
Bonds Versus Bond Funds: Minnows Versus Sharks.

Brokerage firms like to tell clients they should buy bonds instead of bond funds, but that is rarely a good idea. Investors almost always have an advantage buying a mutual fund's portfolio of bonds rather than buying bonds directly.

Treasury bonds are an important exception. The Treasury market is extremely large and liquid, its structures are as simple as they come, and most brokerages charge modest fees to buy and sell them at very fair prices. For pretty much everything else, the cards are stacked against you.

Time Is Relative

The appeal of Treasury bonds to many do-it-yourself investors is that the former have fixed maturity dates, and the U.S. government has always made good on paying back principal when that time comes. What may be less obvious is that with a few exceptions, most other bond sectors carry features–such as the option for borrowers to refinance or pay off debt early–that make the timing of principal return much less certain. That goes for most municipals, mortgage securities, and corporate bonds (though the latter often carry some financial penalties designed to compensate investors for the option).

The chief risk associated with an embedded option is that you'll get your money back early at just the wrong time–when market yields are low, the incentive for borrowers to refinance is high, and by definition reinvesting the money at a good rate is most difficult.

What may be less obvious is the cost associated with that option. Think of it this way: When you purchase a bond with an option attached, you're actually buying the bond and simultaneously selling the borrower an option (to refinance). You'll never see the price of the option broken out, but the bond's price–and by extension its yield–will have the value of the option baked in. As such, an identical bond without the option would carry a lower yield and a higher price.

The difference isn't trivial, and no institutional investor would ever pay the same price for those two bonds. In fact, they put tremendous effort into figuring out how much that option is worth and how much more yield they should get from the borrower to account for it.

It's not plain-vanilla math, though, and the number is by definition an estimate. That's because most borrowers' decisions are based on the level of interest rates when they have an opportunity to refinance. Every homeowner with a mortgage knows that it will only make financial sense to refinance when rates get low enough, but that pinning down when that's going to happen or how low they're going to get can be as difficult as predicting the weather.

As such, the process for pricing an embedded option is especially complex for plain-vanilla mortgages that can be refinanced at any time. And institutional investors know that unless they know what it's worth, the market will always look to underpay.

The Return of Your Money

While we know the U.S. Treasury is a safe bet to pay you back, the risk of being stiffed exists with just about every other kind of bond. Knowing how to handicap that risk is another laborious exercise requiring skill, knowledge, and experience. Most fund managers have teams of analysts spending most of their time looking into the finances of bond issuers whether large or small, municipal, corporate, or otherwise. It would be almost impossible for any individual to devote the amount of time and effort to replicate that work, and even if one could, the cost of doing so would likely be well beyond any benefit one might get from going it alone.

Here too, though, the practical risk often isn't actually whether you're going to get your principal back, but rather how much extra yield you should demand in exchange for the risk that you won't. And keep this in mind: While most individual investors don't bother buying mortgages directly, the fact that many do choose to purchase corporate and municipal bonds on their own also means there are plenty of parties–including brokers, corporate borrowers, or mutual fund managers–who make it their business to sell debt to investors who don't know that number and to whom they can sell bonds without paying anywhere close to it.

Buying in Bulk

Let's say for the sake of argument, though, that you still want to buy a bond with an embedded call option and some level of credit risk and that you've even somehow managed to get confident in the yield number that you're going to demand. Unless you're going to invest a ton of money all at once, it's nearly a sure bet that you're going to have to give up some of that yield in the form of higher trading costs that you won't see broken out from a bond's price either.

The data will look different for every sector and time period, but the phenomenon is well-established. Vanguard has studied the relationship between trade size and pricing among municipal bonds at least three times in the past 15 years, and the data have always borne out that the smaller the bloc the higher the cost, and you generally won't get institutional-level pricing on a single purchase until you're above the $1 million range. And in the case of municipals, roughly 70% of trades are under $50,000, which means most people are giving up the pricing advantage they'd get by throwing in with other investors in a fairly priced fund.

Morningstar

by Eric Jacobson

26 Mar 2019

Muni Bond Math: A Tax Time Refresher

Summary

Going forward, investors will be seeking ways to minimize that future tax burden, especially for those in states with high state and local taxes.

Municipal bonds, which are issued by state and local governments, occupy a special place in the investing landscape.

For most investors, the choice of a muni bond fund is primarily driven by the need for tax-efficient income. The income from these bonds is exempt from federal income tax and sometimes state

income taxes as well.

Tax preparers everywhere are explaining to clients what they can expect with this year's tax filing. Going forward, investors will be seeking ways to minimize that future tax burden, especially for those in states with high state and local taxes (SALT).

Municipal bonds, which are issued by state and local governments, occupy a special place in the investing landscape. The income from these bonds is exempt from federal income tax and sometimes state income taxes as well. This treatment can make them especially attractive for investors looking for ways to minimize their tax burden.

It's all in the math

To account for their tax benefit, municipal bonds tend to have lower yields than comparable taxable securities, such as corporate bonds or U.S. Treasuries. Calculating a tax-equivalent yield lets you fairly compare these two types of bonds.

The formula is straightforward:

Tax-equivalent yield = Muni bond yield / (1 – tax rate)

In 2019, the highest marginal tax bracket is 37% and the 3.8% Health Care Act tax also applies to investment income, giving us a maximum marginal tax rate of 40.8%.1 Thus, if you had a muni bond that was yielding 2%, then it had a tax equivalent yield of 3.4% (2% / (1 – 40.8%). In other words, a taxable bond would need to yield at least 3.4% to provide a comparable return.

Ramping up tax efficiency with ETFs

For most investors, the choice of a muni bond fund is primarily driven by the need for tax-efficient income. But the income is only part of the story. Here is a checklist you can use to help determine the tax efficiency of a muni bond investment:

Consider state-specific options if you live in a high-SALT state

For many investors in high-tax states, such as California or New York, only $10,000 of state income taxes can be deducted.1 State-specific funds let investors deduct bond income from their federal and state tax returns.

Minimize capital gains payouts

Both mutual funds and exchange-traded funds (ETFs) must pay out any realized capital gains. According to data from Morningstar, 33% of intermediate-term municipal bond mutual funds paid out capital gains in 2018. These distributions may be taxable events, increasing an investor's tax burden.

Look out for AMT-eligible securities

Income from bonds issued by non-governmental entities, such as a development project for a municipal airport, might be subject to the alternative minimum tax. These bonds might yield more to make up for this tax treatment, but the bond holder will have to report this income and potentially pay tax on the interest. When evaluating an individual bond, mutual fund or ETF, make sure to check for the AMT exposure. (This can typically be found in the annual report or a fund company's website.)

iShares muni bond ETFs check all three tax efficiency boxes. They have:

- Monthly income that is exempt from federal income taxes.
- A history of no capital gains payouts. Since 2007, no iShares municipal bond ETFs have distributed capital gains.
- No AMT exposure. The iShares Municipal Bond ETFs seek to track S&P Municipal Bond indexes that screen out any bonds with income subject to AMT.

Over time, tax savings can have a big impact on your bottom line. April 15 is a good reminder that tax awareness isn't a seasonal activity, but one that's good practice all year around.

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1 Source: Forbes, March 7, 2018; irs.gov.

BlackRock

Mar. 27, 2019

A Cautionary Tale for the New Muni Bond Era.

A decade after the Libor scandal, a new approach to interest rates could help U.S. states and cities – if they change their thinking.

There's a moment in Act II of Hamlet where his old college buddies are trying to convince him to look on the bright side. Sure, his dad died and his mom hooked up with his uncle, they argue, but Denmark could be worse off. Hamlet's response is one of William Shakespeare's great lines: "There is nothing either good or bad, but thinking makes it so."

Hamlet meant that our beliefs about our circumstances matter more than anything. In fact, they matter a lot more than what others tell us, even if everyone else might be right. Oddly enough, Hamlet's view offers a cautionary tale about the future of the municipal bond market.

A decade ago, two big developments rocked public finance: the Great Recession and the news that bankers in the Bard's beloved England had conspired to manipulate the ubiquitous London Interbank Offered Rate. Libor is the most common benchmark interest rate index used to make adjustments to variable rate loans. Unsurprisingly, public finance experts focused much more on the recession, but the Libor scandal may ultimately prove more important in the long run.

By early 2008, states and localities had borrowed billions of dollars at variable short-term interest rates. This made sense because short-term rates were far below the long-term rates governments were used to getting. By stringing along a series of short-term bonds, governments could borrow for the long run but pay less to service that long-term debt. Even better, with an insurance contract known as a floating-to-fixed swap, they could borrow at variable rates and pay lower long-term fixed rates. Prudent public debt managers around the country employed this strategy, especially when it saved money early in the Great Recession.

But they shortly found themselves dragged into scandal because much of that variable rate was pegged to Libor. When bankers held Libor artificially high, governments believed they paid higher short-term rates than they would have otherwise. When rates were held artificially low, floating-t--fixed swaps paid less and governments had to make extra debt service payments out of pocket.

Before the dust settled, several big banks paid millions to settle state and local governments' claims of wrongdoing. State and local leaders across the country vowed to never again venture into the variable rate market, even for bonds tied to other short-term benchmarks.

In the decade since the Libor scandal, the finance industry has worked to develop a better, more transparent benchmark. Last year, it agreed to phase Libor out and instead go with the Secured Overnight Financing Rate (SOFR). Unlike Libor, which was run by the banks and was based on bankers' expected short-term interest rates, SOFR is administered by the New York Federal Reserve and is based on the market prices of very short-term investments. In concept, that makes variable rates less susceptible to manipulation. This is a major move, considering the estimated $200 trillion in mortgages, credit cards and other assets that are tied to variable interest rates.

It's still early for SOFR. Regulators, investors and academics have generally called it a move in the right direction. But so far just a few large governments and corporations have issued SOFR-referenced debt. That will change. As investors become more comfortable with it, they will look for more SOFR-related investment opportunities. That could mean a chance to revive the moribund market for variable rate municipal debt.

When that happens, states and localities will face a difficult choice. They could stick with beliefs based in Libor-era thinking and conclude that variable rate debt is too good to be true. Or they could bring their thinking into the SOFR era and reconsider the many potential benefits of a prudent variable rate debt management strategy. By then, things will have changed in Denmark.

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

April 2019

Cash-Strapped Illinois, Chicago Seek Billions From Investors.

Despite their precarious finances, state and city leaders are turning to the bond market at what some say is an opportune time

Illinois and its biggest city kick off hundreds of millions of dollars in borrowings this week, a test of investors' willingness to lend to stressed governments prone to spending more money than they bring in.

The state launched borrowings with about a $440 million bond deal on Tuesday, followed by a sale topping $700 million by Chicago. Analysts expect what could be billions more especially from the state, as it puts together funds to do everything from paying retirees' pensions to launching capital projects.

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The Wall Street Journal

By Gunjan Banerji

Updated March 26, 2019 6:06 p.m. ET

Fitch Ratings: Fortunes May Soon Turn for the Better for U.S. NFP Hospitals

Fitch Ratings-Austin-26 March 2019: Though not over yet, U.S. not-for-profit hospitals appear to have weathered the worst of their operational challenges with more performance stability not far off, according to Fitch Ratings in a new report.

Among the developments generating the most market interest is the emergence of non-traditional competitive entrants like Amazon with grand designs to reinvent healthcare delivery. Whether they succeed in the long run remains to be seen, but it seems inevitable that these non-traditional entrants will ultimately change the way individuals interact with the sector. As such, hospitals will become more concerned with “steerage” into the providers care delivery system versus “leakage” outside the provider system.

Another headwind for the sector is payor mix, which is shrinking. Commercial contracts are yielding diminishing margins at the same time that commercial payors are decreasing as a percentage of revenue due to the growth of Medicare enrollees. “With an estimated 10,000 people set to turn 65 years old every day over the next decade, the spread between the profit generating commercial business and break-even to unprofitable government payors will continue to shrink,” said Senior Director Kevin Holloran.

Interestingly, it’s the very same Baby Boomer generation that will actually benefit some hospitals over time. “With almost all providers aiming to break even or better on Medicare, organizations that successfully absorb Medicare reimbursements will find themselves well positioned for the future,’ said Holloran. Many providers will find themselves the beneficiary of a growing book of business that is characterized by heavy healthcare usage.

Elsewhere, profitability for hospitals and healthcare systems is still on the decline, though the pace of declines appears to be leveling off. “Operating margin percentages for most hospitals are actually lower than those experienced during the Great Recession of over a decade ago,” said Holloran. “What has yet to be determined is whether margins continue to fall over the longer term, or if this is the point where the sector’s rally begins.”

Despite the heavy headwinds and pressures on operational performance, the healthcare sector has historically been successful at maintaining generally consistent margins over an extended period of time – through both ups and most importantly through downs. As such, not-for-profit hospitals will begin to find their operational footing as 2019 progresses.

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[Chicago, Illinois Bond Deals Cash In on Bond Market Rally.]

Robin Prunty, head of research at S&P Global Ratings, examines the municipal bond market amid the current bond rally. She speaks with Bloomberg's Taylor Riggs in this week's "Muni Moment" on "Bloomberg Markets."

Watch video.

Bloomberg MarketsTV Shows

March 27th, 2019, 8:21 AM PDT

S&P ESG in USPF: Connecting The Dots

Environmental, Social or Government related factors contributed to 34% of rating actions in 2017 and 2018.

Continue Reading

Mar. 28, 2019

S&P: When U.S. Public Finance Ratings Change, ESG Factors Are Often The Reason

S&P Global Ratings performed a two-year review of environmental, social, and governance (ESG) factors in our criteria and how they influenced, positively or negatively, the credit profile of our U.S. public finance (USPF) entities. These include local governments and states, as well as health care, housing, higher education, charter school, utility, transportation, and public power enterprises.

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Mar. 28, 2019

New Standards to Drive U.S. Sustainability-Linked Lending.

NEW YORK (LPC) – Global standards set in place by loan trade associations this week that tie syndicated loan pricing to companies' sustainability performance are expected to stimulate the budding U.S. green lending market.

Less than a handful of U.S. companies have issued sustainability-linked loans since the first deal for natural gas utility CMS Energy was completed last June, far lagging firms in Europe which are leading the global push to improve environmental performance.

The new sustainability standards, which were issued on Wednesday by the Loan Market Association (LMA), the Loan Syndications and Trading Association (LSTA) and the Asia Pacific Loan Market Association (APLMA), are expected to bolster borrowers' and investors' confidence in green lending.

Sustainability-linked loans are any kind of loans that incentivize borrowers with margin reductions or increases depending on their ability to meet pre-set environmental performance targets.

A lack of direction and consistency in being able to identify and measure these goals has been stifling growth so far, bankers said.

"By having pricing tied to a borrower's improvement in sustainability performance, it directly incentivizes borrowers to make improvements," said Tess Virmani, the LSTA's associate general counsel. "If market interest keeps gathering steam, then the sustainability-linked loans will find a good home in the corporate loan market."

One of the main differences between sustainability-linked loans and green loans, which are linked to use of proceeds, is that they can be raised for general corporate purposes rather than specific projects. Loans for general corporate purposes are more widely issued, which is likely to boost sustainability-linked loans.

Key characteristics of sustainability-linked deals include disclosing the loan's tie to the company's overall social responsibility strategy; having sustainability pricing targets arranged between borrower and lender; reporting on sustainability performance and external reviews, according to the new lending principles.

TESTING THE WATERS

Global water technology company Xylem Inc became the fourth U.S. company to issue a sustainability-linked loan, with an $800 million revolving credit in early March. Xylem is the first general industrial company to commit to reducing its environmental footprint this way.

The four U.S. sustainability-linked loans that have come to the market so far — two this year and two last year — tally roughly $8 billion. Banks are targeting the sector as a growth area as they seek to improve their own credentials.

"Banks want to show their growing commitment to sustainable development goals, and this is one of the products they might use to show that," said Anna Zubets, vice president at Moody's Investors Service.

Last year, sustainability-linked loans issued globally topped $36 billion, led by European companies, according to Moody's.

Global issuance in the more mature green bond market, in contrast, could jump 20 percent to $200 billion this year, the rating agency said.

"The U.S. is a little behind on the discussion but you see it happening here as well. More than 80 percent of the S&P 500 listed companies are now issuing sustainability reports and it becomes a bigger discussion among shareholders and investors and asset managers, which is what we see among our client base," said Anne van Riel, head of sustainable finance at ING.

"I expect that that will automatically carry over to more sustainable financing, whether green loans, green bonds or sustainable-linked loans."

ING was the sustainability coordinator for Xylem's deal, and helped the company to decide reasonable but ambitious performance targets to guide loan pricing.

Interest margins on Xylem's general corporate purpose revolving credit will be based on social and corporate governance ratings by independent provider Sustainalytics. Citigroup, JP Morgan, ING, BNP Paribas and Wells Fargo were lead arrangers and bookrunners.

Pricing is initially based on ratings, opening at 110 basis points over Libor with a 15-basis points facility fee, and then will be adjusted up or down by up to 5 basis points based on its ability to achieve predetermined sustainability targets, according to a regulatory filing.

The other sustainability-linked loans completed in the United States so far include global logistics real estate group Prologis Inc in January, renewable energy and utility company Avangrid Inc last July and electric and natural gas utility CMS Energy and its main unit Consumers Energy last June.

