas Legislature established the Edwards Aquifer Authority (EAA) to fulfill Edwards Aquifer Authority Act's limited purpose and scope of management, protection, preservation, and conservation of Edwards Aquifer, and granted EAA limited powers in scope and effect, and thus EAA was a special purpose district, rather than a general purpose governmental entity, that fell within exception to one person, one vote requirement of the Equal Protection Clause; EAA could not impose ad valorem property taxes or sales taxes, did not provide general public services such as the operation of schools and housing, and imposed limited restrictions to protect aquifer from pollution, and EAA's performance of some classic governmental functions such as making rules were incidental to EAA's primary purpose.

Single member district apportionment plan for board of directors for Edwards Aquifer Authority (EAA), a special purpose district, by subregional water interests, rather than by population, was carefully balanced to reflect different water interests in subregions that were disproportionately impacted by aquifer, and thus plan was rationally related to statutory objectives of Edwards Aquifer Authority Act, and therefore plan did not violate one person, one vote requirement of the Equal Protection Clause; population-based representation would have defeated purpose of EAA and destroyed the careful balance of interests upon which EAA was formed, and apportionment plan was not limited to permit holders or landowners with wells as all residents within EAA's jurisdictional boundaries were allowed to vote.

S&P: U.S. State And Local Government Credit Conditions Improve As Economic Growth Picks Up.

Midway through 2018, accelerating economic growth is providing a favorable near-term backdrop for credit conditions in the state and local government sectors. According to S&P Global Ratings' updated baseline forecast, U.S. GDP is on a trajectory to expand by 3.0% in real terms in 2018.

Continue Reading

Jul. 26, 2018

MSRB Holds Quarterly Board Meeting.

Washington, DC – The Board of Directors of the Municipal Securities Rulemaking Board (MSRB) met on July 18-19, 2018, and addressed financial and fee issues, and its strategic focus on information technology and data assets, among other topics.

The Board approved a $40-million budget and an associated operating plan for the fiscal year that begins October 1, 2018. The flat, year-over-year expense budget reflects the MSRB's continuing strategic priorities. A summary of the budget will be made publicly available at the start of the fiscal year.

In conjunction with the FY2019 budget, and consistent with the Board's stated approach to monitor and manage organizational reserve levels, the Board agreed to temporarily reduce the rate of assessment for municipal securities dealers' underwriting, transaction and technology fees related to market activity during the last three months of calendar 2018.

"Temporarily reducing assessments is intended to be sensitive to the financial impact on the industry and to reduce excess reserves by approximately $2.6 million," said MSRB President and CEO Lynnette Kelly. The MSRB previously rebated over $9 million to dealers since 2014.

As part of the MSRB's continued efforts to optimize the use and dissemination of municipal market data, the Board approved a data strategy. The strategy establishes goals to advance the MSRB's mission through data governance, quality and analytics.

“The MSRB plays a recognized and critical role in ensuring fair and efficient access to municipal market data,” said Kelly. “Our new data strategy provides the necessary foundation to ensure and enhance the quality and value of our data.”

The Board also approved a $5 million budget designation that positions the MSRB’s information technology infrastructure for the future. The investment will fund exploration and potential transition to cloud computing, which would support resilient and secure IT infrastructure and data systems. Relatedly, the Board agreed to continue to evaluate the MSRB’s data subscription pricing model as part of its effort to diversify funding sources and promote the organization’s financial sustainability.

At its meeting, the Board also discussed the MSRB’s role in providing guidance and assistance to regulatory authorities in the examination for compliance with, and enforcement of, MSRB rules. It directed staff to advance the important goal of ensuring that MSRB rules are consistently interpreted as intended and enforcement activities are aligned to promote regulatory certainty.

The Board discussed stakeholder reactions to and observations on the MSRB’s 2017 advisory on selective disclosure. While the Board appreciates feedback from regulated entities, issuers and investors on this and other MSRB publications, it continues to believe that selective disclosure is an important issue in the municipal securities market and that the advisory is serving its intended purpose of increasing awareness of this topic among market participants and the potential for issuers to use the EMMA website for broad dissemination of information.

Finally, the Board discussed implementation of the MSRB’s mark-up disclosure requirements and related guidance on prevailing market price noting that there has been no material market disruption as a result of the new transparency rules.

Date: July 23, 2018

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

SIFMA: Treatment of Municipal Securities under the Liquidity Coverage Ratio Rules.

SIFMA, together with the Government Finance Officers Association (GFOA), National Association of State Treasurers, sent a letter to the Federal Reserve, the Office of the Comptroller of the Currency, and the Federal Deposit Insurance Corporation (FDIC) on the treatment of municipal securities under the agencies’ Liquidity Coverage Ratio (LCR) rules. Congress recently enacted legislation that will require the agencies to amend their LCR rules to provide High Quality Liquid Asset treatment of municipal securities that are investment grade and liquid and readily marketable.

Read the Letter.

Senate Liberals Seek New Puerto Rico Debt Relief.

WASHINGTON — A group of U.S. Senate liberals on Wednesday introduced legislation providing debt relief to Puerto Rico as the island territory struggles to recover from a devastating 2017 hurricane that worsened conditions in an already-suffering economy.

Independent Senator Bernie Sanders and Democratic Senator Elizabeth Warren have joined up with three other liberal Democratic senators in seeking broad debt relief for Puerto Rico and other U.S. territories.

The U.S. commonwealth declared the largest municipal bankruptcy in 2017 under the so-called federal PROMESA law, and is seeking to restructure in court more than $70 billion in debt. It also has another $45 billion or so in unfunded pension liabilities.

“Greedy Wall Street vulture funds must not be allowed to reap huge profits off the suffering and misery of the Puerto Rican people for a second longer,” Sanders said in a statement.

Their initiative is not expected to gain traction in the Republican-controlled Congress, but it could provide hints about what Democrats might pursue if they manage to win majorities in either the Senate or House of Representatives in November’s congressional elections.

The bill surfaced on the same day a federal judge took up but did not immediately rule on litigation by the Puerto Rican government challenging the ability of its federally appointed oversight board to enforce certain measures through the budget and fiscal plan. A U.S. House committee also held a hearing on management turmoil at the island’s bankrupt electric utility.

The Senate bill would give U.S. territories the option to terminate non-pension debt obligations under certain conditions.

It would provide $7.5 billion for Puerto Rican creditors whose debt is terminated, including Puerto Rican residents, banks and credit unions that did business solely in Puerto Rico.

Another $7.5 billion would be set aside for mainland creditors whose debt was terminated, including individual investors.

Backers of the legislation said the $15 billion in Washington funding would not be made available to hedge funds and their investors, bond insurers or financial firms with consolidated assets greater than $2 billion.

Spokesmen for a bondholders group that includes hedge funds and for bond insurer MBIA Inc declined to comment on the legislation on Wednesday.

Congress passed the PROMESA legislation in 2016, which created a seven-member board to manage Puerto Rico’s finances.

In U.S. District Court in Puerto Rico on Wednesday, Judge Laura Taylor Swain, who is overseeing the territory’s bankruptcy case, also received an update on privatizing the Puerto Rico Electric Power Authority (PREPA). Attorneys for the island’s oversight panel said the private market had “significant amount of interest” in taking over PREPA assets and operations.