"Some treasurers and CFOs are a bit more conservative, and when they see their peers doing it or see more market activity they will also follow," said van Riel.

Having clear standards for the asset class is a way to hold management accountable for promises made, and make green identification more than a marketing tool.

"In order for money to continue to flow into these kinds of products, reporting standards are going to have to develop and mature so the market can be credible and management can be held accountable for goals," Zubets said,

"Investors can have trust that if something is labeled as green it is actually going to deliver an impact."

Reuters

by Lynn Adler

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Reporting By Lynn Adler; Editing by Tessa Walsh and Michelle Sierra

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What Are Green Bonds and How 'Green' Is Green?

Trillions of dollars of investment are needed to combat global warming. Enter green bonds, a way for issuers to raise money specifically for environmentally friendly projects — such as renewable energy or clean transport — and to be able to boast about it publicly. Fund managers also like the notes as a way of meeting growing investor demand for sustainable options. The market, which opened slowly more than a decade ago, has boomed in recent years, helping spur development of other socially conscious debt products. Because investors face the challenge of judging whether a note is truly green, regulators are working on standards to help guard against greenwashing, or misleading claims about just how good a friend to the environment an issuer is.

1. What do green bonds finance?

Green bond proceeds can go toward new or existing projects that are meant to have positive environmental or climate effects. Inside that, the range is vast. It covers energy, transport, waste management, building construction, water and land use. Some definitions also include communications and information technology.

2. How big is the global green-bond market?

A cumulative $580 billion of green bonds were sold through 2018, according to Bloomberg New Energy Finance. Another $170 billion to $180 billion are likely to be sold in 2019 based on what's currently happening in the market, BNEF analyst Daniel Shurey says. The market is expected to keep growing, with Europe alone needing about 180 billion euros ($203 billion) of additional investment a year to achieve 2030 emission targets set by the European Union in the 2015 Paris Agreement on climate change. For now, however, green bonds are a tiny fraction of the more than $100 trillion global bond market.

3. Who sells green bonds?

Issuers from more than 50 countries have sold green bonds including supranational institutions such as the World Bank and the EU's European Investment Bank. Companies are also in the market, along with local, state and national governments. The first emerging-market green bond was issued in South Africa in 2012. Poland opened the sovereign market in 2016, followed by the likes of France, Belgium and Ireland. The U.S. is the largest source overall, led by the mortgage giant Fannie Mae and local governments selling notes to finance infrastructure such as sewerage upgrades.

4. Who decides whether a bond is green?

It's complicated. Many issuers say they follow the Green Bond Principles, endorsed by the International Capital Market Association in 2014 to bring transparency to the market. The principles are voluntary, covering how to spend and manage proceeds, how to evaluate if a specific project is green-worthy, and what type of reporting to put in place. A slew of companies offer services to independently assess, verify or certify a bond's green bona fides. They include ratings companies such as Moody's Investors Service; the Climate Bonds Initiative, which created the first green-bond standard in 2010; and specialized firms such as Paris-based Vigeo Eiris, Amsterdam-based Sustainalytics, and Cicero Shades of Green, a unit of the Norwegian climate research institute Cicero. (Bloomberg LP, the parent of Bloomberg News, provides a green-bond tag and the related disclosures of issuers.)

5. Just how green are green bonds?

It can sometimes be difficult to say given the lack of globally accepted standards or consistent verification. The perception of what's green can differ, too. China, the world's biggest carbon emitter and No. 2 green-bond issuer, has faced criticism for using green bonds to finance coal-burning power plants, even if the new facilities are cleaner than predecessors. Reports say Chinese regulators may drop so-called clean coal from green-bond definitions to harmonize them with EU standards and win international investors. In its analysis, Oslo-based Cicero uses three shades of green:

- dark green for things that will lower carbon emissions in the long run like wind energy
- medium green for things that take a good step forward such as plug-in hybrid buses
- light green for environmentally friendly steps that won't change the long-term outlook on their own, such as more efficient fossil-fuel infrastructure

New coal projects get labeled brown for being in opposition to what Cicero calls a “climate-resilient future.” There’s also debate over whether an issuer’s overall environmental commitment or carbon footprint should be taken into account. Poland’s sovereign green bonds were snubbed by at least one major investor because of the country’s reliance on coal and its mixed record on climate action. In 2017, Madrid-based Repsol SA became the first major oil company to sell green bonds.

6. Is there hope for a global green bond standard?

Yes. The EU is creating a Green Bond Standard, which will build on current market practices, such as the ICMA Green Bond Principles. Issuers from anywhere in the world will be able to cite compliance, if their plans are independently verified by an EU-accredited assessor. However, the new standard will be voluntary, rather than legally binding. The European Commission, the EU’s executive arm, has directed a group of experts to make recommendations. The International Organization for Standardization is also preparing a Green Bond Standard that will draw upon existing principles.

7. Who buys green bonds?

In general, it’s the same as the rest of the bond market — institutional investors including pension funds, insurance companies and asset managers. The overall green market is also getting a boost from investors seeking “responsible” or “sustainable” places to put their money. That has helped Europe’s listed green funds double assets under management since 2013 to more than 32 billion euros in 2017, according to Novethic, a sustainable finance data provider. In 2015, France became the first country to require institutional investors to report how they consider environmental factors. The EU is likely to encourage asset managers across the bloc to integrate sustainability requirements into investment decisions as part of its work on the Green Bond Standard.

8. Does green investing mean compromising on returns?

Not necessarily. The vast majority of green bonds are investment grade and they are priced similarly to conventional debt at issuance. Growing investor demand and relative scarcity could also help boost secondary market prices. In the euro market, green bonds returned 0.34 percent in 2018, while the overall investment-grade market returned 0.41 percent, based on Bloomberg Barclays indexes. But for issuers themselves, bringing a green bond to the market can entail additional costs to cover getting an external opinion and report annually on the use of proceeds.

9. Are green bonds the same as sustainable bonds?

No. Green bonds are used solely for environmental goals, while sustainable bonds combine both environmental and social objectives. There are also social bonds, whose proceeds are dedicated to projects aimed at improving social welfare or helping disadvantaged populations. The range of socially conscious instruments keeps growing as more investors look to do good while making money, and regulators look to the instruments to influence policy and investment decisions. There are now loans linked to specific environmental, social or governance targets, which give companies an incentive to achieve what they say they will. And in October, the Seychelles sold the world’s first sovereign blue bond, debt issued to finance marine and ocean-based projects that have positive environmental, economic and climate benefits.

Bloomberg QuickTake Analysis

By Lyubov Pronina | Bloomberg March 29

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20 Issues to Track in the Second Tranche of OZ Guidance.

Five months ago, the Treasury department issued its first tranche of proposed regulations concerning the opportunity zones (OZ) tax incentive, releasing 74 pages of regulations, a revenue ruling, an updated Q&A document and a draft of Internal Revenue Service Form 8996.

In the next few weeks, the second tranche will be released. It will include a request for comments and be followed by a public hearing. What will the second set of guidance include? The issues addressed will likely include many of those presented at the most recent public hearing and included in comment letters, as well as Treasury's assessment of areas most in need of guidance.

The following is a summary of 20 OZ guidance areas that Novogradac is closely tracking as we await the second tranche of guidance. How these issues are addressed will go a long way in determining the success of the OZ incentive in facilitating the investment of equity capital in real estate and operating businesses in distressed communities.

This list is segregated into six broad categories (and assumes a working knowledge of the OZ incentive):

- Compliance testing/calculations
- Operating businesses
- Real estate
- Renewable energy
- Corporations
- Fund management
- Compliance testing/calculations

1. 90 percent and 70 percent asset test. Last year's proposed regulations require that qualified opportunity funds (QOFs) and qualified OZ businesses use generally accepted accounting principles (GAAP) to calculate compliance with the 90 percent and 70 percent asset tests, if they have applicable financial statements. Mandating the use of GAAP to value tangible property is not a suitable valuation method for several reasons. (For additional discussion, see page 8 of the Novogradac Opportunity Zones Working Group (OZWG) Dec. 28, 2018 letter to the Internal Revenue Service (IRS).) The final regulations should allow QOFs and qualified OZ businesses to elect to use unadjusted cost basis to value tangible property regardless of whether or not they have an applicable financial statement.

2. When must a qualified OZ business begin. In order for investments in corporations and partnerships to qualify as opportunity zone property (OZ property), the statute requires that as of the time such interest was acquired, such corporation/partnership was a qualified OZ business (or, in the case of a new corporation/partnership, such corporation was being organized for purposes of being a qualified OZ business). Treasury guidance is needed that provides new businesses that are being organized for the purpose of being a qualified OZ business and existing businesses that are expanding within or into OZs time to acquire and/or improve tangible property and put such property to active use in OZs. (For additional discussion, see page 6 of the OZWG July 16, 2018 letter to the IRS.)

Operating businesses

3. Measuring 50 percent of gross income in OZs. The proposed regulations require that at least 50 percent of the gross income of a qualified OZ business be derived from the active conduct of a trade or business in the OZ. Practitioners need further guidance on how to measure that. Treasury should provide a safe harbor for the 50 percent test that could include such things as location of employee services, location of tangible property and the location where economic value is created. The determination should not be solely based on the location of the customers of the business. (For additional discussion, see page 5 of the OZWG Nov. 26, 2018 letter to the IRS.)

4. Leased property. Under the statute, OZ property must be "purchased." However, the substantially all test for qualified OZ businesses refers to tangible property owned or leased. Guidance is needed as to how to value leased property for purposes of the substantially all test, as well as how to apply the original-use requirement for leased property. (For additional discussion, see page 6 of the OZWG Nov. 26, 2018 letter to the IRS.)

5. Intangible property. The proposed regulations require that a substantial portion of the intangible property of a qualified OZ business be used in the active conduct of a trade or business in the OZ. Guidance is needed regarding (i) the meaning of the term "substantial," (ii) the meaning of the phrase "used in the active conduct of a trade or business," (iii) a method for measuring the portion of intangible property used in a business, and (iv) a method for determining whether a business's intangible property is used in the OZ. (For additional discussion, see page 16 of the OZWG Dec. 28, 2018 letter to the IRS.)

6. Reasonable working capital definition. Proposed regulations created a reasonable working capital safe harbor for qualified OZ businesses to acquire, construct and/or substantially improve tangible property. However, new and expanding operating businesses also need working capital to cover expenditures such as payroll, inventory and occupancy costs during the startup phase. A similar working capital safe harbor is needed for operating expenditures. (For additional discussion, see page 12 of the OZWG Dec. 28, 2018 letter to the IRS.)

7. Substantial improvement and aggregation of assets. Qualified OZ business property must have its original use in an OZ with a QOF or a qualified OZ business, or the QOF or qualified OZ business must substantially improve the property. Property is treated as substantially improved by the QOF or a qualified OZ business only if, during any 30-month period beginning after the date of acquisition of such property, additions to basis with respect to such property in the hands of the QOF or qualified OZ business exceed an amount equal to the adjusted basis of such property at the beginning of such 30-month period in the hands of the QOF or qualified OZ business. To facilitate the qualification of an existing operating business as a qualified OZ business, it would be quite helpful if, at the election of the taxpayer, the substantial improvement requirement could be met by an operating business on an aggregate basis–where the acquisition of tangible property over any 30-month period exceeds the aggregate adjusted basis of existing tangible property held by the business at the beginning of a 30-month period. (For additional discussion, see page 2 of the OZWG Dec. 28, 2018 letter to the IRS.)

Real estate

8. Refinancing in excess of basis. Guidance is sought on tax consequences for debt-financed distributions from a partnership QOF, especially due to an increase in the fair-market value of a business. At issue is whether such distributions trigger recognition of deferred gain or affect qualification for the 10-year hold fair-market-value step-up election. (For additional discussion, see page 8 of the OZWG July 16, 2018 letter to the IRS.)

9. Substantial improvement requirement for unimproved land. It remains unclear whether unimproved land needs to be substantially improved to meet the substantial improvement test and Treasury could settle that issue. (For additional discussion, see page 9 of the OZWG Nov. 26, 2018 letter to the IRS.)

10. Original use requirement and vacant buildings. The proposed regulations ask whether some period of abandonment or underuse of tangible property erases a property's history of prior use in the OZ and if so, should such a fallow period enable subsequent productive use of the tangible property to qualify as "original use." To facilitate the improvement of vacant or underused property, prior use should be disregarded for property vacant or idle for at least a one year. (For additional discussion, see page 1 of the OZWG Dec. 28, 2018 letter to the IRS.)

11. Treatment of IRC Section 1231 Gains. Section 1231 gains are required to be netted with Section 1231 losses to determine the amount, if any, of capital gains a taxpayer has. This brings into question when the 180-day window to invest Section 1231 gains begins, and whether partnerships can invest gross Section 1231 gains into a QOF. (For additional discussion, see page 4 of the OZWG Dec. 28, 2018 letter to the IRS.)

12. 31-month working capital safer harbor–issues beyond taxpayer's control. The proposed regulations provide qualified OZ businesses with a 31-month safe harbor to hold funds, but make no provision to extend that period for issues beyond their control. It is not uncommon for real estate and other developments to experience delays that are beyond the businesses control–such as delayed permitting and other municipal approvals, contract disputes, supply embargoes, labor stoppages, extreme weather events and national disasters. Additional flexibility is needed to give investors comfort that businesses experiencing these unforeseen delays will not be disqualified. (For additional discussion, see page 12 of the OZWG Dec. 28, 2018 letter to the IRS.)

13. Residential rental property and triple net leases. Guidance is needed as to whether renting property pursuant to a triple-net lease can be an active trade or business and final confirmation is desired that operating residential rental property can be an active trade or business. (For additional discussion, see page 10 of the OZWG Nov. 26, 2018 letter to the IRS.)

Renewable energy:

14. Depreciation recapture under Section 1245. The sale of a partnership QOF interest, after holding the investment for 10 years, will generally result in no net gain, because of the 10-year hold fair-market-value election. However, if the QOF has a direct or indirect partnership interest in depreciated personal property, it is unclear if the investor must recognize ordinary income recapture and a corresponding capital loss. This issue is particularly significant for the renewable energy community.

Corporations:

15. Consolidated group rules. Neither the statute nor the regulations address whether capital gains of one member of a consolidated return group of corporations can be treated as capital gain of other members of the consolidated return group so that gains may be aggregated under a single deferral election by the consolidated return group for purposes of the OZ statute. Guidance is needed as to the proper treatment of QOF investments within a consolidated group. (For additional discussion, see page 10 of the OZWG Dec. 28, 2018 letter to the IRS.)

Fund management:

16. Reasonable time to invest and working capital allowance. QOFs need time to make investments. The OZ statute explicitly states that Treasury guidance is needed to provide a reasonable time for a QOF to reinvest the return of capital from the sale of investments in OZ property. Likewise, QOFs need adequate time to assemble and underwrite initial OZ property investments. Treasury regulations provided qualified OZ businesses a safe harbor, allowing funds to be held for up to 31 months if there is a written plan in place that follows specific requirements. A similar safe harbor is needed for QOFs. (For additional discussion, see page 1 of the OZWG Nov. 26, 2018 letter to the IRS.)

17. Interim gains at fund level. In the first tranche of guidance, Treasury asked whether interim gains should be subject to tax. If yes, an additional question is whether a partnership operating as a QOF can make the election on behalf of its investors to reinvest, rather than being required to make a distribution and for the investors to then reinvest in the same or another QOF. (For additional discussion, see page 1 of the OZWG Mar. 9, 2018 letter and page 2 of the OZWG Nov. 26, 2018 letter to the IRS.)

18. Time to reinvest interim gains for purposes of 90 percent test. If QOZP is sold for cash, it is no longer a qualified investment for the 90 percent test–but the OZ statute allows a reasonable time to reinvest. Treasury could provide a definition of "reasonable time," which should be at least one year. (For additional discussion, see page 1 of the OZWG Nov. 26, 2018 letter to the IRS.)

19. Exit approach in wind-down period. The OZ statute provides a fair-market-value step-up benefit only if a taxpayer sells its investment in a QOF. That requirement is counter to the way funds generally unwind. Treasury could issue rules that provide that if a QOF disposes of assets after 10 years, pursuant to a plan of liquidation, then the QOF investors can treat such sales in a manner equivalent to selling an interest in a QOF.

20. Appreciated property contribution and carried interest. The statute and proposed regulations do not specify whether investments in QOFs must be cash, or can include property or services. Guidance is needed. If eligible investments include contributions of property, anti-abuse rules are needed to regulate contributions of appreciated property. (For additional discussion, see page 20 of the OZWG Dec. 28, 2018 letter to the IRS.)

This list of 20 OZ guidance areas that Novogradac is closely tracking is not an exhaustive list, but how they are addressed will go a long way in determining the success of the OZ incentive in facilitating the investment of equity capital in real estate and operating businesses in distressed communities. What issues would you add to this list? Email your ideas to cpas@novoco.com.

Join us in Denver
Join OZ investors, fund managers, businesses, community leaders and advisers to discuss this guidance and other timely OZ topics at the Novogradac 2019 Opportunity Zones Spring Conference, April 25-26 in Denver.

Published by Michael Novogradac on Thursday, March 21, 2019 – 12:00am

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Small Cities Feel the Clock Ticking on Opportunity Zones.

David Nikoloff spends his days thinking about real estate and economic development in small

Pennsylvania cities that have proud industrial pasts with names you might recognize, like Bethlehem Steel. In a changing global economy, while there's still a lot of pride in Bethlehem or Lancaster or Reading, there seems to be less and less capital, especially for small businesses. It's made it hard to bounce back after de-industrialization.

"With the consolidation of banks, some acquired market share and inherited a bank in Lancaster, and they honestly didn't know what to do with it," Nikoloff says. "God love 'em, but they knew nothing about south central PA or Berks County."

Nikoloff is vice president for real estate lending at Community First Fund, a nonprofit loan fund based in Lancaster, Pennsylvania. Founded in 1992, the loan fund has built up a $42.5 million small business loan portfolio, with clients borrowing money to purchase and renovate buildings for everything from barbershops and a barber school, to locally owned grocery stores, restaurants, and cafe-bakeries. As a federally certified community development financial institution, no less than 60 percent of Community First Fund's loans go to businesses located in low- and moderate-income census tracts.

Continue reading.

NEXT CITY

by OSCAR PERRY ABELLO

MARCH 26, 2019

Direct Purchases of Bonds By Banks: A Popular Alternative for Municipalities.

Traditionally, municipalities have sold bonds through competitive sales and negotiated sales. In a competitive sale, bids from interested buyers are opened at the advertised time and place, and the issuer awards the sale to the successful bidder by a sale resolution or an award order signed by an authorized official.

The closing of the issuance of the bonds usually occurs roughly seven to ten days thereafter.

In a negotiated sale, the issuer typically selects a bond underwriter, which markets the bonds. The issuer and the underwriter then negotiate the terms of the bond, and the closing occurs about one to two weeks later.

Municipalities have increasingly used a third method to sell bonds – "direct purchases" by banks or financial institutions, including community, regional and national banks. Bank direct purchases ("BDPs") have become a popular alternative to competitive or negotiated sales of municipal bonds. BDPs can benefit municipal bond issuers by saving them time and expenses compared to competitive or negotiated sales.

BDPs are usually quicker and less expensive for municipalities than competitive or negotiated bond sales because they impose fewer requirements on the issuer:

- No published Notice of Sale in The Bond Buyer (national newspaper of the municipal bond industry)
- No underwriter (and no underwriter's discount or fee)

- No placement agent (and no placement agent's fee)
- No Preliminary Official Statement or final Official Statement (disclosure documents)
- No bond ratings (and no rating agency fees)
- No Continuing Disclosure Undertakings for the purchased bonds
- No CUSIP number for the purchased bonds
- Sometimes no bond trustee; rather, a local official may be the Transfer Agent
- Sometimes no Bond Purchase Agreement; rather, a bank term sheet or commitment letter is more commonly used

No book-entry-only registration; rather, the registered bondholder is the bond buyer
These advantages make BDPs an attractive option for municipalities. In BDPs, the interest rate may be a fixed or variable rate, as agreed between the issuer and bank. The term of the bonds may range from under 10 years to 15 years, as agreed between the issuer and bank. The bonds may or may not be tax-exempt bonds for federal income tax purposes.

Although BDP transactions can be attractive to both municipalities and bank purchasers, they can involve many special considerations that are beyond the scope of this article.

Scott H. Hogan

USA March 27 2019

Foster Swift Collins & Smith PC

[How Public Pensions Could Trigger the Next Financial Crisis.]

Given that public pension funds are now the dominant investors around the globe, and the fact that agencies are scrambling to raise taxes to catch up on massive unfunded liabilities, he expects the credit boom to continue at least a few more years. … This other extreme view comes from the Modern Monetary Theory, and Reynolds believes it is just as wrong as the expectation of disaster any minute now.

Read the full article on: ValueWalk

Truth in Accounting

Michelle Jones | April 1, 2019

[OZ Framework: Measuring Impact in Opportunity Zones (Podcast Episode #18)]

Should the Treasury Department impose a community impact reporting requirement on Opportunity Zone investing? And what would a reporting framework even look like? Earlier this year, the U.S. Impact Investing Alliance, in partnership with Georgetown University's Beeck Center for Social Impact + Innovation, created the Opportunity Zones Reporting Framework — a guideline that defines best

Continue reading

March 27, 2019

Future Growth of Public Finance Advisory Market 2019-2026 Analysis with Major Player Deloitte, the Hackett Group, KPMG, Forbes, EY, Accenture, L.E.K. Consulting, PwC.

Miami, FL — (SBWIRE) — 03/31/2019 — Public Finance Advisory is a study of the role of government in the economy. It is one of the adjustments to assess government revenue and government spending by government authorities, achieve desirable effects and avoid undesirable consequences. Helping municipal and not-for-profit entities to structure and arrange tax-exempt debt transactions to meet their financing needs.

This research report which has been made by using primary and its subordinate techniques. During the analysis of the Public Finance Advisory market, the existing industries, as well as upcoming startups have been considered. It helps to make informed decisions in the businesses. Well explained Porter's five analysis and SWOT analysis have been used by a researcher of the report.

For Sample Copy of Reports: https://www.qyreports.com/request-sample?report-id=116097

Companies Profile: Deloitte, The Hackett Group, KPMG, Forbes, EY, Accenture, L.E.K. Consulting, A.T. Kearney, Bain & Company, Boston Consulting Group, Booz Allen Hamilton, McKinsey & Company, Mercer, PwC, JPMorgan Chase & Co., Crisil, ICICI, IFCI, BNY Mellon, Raymond James, Oliver Wyman, Accenture, etc.

The business profiles of leading key players have been profiled to get a detailed description of applicable strategies carried out by top-level companies. The global Public Finance Advisory market has been analyzed in terms of the competitive landscape. It highlights the cost of Public Finance Advisory industries. This research report helps to provide the proper guidelines for boosting the performance of the companies. Detailed information of several clients, vendors, and sellers have been included in the report. Financial terms such as prices, shares, and profit margin have been presented in terms of facts and figures.

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The objectives of the Public Finance Advisory Market report are:

– In-depth analysis of the degree of competition across the globe
– Estimation of global market values and volumes
– Business profiling of prominent companies across the global regions like North America, Latin America, Middle East, Asia-Pacific, Africa, and Europe
– Detailed elaboration on global market value, volume, and penetration
– Global market growth projections
– Detailed description on development policies and plans

It takes a closer and analytical look at the various companies that are striving for the global Public Finance Advisory market. To get more clients rapidly, different applicable sales strategies have been mentioned in the report. The statistical surveying report on Public Finance Advisory market predicts the growth of Public Finance Advisory industries in the near future. A notable feature of the report is an analysis of applications, end-users, size and technical platforms.

Any query, ask to our expert@ https://qyreports.com/enquiry-before-buying?report-id=116097

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Chapter 8 Major Key Vendors Analysis of Public Finance Advisory Market
Chapter 9 Development Trend of Analysis
Chapter 10 Conclusion

If you have any special requirements, please let us know, we will offer you the report as per your needs.

SALT-Fueled Rally in Muni Market Faces Tax-Day Test.

- **Muni mutual funds have drawn most cash since records began**
- **But analysts wonder if it's based on reality or perception**

The rally in the $3.8 trillion municipal-bond market is about to face a major tax-season test.

All year, analysts have credited the $10,000 cap on state and local tax deductions for driving a record-setting amount of cash into tax-exempt debt as investors look for ways to cut what they owe to the federal government. The wave of money helped propel a five-month rally that's pushed yields on some municipal bonds to the lowest against Treasuries since at least 2001.

But it's still not clear whether that influx was driven by investors who were sure to face higher tax bills — or those who just feared they would. Analysts are now watching to see if there's a pullback after the last tax returns are due on April 15 should the hit be smaller than expected. And there's also the chance some who are paying more this year will sell bonds to raise cash for their tax bills.

Continue reading.

Bloomberg Markets

By Amanda Albright

April 1, 2019

TAX - WISCONSIN

State ex rel. Peter Odgen Family Trust of 2008 v. Board of Review

Supreme Court of Wisconsin - March 14, 2019 - 923 N.W.2d 837 - 2019 WI 23

Taxpayers sought certiorari review of decision of the town's board of review to sustain property tax assessment that was based upon assessor's change in the classification of taxpayers' property from agricultural and agricultural forest to residential.

The Circuit Court upheld board's decision. Taxpayers appealed, and the Court of Appeals reversed. The Supreme Court granted certiorari review.

The Supreme Court of Wisconsin held that lots were chiefly put towards the growing of Christmas trees, apples, and hay, and thus were devoted primarily to agricultural use and were entitled to be classified as "agricultural lands" for tax purposes.

Two lots were chiefly put towards the growing of Christmas trees, apples, and hay, and thus were devoted primarily to agricultural use and were entitled to be classified as "agricultural lands" for tax purposes, where landowners maintained a barn and a one-acre apple orchard on the smaller of the two lots, the remainder of the lot consisting of untillable forest, apple trees were individually staked out and planted in clean rows, larger of the two lots contained a four- to five-acre Christmas tree farm and a three-acre hayfield, Christmas trees were individually staked out and planted in clean rows, and landowners consistently planted and harvested hay in the hayfield and planned to harvest the field again.

TAX - LOUISIANA

2590 Associates, LLC v. Commissioner of Internal Revenue

United States Tax Court - January 31, 2019 - T.C. Memo. 2019-3 - 2019 WL 413619 - 117 T.C.M. (CCH) 1010

Tax matters partner for limited liability company (LLC) treated as a partnership for federal taxation purposes petitioned for review of final partnership administrative adjustment (FPAA) which denied worthless debt deduction for bridge loan to developer that developer had failed to repay.

The Tax Court held that:

- LLC was entitled to claim worthless debt deduction;
- State law supported finding that lender's transfer of debt to LLC did not negate legitimacy of the debt; and
- Debt became worthless in tax year in which private activity bonds were terminated and district court dismissed developer's counterclaims and affirmative defenses in foreclosure case.

Individual lender's transfer of debt, a bridge loan he had extended to property developer, to limited liability company (LLC) in exchange for equity interest therein did not negate the legitimacy of the debt, and thus, debt was bona fide and LLC could claim a worthless debt deduction when developer defaulted on repayment of the loan; transaction postponed need for development company to repay the debt, it did not discharge the debt, and while the development company and LLC had common, related owners, they did not have identity of ownership, and further, bona fide debt existed between development company and LLC, since LLC held a promissory note with a fixed maturity date and accrued interest at above-market rate, interest increased upon default, and at time of note's transfer, LLC fully intended to collect the debt from development company.

State law supported finding that individual lender's transfer of debt, a construction bridge loan to developer, to limited liability company (LLC) in exchange for equity interest therein did not negate the legitimacy of the debt, for purposes of LLC's claimed worthless debt deduction when developer defaulted on repayment of the loan; the underlying debt continued to exist, as there was no novation, as required by state law to release debtor of its liability to a creditor, but rather, a creditor's valid assignment of a promissory note.

Bridge loan to developer for construction project became worthless, for purposes of worthless debt deduction from income taxes, not in tax year that foreclosure proceedings were started or in tax year when final judgment of foreclosure was issued, but rather, in tax year in year in which private activity bonds were terminated, since note had value at beginning of that year, and with termination of the bonds, developer did not see viable means to obtain refinancing of the project, and also, the developer's negotiations to avoid foreclosure broke down in that year and the district court dismissed developer's counterclaims and affirmative defenses in the foreclosure case.

TAX - ILLINOIS

City of Chicago v. City of Kankakee

Supreme Court of Illinois - March 21, 2019 - N.E.3d - 2019 IL 122878 - 2019 WL 1292293

Plaintiff municipalities brought action against defendant municipalities, brokers, and internet retailers, seeking to recover use tax revenue that was purportedly unjustly retained by defendants under an alleged scheme by which they misreported situs of online retail sales.

The Circuit Court entered an order dismissing claims, and plaintiffs appealed. The Appellate Court reversed and remanded. Leave to appeal was granted.

The Supreme Court of Illinois held that Illinois Department of Revenue had exclusive jurisdiction over plaintiff municipalities' claims against defendant municipalities, brokers, and internet retailers to recover use tax revenue that was purportedly unjustly retained by defendants under an alleged scheme by which they misreported situs of online retail sales, since Department was vested with sole authority to audit disputed transactions and to distribute and redistribute tax revenue due to any error.

Q1 2019 Review: Tax-Free Municipal Bond - A Shining First Quarter For Munis

Summary

- Muni supply is down. The drop last year has carried over to this year.
- Demand is also higher, particularly in the high-tax states like New York, New Jersey, and California.
- In the past few weeks, longer-maturity munis have also declined in yield as investors have moved further out on the yield curve to secure incremental yield.
- Clearly, there has been a reversal in bond market sentiment since last October, when the 10-year Treasury reached nearly 3.25%.

The first quarter of 2019 was a good one for the tax-free bond market, with yields falling during the quarter.

There are two main reasons that munis have had a good run so far this year.

Muni supply is down. The drop last year has carried over to this year. Remember, 2018 supply was down almost 25% compared to 2017 supply, in part due to the glut that was issued at year-end 2017 to beat the tax bill. The market has struggled with lower supply since. A great deal of the drop in supply can be traced to the 2017 tax reform act, which prohibited advance refundings of older, higher-coupon municipal bonds. Refundings were an important source of supply in past years, particularly in 2014 and 2016.

Demand is also higher, particularly in the high-tax states like New York, New Jersey, and California. Because of the SALT provisions of the tax bill, the cost (in terms of foregone yield) of owning out-o--state bonds in these states is much higher. We don't see this demand factor changing. (See our February piece regarding the SALT conundrum.)

In the past few weeks, longer-maturity munis have also declined in yield as investors have moved further out on the yield curve to secure incremental yield. Also, the more dovish stance by the Federal Reserve since year end, reinforced in the March Federal Reserve meeting, has seemed to ease retail investors' normal reluctance to invest in longer maturities. The tax-free muni yield curve is also much steeper than the Treasury yield curve is, with the difference between 10- and 30-year AAA munis at approximately 80 basis points, while the difference between 10- and 30-year Treasuries is only 44 basis points.

What does all this positive movement in the muni market mean?

Clearly, there has been a reversal in bond market sentiment since last October, when the 10-year Treasury reached nearly 3.25%. The 10-year is back to a 2.45 yield, but the drop of 80 basis points has been accompanied by almost no drop in the rate of core inflation (nor any rise). And even though headline inflation has fallen (mainly due to oil), the drop in real yields has caused us to reassess bond markets in general and tax-free bonds in particular.

We think the SALT provisions are resulting in people – particularly in high-tax states – paying more this year in income taxes. In a market that has seen a resumption of bond fund inflows, we are concerned that the approaching tax deadline may see some bond selling, either directly or in bond fund form, to pay for the taxes.

We are also concerned that state and local governments – again, particularly those in high-tax states – will be under pressure from their citizens to cut taxes to make up for the extra taxes being borne because of the SALT provisions. If high-tax states oblige but don't cut expenses, debt service coverage could suffer.

Last fall, we thought real rates were high, bond selling was overdone, and the muni yield of 4%-plus was a giveaway. That yield bogey is very hard to find in a bond market that has done an about-face in the past four months. Thus, we are getting more defensive at the margin to make sure we are positioned to take advantage of any volatility accompanying April 15th. When it gets crowded at our end of the boat, we generally start moving to the other end.

Seeking Alpha

by David Kotok
Chief Investment Officer, Wealth Preservation, portfolio strategy
Cumberland Advisors

SEC Charges College Controller with Fraud.

Keith Borge of the College of New Rochelle agreed to a partial settlement over allegations he misstated assets.

The Securities and Exchange Commission announced charges against the former controller of the College of New Rochelle, Keith Borge, alleging he defrauded municipal securities investors by concealing the college's poor financial condition.

Investigators said Borge created false financial records, did not file payroll tax submissions, and did not assess the collectability of pledged donations that were unlikely to be received as donors became frustrated with the college's operations.

Investigators said Borge's misconduct resulted in the college's financial statements for its 2015 fiscal year falsely overstating net assets by almost $34 million.

In a parallel action, the U.S. Attorney's Office for the Southern District of New York announced criminal charges against Borge for violating antifraud provisions of federal securities laws.

Borge agreed to a partial settlement of the SEC charges. He pleaded guilty to one count of failing to pay over federal payroll taxes and one count of securities fraud in White Plains federal court.

"Financial difficulties are no excuse for engaging in accounting misconduct and concealing critical information from investors," LeeAnn Ghazil Gaunt, the chief of the SEC enforcement division's public finance abuse unit, said in a statement.

The SEC did not charge the College of New Rochelle, citing the school's extensive cooperation and remediation.

Under Borge's partial settlement, monetary sanctions were still to be determined. The partial settlement was subject to court approval.

Prosecutors also alleged Borge also defrauded the City of New Rochelle Industrial Development Agency by providing false and misleading statements in the college's financial statements. The development agency issued $35.7 million in bonds to pay for the renovation of campus facilities, including the library and administration building.

The scandal at the college was exposed in 2016 after $31 million in debts were discovered after Borge retired.