Meanwhile, the U.S. House Committee on Natural Resources heard from energy, finance and restructuring experts on ways to depoliticize PREPA and make it a regulated and fully functioning utility in order to attract private investment.

“This has been an ongoing problem we need to break this time,” said Committee Chairman Rob

Bishop, who rejected the idea of federalizing the utility.

Since mid-July, there have been three executive directors either in place or named to oversee the utility's restructuring and the restoration and upgrading of the U.S. territory's electric grid, which was decimated by Hurricane Maria last year.

Although invited, Puerto Rico Governor Ricardo Rossello declined to attend. In written testimony, Rossello disputed allegations of political interference sparking turnover of the utility's executive directors and board members. He said current PREPA head Jose Ortiz has unassailable credentials and has demonstrated in his previous government roles the ability "to put politics aside."

By Reuters

July 25, 2018

(Reporting by Richard Cowan in Washington; Additional reporting by Karen Pierog in Chicago and Luis Valentin Ortiz in San Juan; Editing by Daniel Bases, Susan Thomas and Matthew Lewis)

Fitch: Trajectory Matters When Assessing Demographics for U.S. States

Fitch Ratings-New York-25 July 2018: While demographics play a pivotal role in the overall health and growth of regions throughout the United States, a new report by Fitch Ratings says that how demographic and economic growth occur is also crucial.

A state's ability to attract and retain residents ultimately can have significant implications for the strength of the region's economy. And trajectory in key indicators matters. "Two state economies may grow at a similar rate over time, but one may have grown more abruptly, possibly with some significant retrenchment in between," said Senior Director James Batterman. "While narrower economies can exhibit solid demographics and growth over extended periods, more diversified economies can sometimes be less volatile over the cycle and more predictable." Consequently, Fitch seeks to measure not just the strength of key demographic indicators but also the stability of these over time.

Continue reading.

If Rich States Need Federal Help, Remember They Paid for It.

It would be a sign that progressive taxation has worked and should continue.

Yes, Connecticut is in trouble. No, it's not going to follow the path of the Greek debt crisis.

My Bloomberg Opinion colleague Brian Chappatta recently wrote about widening credit spreads on its municipal debt, and the prospect that one day the state could default. Other states like New Jersey and Illinois have similar woes.

Mitch Daniels, president of Purdue University and former governor of Indiana, compared the state budget crisis with the European debt crisis, with Connecticut and Illinois playing the role of Greece and Italy. But this analogy gets the relationship backward. Daniels also argued that the structure of the U.S. Senate will prevent "profligate" states like Connecticut from being bailed out by others, but given the structure of U.S. taxation, it's entirely appropriate for some of the overburdened states to get federal help.

Continue reading.

Bloomberg Economics

By Conor Sen

July 27, 2018, 4:00 AM PDT

TAX - LOUISIANA

Beer Industry League of Louisiana v. City of New Orleans

Supreme Court of Louisiana - June 27, 2018 - So.3d - 2018 WL 3216508 - 2018-0280 (La. 6/27/18)

State alcoholic beverage foundation and state restaurant association filed separate petitions against city and city's chief financial officer and director of finance, seeking injunctive relief and declaratory judgment that provisions municipal code allowing for imposition and collection of occupational license tax or excise tax on dealers of alcoholic beverages were unlawful and unenforceable.

After petitions were consolidated, the Orleans Civil District Court, Orleans Parish, granted plaintiffs partial summary judgment, declaring the provisions in question to be unlawful, unconstitutional, and unenforceable. Defendants appealed.

The Supreme Court of Louisiana held that state gallonage tax levied on dealers who handled high alcohol content beverages was an "occupational license tax" authorized by state constitution and, thus, municipal ordinance authorizing similar tax was likewise constitutionally permissible. Such tax indirectly taxed the handling of liquor rather than constituting a property tax upon the liquor itself, was triggered by business conduct consisting of the professional handling of alcohol, and designated specific class of merchants, namely dealers, who were responsible for payment.

IRS Releases New "Issue Snapshot" on Single-Family Housing Bonds: Squire Patton Boggs

The IRS has released another "issue snapshot," which deals with qualified mortgage bonds (or, as they are often called in our lingo, single-family housing bonds). An issuer uses the proceeds of qualified mortgage bonds to make loans to private homeowners. Because of the private loan limitation, the bonds are private activity bonds. To be tax-exempt, then, the bonds must meet all of the requirements for qualified mortgage bonds (which recapitulate most of the other tax-exempt bond requirements, filtered through a fish-eye lens). Private activity bonds involving loan programs (such as single-family housing bonds or student loan bonds) rather than project financing raise the question of what to do when the issuer receives repayments of the loans made with the proceeds of the bond issue – can they be used to originate more loans, or must they be used to pay down bonds?

This new issue snapshot analyzes this issue, walking through the mechanics of a refunding of single-family housing bonds where the issuer has on hand repayments of some of the mortgage loans (often referred to as "replacement refunding" transactions). The issue snapshot also describes how long the refunding bonds can be outstanding without getting more volume cap. For most bonds subject to volume cap, refunding bonds don't need additional volume cap as long as the amount of the refunding bond doesn't exceed the amount of the refunded bond. For qualified mortgage bonds, there's an additional back-stop – you can't go longer than 32 years from the issuance date of the original mortgage bond without getting more volume cap. (The 32-year rule is intended as a rough-justice substitute for the fact that there isn't truly a bond-financed "asset" with a "useful life," in qualified mortgage bond financings in the same way that one exists in, say, a solid waste disposal facility financing; the typical length of a residential mortgage is around 30 years.) In addition, in general, mortgage repayments can be used to originate new mortgage loans only within 10 years after the issuance date of the original mortgage bond.

The issue snapshot contains "Issue Indicators or Audit Tips" for examining agents (and, by extension, us), which are worth a read. The full list of issue snapshots can be found here; the aspects regarding tax-exempt bonds continue to form quite an eclectic mix.

The Public Finance Tax Blog

By Johnny Hutchinson on July 24, 2018

Squire Patton Boggs

Fitch: Good 2018 Returns Are Little Help for US Public Pensions.

Fitch Ratings-New York-24 July 2018: Several public pension plans have announced solid investment returns as of fiscal year-end 2018, which for most pensions was on June 30, 2018, says Fitch Ratings. Fiscal 2018 gains for most are likely to be firmly ahead of their investment return targets. However, most public pensions still face an uphill climb to improve funding levels, due to the depth of past losses, a historically slow economic recovery, the continued use of favorable but unrealistic actuarial assumptions, and for many plans, inadequate pension contribution practices.

Indices for corporate stocks, the largest component of most pensions' asset portfolios, rose by double digits, as of fiscal year-end June 30, 2018, with the Russell 3000 rising by almost 13%. The California Public Employees' Retirement System (CalPERS), the nation's largest public defined benefit pension system, reported a fiscal 2018 portfolio gain of 8.6%, propelled by 11.5% growth in holdings of public equities, while the Florida Retirement System estimated a portfolio gain just below 9.0%, according to press reports. Investment gains in this range are modestly higher than pensions' own long-term targets for asset gains, the all-important investment return assumption, which pensions use to measure liabilities. As of fiscal 2017, this target averaged about 7.4% for major defined benefit plans, compared to the 6.0% level Fitch uses to reflect the magnitude of liabilities.