Borge had worked at the college since 1979. He faces up to 20 years in prison.

cfo.com

by William Sprouse

March 29, 2019

Why Billions in Disaster Recovery Remain Unspent for 2017 Hurricanes.

A new GAO report signals bad news for places that will try to rebuild after the Midwest flooding.

Historic flooding in the Midwest has left millions of acres under water in 10 states after a "bomb cyclone" storm brought heavy snow and drenching rains. And it's far from over. Weather forecasters say more precipitation is on the way.

The task list for the cleanup and recovery is already mounting. So far, the floods are affecting the safety of more than a million private water wells; farms won't be able to plant crops this year; and Superfund waste sites are inaccessible.

And when it comes to getting the money to rebuild, states and localities in the Midwest likely have a long wait ahead of them.

According to a new report from the U.S. Government Accountability Office (GAO), states and localities have still barely tapped the billions in federal funding for 2017's major hurricanes.

Continue reading.

GOVERNING.COM

BY LIZ FARMER | MARCH 29, 2019 AT 4:00 AM

S&P Webcast Replay: Request for Comment: Issuer Credit Ratings Linked to U.S. Public Finance Obligors' Creditworthiness

Mar. 28, 2019 | New York

S&P Global Ratings analysts from the U.S Public Finance and Methodologies teams held a live, interactive webcast on Thursday, March 28, 2019 at 2:00 p.m. Eastern Daylight Time, where they discussed the recently released Request for Comment: Issue Credit Ratings Linked to U.S. Public Finance Obligors' Creditworthiness.

View The Webcast Replay

S&P Extra Credit: What Makes Charter Schools Unique

Why does the charter school sector tend to have lower ratings than other sectors within USPF? Listen to Lisa Schroeer talk with Jessica Wood, Kaiti Wang and Luke Gildner about charter schools. We cover the sector broadly and then dive deeper into Colorado and California charter schools. We highlight trends, differences and similarities.

Listen to Audio

Mar. 25, 2019

Economics in Brief: Three City Bank Models | Finance Policy Passion | Pot Banking Progress

Here's what got our attention in the world of economic policy and practices this week. If you have a story idea for The Bottom Line, email our senior economics correspondent, Oscar Perry Abello, at oscar@nextcity.org. — Next City editors

Big Public Bank Deposit

San Francisco's treasurer released the Municipal Bank Feasibility Task Force Report last Friday. The findings didn't make the front pages — the city was up against another report delivered by some guy named Mueller that day — but the task force's analysis of three models for municipal-owned banks is worth digging into. BTW, here's how this whole deep dive came to be in S.F.

Must-See Livestreams

Reason #436 that Oscar Perry Abello is the Next City senior economics correspondent you need in your life? He says this profile in The American Prospect, "Congress's New Progressives Take On the Banks," "sums up a lot of why I'll be excited to watch livestreams of House Financial Services Committee hearings for the next year." We can't blame him: Chances are you've seen at least one viral video this month of someone being grilled by committee member Alexandria Ocasio-Cortez. With old and new legislators from major urban areas, everything from the Community Reinvestment Act to strengthening minority-owned banks is on the policy table.

Bipartisan Support for Pot Banking Bill

Speaking of the House Financial Services Committee, members moved a bill along Thursday that would help legal pot entrepreneurs get better access to financial services. As Roll Call reported, at a congressional hearing on the bill, the owner of a Washington, D.C.-based dispensary testified how current barriers more harshly affect less wealthy, minority cannabis entrepreneurs. Next City will continue to report on the growing activism by advocates looking to ensure economic inclusiveness in the industry as profits flow. Here's our latest on that movement, in Chicagoland.

NEXT CITY

MARCH 29, 2019

EPA Issues Guidance to Help States Improve Drinking Water Infrastructure.

Over $2 Billion to States, Tribes, and Territories in 2018

WASHINGTON (March 25, 2019) — Building on recent successes to move President Donald Trump's infrastructure agenda forward by providing the financing and resources communities need to modernize local water infrastructure, today the U.S. Environmental Protection Agency (EPA) issued new guidance for states to use when applying for financing from the Drinking Water State Revolving Fund (DWSRF).

In 2018 the Drinking Water State Revolving Fund (DWSRF) committed $2.8 billion in drinking water infrastructure loans and refinancing and disbursed $2.5 billion for drinking water infrastructure to improve our nation's public health.

Last week in a speech at the Woodrow Wilson Center, EPA Administrator Andrew Wheeler suggested federal water funding programs would be excellent models for international organizations to adopt in order to address the global water crisis.

Today's guidance for states highlights recent changes made to the DWSRF as a result of the America's Water Infrastructure Act (AWIA) of 2018. Of note, AWIA:

- increases the amount of additional subsidy available to disadvantaged communities;
- expands eligible uses of the DWSRF set-asides to include source water protection activities and source water assessments;
- extends the American Iron and Steel provision for DWSRF-funded projects through federal fiscal year 2023; and
- increases the maximum-authorized DWSRF loan term up to 30 years for any DWSRF-eligible community or up to 40 years for state-defined disadvantaged community.

A critical component of maintaining and repairing aging water infrastructure is properly managing assets such as tanks, pipes and pumps. Through planning and conducting inventories, systems can maximize their infrastructure investments while minimizing the total cost of owning and operating them. To support this work, EPA has also released an updated State Asset Management Initiatives document. This document update, required by AWIA, allows states to learn about the various state asset management promotion initiatives.

Background

Since the DWSRF was established in 1997, the EPA has worked with the states to turn $20 billion of the American taxpayers' money into $38 billion in assistance to infrastructure projects that are delivering drinking water to thousands of communities across the country—especially in low-income communities and where public health risk is the highest. The Drinking Water and Clean Water State Revolving Funds (SRFs) play an integral role in President Trump's efforts to rebuild the country's aging water infrastructure while improving local water quality, creating jobs, and protecting public health. In 2018, the SRFs committed $9.6 billion in drinking water and clean water infrastructure loans and refinancing and disbursed $8.8 billion for drinking water and clean water infrastructure.

For more information visit: https://www.epa.gov/drinkingwatersrf and https://www.epa.gov/dwcapacity.

[What We Need To Do To Fix Infrastructure In the U.S.]

America's infrastructure is more than just a network of roads, bridges, tunnels, ports, railroads and airports connecting our towns, cities and states. It serves as a backbone of economic growth and preserves our safety, quality of life and prosperity. The United States has long been a global leader in innovation, transportation and smart fiscal policies, yet the infrastructure that keeps our country open for business is now far out of date.

According to the American Society of Civil Engineers, the current condition of our infrastructure earns a grade point average of D+, and there is an estimated $2 trillion funding gap to bring it to a state of good repair by 2025. While we have benefited from past centuries of building, neglect has befallen our once greatest achievements – in the 1930s, 4.2 percent of the country's GDP was spent on infrastructure investment, but by 2016, that number fell to 1.5 percent. In other words, our nation's infrastructure is crumbling, and we need real, sustainable investment – and we need it now.

For many of these challenges, Americans must be willing to pay, rates and fees that reflect the true cost of using, maintaining and improving all infrastructure, including our water, waste, transportation and energy services. Most Americans support this approach. In last November's elections, 79 percent of all state and local ballot measures supporting transportation infrastructure investments passed. Voters across 31 states raised their own taxes and fees in exchange for better roads, bridges and transit.

There is no single funding solution that will solve all our infrastructure investment challenges. It is important that we have a large toolkit of funding and financing options available that can be utilized to provide the infrastructure we need. Our funding plan brings together a collection of 10 bold ideas to significantly invest in our nation's infrastructure.

The first – and most logical – step in raising money for infrastructure should be to raise the federal tax on gasoline and diesel. Eventually, this would give way to a system that would impose a tax on vehicle miles traveled, as we adapt to increasing fuel economies and the proliferation of hybrid or all-electric vehicles. The fuel tax has not been raised since 1993, and since that time, the money generated from those taxes has lost over 40 percent of their purchasing power. Rep. Peter DeFazio (D-Ore.), chairman of the House Transportation and Infrastructure Committee, continues to point out that we're borrowing $16 billion a year to backfill the Highway Trust Fund, while the majority of states around the country have raised their gas tax. It's time we put the Highway Trust Fund on a long-term path to solvency, and raising the existing user fees is the only way to achieve this.

Other user fees include updates to the Harbor Maintenance Fee, raises to the Airline Passenger Facility charge, and the introduction of a new Rail Passenger Charge – each helping to fund direct capital investments for their respective users.

These long-term funding streams will need to be leveraged in the short term to provide the capital needed to get large infrastructure projects underway. By issuing bonds backed by the projected revenue of long-term solutions, the federal government will deliver the vital capital needed to jump start infrastructure revitalization across the country.

Beyond fees and bonding, we're proposing the expansion of programs like the Transportation Infrastructure Finance and Innovation Act, Water Infrastructure Finance and Innovation Act and Railroad Rehabilitation & Improvement Financing, as well as making new money available through federal loans for infrastructure improvement. There are also a set of easily achievable suggestions that could help move along current and future projects, such as streamlining the regulatory process, removing statutory and regulatory barriers to promote private-public partnerships and supporting municipalities implementing their own funding mechanisms like congestion pricing in New York City.

The Building Congress believes that a robust, long-term federal infrastructure modernization program, combined with greater investment by state, local and private stakeholders, can engender the partnership necessary to ensure America has a 21st century infrastructure network. However, without a serious commitment from federal lawmakers, we will not make the kind of progress demanded by the challenges we're facing.

Infrastructure investment has a history of creating jobs and strengthening the economy in this country. Direct funding from the federal government has resulted in some of the most transformative infrastructure projects that have had the greatest lasting effects. From the Hoover Dam, to rural electrification and the interstate highway system, significant investments in infrastructure have paved the way for our country's current economic success.

We have an incredible opportunity to use the momentum and support from the American people for infrastructure investment to provide long-term, sustainable revenue as part of an infrastructure package. The Building Congress calls on Congress and the Trump administration to put forth and approve a robust and comprehensive bipartisan package that includes sustainable funding to get America's infrastructure not just back to a state of good repair, but to make us a global leader. If we do not invest now and fail to rise and meet this crisis, then we cannot guarantee America's long-term economic development, productivity and international competitiveness.

The United States must be at the forefront of the world, and the foundation of our position is our infrastructure.

THE HILL

BY CARLO A. SCISSURA, OPINION CONTRIBUTOR — 03/25/19

CONTRIBUTORS ARE THEIR OWN AND NOT THE VIEW OF THE HILL

Carlo A. Scissura is president and CEO of the New York Building Congress.

Federal Court Deals Airbnb a Blow in its Fight Against Local Regulations.

"This case is hugely significant," says one legal scholar.

Santa Monica, California scored a significant win in federal appeals court on Wednesday, with a ruling that promises to set a favorable precedent for local governments seeking to regulate home-sharing and short-term rental websites like Airbnb.

Affirming a lower court's decision, the U.S. 9th Circuit Court of Appeals rejected claims by Airbnb and HomeAway.com that the city's home-sharing regulations were illegal under a federal law that shields internet companies from legal risks they could face from third-party content. Similar cases are pending elsewhere.

"Now we have a precedent that really, really opens the door to regulation," said Abbey Stemler, a professor of business law at Indiana University and a leading scholar on the sharing economy.

"Why this case is hugely significant in my mind is it now creates a way for local governments to rein in these platforms," she added.

Santa Monica's ordinance, first passed in 2015 and amended in 2017, permits city residents who obtain a special license to host visitors in exchange for money for a period of less than 31 days, as long as the resident and visitor are both staying in the home.

It also imposes obligations on platforms like Airbnb: They have to collect and submit occupancy taxes, they have to disclose certain listing and booking information to the city, and they can't complete bookings for property not licensed and listed in a city registry.

Businesses are prohibited under the ordinance from collecting booking services fees for unlicensed, and therefore unlawful, short-term rentals.

The companies grounded their legal arguments against the local regulations in a 1996 federal statute known as the Communications Decency Act. Section 230 of that law provides legal protections for online entities that host or republish speech.

A basic example would be that a company providing an online forum would not be held liable for defamatory content posted by a user. But Stemler explained that in recent years the Communications Decency Act has been used in efforts to block regulation.

In the Santa Monica case Airbnb and HomeAway.com argued that the city's ordinance required them to monitor and remove third-party content and in doing so violated the Communications Decency Act, interfering with protections afforded to them under the federal law.

The content monitoring and removal referenced here would have to do with actions the companies may have taken to check that properties appearing on their websites were included in the city's short-term rental registry and removing property listings if they were not.

"While we acknowledge the Platforms' concerns about the difficulties of complying with numerous state and local regulations, the CDA does not provide internet companies with a one-size-fits-all body of law," the 22-page opinion by Judge Jacqueline Nguyen says.

"Like their brick-and-mortar counterparts, internet companies must also comply with any number of local regulations concerning, for example, employment, tax, or zoning," it adds.

The decision points out that the ordinance does not force the companies to review the content of property listings, or to remove them. Instead it prohibits the processing of transactions for properties that don't meet registry and licensing requirements.

An analogy Stemler offers is that if a company hosted a website listing cocaine dealers and took a fee for each sale, the activity would not be protected under Communications Decency Act.

"That final step of processing the transaction is what Santa Monica is saying is not protected by the CDA," she added.

The companies also leveled some claims against the ordinance under the First Amendment. But the district court concluded that the local law regulated conduct, not speech. The appeals court agreed, saying it concerned "nonexpressive conduct—namely, booking transactions."

Airbnb did not respond to an emailed request for comment on Wednesday. The Santa Monica case is not the only time the tech firm has tangled with local governments over regulations.

Around the same time the company began its court battle over the Santa Monica rules it also challenged a similar ordinance in San Francisco. That case concluded with a settlement in 2017 and the company agreeing to follow an amended set of regulations.

In January, a federal judge ruled in favor of Airbnb and HomeAway in a New York City case, issuing a preliminary injunction that blocked city regulations from taking effect while the litigation continues.

A day later, Airbnb filed a lawsuit in a Florida federal court over Miami Beach's short-term rental restrictions. And last November the company sued Boston over its rules.

Some of the arguments the company has made in the Miami Beach and Boston cases hinge on the Communications Decency Act.

Route Fifty

By Bill Lucia,
Senior Reporter

MARCH 13, 2019

What to Consider When Budgeting Cloud Migration at the Municipal Level.

Learn how calculating costs and forecasting future savings when budgeting cloud migration can help your local government realize tech modernization.

Budget requests for technology investments hold the promise of running government more efficiently at a reduced cost by improving resource management, processes and decision-making, according to the report, “Transforming Government Through Technology,” developed in 2018 to counsel federal operations in digital modernization.

In the report, the Technology CEO Council (TCC) recommended cost-reduction estimates over a 10-year period be used to justify investments in federal workforce, processes and technology tools.

Likewise, civic technology applications that do not have a clear revenue stream often require creative thinking, and potentially a reform of local procurement processes. But budgets can be used to tackle the issue, according to “The Civic Technology Landscape,” a 2015 report by the Urban Sustainability Directors Network.

Continue reading.

efficientgov.com

by Andrea Fox

April 1, 2019

Novogradac 2019 Opportunity Zones Spring Conference.

Hyatt Regency Denver at Colorado ConvCtr | April 25, 2019 – 8:00am to April 26, 2019 – 12:00pm

We look forward to welcoming opportunity zones (OZ) stakeholders of all types to Denver for the Novogradac 2019 Opportunity Zones Spring Conference.

With the release of the first tranche of Treasury guidance on the OZ incentive and the expected release of a second tranche before April, we hope you take advantage of this conference to get the latest information on OZs, as well as make new contacts and renew existing relationships in Denver.

We encourage you to add your name to the list of the attendees at the Hyatt Regency Denver at Colorado Convention Center, where we will discuss a range of topics covering all dimensions of the OZ incentive, with information for developers, investors, government entities and anyone else in community development.

We've tailored the agenda to address the topics that are most important to those interested in the OZ incentive. Some of the topics that our expert panelists will address April 25-26 include:

- what is coming from the new session of Congress and how legislation could improve the OZ incentive,
- how opportunity fund sponsors view the market,
- how communities can capitalize on OZs,
- recommended practices to maximize the impact of OZs,
- and more.

We'll also offer three tracks of panels on Thursday afternoon: In the first track we will cover significant organizational and operational matters on opportunity funds; in the second track we will cover hot topics around the various types of OZ businesses; and in the third track we will do a deep dive into technical tax aspects of the incentive.

Networking possibilities will be plentiful in Denver, where you can meet with leading professionals, including members of the Novogradac & Company LLP OZ practice, before and after each session. There also will be a networking reception Thursday evening.

Our hope is that the Novogradac 2019 Opportunity Zones Spring Conference will not only be educational and encouraging, but that you will leave Denver with knowledge and relationships that will help you continue to thrive in OZs for 2019 and beyond.

John Sciarretti, CPA | Conference Chairman

Click here to learn more and to register.

National Association of Bond Lawyers (NABL) Essentials Conference - Chicago

April 24, 2019 – April 26, 2019

MSRB staff will review the MSRB rules for bond lawyers and demonstrate EMMA tools that are essential for serving municipal market clients in Chicago, Illinois.