While fiscal 2018 returns will have a modestly positive effect on funding levels, they are unlikely to change broader pension funding challenges. The gap between projected liabilities and the value of asset portfolios remains stubbornly high, pushing the actuarially determined contribution (ADC) paid by participating governments higher. The median ADC for major plans was 74% higher in fiscal 2017 than in fiscal 2010. We expect ADCs to continue growing in the near term, as plans recoup past asset underperformance, shift gradually to less favorable but more realistic actuarial assumptions, and absorb rising retirement outlays.

Looking forward, pension portfolio returns face additional near-term uncertainty. Volatility in financial markets is notable with the Russell 3000 gaining just under 1.5% in the second half of fiscal 2018. The current economic expansion, even with the recent strong investment returns, has been weaker than in past cycles, and likely is closer to its end than its beginning. Market gains that fall short of pension targets, or outright market losses, would erode recent gains and leave participating governments susceptible to further contribution increases.

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

[Fitch Updates Rating Criteria for Infrastructure and Project Finance.]

Link to Fitch Ratings' Report(s): [Rating Criteria for Infrastructure and Project Finance]

Fitch Ratings-Paris/London-27 July 2018: Fitch Ratings has updated its Rating Criteria for Infrastructure and Project Finance.

The update only includes minor clarifications. No rating changes are expected as a result of the updated criteria.

The report replaces the version dated August 2017. It is available at www.fitchratings.com or by clicking on the link above.

27 JUL 2018 08:54 AM ET

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New Jersey May Borrow $450 Mln to Protect Schools From Guns.

- **Borrowing is part of $1 billion sale, including expansion**
- **It could boost state's general-obligation debt by 50 percent**

New Jersey voters in November may decide to raise $1 billion in the bond market, about half of which would be used to protect schools against shootings.

The borrowing initiative — which will also fund expansion programs at vocational institutions — has received widespread support in the legislature, which earlier this month approved putting it on the ballot by a nearly unanimous vote, with just one senator dissenting. Governor Phil Murphy is reviewing the bill and his office declined to say whether he would sign it.

If approved, the borrowing would allow New Jersey to increase its outstanding general-obligation debt by 50 percent to $3 billion, according to the state's latest debt report. Historically, New Jersey has relied on appropriation-backed debt sold through various agencies, with about $33 billion outstanding.

The voter-approved bonds would probably draw strong interest from investors because such securities are scarce and debt service doesn't rely on annual legislative appropriations, said Daniel Solender, head of municipal investments at Lord Abbett & Co., which manages $20 billion of state and local debt, including some issued by New Jersey.

"For people looking for higher quality, looking for not having to worry about the appropriation, they'd probably get good reception," Solender said.

Student Safety

About $450 million would finance school facility security grants to improve entryways and security systems to defend public schools from mass shootings or attacks.

More than 215,000 students have experienced gun violence at a school since 1999, according to a database of such shootings compiled by The Washington Post. The issue attracted renewed attention after several deadly incidents this year, including one in Parkland, Florida, in February that left 17 dead and another in Santa Fe, Texas, that killed 10 people.

“The safety of the students is paramount,” Republican state Senator Steve Oroho, a co-sponsor of the bond bill, said in an interview.

Another $400 million would help vocational institutions expand their facilities and buy equipment to accommodate more students. County vocational school districts had to turn away about 17,000 students in 2017 because of a lack of facilities, according to the legislation.

Employers in the state are seeking more skilled workers, Oroho said. Fulfilling the needs of people who want to pursue a skill and providing employers with more qualified employees will benefit New Jersey in the long run, Oroho said.

“Not all debt is bad debt as long as you get the proper rate of return,” Oroho said. “And education will always have a high rate of return.”

Increasing the debt means the state will need to pay more principal and interest every year. About 7.5 percent of New Jersey’s fiscal 2019 budget, or $2.8 billion, will go toward debt service, not including payments on school-construction bonds, according to state budget documents. Adding another $1 billion of general-obligation debt will increase principal and interest payments by as much as $72.3 million per year, according to a fiscal analysis of the bond bill.

Pension Predicament

While the borrowing initiative would add to New Jersey’s debt load, the bigger credit concern for the state is its retirement obligations, said Baye Larsen, an analyst at Moody’s Investors Service. New Jersey has about 56 percent of the funds needed to pay current and future retirees enrolled in its state pension plans, as of July 1, 2017. It has an unfunded pension liability of nearly $41 billion.

“The growth in their adjusted net pension liability is going to significantly outweigh the growth in their bonded debt and that is really going to continue to be more of a credit driver for the state,” Larsen said.

New Jersey general obligations maturing in 2028 traded Wednesday at an average yield of 2.7 percent, or about 74 basis points more than top-rate municipals, according to data compiled by Bloomberg.

Debt sold in the state gained 0.9 percent this year through Wednesday, beating the 0.05 percent advance in the broader municipal-bond market, according to Bloomberg Barclays indexes.

Bloomberg Markets

By Michelle Kaske

July 26, 2018, 7:08 AM PDT Updated on July 26, 2018, 7:54 AM PDT

Wells Fargo Bucks Muni-Market Herd With Push Into Local Bonds.

- **Lyle Fitterer says firm overweight general-obligation bonds**
- **As others avoid them, ‘we’ve found pockets of opportunity’**

Since Detroit collapsed into bankruptcy five years ago, some investors have favored municipal bonds secured by specific taxes and revenue, wagering they’ll fare better than debt backed by only a promise to repay should a local government run into financial distress.

But, lately, Wells Fargo Asset Management’s Lyle Fitterer isn’t among them.

Fitterer, who oversees $39 billion in municipal debt, said his firm has expanded its allocation to general-obligation bonds and bought those issued by localities in Michigan, Illinois, and Pennsylvania — states where some governments have struggled with fiscal strains even amid the second-longest economic expansion on record.

“Because people have been avoiding a lot of local general-obligation bonds, we’ve found opportunities there,” Fitterer said.

Fitterer said doing extensive research on factors like a town’s cash reserves, debt levels, taxes and demographic trends can help locate the most resilient bonds. He also considers how much revenue is derived locally, as opposed to from state revenue-sharing.

One bet that has paid off is Southfield, Michigan, a Detroit suburb that Fitterer said has performed well. The city sold 10-year bonds in 2015 at a 2.72 percent yield, or about 73 basis points above the benchmark at the time, according to data compiled by Bloomberg. In June, it sold securities with a similar maturity for a 2.99 percent yield, about 50 basis points more than top-rated debt.

Bloomberg Markets

By Amanda Albright

July 23, 2018, 8:00 AM PDT

S&P: Is Long Island Power Authority's Fiscal Gain Local Governments' Credit Pain?

In 2010, the Long Island Power Authority (LIPA) filed property tax grievances with numerous local governments on Long Island, asserting that the property taxes embedded in the payments it makes to National Grid in connection with the power purchase agreements it has with that generation supplier reflect substantial tax overvaluations by local taxing jurisdictions for four power plants.

Continue Reading

Jul. 26, 2018

Letter To the Editor: Why Muni Debt Managers Reject OAS Methodologies.

Re: "Kalotay cites higher muni costs, need for MA training due to advance refunding halt," The Bond Buyer, July 16:

As a 30-year public finance practitioner who has the privilege of working with some of the largest and most sophisticated issuers in the country, I have an answer for Mr. Kalotay as to why, referring to option-adjusted-spread (OAS) methodologies, "municipal debt managers have largely disregarded it, in favor of questionable seat-of-the-pants methods."

Firstly, finance is not physics. Newton's second law of motion has held up since the late 17th century because it is imposed on us by the realities of nature. Finance, however, is pure convention. It is a science/art that is organic and constantly evolving. It is the responsibility of debt managers to constantly seek superior decision making methodologies, not lock themselves into a generation old methodology that was never designed to address their programmatic realities.

Secondly, it is not correct to say that debt managers have largely disregarded OAS methodologies. Rather than disregarding OAS methodologies, my experience is that a large majority of sophisticated issuers have evaluated and rejected them in favor of more organic and integral methodologies.

The black box gang has always mistaken complexity for sophistication in the realm of financial modeling and it is both denigrating and arrogant to characterize non-OAS methodologies currently utilized by debt managers as "questionable seat-of-the-pants methods."

They are, in fact, methodologies developed by earnest and sophisticated public finance professionals over the course of the generation that has passed since the advent of OAS methodologies who are not willing to cede complex decision making processes to antiquated black box models that do not in any meaningful way capture the broad range of programmatic considerations inhered in modern municipal debt programs. (How could they? They were developed for a completely different purpose.)

As the article states, Mr. Kalotay is a fixed-income expert and of that there is no doubt. I both acknowledge and applaud his significant contributions in this area. But the reality is that the fixed-income analytics he espouses, which are at best of dubious value for their intended security analysis purposes, as proven during the calamitous financial crises, have even less value for public finance debt managers. Rather than weld himself to OAS methodologies, I encourage Mr. Kalotay to channel his unique intellect and insights into the development of new methodologies that are more relevant to the realities faced by modern public finance debt managers.

Frank Lloyd Wright, the great architect, wrote that "five lines where three are enough is always stupidity." That is the lesson I recommend the MSRB impose on municipal advisors as our profession continues its efforts to improve public finance decision making through the development of more organic and integral decision making processes.

Sincerely,

Laurence H. Wadler

The Bond Buyer

By Laurence H. Wadler

Published July 26 2018

CA Pension Fund Earnings Up, but Crushing Debts Remain.

California's two immense public employee pension funds this month reported investment earnings higher than their assumed rate for the second straight year.

The California Public Employees Retirement System (CalPERS) said its investment portfolio earned 8.6 percent during the year that ended June 30, while the California State Teachers Retirement System (CalSTRS) topped that with an 8.96 percent gain.

That's certainly better than the minuscule earnings the two funds had seen earlier in the decade, but despite public crowing by union advocates, the earnings reports merely underscore the wide gaps between pension promises and assets to pay for them.

For one thing, making money on investments in the past year has been a no-brainer and relative to the stock market and other indices, the performance of both funds was modest.

That's because both were burned badly in the recession a decade ago when their speculative investments tanked and since then, both have adopted safer and more stable investment strategies that have limited upside potential.

Safer may be better in the long run, but modest earnings, by themselves, cannot cover the funds' asset shortages, called "unfunded liabilities." Both have scarcely two-thirds of the assets they would need to cover pension commitments, even assuming they meet their earnings projections of 7 to 7.5 percent a year.

CalSTRS' chief investment officer, Christopher Ailman, put it this way in a statement that accompanied its earnings report:

"We will rank high compared to similar funds, but it is only one year. We need to repeat that performance year in and year out, on average, over the next 30 years."

As they lower investment expectations, CalPERS and CalSTRS have turned to the state and other public employers to close their asset gaps, requiring them to raise their "contributions" by billions of dollars.

CalPERS is increasing its bite on employers on its own, as it is empowered to do, while the Legislature and Gov. Jerry Brown adopted a plan to prevent CalSTRS from slipping into insolvency by increasing payments from the state and teachers modestly while hitting school districts hard, more than doubling their mandatory payments into the fund.

Making the increased payments has caused financial turmoil in local governments, especially cities, and in school districts.

As CalSTRS was reporting its 2017-18 earnings, CALmatters published a deep dive into how pension payments are clobbering the state's school systems, focusing on those in Los Angeles, Fremont and Sacramento.

"Over the next three years, schools may need to use well over half of all the new money they're projected to receive to cover their growing pension obligations," CALmatters' Jessica Calefati wrote, " leaving little extra for classrooms, state Department of Finance and Legislative Analyst's Office estimates show."

"Some districts are predicting deficits and many districts are bracing for what's to come by cutting programs, reducing staff or drawing down their reserves – even though per-pupil funding is at its highest level in three decades and voters recently extended a tax hike on the rich to help pay for schools," she continued.

Schools and local governments are feeling immense stress from ever-rising pension payments even though California's economy has been booming and tax revenues have been surpassing projections.

That's why we'll see dozens of cities and other local governments asking their voters for tax increases in November, and why school officials are pleading with Brown and legislators for more money.

By Dan Walters | July 25, 2018

Senator Slams Muni Bond Regulator as 'Incestuous'

Kennedy of Louisiana says ex-industry leaders have the 'public' seats

Sen. John Kennedy, a Republican of Louisiana, on Tuesday slammed the self-regulatory body that oversees the $3.8 trillion muni-market "an incestuous…little club" that needs to be overhauled.

Kennedy called for reform of the Municipal Securities Rulemaking Board during comments at a Senate Banking confirmation hearing for Elad Roisman to be a member of the Securities and Exchange Commission. The SEC has oversight responsibilities for the MSRB.

Kennedy noted that the Dodd Frank Act required the MSRB board to have 11 public members and 10 representatives of regulated entities.

Kennedy said he didn't think that anyone on the board represented consumers. He noted that some of the public seats are taken by former industry executives, including JP Morgan JPM, +1.03% .

According to the MSRB website, Donna Simonetti, a former executive director at JP Morgan, is on the MSRB board for a term that expires in 2021. Ronald Dieckman, a former senior vice president and director of the public finance and municipal bond trading and underwriting department at J.J.B. Hilliard, is also a board member.

"They're insiders. The whole thing is incestuous," Kennedy said.

"Do you know how the board is picked? I'm glad you asked," he said to Roisman, who did not ask. "They pick themselves. It is a little club," he added.

A spokesman for the senator said he was working on legislation to address his concerns.

Roisman, currently the chief counsel of the Senate Banking Committee and also previously an aide to former SEC Commissioner Dan Gallagher, said it was important for self-regulatory organization to have transparency.

Michael Post, the MSRB's general counsel, defended the board's makeup in a phone interview.

He said the agency's standard on who can be a public member of the agency's board was approved by the SEC.

“We have standards set out in federal law and approved by the SEC and we consistently apply them,” he said.

Under the by-laws, public members must have had no association with a municipal securities broker, municipal securities dealer or municipal adviser for two years, he said. Of the 11 public members, one slot is reserved for a representative of institutional or retail investors, one slot for a representative of municipal entities and one slot for a member of the public with knowledge or experience in the municipal industry, Post noted.