Register

SEC Charges Ex-College Controller With Municipal Securities Fraud.

"Financial difficulties are no excuse for engaging in accounting misconduct and concealing critical information from investors," said the SEC's LeeAnn Ghazil Gaunt.

The Securities and Exchange Commission said Thursday that it has charged the former controller of a New York-based not-for-profit college with defrauding municipal securities investors by concealing the college's deteriorating finances.

According to the complaint, Keith Borge made numerous fraudulent misrepresentations and omissions regarding the financial condition of the College of New Rochelle to the investing public in its fiscal year 2015 audited financial statements.

The cumulative impact of Borge's misconduct was significant: he prepared the college's FY 2015 financial statements that falsely reported some $25 million in net assets, when actual net assets were in the red by about $8.8 million — an overstatement of roughly $33.8 million, the complaint states.

"Like many small private colleges prior to 2013, the college came under considerable financial stress as student enrollment declined and tuition revenues decreased, leading to chronic cash flow issues," the complaint states.

Starting as early as 2013, Borge improperly withdrew funds designated for the college's endowment to fund various operational expenses at the college.

The college is expected to cease operations in August 2019 as a result of its financial difficulties.

Borge created false financial records, failed to file payroll tax submissions as well as to assess the collectability of pledged donations that were increasingly unlikely to be received as donors became more frustrated with the college's operations, according to the SEC.
Borge also falsely certified the accuracy of the college's financial statements.

The financial statements were published by Borge to an online repository in connection with the college's continuing disclosure obligations stemming from a 1999 bond issuance, and significantly influenced investors' decisions to invest in the bonds.

"Financial difficulties are no excuse for engaging in accounting misconduct and concealing critical information from investors," said LeeAnn Ghazil Gaunt, chief of the SEC Enforcement Division's Public Finance Abuse Unit, in a statement.

"Municipal bond investors, including those in the secondary market, depend on the accuracy of financial statements, and the SEC will hold accountable those who take steps to mislead the investing public," added Marc Berger, director of SEC's New York Regional Office.

The SEC's complaint, filed in federal district court in Manhattan, charges Borge with violating, and aiding and abetting violations of, the antifraud provisions of the federal securities laws.

Borge agreed to a partial settlement that would permanently enjoin him from future misconduct, with potential monetary sanctions to be determined at a later date. The partial settlement is subject to court approval.

ThinkAdvisor

By Melanie Waddell | March 28, 2019 at 07:36 PM

[Is There Still A Path that Returns Puerto Rico to Debt Sustainability?]

The relatively generous settlement with the sales-tax backed bonds (COFINA) has reduced the funds available for everyone else.

Puerto Rico's debt restructuring is in a strange form of limbo.

Puerto Rico's oversight board is currently on life support. It is waiting to see if the Supreme Court takes up its appeal to the PROMESA appointment case. The appellate court concluded that the members of Puerto Rico's Oversight board need to be confirmed by the Senate, but upheld the rest of PROMESA (the law setting out Puerto Rico's debt restructuring process) and the board's existing decisions. And even if the current board selection process—modeled on the process used to pick the DC control board—is ultimately upheld, the clock is ticking: the current board's three year term runs out at the end of the summer.

If President Trump wants a new board—whether to wipe out the debt, or to pave the way for a more generous settlement of Puerto Rico's remaining claims as many creditors want—he clearly has an opportunity to change the board's composition.*

And at least for now the process for restructuring Puerto Rico's bonds also seems stuck.

Continue reading.

Council on Foreign Relations

by Brad W. Setser

March 25, 2019

[Oyster Bay SEC Settlement Allows Borrowing Without Credit Rating Damage.]

The settlement over securities fraud allegations requires a monitor for the town's securities disclosures, but allows it to continue, which works in the town's favor, experts said.

Oyster Bay's proposed settlement with the Securities and Exchange Commission in a lawsuit accusing it of fraud related to concessionaire loan guarantees allows the town to keep borrowing, municipal finance experts said.

The town board last month agreed to settle the case and is looking to move on, officials said. The settlement must still be approved by a judge.

"They got a good deal in [the] settlement that allows the town to go forward, and the SEC got its case out there," Christine Chung, co-director of the Institute for Financial Market Regulation at Albany Law School, said. "You only litigate if you think the SEC can't prove it or if you think you'll get a better deal."

The federal agency responsible for overseeing securities markets sued Oyster Bay and former Town Supervisor John Venditto in November 2017, alleging securities fraud over the town's failure to disclose disputed indirect loan guarantees to concessionaire Harendra Singh in its bond offering documents and making misleading statements about those guarantees when the town disclosed them. The lawsuit noted that Venditto invoked his Fifth Amendment right against self-incrimination when he was interviewed by SEC attorneys. The SEC and federal prosecutors alleged the town backed about $20 million in loans to creditors on behalf of Singh.

The SEC had sought an unspecified fine and a court-appointed overseer for five years with the power to block the town's borrowing. The proposed settlement imposed no fine and a court-appointed consultant is to have a limited advisory role for three years.

"The settlement doesn't reflect a weakness [in the SEC's case]," Chung said. "It just reflects sort of the reality of what's the better outcome."

A court-appointed overseer that could have blocked borrowing would have been a credit risk for the town.

"Had Oyster Bay been restricted from issuing notes or had there been any problems in doing so, this would have been a very major risk for them," Moody's Investors Service analyst Douglas Goldmacher said. "It could have made it more difficult for them to carry out their regular functions as a municipality."

The agreed-to court-appointed consultant in an advisory role and making recommendations could be a positive, Goldmacher said.

"An extra set of eyes to go through and make sure that all the disclosure is properly in order definitely cannot hurt and has the potential to help," he said.

Town Attorney Joseph Nocella said the town settled after "the parties finally came to an agreement that both could live with."

In a Feb. 21 memo, Nocella said the consultant would increase investor confidence in the town's bonds, which would "only further enhance the town's already improving bond rating."

Goldmacher said Moody's is "quite comfortable where the rating is currently" at Baa3, its lowest investment grade rating.

The town has spent more than $5 million on legal fees related to the concessions investigations and civil lawsuits brought by the SEC and Singh's creditors since 2015.

While the legal fees are more than several recent fines that the SEC obtained against municipal bond issuers — in 2016, the city of Miami agreed to a $1 million SEC fine, and in 2017, the Port Authority of New York and New Jersey agreed to pay $400,000 to settle a bond disclosure cases — a fine and a consultant who could halt borrowing would have had market consequences.

"They could have a drag on their ability to access markets on favorable terms going forward more so than the one time payment of legal fees," Chung said.

Before the SEC filed its lawsuit, the town tried to stave off any enforcement action, arguing in 2017 to the commission that the town couldn't have disclosed some of the loan guarantees because it hadn't known about them, claiming all but one had been concealed by a single rogue deputy town attorney.

That argument fell with the testimony of former Town Attorney Leonard Genova last year during the federal corruption trial against Venditto and former Nassau County Executive Edward Mangano and his wife, Linda. Venditto was acquitted on corruption-related charges in that trial while a mistrial was declared in the Mangano case.

Mangano was convicted of conspiracy to commit federal program bribery, federal program bribery, conspiracy to commit honest services wire fraud, honest services wire fraud and conspiracy to obstruct justice in a second trial earlier this year. Linda Mangano was found guilty of conspiracy to obstruct justice, obstruction of justice and two counts of lying to the FBI.

The first indirect loan guarantee to Singh's creditors in 2010 for a $1.5 million line of credit, which town officials have said was legitimate, wasn't disclosed in bond offerings.

Genova, who received immunity from criminal prosecution in return for his testimony, testified some of the disclosures were intentionally misleading.

"We had access to the information," Genova testified last year, referring to bond disclosures in 2015, after the FBI had started investigating the transactions with Singh. "We chose not to include it at that point."

Genova testified that a 2012 bond document "was not accurate, and it did omit a material fact … liabilities with the loans that were backed for Mr. Singh."

The town's settlement doesn't include Venditto.

"Mr. Venditto maintains he didn't do anything wrong in the civil realm just like the criminal realm," Venditto's attorney Marc Agnifilo said. His client was "essentially a victim of this fraud," he said.

"If the SEC will agree to something like that [the settlement with the town] and agree he doesn't have to pay any money, there's the possibility we'd settle the civil case," Agnifilo said.

newsday.com

By Ted Phillips

March 26, 2019 6:00 AM

- How to Survive the Zombie LIBOR Apocalypse: Saul Ewing
- SIFMA Issues Muni Model Placement Engagement Agreements.
- Population Growth, Temporary Cap Increase Boost LIHTC and Bond Ceilings.
- MSRB Asks SEC Approval to Require More Data from Underwriters.
- Hawkins Advisory: Implementing the Rule 15c2-12 Amendments
- Fitch Ratings: Updated U.S. Public Finance Tender Option Bond Criteria
- Fitch Publishes Exposure Draft On New Short-Term Rating Criteria.
- Fitch Feedback Report on Discussion Paper: Short-Term Ratings
- And finally, The Honorable Gerald Austin McHugh, Pompous Ass, Presiding is brought to us this week by *East Rockhill Township v. Richard E. Pierson Materials Corp.*, in which His Honor begins the opinion with, "This case represents an unusual exercise of federal diversity jurisdiction in that I am being asked to address what is essentially a local zoning controversy." *A local zoning controversy.* Imagine it! The effrontery! The judge goes on to note that the quarry in question has maintained its permits, "albeit without engaging in the extraction of stone." Please stand by as I engage in the extraction of my bile duct/gag reflex. Lighten up, Francis.

OPEN MEETINGS - ALABAMA

[Swindle v. Remington]

Supreme Court of Alabama - March 8, 2019 - So.3d - 2019 WL 1090393

President of education association, in her individual capacity and in her capacity as president, brought action against members of board of the Public Education Employees' Health Insurance Program (PEEHIP) in their official capacities for declaratory and injunctive relief based on a claim that the PEEHIP board members violated the Open Meeting Act in regards to a decision to increase health insurance premiums and surcharges.

The Circuit Court entered summary judgment for association's president, invalidated the increased charges, and ordered money held in escrow to distributed back to the respective PEEHIP members. PEEHIP board members appealed.

The Supreme Court of Alabama held that the closed morning session that occurred prior to the board's open afternoon meeting in which the board approved the premium and surcharge increases was a "meeting" under the Open Meetings Act that included the afternoon meeting.

Circuit court's decision to invalidate the increases in health insurance premiums and surcharges approved by the Public Education Employees' Health Insurance Program (PEEHIP) and to return the funds in escrow to the insureds, which was a decision made as part of a summary judgment entered against PEEHIP based on a finding that PEEHIP violated the Open Meetings Act when approving the increases, would be de novo rather than deferential; Open Meetings Act afforded a circuit court no discretion to invalidate actions taken during a meeting because of a violation that occurred prior to the open meeting conducted in a manner consistent with the Open Meetings Act, and the primary issue in this case whether a morning training session was part of one full-day meeting.

Closed morning session that occurred prior to open afternoon meeting of board of the Public Education Employees' Health Insurance Program (PEEHIP) was a "meeting" under the Open Meetings Act that included the afternoon meeting, despite argument that the morning session was a training program and was necessary to educate board members about complex financial matters; the morning session, which was prearranged, was attended by all board members, record was replete with references that staff made recommendations to the board in the morning session about proposed increases in health insurance charges, board members asked questions during the morning session about the proposals, and at least one member openly disagreed with the recommendations.

PERMITS - ALASKA

[Rosauer v. Manos]

Supreme Court of Alaska - March 8, 2019 - P.3d - 2019 WL 1087294

After homeowners had trees removed from a municipal right-of-way across the road from their home, only obtaining a required permit several months later, neighbors, whose property abutted the right-of-way and whose house had been behind the removed trees, sued homeowners and tree-removal company for damages.

The Superior Court granted summary judgment to homeowners and the tree-removal company, and neighbors appealed.

The Supreme Court of Alaska held that retroactive permit was validly granted and, thus, conferred lawful authority for tree removal, and thus, neighbors could not establish claim under timber-trespass statute.

It was not unreasonable to interpret city's municipal code provision, authorizing waiver of permit terms and conditions, to include waiver of the prior-authorization requirement.

Department of Development Services' decision to grant homeowners a retroactive permit, to remove trees from a municipal right-of-way across the road from their home, would be reviewed for reasonableness; city's municipal code delegated significant authority and discretion over public-use permits to the Department, code broadly entrusted decisions regarding safe and efficient use of public spaces to Department, and authority to grant retroactive permits, with terms and conditions necessary to protect public interest, was consistent with such a policy.

Retroactive permit, to remove trees from municipal right-of-way across road from homeowners' home, was validly granted and, thus, conferred lawful authority for tree removal, and thus, neighbors, whose property abutted right-of-way and whose house had been behind the removed trees, could not establish claim under timber-trespass statute, which required that removal be without lawful authority; city's municipal code delegated significant authority and discretion over public-use permits to the Department of Development Services, code broadly entrusted decisions regarding safe and efficient use of public spaces to Department, and authority to grant retroactive permits, with terms and conditions necessary to protect public interest, was consistent with such a policy.

PUBLIC PENSIONS - CALIFORNIA

Mijares v. Orange County Employees' Retirement System

Court of Appeal, Fourth District, Division 3, California - January 23, 2019 - 32 Cal.App.5th 316 - 243 Cal.Rptr.3d 728 - 19 Cal. Daily Op. Serv. 1541

Employer brought action against county retirement system seeking declaratory relief that retirement system board's corrective measure requiring employer to provide additional funds to retirement system was invalid.

The Superior Court granted judgment on the pleadings in retirement system's favor. Employer appealed.

The Court of Appeal held that:

- Corrective measure was not impermissibly retroactive;
- County retirement system board did not require receipt of written petition requesting that employees be withdrawn; and
- Board had authority to implement corrective measure.

County retirement system board's corrective measure, requiring employer to pay approximately $3.3 million in additional contributions over 20 years to address unfunded accrued actuarial obligations of pension benefits promised to its employees, was not impermissible retroactive policy, although measure required payment two years after last employee retired from employer, since payment to address unfunded liability applied prospectively to former employees and was not payable immediately.

County retirement system board did not require receipt of written petition requesting that employees be withdrawn from the county retirement system and transferred to state retirement system, and thus statute governing withdrawn employees was inapplicable to county retirement system board's corrective measure requiring employer to pay approximately $3.3 million in additional contributions over 20 years to address unfunded accrued actuarial obligations of pension benefits promised to its employees, where employees who transferred to state system did so via transfer agreement made between county retirement system board and employer.

County retirement system board had authority to implement corrective measure requiring employer to pay approximately $3.3 million in additional contributions over 20 years to address unfunded accrued actuarial obligations of pension benefits promised to its employees, since board had plenary power to assure prompt delivery of benefits to participants and their beneficiaries, and board had statutory authority to approve funding periods to amortize unfunded accrued actuarial obligations.

PUBLIC UTILITIES - IDAHO

Idaho Power Company v. Tidwell

Supreme Court of Idaho, Boise, September 2018 Term - December 28, 2018 - 434 P.3d 175

Landowner, who intervened in proceeding concerning utility's application for certificate of public convenience and necessity to construct high-voltage electric transmission line, appealed Public Utility Commission's decision denying landowner's request for intervenor funding for reimbursement of landowner's attorney fees.

The Supreme Court of Idaho held that:

- Deadline to file intervenor funding request was 14 days after Commission held last evidentiary hearing, not due date for petitions for reconsideration of final order;
- Landowner was provided adequate information about right to seek intervenor funding and deadlines governing such requests; and
- Landowner was not entitled to award of appellate attorney fees pursuant to private-attorne--general doctrine.

ZONING & PLANNING - IOWA

Ames 2304, LLC v. City of Ames, Zoning Board of Adjustment

Supreme Court of Iowa - March 8, 2019 - N.W.2d - 2019 WL 1086853

Landowner filed petition for writ of certiorari after city denied landowner's permit for interior remodel of nonconforming use residential structure.

The District Court annulled writ. Landowner appealed. The Court of Appeals reversed. Zoning board sought further review.

The Supreme Court of Iowa held that landowner's proposed remodel did not constitute a prohibited increase in the intensity of the nonconforming use.

Landowner's proposed interior remodel of nonconforming use residential structure containing four one-bedroom apartment units, which would have increased number of bedrooms within units, did not constitute a prohibited increase in the intensity of the nonconforming use, where remodel would not have increased number of dwelling units within the structure.

Ordinance prohibiting increases in intensity of nonconforming uses, which defined “intensity” as degree or level of concentration to which land was used for commercial, industrial, or any other nonresidential purposes but did not define “intensity” concerning residential purposes, was nevertheless applicable to residential structures.

EMINENT DOMAIN - MASSACHUSETTS

Smyth v. Conservation Commission of Falmouth

Appeals Court of Massachusetts, Barnstable - February 19, 2019 - N.E.3d - 94 Mass.App.Ct. 790 - 2019 WL 660964

Landowner brought action against local land commission, claiming that denial of her residential construction variance, pursuant to wetlands protection bylaw, effected an uncompensated taking of her property.

Commission filed a motion to bifurcate the trial, so that only the question of damages would be tried before a jury.