MARKETWATCH

By GREG ROBB
SENIOR ECONOMICS REPORTER

July 24, 2018

TAX - CALIFORNIA

Time Warner Cable Inc. v. County of Los Angeles

Court of Appeal, Second District, Division 1, California - July 19, 2018 - Cal.Rptr.3d - 2018 WL 3471088 - 18 Cal. Daily Op. Serv. 7224

Telecommunications company filed refund petition, contesting valuation of its possessory interests in public rights-of-way based on television, broadband, and telephone revenue.

The Superior Court reversed in part, and county appealed.

The Court of Appeal held that:

- Assessor was not required to value possessory interests in public right-of-way by capitalizing cable television franchise fee and could include broadband and telephone revenue;
- Evidence did not support assessor’s determination that five percent of gross income from all three income streams represented the fair market value of the possessory interests;
- Assessor was required to allocate portion of economic rent to nontaxable intangible assets; and
- Substantial evidence supported use of 10-year term of possession.

In light of lack of evidence of an open and competitive market, assessor was not required to value telecommunications company’s possessory interests in public right-of-way, which company used to provide cable television, broadband internet, and telephone services, by capitalizing cable television franchise fee, but rather could base value on the economic rent the possessory interests would command in a rational market; while company argued that possessory interests were available to any prospective cable operator at five percent of television revenue, there was no evidence prospective cable operators were purchasing new franchises or there was an actual, working market for cable television possessory interests, and subject possessory interests generated a considerable amount of revenue for company beyond television services.

Evidence did not support assessor’s determination that five percent of gross income from all three income streams, including cable television, telephone, and broadband internet, represented the fair market value of telecommunications company’s possessory interests in public right-of-way; while there was evidence cable companies paid five percent of television revenue as franchise fee for the possessory interest to provide cable television service, and company may have previously paid a franchise fee on cable modem service, there was no evidence as to purported similarities in the way possessory interests were used to provide television, broadband, and telephone services, and television, broadband, and telephone businesses did not operate in similar competitive environments.

When assessing tax on telecommunications company's possessory interests in public right-of-way, county assessor was required to allocate portion of economic rent to nontaxable intangible assets.

Substantial evidence supported assessor's use of 10-year term of possession when assessing telecommunications company's possessory interests in public right-of-way which company used to provide cable, telephone, and broadband internet services, even though average remaining term of company's franchises was five years; there was substantial evidence that company and the franchisors understood that the acquired franchises would last as long as company wanted them to last, and company acknowledged that all parties implicitly understood that it would physically occupy its rights-of-way for as long as it chose to do so, notwithstanding anticipated change from local to state control.

Muni Market Recap: Summer Lovin' for Munis.

Municipal bond markets go into summer slumber right around the last day of the school year. This year, the muni slumber has so far lead to an outperformance of municipal bonds relative to US treasuries.

As schools let out, bond traders, bankers and community financial officers stop making excuses for working too hard and everyone goes on vacation. In addition to taking some time for R&R, there's also a greater willingness to take vacation due to the collective liberation that comes from knowing your opponent is likely resting with a pina colada too.

The environment is self-fulfilling because the lack of activity breeds a more relaxed market environment. The most surprising aspect of the absence of market participants and lower trading activity is the trend for municipal bonds to outperform US Treasury bonds during the summer.

The muni/treasury ratio is the best measure of the relationship between Municipal bonds and US Government bonds. The muni/treasury ratio is the yield of Munis divided by the yield of US Government bonds, eg. 1.55%/2.60% (based on market clearing trade data as per MSRB and Bloomberg). This ratio usually reflects the tax benefit for owning a Municipal bond versus US Government bonds.

Munis have had good performance through the quiet of the summer. The 2 year part of the municipal curve has performed the best, with ratios decreasing from 65% to 60% (based on Bloomberg BVAL yields). 10 year ratios have decreased from 85% to 84%. The term used for this experience is outperformance or richening of Munis versus US Treasuries.

So why have munis outperformed? With everyone on vacation, literally and figuratively, everything slows, bankers stop calling communities to fund projects and community leaders make plans to begin the funding of future infrastructure again in September.

Still, while we're all getting some much needed sun, the July 1 coupon payments and principals for past deals are paid into mutual fund accounts and the cash demands to be put to work in the form of new issue municipal bonds. The imbalance between consistent/increasing demand is met with lower new issue supply during the summer and this imbalance leads to municipal bond outperformance.

PS. Don’t get any crazy ideas, the market is quiet for a reason: it is a delicate balance and the market participants could not handle heavy supply of municipal deals.

Note: The data are an amalgamation of market clearing yields from MRSB trade data. They are approximate Muni Yields and are not transactable.

Investing in municipal securities contains risks, including loss of principal. Please read the official statement before investing in any municipal security. Securities offered through Neighborly Securities, Member FINRA, SIPC and registered with MSRB.

Posted 07/20/2018 by Homero Radway

Neighborly Insights

States Finalize Fiscal 2019 Budgets - Updated July 26

As of July 26th, all states have enacted a new or revised budget for fiscal 2019. 46 states began fiscal 2019 on July 1 (New York began on April 1, while Texas begins on September 1 and Alabama and Michigan on October 1). Last year, 17 states enacted budgets covering both fiscal 2018 and fiscal 2019.

For the most current information on states’ budgets, please visit NASBO’s state-by-state listing of proposed and enacted budgets.

Additionally, for summaries of governors’ budget proposals for fiscal 2019 please click here.

By Brian Sigritz posted 05-09-2018

NASBO

In Wake of Tax Reform, Muni Bond Market Gains Footing.

As banks sell munis, and the Fed hikes rates, supply and demand take over

Six months after the sweeping tax-reform package that cut corporate and individual rates rattled the $3.7 trillion municipal bond market, financial advisers say the fallout has proven to be a good thing for investors.

With deductions for state and local taxes now capped at $10,000, in many high-tax states muni bonds are “the only game in town,” said Timothy Heaney, a muni bond portfolio manager at Newfleet Asset Management.

“Our clients are as interested in muni bonds as ever,” said Theodore Haley, president of Advanced Wealth Management in Portland, Ore. “Many people lost deductions due to the new tax law, and especially here in Oregon, the limit on deductions for state and local taxes is a big hit for some,” he said.

[Continue reading.](#)

Investment News

Jul 23, 2018

By Jeff Benjamin

Tax Exemption Offsets Lack of Competition in Municipal Bond Markets.

The tax exemption for earnings on municipal bonds cost the federal government almost $31 billion in 2017. The exemption is intended to promote state and local investment, but many analysts argue the policy is an inefficient way to provide such a subsidy.

In a paper presented at the 2018 Municipal Finance Conference at Brookings, Duke University economists Juan Carlos Suárez Serrato, James W. Roberts, Andrey Ordin, and Daniel Garrett show that each dollar of tax exemption for interest paid on municipal bonds generates about $1.80 in savings for municipal authorities. In the paper "Tax Advantages and Imperfect Competition in Auctions for Municipal Bonds," using data on submitted and winning bids at municipal bond auctions, the authors estimate that each percentage point increase in the effective personal income tax rate on taxable bonds reduces municipal borrowing costs by roughly 9 percent, implying state and local governments receive a significant subsidy via the tax exemption.

How is it that the tax benefit has such a large impact on state and local borrowing costs? Suárez Serrato and coauthors say lack of competition in muni bond auctions—which often include few participants who need specialized information about each municipality and bond issuance—allows powerful bidders to suppress the price of the bond below what they would be willing to pay in a competitive auction. When a tax increase raises the value of the tax exemption, additional investors join the auction and bid higher prices. The tax hike not only raises the price investors are privately willing to pay, but also makes the auction more competitive. As evidence for this hypothesis, the authors show the pass through from tax savings to borrowing costs is larger for bonds issued by school districts and smaller jurisdictions, where auctions tend to have very few bidders and often are private.

[T]ax exemption is an effective policy for subsidizing state and local governments, and that its removal could place substantial burden on municipalities.

What does this mean for the importance of muni bond tax exemptions? The Suárez Serrato analysis implies the tax exemption is an effective policy for subsidizing state and local governments, and that its removal could place substantial burden on municipalities. In an analysis of the effects of the recently enacted Tax Cuts and Jobs Act, the authors find the new law—which limits the deductibility of state and local taxes and hence raises the effective tax rate—may lower interest costs for municipalities by 2.5 percent. An Obama-era proposal to limit the deductibility of muni interest income, on the other hand, would lead to an increase in state and local borrowing costs of around 31 percent, on average.

Suárez Serrato and coauthors note that these large policy effects exist primarily because of inefficiencies in primary municipal bond markets. If the tax advantages turn into public savings because bond auctions tend to be uncompetitive, then policies aimed at increasing competition in municipal bond auctions could significantly lower borrowing costs without sending the bill to federal and state taxpayers.

The Brookings Institute

Sage Belz and Louise Sheiner

Monday, July 23, 2018

Sports Stadium Subsidies Continue Unabated, Despite No Good Justification.

Less than two miles from the Capitol building sits the brand new Audi Field. Home of the D.C. United soccer team, the new stadium hosted its first match on July 14, 2018, and gave D.C. taxpayers a first look at their $150 million “investment.”

Audi Field officially won the title of “largest stadium subsidy in MLS history” after the D.C. city council voted 12-0 for the stadium in 2014. The team achieved this despite owners Jason Levien, Erick Thohir, and soon-to-be majority owner Patrick Soon-Shiong pegging their net worth in the billions. Soon-Shiong himself is worth almost $8 billion, and will become the wealthiest owner in the league.

The ownership group’s $250 million contribution to the project, combined with the $150 million it received from taxpayers, makes it the most expensive soccer stadium in American history, as well. This raises the question of why local taxpayers had to fork over $150 million to build a stadium that would represent a small percentage of D.C. United’s billionaire ownership’s wealth.

Continue reading.

The Washington Examiner

by Curtis Kalin & Adam Kazda | July 22, 2018 12:00 AM

IRS PLR: City Agreement to Deliver Water to Power Company Won’t Result in Private Business Use of Bonds.

The IRS ruled that a city’s agreement to deliver water to a company won’t cause tax-exempt bonds used by a governmental entity to construct a new reservoir to meet the section 141(b) private business tests, finding that the agreement isn’t an output contract and even though the company will receive a special economic benefit from the project, it won’t be making private payments for it.

Read the IRS Private Letter Ruling.

IRS PLR #201830006

Four Ways to Make Wiser Infrastructure Investments.

America’s public infrastructure, particularly its transportation [1]and water systems[2], is decaying, underperforming our nation’s needs and goals. But the solution to our infrastructure problem is relatively straightforward. America, at all levels of government and in conjunction with the private sector, needs to: **Invest. More. Wisely.**

Each of these three words contains an idea and corresponding set of policies. This paper focuses mostly on the final idea: Wisely. At its core, ‘wisely’ means that whatever level of investment is chosen, it ought to be invested in the smartest manner possible. While straightforward in theory, the application of a wiser approach to infrastructure is more complicated in practice. There is generally a reason why sub-optimal choices that fail to maximize total social benefits or minimize total social costs are frequently made and often encouraged by problematic policy or outmoded regulations. Despite bipartisan recognition of the problem and proposals by both the Administration and Democratic leadership, Congress has yet to, and remains unlikely to, pass major new infrastructure legislation.

This paper explores a set of core ideas that can help America make wiser infrastructure investment choices. Changes are needed at all levels of government, especially the state and local levels including infrastructure authorities, where most infrastructure decisions are made. The federal government has an important, but limited, role in structuring these choices. The federal government’s most impactful role is to promote wiser federal infrastructure investment choices and to incentivize wiser decision-making at the local level. Incentive programs, even small ones, from the federal government such as the TIGER[3] competitive transportation grant program, or the Race to Top education program[4]have shown that “competitive programs have impact”[5]in promoting change at the state and municipal level.

Continue reading.

The Brookings Institute

Aaron Klein

Wednesday, July 25, 2018

Federal Aviation Administration Announces that Municipalities May Not Regulate Airspace — Even for Drones

The Federal Aviation Administration (FAA) recently issued a press release clarifying the abilities of municipalities to regulate drone operations in the navigable airspace. State and local governments “are not permitted to have their own rules or regulations governing the operation of aircraft,” as it would conflict with superseding federal law, according to the release. The FAA reiterated that “[s]tate and local governments are not permitted to regulate any type of aircraft operations, such as flight paths or altitudes, or the navigable airspace.”

However, state and local governments *may* utilize laws traditionally related to state and local police powers in order to regulate land use, zoning, privacy, and law enforcement operations. Hence, state and local governments may generally regulate the locations of aircraft takeoff and landing sites through their land use powers, which includes where drones can take off or land.

The FAA and the federal government’s approaches on drone operations continue to evolve. Other issues we’re monitoring include counter-drone technology, real-time flight waivers applications, and identification sensor systems.

Harris Beach PLLC

July 30, 2018

Fixing America's Forgotten Places.

Opportunity Zones, created by Trump's tax law, are meant to help the heartland thrive and make the country more equal—but can they pull it off?

FRESNO, Calif.—Census tract 06019000100 has a lot going for it. Locals cheer the melting-pot atmosphere, the arts scene, the nearby nature, and the affordable housing—affordable in national terms, which feels all the more amazing given that it is a quick drive both to the grandeur of Yosemite and to the tech hub of the Bay Area. Start your car up and grab a coffee here at 9 a.m., and you could be standing in downtown San Francisco or in front of Apple's headquarters by noon.

For all that, though, this tract has its problems. There is the stifling summer heat, the poverty, and the pollution. Technology companies have not flooded into the area like they have in the Bay and in Reno, and the city faces underinvestment and blight. Roughly two-thirds of the families in 06019000100 live below the poverty line. The surrounding county is economically depressed too, with an unemployment rate above 8 percent, one of just a handful of places nationally where that is still true. Moreover, the income gap between households in Fresno County and Santa Clara County, where Apple is headquartered, has widened in the past 10 years.