The Superior Court denied the motion. After a jury trial, the jury found in favor of landowner and awarded damages. The Superior Court then denied commission’s motion for judgment notwithstanding the verdict (JNOV). Both parties appealed.

The Appeals Court, Green held that:

- As a matter of first impression, landowner was not entitled to a jury trial;
- Reduction in property’s appraised value did not in itself constitute a regulatory taking; and
- Landowner was not entitled to compensation.

Landowner was not entitled to a jury trial in her action challenging a wetlands protection bylaw as a regulatory taking, based on denial of her application for a residential construction variance; landowner’s claim did not sufficiently resemble an action in tort, in that she did not allege any physical invasion of her property and her claim did not concern whether a wrongful act occurred, but rather requested compensation for a lawful inverse condemnation.

Reduction in appraised value of landowner’s property from $700,00 to $60,000, due to denial of landowner’s application for residential construction variance, did not in itself constitute a regulatory taking; even in unbuildable condition, the property’s value was still $11,000 higher than the amount which landowner’s predecessor originally paid for the property and the zoning bylaw allowed other uses for this property, such as a park, playground, or privacy for abutting owners.

Landowner was not entitled to compensation for a purported regulatory taking of her property, based on denial of her application for a residential construction variance; evidence showed a lack of any financial investment by owner or her predecessor toward development of the property, including a substantial period in which the property could have been freely built upon, and, even with the variance denial, landowner’s property was worth more than its original purchase price, such that any compensation could have constituted a windfall.

EMINENT DOMAIN - NEW JERSEY

Casino Reinvestment Development Authority v. Birnbaum

Superior Court of New Jersey, Appellate Division - February 15, 2019 - A.3d - 2019 WL 638750

Casino Reinvestment Development Authority (CRDA) brought condemnation action against property owners, seeking a judgment that CRDA had duly exercise its power of domain over the property for redevelopment purposes.

After a hearing, the Superior Court dismissed the action as a manifest abuse of power. CRDA appealed.

The Superior Court, Appellate Division, held that CRDA failed to establish that the condemnation was reasonably necessary.

Casino Reinvestment Development Authority (CRDA) failed to establish that condemnation of private property was reasonably necessary for a proposed redevelopment project, as required for CRDA to exercise its power of eminent domain; the project was intended as a complement to a nearby casino, whose revenue would have provided the project's primary funding, but that casino closed down and statutory changes after the project's conception reduced or eliminated significant funding sources which the CRDA relied on to incentivize private investors to commit to redevelopment, such that CRDA was attempting to bank the property in hopes that it would be used in a future undefined project.

MUNICIPAL CORPORATIONS - NEW YORK

Incorporated Village of Garden City v. Zambardino

Supreme Court, Appellate Term, New York - March 7, 2019 - N.Y.S.3d - 2019 WL 1177709 - 2019 N.Y. Slip Op. 29065

Village sought to recover in commercial claims action the sum of $937.50 against defendant for fees for services that had been rendered by village's fire department in responding to an automobile accident.

The District Court granted summary judgment in favor of defendant, and village appealed.

The Supreme Court, Appellate Term, held that exceptions to common law free public services doctrine did not apply.

Exceptions to common law free public services doctrine did not apply to claim brought by village who sought to recover $937.50 against defendant for services that had been rendered by village's fire department in responding to an automobile accident; exceptions to doctrine only applied to statutes passed by state legislature, not to a village code, and village code was contrary to Home Rule law, which prohibited a village to charge individuals for expenses related to the aftermath of automobile accidents.

ZONING & PLANNING - PENNSYLVANIA

[East Rockhill Township v. Richard E. Pierson Materials Corp.]

United States District Court, E.D. Pennsylvania - March 6, 2019 - F.Supp.3d - 2019 WL 1057421

Township brought action in state court to enjoin owner and lessees of quarry from installing an asphalt plant at the quarry. Owner and lessees removed the action and asserted a counterclaim under the Declaratory Judgment Act seeking a declaration that township's efforts to regulate the quarry were preempted by Pennsylvania's Noncoal Surface Mining Conservation and Reclamation Act, and that an asphalt plant was a permitted accessory use.

The District Court held that:

- District court would accept jurisdiction under Declaratory Judgment Act over claim challenging township's denial of a permit to operate the quarry;
- District court would abstain from exercising jurisdiction over claim seeking permission to operate an asphalt plant at the quarry; and
- Township lacked authority under Pennsylvania law to regulate the operation of quarry or limit the amount of stone extracted from it.

BANKRUPTCY - PUERTO RICO

[In re Financial Oversight and Management Board for Puerto Rico]

United States Court of Appeals, First Circuit - February 22, 2019 - 916 F.3d 98

In the debt adjustment case of the Commonwealth of Puerto Rico under Title III of the Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA), representatives of the Puerto Rico legislature brought action against the Financial Oversight and Management Board for Puerto Rico, its members, and its executive director, alleging that Board acted in excess of its authority by refusing to certify budget developed by the legislature and by instead certifying a new fiscal plan and territory budget that it had developed.

Board moved to dismiss for lack of subject matter jurisdiction and for failure to state a claim. The United States District Court granted motion. Appeals were taken.

The Court of Appeals held that:

- Addressing questions of first impression, the federal courts lacked Article III jurisdiction over the complaint's request for a declaration about fiscal plan recommendations;
- The district court correctly concluded that it lacked statutory authority to review alleged errors in the Board's certification determinations; and
- The complaint failed to state a claim to relief on the theory that the Board exceeded its authority under PROMESA during the fiscal plan and territorial budget processes.

In debt adjustment case of the Commonwealth of Puerto Rico under Title III of the Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA), federal courts lacked Article III jurisdiction over request by representatives of Puerto Rico legislature for declaration that rejected policy recommendations concerning rights of employees in Puerto Rico, which were contained in fiscal plan developed by the Financial Oversight and Management Board for Puerto Rico, were non-binding recommendations; if request were read to seek a declaration about the rights of the Board and Legislative Assembly whenever there was disagreement about whether to implement a fiscal plan policy included by the Board, that would have been a request for an advisory opinion, and if request were read to refer to particular labor reform package, the dispute lacked the requisite reality, as currently certified fiscal plan did not include the objected-to labor reforms.

Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA) precluded declaratory judgment and injunctive relief challenges by representatives of Puerto Rico legislature to actions of the Financial Oversight and Management Board for Puerto Rico in declining to certify legislature's budget and instead certifying new fiscal plan and territory budget developed by the Board; PROMESA granted the Board exclusive authority to certify fiscal plans and territory budgets for Puerto Rico and then explicitly insulated those certification decisions from judicial review.

PUBLIC PENSIONS - TEXAS

Eddington v. Dallas Police and Fire Pension System

Supreme Court of Texas - March 8, 2019 - S.W.3d - 2019 WL 1090799 - 2019 Employee Benefits Cas. 78, 886 - 62 Tex. Sup. Ct. J. 560

Pensioners filed petition against city police and fire pension system and its board chair for declaratory relief, requesting declaration that amendments to pension plan that reduced future interest rate and accelerated withdrawal requirements on accounts established pursuant to deferred retirement option plan offered under pension system violated state constitution.

Following bench trial, the District Court concluded amendments did not violate constitution and dismissed pensioners' claims. Pensioners appealed. The Court of Appeals affirmed. Pensioners filed petition for review.

The Supreme Court of Texas held that prospective changes to interest rate paid on deferred retirement option plan (DROP) accounts did not violate state constitution.

PUBLIC RECORDS - VERMONT

Long v. City of Burlington

Supreme Court of Vermont - September 21, 2018 - 199 A.3d 542 - 2018 VT 103

Advocacy organization brought action against city alleging that the city violated the Public Records Act (PRA) by failing to disclose an unredacted market feasibility study for a proposed redevelopment project.

The Superior Court awarded summary judgment to the city. Advocacy organization appealed.

The Supreme Court of Vermont held that:

- The study was exempt from disclosure under the PRA trade secrets exemption despite voluntary submission of redacted version of the study to city;
- Developer made reasonable efforts to protect the confidentiality of information contained in the study, as required for that information to be exempt; and
- Even if the city's acknowledgment of a non disclosure agreement with developer was not binding on the city, the study was protected by trade secrets exemption.

Market feasibility study for a proposed redevelopment project was exempt from disclosure under the

Public Records Act's (PRA) trade secrets exemption despite voluntary submission of redacted version of the study to city; developer who conducted the study included anticipated project costs and revenues, financial projections, and confidential lease terms with a major prospective tenant in the document, which could be reverse engineered by competitors to determine developer's pricing and forecasting models.

Developer made reasonable efforts to protect the confidentiality of information contained in market feasibility study for a redevelopment project, as required for that information to be exempt from disclosure under Public Records Act's (PRA) trade secrets exemption; developer only shared information with third parties when absolutely necessary, and only then on the condition that the information not be shared further, developer had a confidentiality agreement with its own consultant prohibiting the sharing of the information without consent, and developer requested confirmation from city that it acknowledged a non disclosure agreement.

Even if a city's acknowledgment of a non disclosure agreement (NDA) with developer was not binding on the city, market feasibility study conducted by developer for a redevelopment project was protected by trade secrets exemption under the Public Records Act (PRA); the PRA did not require a valid NDA for information to be exempt as trade secrets and developer made reasonable efforts to ensure that the information stayed confidential.

SIFMA Issues Muni Model Placement Engagement Agreements.

New York, NY, February 19, 2019 – SIFMA today issued two new model placement agent engagement agreements, along with related commentary. One of the agreements covers conduit bonds and the second covers non-conduit bonds.

"These new agreements add to SIFMA's suite of model and master agreements that aid our member firms and others in the marketplace by reducing compliance risk and legal costs and increasing regulatory certainty," said Leslie Norwood, managing director, associate general counsel and co-head of SIFMA's Municipal Division.

The two new agreements are intended for use by brokers, dealers, and municipal securities dealers acting as a placement agent. Federal securities laws require a broker dealer to have an adequate and reasonable basis for recommending a security to an investor. Use of these agreements will assist broker dealers in ensuring their compliance with federal securities laws.

Fitch Feedback Report on Discussion Paper: Short-Term Ratings

Read the Report

Fitch Publishes Exposure Draft On New Short-Term Rating Criteria.

Fitch Ratings-London-22 March 2019: Fitch Ratings has published an exposure draft proposing new criteria for short-term ratings across its corporate, financial institution and public finance portfolio. The proposals follow a major review of the function and utility of our short-term rating scale, begun in August 2018 with the publication of a discussion paper and a broad-based market dialogue, which has helped shape our proposed, expanded approach to a short-term scale for today's capital markets.

The proposed criteria revisions would amend our correspondence table between Long- and Short-Term IDRs to provide a substantially more differentiated analytical view of short-term risk between issuers. More specifically, we propose increasing the number of long-term ratings that can correspond to more than one short-term rating to five from three, by permitting Long-Term IDRs of 'A' to correspond to 'F1+' (in addition to the existing 'F1' mapping) and Long-Term IDRs of 'BBB+' to correspond to 'F1' (in addition to the existing 'F2' mapping).

The new proposed criteria would also reflect the greater granularity now present in our asset class criteria, compared with criteria in effect at the time of the original introduction of the short-term scale. Consequently, the exposure draft proposes specific short-term oriented analytical factors that would be used as the primary elements to distinguish between short-term ratings at crossover points.

We have also published a summary of feedback received during our market dialogue on alternative approaches to the current short-term rating scale. As well as responding to different options discussed with the market, this paper outlines some of the logistical issues associated with the proposed revised criteria.

The exposure draft contains an assessment, by sector, on the estimated potential impact of the proposed criteria. The short-term ratings of any issuers whose ratings we believe will be affected by the finalised change in criteria will be individually placed Under Criteria Observation (UCO) upon publication of the final criteria, at the conclusion of the exposure draft period. No long-term ratings will be affected by this proposed criteria change, and we also do not currently expect any impact on any money market fund ratings, where short-term ratings serve as inputs to the rating process. We intend to conclude resolution of all eventual UCO designations within six months of the publication of final criteria. The new criteria would apply cross-sector at the point of finalisation, and sector criteria would be updated to reflect the approach in the course of scheduled sector criteria updates.

Fitch invites feedback on the proposed criteria from market participants. Comments should be sent to criteria.feedback@fitchratings.com by 23 April 2019. Fitch will publish on its website any written responses it receives, in full, including the names and addresses of such respondents, unless the response is clearly marked as confidential by the respondent.

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Fitch Ratings: Updated U.S. Public Finance Tender Option Bond Criteria

Fitch Ratings-New York-22 March 2019: Fitch Ratings has published the following updated report: "U.S. Public Finance Tender Option Bond Rating Criteria." This report updates the prior report published on March 28, 2018. The key elements of Fitch's tender option bond rating criteria remain consistent with those of its prior criteria report.

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Kansas City Joins U.S. Airport Boom With $1.5 Billion Renovation.

- **Brutalist-style terminals from 1970s haven't kept pace**
- **The world of air travel has changed,' project developer says**

Kansas City Mayor Sly James will be on hand Monday to celebrate the symbolic destruction of an unloved landmark: his city's nearly five-decade-old airport, whose brutalist-style, poured-concrete terminals make it appear like a relic of a bygone age.

The $1.5 billion, four-year renovation is the largest public works project ever in Missouri's biggest city and part of a growing construction boom by American municipalities that are overhauling airports built when "jet-set" was a synonym for the one percent.

Since the beginning of 2017, airports have raised nearly $30 billion in the bond market to finance work needed to accommodate record numbers of passengers. Chicago is planning a major expansion for O'Hare International, once the nation's biggest. New York's LaGuardia is getting a major makeover. In Salt Lake City, the entire airport, with the exception of its runways, will essentially be rebuilt over the next five years.

Like many around the country, Kansas City's, which opened in 1972, isn't well-suited to the times.

Patrick Klein, director of aviation at the airport, said its three, separated U-shaped terminals — one of which is currently empty — are essentially "cement igloos" that don't allow it to add more restrooms, concessions, nursing areas or other facilities that travelers have come to expect. That's meant it has been largely unchanged since the opening, despite a nearly tripling in passenger traffic. The renovation will transform the three-terminal space into a single-terminal operation.

Behind the Times

"These airports were designed with one-power outlet to plug in the vacuum for the cleaning crew," said Geoffrey Stricker, managing director at Edgemoor Infrastructure & Real Estate, the developer on the project. "The world of air travel has changed, security has changed, customer needs and terms have changed, technology has changed. Airports need to have modern facilities that are attractive to airlines."

On Friday, the airport completed a $110 million debt placement with Morgan Stanley for initial costs, and the city council has approved about $1.8 billion in bonds for the project. John Green, the airport's chief financial officer, said the first round of bonds — backed by the airport's revenue — will be sold in the "early to mid-summer."

Stricker, the developer, said the sheer scale and scope of the Kansas City project separates it from others. They're essentially constructing an entirely new facility with tarmac upgrades, a parking garage and a new road network to get to the facility, in addition to an entirely new terminal.

Officials in Kansas City hope the new airport will help draw corporate headquarters and talent from increasingly expensive coastal cities.

The condition of the airport is "adequate for a market this size" but has trouble competing with other regional epicenters like Denver or Dallas, said Tim Cowden, president and CEO of the Kansas City Area Development Council. "The airport didn't give off the dynamism and vibrancy that the city has," he said. "Now it will."

Not Good Enough

He thinks the airport was a reason Kansas City didn't make the final list for Amazon.com Inc.'s second headquarters, which the city bid for. "Our airport and our air service was not up to par with the other regions that made it," he said. "Now, as we have opportunities to compete for future projects, this new airport will allow us to compete on a level with other markets in our fighting weight."

On Monday, Mayor James is expected to join airport, community and development officials to start the ceremonial demolition by hammering off a piece of the existing terminal — officially beginning the four-year endeavor.

Bloomberg Markets

By Danielle Moran

March 24, 2019, 6:50 AM PDT

Record High Value a Cause for Concern for Muni Bond Bulls.

Sean Carney, head of municipal strategy and primary markets at BlackRock, discusses record high valuations in the municipal bond market. He speaks with Bloomberg's Taylor Riggs in this week's "Muni Moment" on "Bloomberg Markets."

Watch video.

Bloomberg MarketsTV Shows

March 20th, 2019

Municipal Bonds Off to Best Yearly Start Since 2014.

- **Muni-debt funds have raked in cash steadily since early Jan.**
- **Tax-exempt bond returns are twice as high as Treasuries**

State and local-government bonds are headed for their strongest start to a year since 2014, propelled by an influx of cash into municipal-debt mutual funds as investors seek out tax havens and the Federal Reserve holds off on interest-rate increases.

The securities have returned 1.8 percent in 2019, putting them on track for the best first-quarter showing in five years. That's roughly double the gain for Treasuries, according to Bloomberg Barclays indexes.

The outperformance has been driven in part by a push among investors to cut their tax bills after the new limit on state and local deductions was ushered in, a trend that Bank of America Corp. analysts said they expect to continue. The Fed's decision to step back from tightening monetary policy is also boosting fixed-income investments.

"SALT is creating elevated demand, especially on the two coasts," said Michael Pietronico, chief executive officer of Miller Tabak Asset Management. "The perception that the Federal Reserve is on hold has helped pull cash off the sidelines."