Still, Fresno is a place that feels on the cusp, as if just a little more investment, a little more infrastructure, and a little more spit and elbow grease might help it thrive. It has what a real-estate broker might call "good bones," with plenty of lower-cost real estate and highway saturation. It has a steady supply of educated workers, by virtue of being home to Fresno State, among other schools. And it has a powerful industrial base, in terms of agriculture as well as in other industries. "If you are a company that is looking at having a West Coast presence, especially a distribution or an e-commerce center, there's no better place than Fresno County right now," said Lee Ann Eager, the president of the Fresno County Economic Development Corporation (motto: "Living the California dream").

Continue reading.

THE ATLANTIC

ANNIE LOWREY

JUL 24, 2018

Overpromising has Crippled Public Pensions. A 50-State Survey.

Introduction

The real problem plaguing public pension funds nationwide has gone largely ignored. Most reporting usually focuses on the underfunding of state plans and blames the crises on a lack of taxpayer dollars.

But a Wirepoints analysis of 2003-2016 Pew Charitable Trust and other pension data found that it's the uncontrolled growth in pension promises that's actually wreaking havoc on state budgets and taxpayers alike.[1] Overpromising is the true cause of many state crises. Underfunding is often just a symptom of this underlying problem.

Wirepoints found that the growth in accrued liabilities has been extreme in many states, often growing two to three times faster than the pace of their economies.[2] It's no wonder taxpayer contributions haven't been able to keep up.

Continue reading.

Wirepoints

By Ted Dabrowski and John Klingner

July 19, 2018

Understanding the Impact of Local Governments' Financial Planning On Muni Investors.

Indra Nooyi, CEO of PepsiCo, once said that you can either run an organization for your duration or you can strive to run it for the organization's duration. The latter simply alludes to a strategic mindset to understand the implications of your actions in the future and preparedness towards future contingencies.

After some of the well-known bankruptcies of U.S. municipalities, including Detroit and Stockton, more and more local governments are breaking the monotony of simply following their revenue and expenditures and turning toward building a sustainable framework of long-range financial strategy to make budget decisions over future budget cycles.

In this article, we will take a closer look at understanding the need for long-range financial plans (L-RFPs) for local governments and how they can bring sustainable growth.

Continue reading.

municipalbonds.com

by Jayden Sangha

Jul 26, 2018

Municipal Bonds Weekly Market Report: Jobless Claims Hits 49-Year Low

MunicipalBonds.com provides information regarding the performance of muni bonds for the past week in comparison with Treasury yields and net fund flows, as well as the impact of monetary policies and relevant economic news.

- Treasury yields were all up big, while most municipal yields saw smaller gains this week.
- Muni bond funds saw large inflows this week.
- Be sure to review our previous week's report to track the changing market conditions.

Continue reading

municipalbonds.com

Brian Mathews

Jul 24, 2018

As States Legalize Sports Gambling, Convenience and Tax Rates Are Key.

There isn't a one-size-fits-all approach to legalization, but one analysis says states should see serious budget revenue gains with the right policies.

WASHINGTON — States legalizing sports gambling will not only see more in-state gross gaming revenue but also private sector economic activity that boosts their gains beyond any tax on proceeds, according to an analysis by Regional Economic Models, Inc.

Gross gaming revenue, or GGR, refers to the amount of money retained by betting operations after payouts.

Following the Supreme Court's May 14 decision, in *Murphy v. National Collegiate Athletic Association*, striking down federal restrictions on sports gambling, many states are considering GGR taxes to fund highway construction, pay for social services or make infrastructure repairs.

"Some of these priorities may be harder to get at with a smaller budget," said Peter Evangelakis, a senior economist at REMI, at a Thursday discussion of sports betting policies in D.C.

While illegal bookies and office pools will also crop up, state legalization of sports gambling will increase sporting event sales from travel to food to merchandise. States that tax GGR will likely increase state spending, which will in turn generate more growth as the money is fed back into their economies, Evangelakis said.

The Professional and Amateur Sports Protection Act of 1992, the federal prohibition on sports betting that the Supreme Court overturned this year, allowed licensed sports pools to continue in Nevada. In 2007, the Nevada Gaming Control Board reported $248.8 million in state revenue from sports wagering.

An estimated 69 million people, 28 percent of U.S. adults, bet on sports—averaging $1,554 per bettor annually, according to a 2015 Ernst & Young survey.

States have two main choices when considering legalizing sports gambling: how convenient to make access and how much to tax GGR.

REMI's model considers "low convenience" gambling to be limited to brick and mortar casinos, "moderate convenience" to include gas stations and convenience stores, and "high convenience" to add online betting to the mix. A low tax is 6.75 percent, base tax would be 10 percent, and a high tax is 15 percent.

Kentucky has horse racing with legal gambling and a state lottery but no casinos, so it's considered moderate convenience. REMI's 10-year model projects Kentucky would see a $93.6 million increase in GGR if the state legalized sports gambling this year, which translates to a $9.4 million increase in state revenue with a base tax of 10 percent.

State employment would spike in 2019 with two-thirds of new jobs in the gaming sector, dipping slightly as prices rise. Migration would more gradually increase before leveling off around 2029.

The gross domestic product in Kentucky would increase by about $150 million and personal income by $80 million, the analysis concludes.

Connecticut, which is home to the second- and third-largest casino in the U.S., is otherwise a low convenience gambling state. Should Connecticut legalize sports betting, REMI says it would see a $139.5 million increase in GGR and $9.4 million increase in state revenue with a low tax of 6.75 percent.

"I will say here the impacts are more muted," Evangelakis said. "Connecticut's gaming sector has much higher productivity, so even though the size of the sales and the revenue rises faster, they need less employment."

Route Fifty

By Dave Nyczepir,
News Editor

JULY 26, 2018

[U.S. Bond Funds Draw Most Cash in Nearly 6 Months.]

NEW YORK, July 25 (Reuters) – U.S. fund investors pushed the most cash in nearly 6 months into bonds in the latest week and inched back into stocks for the first time in 5 weeks, Investment Company Institute data showed on Wednesday.

The data, collected over the seven-day period through July 18, shows investors tip-toeing into a market despite ongoing concern over the U.S. conflict with its trading partners.

During that week, Federal Reserve Chairman Jerome Powell expressed an optimistic view on the U.S. economy and early earnings reports mostly bolstered the outlook for the most recent quarter.

Bond mutual funds and exchange-traded funds based in the United States collected nearly $8.7 billion during the week and stock funds pulled in another $1.5 billion, according to the trade group.

The strong sales for debt funds were helped by nearly $1.8 billion pumped into municipal bond funds that offer tax-free income, the most cash for those products since late January, ICI's records show.

Seen as a lower-risk source of income than equities, bond funds have drawn strong demand despite the risk of rising interest rates and inflation, not to mention the year-to-date negative performance of many such debt funds.

Bond ETFs, in particular, have also drawn interest from institutions that traditionally favored trading individual bonds.

Nearly 87 percent of the cash that moved into stock funds went into products primarily invested within the United States, according to the ICI.

After strong demand for stocks outside the country in 2017 and earlier this year, investors started pulling cash in recent weeks as anxiety spiked about U.S. interest rate hikes as well as the consequences of a growing trade war for the dollar and equity markets around the world.