Investors have added about $12.6 billion to municipal-bond mutual funds since early January, with about $1.6 billion sent in during the week ended March 13, the tenth straight weekly gain, according to Lipper US Fund Flows data. At the same time, the pace of new bond issuance hasn't kept up with demand, analysts say, a factor that helped push the prices of top-rated 10-year bonds earlier this month to their highest against Treasuries since at least 2001.

"We expect demand to remain strong, supply to remain light – it's going to be a struggle to find value," said Pietronico, who anticipates that municipal bonds will return from 3 to 4 percent this year. "As the year progresses, we think it will get more brutal."

Bloomberg Markets

By Claire Ballentine

March 18, 2019, 10:30 AM PDT

How to Survive the Zombie LIBOR Apocalypse: Saul Ewing

They're out there now, in small towns and big cities, getting ready to rise up and wreak financial havoc on unsuspecting bond issuers and borrowers. Unless they're sought out early and neutralized, the zombie LIBOR interest rates could take a big bite out of municipalities, hospitals, colleges and other institutions and borrowers with outstanding bonds, loans or swap contracts bearing interest rates tied to LIBOR.

It's already fairly well known that LIBOR, the London interbank offered rate, is being phased out as a reference rate. By the end of 2021, LIBOR will be replaced with another, as yet undetermined, reference rate or rates. Bank regulators in the United Kingdom and the United States have realized, belatedly, that LIBOR never was an efficient or fair way to set international benchmark interest rates. LIBOR is basically an average of what a small number of banks estimate on a daily basis to be their cost to borrow unsecured funds from each other in different currencies across different time periods. These unregulated self-reported estimates (or, more accurately, educated guesses based on an extremely small number of unsecured interbank lending transactions) are not based on actual transactions and, being free from governmental oversight or transparency, were ripe for inaccuracies and even manipulation.

Following some headline-grabbing charges of LIBOR-rigging by large banks, LIBOR's days were numbered, and the British authority overseeing LIBOR announced that, after 2021, it will no longer persuade or compel banks to submit estimates for the determination of LIBOR. The only question left then was what would replace LIBOR – or would a seemingly undead LIBOR continue to control interest rates as Zombie LIBOR?

Beware the Zombie LIBOR

LIBOR is now, in effect, a dead rate walking. The plan is that LIBOR will cease to exist as a benchmark interest rate at the end of 2021, but many imaginative market observers are calling it a "Zombie LIBOR", because it's not really alive now, and it may not really be dead after 2021. As mentioned above, LIBOR is no longer considered to be a reliable benchmark rate, and may become even less reliable as fewer banks provide LIBOR estimates and others move to alternate interest rates. Issuers and borrowers may begin to wonder whether their existing LIBOR-indexed bonds, notes or swap instruments actually reflect the real cost of borrowing money. Issuers and borrowers entering into new transactions may eschew LIBOR altogether in favor of another benchmark rate, without waiting for 2022 to roll around.

However, because so many currently outstanding bonds, loans and swap transactions have LIBOR baked into them, with no easy way to switch to another interest benchmark or comparable interest rate, it's possible that LIBOR may need to stay around even after 2021 in order to provide these "legacy" deals with a benchmark interest rate, no matter how unreliable. Some legacy deals with maturities extending beyond 2021 may have no other good choice but to stick with a zombified LIBOR, even as new deals and other legacy deals have switched over to another, more nimble, benchmark rate. LIBOR, kept artificially alive by a small number of reporting banks, would then go head to head with another rate, or rates, until the legacy deals all mature or find a way to provide an alternate benchmark rate.

SOFR to the Rescue?

In the United States, a committee convened by the Federal Reserve Bank to study LIBOR replacements recommended the adoption of an alternative interest rate benchmark tied to U.S. treasuries-backed repurchase agreement market from actual market transactions. The recommended rate – called the Secured Overnight Financing Rate, or SOFR – represents rates that banks are able to fund overnight on a basis secured by U.S. government debt. The Federal Reserve Bank of New York has been publishing SOFR on a daily basis since April 3, 2018.

As a benchmark for determining interest rates, SOFR has some structural advantages over LIBOR. SOFR is an overnight secured rate based on actual Treasury transactions, changing daily, whereas LIBOR is an unsecured rate based on bankers' estimates of future rates, which means that SOFR is much less susceptible to manipulation and abuse than LIBOR. LIBOR is based on unsecured loans and, therefore, builds in a risk premium; SOFR is a secured rate, with no risk premium, so SOFR generally produces a lower rate than LIBOR and is considered less volatile than LIBOR. And who knows what could happen to LIBOR if, or when, Brexit becomes a reality? So far, it appears that SOFR is the heir apparent as the benchmark interest rate in the U.S. following LIBOR's ultimate demise, assuming LIBOR really does go away.

Who's in Harm's Way?

For decades, LIBOR has been ubiquitous in lending and swap transactions. In the public finance sector, many state, county and local issuers, school and park districts, conduit 501(c)(3) borrowers such as hospitals and colleges, and conduit private activity bond borrowers have issued bonds or entered into loan or letter of credit transactions which provide that interest is to be determined by reference to a floating LIBOR rate (of usually 30, 60 or 90 days), together with an "applicable margin" or spread expressed as a percentage or basis points. LIBOR may be used in determining a taxable rate or tax-exempt rate, or both, and borrowers may have the option to convert floating LIBOR rates into floating prime or fixed rates, and then back again.

Issuers and borrowers have also been frequent participants in swap transactions, under which the issuer or borrower pays a fixed rate of interest to a counterparty and receives in return a floating rate as a percentage of LIBOR. In these transactions, the bonds are issued with a fixed rate, which is then exchanged with the swap counterparty for a LIBOR-based rate, so that the bondholders receive interest at a floating rate tied to some percentage of the applicable LIBOR.

Not only do issuers and borrowers need to concern themselves with the phase out of LIBOR, but banks, underwriters, placement agents, trustees, bondholders and other participants in the municipal bond marketplace will also be closely monitoring the looming battle between LIBOR and SOFR, and trying to determine which side to choose.

The Specter of a LIBOR Legacy

With 2021 staring down at them, bond issuers, conduit borrowers, banks and others are now facing LIBOR's demise from two distinct viewpoints – either those with existing, or legacy, transactions which have pegged interest rates to some fraction of LIBOR, or those entering into new deals with the full knowledge that LIBOR as we know it won't be around forever. For those entering into new floating rate transactions, being forewarned is being forearmed against Zombie LIBOR. As further discussed below, issuers, borrowers and banks can anticipate the phase out of LIBOR and draft their documents accordingly, such as by providing appropriate spread, trigger and fallback provisions. Those with legacy contracts referencing LIBOR, however, aren't so lucky. They will need to pour over their existing documents and get a handle on what happens to their interest rates once LIBOR is history.

Issuers and borrowers with legacy agreements for LIBOR-indexed debt maturing prior to the end of 2021 have, ostensibly, no great incentive to revisit their LIBOR agreements, yet they may wish to calculate whether the LIBOR-based interest rate they are currently paying has a real relationship to the actual cost of borrowing funds. They may discover that their LIBOR is a Zombie LIBOR untethered from reality. In that case, they might want to renegotiate for a lower interest rate – through a new benchmark rate, a new applicable margin, or both – for the remaining term of their LIBOR obligations.

On the other hand, issuers and borrowers with legacy agreements for LIBOR-indexed debt maturing after the end of 2021 have a pressing incentive to revisit their LIBOR agreements – and as soon as possible. These agreements contain the seeds of a Zombie LIBOR uprising which, left unchecked, could lead to uncertainty, higher interest rates and the municipal bond market version of panic in the streets.

The trouble with many legacy LIBOR contracts is that they didn't even bother to contemplate that LIBOR may go away someday, or else they contemplated only a temporary suspension of LIBOR quotes. Those legacy contracts which were sagacious enough to address the possible unavailability of LIBOR, no matter how short-term, usually provided for “fallback” language setting out an alternate benchmark rate to be used when LIBOR was not available.

These fallback provisions have taken many forms, and have set up a variety of alternate benchmark rates, ranging from choices like prime, some sort of fixed rate, some other floating rate determined by another index listed in the financial press, or a rate picked at random by a lender or bond trustee. Issuers and borrowers will need to scrutinize the fallback language, if any, in each of their legacy LIBOR contracts with an eye towards such critical issues as:

- **What’s the alternative?** Does the fallback language clearly and unambiguously identify an alternate benchmark rate? Is the alternate benchmark rate readily ascertainable in today’s market, and does the alternate benchmark rate accurately reflect the cost of borrowing money? If the fallback rate is the prime rate, the issuer or borrower will be facing a rate substantially higher than LIBOR. There’s no sense in replacing a Zombie LIBOR with another unreliable rate, or a rate that gives one party a distinct advantage over the other.
- **Who’s in charge?** The fallback language may give the lender, a bond trustee or some other party carte blanche to determine if LIBOR is indeed unavailable and what alternate benchmark rate is to be used in LIBOR’s place. Does the issuer or borrower have any say in the matter? If it doesn’t like the new alternate benchmark rate or the resulting new interest rate, can the issuer or borrower refinance or redeem without getting hit with a prepayment penalty?
- **What’s the spread?** The fallback language in many legacy contracts may have described an alternate benchmark rate, but probably did not provide a mechanism for adjusting the applicable margin or spread in the event LIBOR is not available. Many legacy LIBOR documents set the interest rate for a bond or loan at a multiple of LIBOR – for example, 0.75 of LIBOR for a tax-exempt bond. As mentioned above, though, LIBOR is a risk-based rate and therefore runs higher than risk-free reference rates such as SOFR (which, being based on secured short-term transactions, will generally be a lower rate than LIBOR). A higher or lower applicable margin may be required so that the actual interest rate paid under LIBOR will be roughly comparable to the actual interest rate under the alternate benchmark rate. Issuers, borrowers and lenders may need to perform mathematical gymnastics to come up with a new spread to use with the new benchmark rate, but the end result should be that the actual interest rate charged to the issuer or borrower won’t fluctuate wildly if and when an alternate benchmark rate replaces LIBOR.
- **How do we fix this?** There’s a good chance that your legacy LIBOR contracts will have to be amended because the fallback provisions are absent, confusing or inadequate, or because the margin is too high or too low for the new alternate benchmark rate. But it may not be so easy to amend legacy contracts. Loan agreements with banks may require the bank’s consent, or the consent of all or a majority of syndicated lenders. Indentures for bond issues may require the consent of all or a majority of bondholders. Issuers and borrowers should determine what consent, if any, is needed to amend legacy documents and, if so, can the required consent be readily obtained or waived?
- **But not so fast.** Amending legacy documents for tax-exempt bonds or loans could result in a “reissuance” for federal income tax purposes. The IRS considers a tax-exempt obligation to be reissued if there are what it deems to be “significant modifications” to the terms of the obligation so that it ceases to be the same obligation as originally issued and is essentially a new obligation, unless the terms of the bond documents themselves provide for such modifications. A reissued tax-exempt bond or loan is subject to a re-testing of the requirements for tax exemption. At a minimum, a new Form 8038 will need to be filed with the IRS, bond counsel may be required to perform additional tax due diligence, and bond counsel, issuer’s counsel and/or borrower’s counsel may have to give new opinions. The bottom line is that bond counsel should always be consulted prior to any amendments of legacy documents for tax-exempt obligations.**Getting Around LIBOR Before It Goes Away**

While bond issuers, conduit borrowers and banks with legacy LIBOR deals will bear most of the brunt of the LIBOR phase out, that doesn't mean that structuring and negotiating new floating rate transactions is going to be a piece of cake for anyone. Those entering into new floating rate bond or loan deals will know the perils of going forward beyond 2021, and will need to be very careful in their negotiations over issues such as:

- **A workable alternative.** New contracts tied to LIBOR should provide for a definitive alternate benchmark rate to go into effect as soon as LIBOR is no longer available. As of early 2019, SOFR seems to be the leading contender for the new benchmark rate, but there are also good arguments in favor of the Federal Funds Effective Rate, especially with respect to swap contracts. Other benchmark rates may emerge as we get closer to 2021. The key thing is to not leave it to chance but instead have a workable, fair fallback benchmark rate waiting in the wings.
- **Who's pulling the trigger?** New contracts should also clearly state who is responsible for determining when LIBOR is no longer available, and how that party will make that determination. Should the new benchmark rate kick in on January 1, 2022, or can the new benchmark rate go into effect earlier, when someone, somewhere determines that LIBOR is nothing but a hollow zombie?
- **Setting the spread.** As discussed above, the spread or margin for LIBOR may not necessarily be the appropriate spread for another benchmark rate. For new contracts, the issuer/borrower and lender should agree on an appropriate spread for when the new benchmark rate goes into effect.

Become a Zombie LIBOR Fighter

The closer we get to 2021, the more likely it is that LIBOR will become a zombie interest rate. It won't reflect real-world interest rates and may wind up costing unwary issuers and borrowers a lot of money in interest rates that are substantially higher than the market rate.

However, you can – and must – fight back against the Zombie LIBOR infestation. First, identify all of your bonds, loans, swap contracts and other financial commitments which have interest rates tied to LIBOR. Then, review the appropriate documents for each deal to see how they handle LIBOR unavailability triggers, new benchmark interest rate fallback provisions, adjustments to the margin and the other issues discussed above. If there is a fallback mechanism, try to figure out what your new interest rate might be using the new benchmark rate multiplied by the appropriate margin (either the existing margin or a new margin corresponding to the new benchmark rate). Is the LIBOR-based rate and the currently specified margin higher or lower than the alternate benchmark rate that would replace LIBOR?

Most importantly, communicate with your lender, swap counterparty or bond trustee. You may need to renegotiate terms, restructure the debt or consider a refunding or refinancing. Also, seek the assistance of competent legal counsel, with up-to-date market experience, to help ward off Zombie LIBOR and guide you through the process of transitioning from LIBOR to the new interest rate benchmark.

by Randall Kulat

March 19, 2019

Saul Ewing Arnstein & Lehr LLP

Population Growth, Temporary Cap Increase Boost LIHTC and Bond Ceilings.

The Internal Revenue Service (IRS) released 2019 population figures in Notice 2019-19, indicating the 2019 low-income housing tax credit (LIHTC) ceiling and tax-exempt private activity bond (PAB) cap for all states will increase. From 2018-2019, the U.S. population increased by 1,448,256 people to 327,167,434 in total, representing a 0.4 percent gain. U.S. territories lost more than 140,000 people, a 3.8 percent decrease.

The fiscal year (FY) 2018 omnibus appropriations bill provided a 12.5 percent increase in LIHTC allocations from 2018-2021. For 2019-2021, annual inflation adjustments would be applied to the new 2018 allocation amounts. Novogradac estimates the temporary 12.5 percent increase will increase affordable housing production by about 28,400 homes over 10 years compared to previous law.

Under Rev. Proc. 2018-57, each state's 2019 LIHTC ceiling is the greater of $2.75625 multiplied by the state population or $3,166,875. The 2019 PAB volume cap is the greater of $105 multiplied by the state population or $316,745,000. With the increase in per-capita allowances, states that lost population but do not qualify for the small-state minimum, will not be seeing a decrease in their LIHTC and PAB cap. In 2018, the state LIHTC cap was the greater of $2.70 per resident or $3,105,000 and state bond caps were the greater of $105 per resident or $310,710,000.

Highlights from Notice 2019-19 include:

Fastest growth: Arizona and Idaho grew by more than 2 percent each, with total population changes of 155,376 and 37,265, respectively. Other states with at least a 1 percent increase in population include (in increasing order): New Hampshire, North Carolina, Montana, Oregon, South Carolina, Nevada, District of Columbia, Texas, South Dakota, Florida, Colorado, Washington and Utah.

Losing population: States that lost population include: Alaska, Connecticut, Hawaii, Illinois, Kansas, Louisiana, Maryland, New Jersey, New York, Rhode Island, West Virginia and Wyoming. Territories that lost population are American Samoa, Puerto Rico and the U.S. Virgin Islands.

New York saw the largest numeric decrease with a 307,190 population decline, representing a nearly 1.6 percent drop. The largest percent decrease is Puerto Rico, with a loss of nearly 4.3 percent of its population or 142,024 residents. The population 2019 population figures for American Samoa, Guam, the Northern Mariana Islands and the U.S. Virgin Islands are the 2018 midyear population figures in the U.S. Census Bureau's International Database and therefore, do not reflect the impact of the 2018 hurricane season.

Biggest states: The 10 most populous states continue to be California with 39,557,045, followed by Texas, Florida, New York, Pennsylvania, Illinois, Ohio, Georgia, North Carolina and Michigan. Eight of the top 10 states saw population increases for 2019. In addition to New York losing nearly 1.6 percent of its population, Illinois also lost 60,943 residents or nearly 0.5 percent of its population. Of all U.S. states with increases, Pennsylvania and California saw the smallest population percentage gain with 0.01 percent and 0.05 percent, respectively.

Small-State LIHTC Minimum: Because their populations are below the small state minimum, these states will receive LIHTC allocations of $3.167 million and not the population-based LIHTC allocation: Alaska, Delaware, the District of Columbia, Montana, North Dakota, Rhode Island, South Dakota, Vermont and Wyoming. U.S. territories are American Samoa, Guam, Northern Marian

Islands and the U.S. Virgin Islands. This list of small-state recipients remains unchanged from 2016, 2017 and 2018.