The following table shows estimated ICI flows for mutual
funds and ETFs (all figures in millions of dollars):

	7/18	7/11	7/3	6/27	6/20/2018
Equity	1,492	-3,155	-10,614	-17,948	-5,173
Domestic	1,297	-1,546	-11,376	-12,535	-3,880
World	195	-1,609	762	-5,413	-1,293
Hybrid	-1,829	-1,048	-2,552	-1,134	-857
Bond	8,659	7,445	4,587	2,980	4,549
Taxable	6,894	6,416	4,231	2,455	3,806
Municipal	1,765	1,028	356	525	742
Commodity	-308	101	-1,027	-612	-264
Total	8,013	3,343	-9,606	-16,714	-1,745

(Reporting by Trevor Hunnicutt; Editing by Dan Grebler)

Municipal-Bond Funds Draw Flood of Cash as Market Extends Gains.

- **Funds got a $1.68B inflow last week, most since January**
- **Eleven straight weeks of inflows follows positive return**

Bondholders are no longer seeing losses from their investments in state and local-government debt — and they're pouring money back into the market.

Mutual funds that focus on municipal bonds picked up $1.68 billion in the week through July 18, the biggest influx of cash since the end of January, according to the Investment Company Institute. It was and the eleventh straight weekly gain.

Strong demand comes as the market recovers from losses in January that left it in the red for much of the year. Municipal bonds have since swung to a 0.04 percent gain, a relatively strong showing given the 1.47 percent loss for Treasuries and 2.79 percent drop for corporate debt, according to Bloomberg Barclays indexes.

"Solid returns of the muni market over all relative to other fixed income sectors is what's drawing in the interest," said Michael Pietronico, chief executive officer of Miller Tabak Asset Management in New York, which manages $1.2 billion of municipal debt.

He said there's also "a lot of uncertainties in regards to tariffs and trade issues globally that is driving money into defensive sectors, particularly munis."

Bloomberg Markets

By Danielle Moran

July 25, 2018, 10:41 AM PDT

The Downsides of Property Tax Caps.

They have created fiscal stress for states and municipalities, and exacerbated inequality. A new report offers a simple solution to alleviate those issues.

Property tax caps are hampering municipalities' ability to fund basic services and are exacerbating inequality, according to a report released by the Center for Budget and Policy Priorities (CBPP) last week.

The tax caps, which first became popular during the 1970s tax revolt and have since spread to 44 states plus the District of Columbia, have created fiscal stress for the states that adopted the limits. As a result, states have cut aid to cities and counties, and municipalities have become more reliant on sales taxes and fees that disproportionately hurt the poor and people of color.

Prior to the first state cap in 1977, property taxes accounted for an average of 50 percent of local revenue across the country, according to the report. In 2015, property taxes accounted for 39 percent of local revenue.

Property tax revenue is shared by states and their localities. The study focused on the impact of caps in Michigan, Massachusetts, Oregon and New York. When adjusted for inflation, Massachusetts cut its unrestricted aid to municipalities by 44 percent from 2001 to 2015. In New York, more than three-quarters of cities and half of the counties reported significant fiscal stress due to the state's adoption of its tax cap in 2011 and subsequent cuts in state aid. And in Michigan, state aid declined in every city outside of Detroit from 2008 to 2014, dropping 17 percent across the state.

Because of property tax caps, "states are pushing too many costs down to the lower level," said Ron Deutsch, executive director of the Fiscal Policy Institute, during a press call about the report.

Property tax caps, according to the analysis, also contribute to inequality. For one, the caps strangle funding for public education, which the researchers see as a pathway for minority and low-income children to move up the socioeconomic ladder.

"I think in particular with schools we have a great imbalance between our high-needs school districts and our well-off school districts in terms of per pupil spending. The tax cap is institutionalizing these inequities," Deutsch said.

Secondly, white homeowners reap the largest benefits from the cap because they have historically owned homes at a greater rate than people of color and on average own more valuable homes.

And because the caps have led municipalities to turn to fees and sales taxes to make up the difference, those costs fall disproportionately on poor residents and people of color since they account for a larger portion of their income. Across the country, the share of local revenues derived from fees went from 16 percent in 1977 to 23 percent in 2015.

”Property tax caps lock in those inequities,” says Iris Lav, former deputy director of the Center for Budget Policy and Priorities.

The study points to a report from the U.S. Department of Justice that examined the use of fees in Ferguson, Mo., and warned of “the illegal enforcement of fines and fees in certain jurisdictions around the country — often with respect to individuals accused of misdemeanors, quasi-criminal ordinance violations, or civil infractions.” The DOJ report went on to explain that people facing these fines and fees “may confront escalating debt; face repeated, unnecessary incarceration for nonpayment despite posing no danger to the community; lose their jobs; and become trapped in cycles of poverty that can be nearly impossible to escape.”

A Proposed Solution

The report has a recommendation to alleviate some of these issues: Flip the current property tax cap formula.

Right now, most states limit the annual increase in property taxes to 1.5 or 2.5 percent or the rate of inflation — whichever number is lower. Setting the limit instead at whichever number is higher, the researchers say, would provide more cash for governments and make revenues more predictable.

“We never thought the tax cap was the right solution,” said Deutsch. “Property tax caps should be eliminated. If they aren’t eliminated, at the very least, they should be amended.”

To control runaway costs for homeowners living on more modest incomes, states could adopt “circuit breakers,” which caps property taxes for people who make below a certain amount.

The report is being released in a year when federal tax reform is being upended. President Trump signed a tax package in December that caps the mortgage interest deduction and the state and local tax deduction. New York is one of four states suing the federal government over both.

The states claim the mortgage interest deduction cap violates the 10th Amendment, which protects states’ rights. Furthermore, they contest the tax reform was intended to undermine their ability to raise taxes and point to Treasury Secretary Steven Mnuchin’s statement this year that the cap was intended to “send a message” to high-tax states.

“The capping of SALT deductions has made it harder for states to raise the revenue they need to rely on,” says Michael Leachman, CBPP’s senior director of state fiscal research. “We are seeing it play out that people are not willing to pay higher property taxes.”

GOVERNING.COM

BY J. BRIAN CHARLES | JULY 26, 2018

Bill Introduced to Authorize Additional $1 Billion in Rural NMTC Allocation.

Rep. Jason Smith, R-Mo., and Rep. Terri Sewell, D-Ala., today introduced the Rural Jobs Act, which would authorize an additional $500 million in new markets tax credit (NMTC) allocation per year for 2018 and 2019 for certain rural areas. Under H.R. 6627, the new allocation would target Rural Jobs Zones, which are NMTC-eligible census tracts in rural communities that are eligible for the United States Department of Agriculture (USDA) Business & Industry program. At least 25 percent of the new allocation would be prioritized for persistent poverty counties and high-migration rural counties.

Friday, July 27, 2018

[CDFA Announces Opportunity Zones Conference.]

Opportunity Zones: Maximizing Impact in Your Community

September 5-6, 2018 | Washington, DC

Click here to learn more and to register.

S&P: The U.S. Not-For-Profit Senior-Living Sector Remains Stable, Supported By Favorable Demand And Growing Liquidity And Financial Flexibility.

The U.S. not-for-profit rated senior-living sector demonstrated continued stability in 2017, highlighted in part by ongoing strength in macro-level factors related to the economy and housing sector, as well as by sector-specific trends related to strong demand and growing liquidity and financial flexibility, particularly relative to operations.

Continue Reading

Jul. 23, 2018