Small-State PAB Cap Recipients:

The small-state PAB recipients for 2019 are the same as those in 2018, with the additions of Arkansas, Mississippi and Montana. Eighteen states, plus the District of Columbia will receive the 2019 small-state PAB minimum: Alaska, Arkansas, Delaware, the District of Columbia, Hawaii, Idaho, Kansas, Maine, Mississippi, Montana, Nebraska, New Hampshire, New Mexico, North Dakota, Rhode Island, South Dakota, Vermont, West Virginia and Wyoming.

Published by Michael Novogradac on Tuesday, March 19, 2019

S&P 2019 U.S. Municipal Green Bond & Resiliency Outlook: Will The Self-Labeled Market Rebound?

The U.S. municipal market for self-labeled green bonds bucked global trends in 2018 and declined for the first time since 2013, although this was in line with broader volume decreases in public financings reflecting tax law changes, which eliminated the ability of issuers to advance refund existing debt.

Continue Reading

Mar. 14, 2019

When Bond Funds Make Sense.

When Bond Funds Make Sense

Like mutual funds and exchange-traded funds, bonds and bond funds can help investors take the edge off market volatility and create a balanced, diversified portfolio. But a debate rages among people who worry about this stuff: Is it better to own individual bonds or bond funds?

The benefits of bond funds

With an individual bond, you get 100 cents on the dollar when it matures (assuming the issuer doesn't default). The knock on bond funds is that, because they are constantly buying and selling bonds, they have no maturity date. Therefore if rates are rising, the value of the fund goes down, and you might have to sell the shares for less than you paid.

While this criticism of bond funds is accurate, there are quite a few caveats. For starters, you'll need at least $500,000 in the bond portion of your portfolio to achieve sufficient diversity and the scale to absorb transaction costs. Short of that, you're better off in funds.

What's more, a bond fund can take advantage of rising rates by constantly buying bonds with higher coupons. But say you own a $10,000 bond paying 3% interest and rates rise to 4%. The semi-annual payouts of about $150 won't be enough to buy a new, higher-yielding bond.

And finally, while it's true you will get your money back if you hold a bond to maturity, you still suffered opportunity cost – you were unable to invest that $10,000 in a new, higher-paying bond without selling and taking the loss.

Continue reading.

Barron's

March 24, 2019 11:00 a.m. ET

Moody's: FEMA's Decision About California Dam Is a Signal to States and Localities

The federal agency may want governments to repair and replace aging infrastructure before it fails, but making California eat some of the repair costs could lead to more deferred maintenance on other projects, the ratings company said.

State and local governments can no longer assume the federal government will cover the costs of disasters it deems caused by deferred maintenance after California's request for $306 million to repair the Oroville Dam was denied, Moody's Investors Service said this week in a report.

Heavy rainfall damaged the Northern California dam's spillway in February 2017, and the resulting flood risk forced the evacuation of 180,000 residents.

The Federal Emergency Management Agency notified the California Department of Water Resources on March 7 that only $333 million of the $639 million the state requested for repairs would be reimbursed. FEMA argued preexisting structural issues with the upper spillway should have been addressed before it failed—declaring those repairs ineligible for at least 75 percent reimbursement.

A 2018 forensic report found systemic problems at the dam, starting with its design and construction but also with maintenance of the structure.

The state agency plans to appeal the decision to FEMA for itself and 29 local water contractors, wholesalers that supply treated water. But FEMA has made clear state and local governments should expedite repair or replacement of aging infrastructure before it fails, according to Moody's weekly credit outlook.

"Prior to the FEMA denial, localities might have anticipated reimbursement even for structures of uncertain storm preparedness," reads the report. "Having to demonstrate infrastructure sufficiency for natural disaster cost reimbursement by FEMA will increase the cost and complexity of local governments' disaster preparation and post-disaster recovery."

The agency doesn't intend to send messages with its decisions, Brandi Richard, spokeswoman for FEMA Region IX, told Route Fifty by email.

"We do encourage tribal, state, and local governments and homeowners to maintain and repair structures as a way to reduce the severity of damage caused by disasters," she added.

FEMA hasn't received the water agency's appeal yet, Richard said, and the appeals process could take up to 18 months. In the meantime, DWR plans to charge contractors $42 million over the course of 2019 for the repairs.

Should FEMA reject DWR's appeal, the department will either have to absorb the repair costs, probably by tapping reserves, or pass them onto contractors and ultimately ratepayers. That could result in higher-than-expected water bills for 27 million people, about 70 percent of California's population, according to the report.

Most of DWR's revenue, 50 to 55 percent, comes from the Metropolitan Water District of Southern California, which serves 19 million customers across Los Angeles, Orange, Riverside, San Bernardino, San Diego, and Ventura counties. The Metropolitan Water District's contract runs through 2035, and the district would likely be responsible for 45 percent of repair cost through that duration, according to the report.

DWR did not respond to a request for comment.

"We support [DWR] and recognize the agency has worked tirelessly to protect public safety and to successfully repair the Oroville spillways," said Jennifer Pierre, general manager of the association State Water Contractors, in a statement given to The Sacramento Bee. "We firmly believe that federally-required repairs to Oroville after a federally-declared emergency should qualify for full federal assistance."

To further offset costs, DWR may have to defer maintenance on other projects, according to the report, which could lead to another disaster.

"Our decisions to grant or deny funding are solely based on the laws and guidelines that govern our work," Richard said. "It is not our agency's intent to be unfair to our state and local partners. That's why we provide subject matter experts to help them submit projects for reimbursement."

Route Fifty

By Dave Nyczepir
News Editor

MARCH 22, 2019

A Closer Look at Environmental Impact Bonds.

How Are They Affecting Green Infrastructure?

Across the nation, countless cities with antiquated sewer and stormwater systems are under orders from the U.S. Environmental Protection Agency (EPA) to reduce stormwater runoff to decrease the amount of pollution entering local waterways. When Washington, D.C., faced this problem, city officials decided to experiment with green infrastructure rather than investing in expensive new pumps and pipes. Since green infrastructure had never been implemented on such a large scale, however, the city faced a huge challenge when it came to financing the project.

For the city, the solution was to launch the country's first Environmental Impact Bond, or EIB. Considered a "pay for success" strategy, an EIB allows cities to share both the risks and the rewards of solving problems through innovative strategies with investors. They make it possible for governments, investors and other participants to focus on overall outcomes rather than specific activities, and they are proving successful.

What are EIBs, how do they work and how exactly are they affecting green infrastructure? Let's take a closer look.

EIBs and How They Work

EIBs are instruments for financing large projects that pay returns based on outcomes. Like Green Bonds, they are commonly used to raise funding for environmentally sustainable projects, such as green infrastructure. Unlike Green Bonds, however, the financial return of the investment is tied directly to the success of the project. In other words, investors can only collect a return on their investment if the project proves to be successful. In the case of financing green infrastructure projects using an EIB, investors see a financial return when a demonstrable difference to the environment is achieved.

The current generation of investors cares about environmental and social returns as much as it cares about financial gain. Known as "impact investors," these individuals and organizations are seeking environmental, social and financial returns when making investments. When a municipality decides to fund a green infrastructure project using EIBs, it seeks investors who want to help pay for environmental capital projects.

Once bonds have been issued, the issuer uses the obtained funds to pay for their planned green infrastructure solutions. The principal amount of the bonds and interest must be remitted on scheduled payment dates. Following an evaluation period, the issuer pays the investors an outcome profit when there is demonstrable proof that the project has performed better than expected. If it underperforms, however, the investor must pay the municipality a "risk-sharing" payment. This usually means that the investor receives little or no interest.

RELATED — Sharing the Risks and Rewards: Examining the 'Pay for Success' Model of Environmental Impact Bonds

What Is Green Infrastructure?

Green infrastructure, also sometimes referred to as GI, is an innovative approach to managing stormwater runoff. It utilizes natural processes, such as evapotranspiration and infiltration, to slow down stormwater to prevent it from overwhelming municipal sewer systems and polluting waterways.

Green infrastructure also harnesses the power of these natural processes to clean and sometimes reuse stormwater. There are several types of green infrastructure, but the overall goal is to replicate natural environments and make it possible to deal with rainwater and snowmelt runoff as naturally as possible.

Green infrastructure includes things like permeable pavements, bioretention and roof-top collection processes. Porous asphalt, pervious concrete, rain gardens, bioswales and tree boxes can all be used in green infrastructure processes as a means of allowing water to be absorbed naturally into the ground. Green roofs, rain barrels and cisterns serve as options for collecting or reusing rainwater and reducing runoff. Man-made wetlands are also common solutions for dealing with stormwater in urban and suburban areas.

Benefits of Environmental Impact Bonds for Green Infrastructure

Because green infrastructure solutions are relatively new and have not been tested in the long term, obtaining financing is often a major challenge for municipalities. Environmental Impact Bonds provide access to funding for projects that are normally difficult to finance. They may also make it possible to obtain financing faster by engaging new investors.

Green infrastructure projects are sometimes risky. Financing them through EIBs means that the risk is shared by municipalities and investors. This, of course, makes it easier for municipalities to embrace green strategies since they are not carrying the entire burden if a project fails.

How EIBs Are Affecting Green Infrastructure

There are more than 700 communities throughout the United States with combined sewer systems. This means that stormwater and raw sewage flow through the same system before reaching a treatment facility. When these systems are overwhelmed, the combined sewage and stormwater ends up polluting local waterways. EIBs make it possible for municipalities facing this type of problem to fund environmentally friendly projects as solutions.

In the case of Washington, D.C., the original plan was a $2.6 billion tunnel system to keep overflow out of local rivers. Partway through the project, however, planners realized that green infrastructure initiatives would cost less ($25 million) while helping the city solve its wastewater problem. The country's first EIB made it possible to move ahead with this innovative project that may have otherwise been impossible to finance.

EIBs are having a huge impact on green infrastructure because they enable municipalities of virtually all sizes to embrace solutions like permeable pavement, green roofs and rain gardens. Financing such projects through traditional means is often challenging due to the unique risks involved with green infrastructure, but organizations are coming up with creative ways to implement greener infrastructure. For example, Atlanta won the first EIB Challenge supported by the Rockefeller Foundation and will be provided with $12.9 million worth of green infrastructure. With the help of creative financing, EIBs make it possible for municipalities to embrace these innovative, environmentally friendly and cost-effective alternatives to traditional stormwater management infrastructure.

A Unique Funding Option

The impact of paving over forests, meadows and wetlands has been seen on a massive scale across the nation. Through green infrastructure projects, however, many cities and communities are creating natural methods of dealing with stormwater runoff. Environmental Impact Bonds can provide a unique means of funding these projects, as they allow municipalities to share the risk with investors who are interested in environmental, social and financial returns on their investments.

Atlanta DWM completes first publicly-issued Environmental Impact Bond

Quantified Ventures, an impact investment firm, and Neighborly, a mission-oriented broker dealer, recently announced the issuance of the first impact bond to be offered on the public markets. The $14 million Environmental Impact Bond (EIB) gives the City of Atlanta Department of Watershed Management (DWM), access to funding for innovative green infrastructure projects that will address critical flooding and water quality issues, reduce stormwater runoff and enhance the quality of life of Westside neighborhoods that are in the Proctor Creek watershed.

The Atlanta EIB builds on the success of previous impact bond offerings in several ways. As a publicly issued bond, it has all the hallmarks of a traditional public municipal bond offering, such as a designated CUSIP number providing wide distribution and access to the secondary market, and has been highly rated by Moody's (Aa3) and S&P (A+). It is also designed to be priced competitively with other municipal bond offerings.

The Atlanta EIB is the second impact bond to be structured by Quantified Ventures as an actual municipal bond, the first of which, with the DC Water and Sewer Authority, was sold in a private placement. In its role in the Atlanta offering, Quantified Ventures brought expertise in evaluating all aspects of EIBs, which require an ability to translate desired outcomes into financial value that can be priced into a security and develop a rigorous evaluation process.

WATER FINANCING & MANAGEMENT

MARCH 25, 2019

MSRB Asks SEC Approval to Require More Data from Underwriters.

WASHINGTON — The Municipal Securities Rulemaking Board has filed rule changes with the Securities and Exchange Commission, which would require underwriters to provide more information about new offerings of bonds and eliminate the need for dealer financial advisors to provide the official statements to the underwriter.

On Thursday, the MSRB filed rule changes to G-11, on primary offering practices, and G-32, on disclosures in connection with primary offerings, after a two-year review process. The new amendments would ultimately increase transparency and equal access to information, the MSRB said.

"Engagement with our stakeholders has been an integral part of our retrospective review of MSRB rules related to primary offering practices," said MSRB Chair Gary Hall. "As a result of the feedback we have received over the past several years, we believe the proposed enhancements will increase transparency and promote the fair dissemination of information."

The MSRB published the draft amendments after a broader request for comment on primary offering practices, and received feedback from market participants in September 2018.

If approved by the SEC, the new amendments to Rule G-32 will require additional data about new issue bonds to be included on Form G-32 and would auto-populate data from the New Issuer Information Dissemination Service (NIIDS) onto that form.

The NIIDS system, developed by the Depository Trust Company at the Securities Industry and Financial Markets Association's request, collects information about a new muni issue from underwriters or their representatives in an electronic format and then makes that data immediately available to vendors that provide such information to market participants.

Form G-32 is submitted to the MSRB by underwriters and provides information about a new issuance, such as the underwriting spread, maturity date, initial offering price, minimum denomination, and more.

Some market groups said that the underwriter that submits the initial NIIDS data should have no obligation to update that information over the life of the bonds, in 2018 comment letters.

MSRB will ask for dealers to provide the minimum denomination of a new issue and to indicate yes or no on whether a minimum denomination is subject to change.

In his 2018 comment letter, Mike Nicholas, CEO of Bond Dealers of America, said his group supported a yes/no indicator for changing minimum denominations.

The MSRB will also require data on names of additional managers and municipal advisors in a deal. Currently, the data only shows syndicate managers.

However, Nicholas in 2018 wrote that the BDA objected to identifying the municipal advisors, saying the information is obtainable from the final OS.

“The BDA objects to this data field,” Nicholas wrote in 2018. “The information is obtainable from the final official statement and does not represent valuable information in the secondary market trading of municipal securities.”

The final proposal also dropped a subsection in Rule-32 that said a dealer financial advisor that prepares an OS would have to deliver it to the managing or sole underwriter after the issuer approves it for distribution.

A new amendment in Rule G-11 would align the time frame for the payment of group net sales credits (sales credits for orders in which all syndicate members benefit according to their participation in the account) with the payment of net designation sales credits. Both would then be paid within 10 calendar days after the date the issuer delivers securities to the syndicate.

Currently, group net sales credits are paid out of the syndicate account when it settles, meaning some syndicate members must wait 30 days following the receipt of the securities before they receive the credits. In contrast, sales credits due to a syndicate member as designated by a customer in connection with the purchase of securities (net designated orders) are supposed to be distributed within 10 calendar days after the date the issuer delivers the securities to the syndicate.

The MSRB began its formal retrospective rule review in early 2012 and in October 2018, it said it would continue its review into 2019.

By Sarah Wynn

BY SOURCEMEDIA | MUNICIPAL | 03/21/19 02:26 PM EDT

How To Use Muni Bonds For Tax-Loss Harvesting.

Democrats’ talk of higher taxes for the rich might intensify interest in state and local government bonds, where income is often exempt from taxes.

Tax-loss harvesting in municipal bond portfolios can allow investors to offset tax liabilities stemming from capital gains in other asset classes—as long as investors and advisors do their homework.

“Basically, when rates go up investors will potentially experience capital losses on munis—and that’s when tax-loss harvesting gets powerful and interesting,” said Alex Etzkowitz, vice president of investment research and strategy at Gurtin Municipal Bond Management in Solana Beach, Calif. “Investors can swap into other bonds, lock into the same amount of income and actually take advantage of losses to offset gains elsewhere. This is unlike tax-loss harvesting with equities, ETFs and mutual funds, which simply defers payments of taxes into the future and effectively postpones the capital gains tax burden."

In a simple example, your client purchases a municipal bond at $120 that is now priced in the marketplace at $110. He or she realizes a $10 loss on the sale and reinvests into a similar security with an identical maturity date, priced at $110. When the bonds mature, there are no capital gains because the purchases were executed above par. But the client has locked in a $10 capital loss that can be used to offset other gains realized through other investments.

Historically, muni bonds have outperformed Treasurys after the hiking of top marginal tax rates. "For top taxpayers, municipal bonds should be a core piece of an overall asset allocation," Etzkowitz said.

High-earning individuals are often better positioned to realize the most benefit from tax-free municipal bonds, said Jim Barnes, director of fixed income at Bryn Mawr Trust in Bryn Mawr, Pa., especially after tax reform introduced limitations on such long-standing deductions as state and local tax and property (SALT) tax.

Muni bonds have become desirable to wealthy investors in high-tax states such as California and New York, where the limitation on the SALT deduction hit hardest.

"We have a few clients in which we do manage a tax-free bond mutual fund portfolio for them in their taxable accounts and we're able to generate fairly comparable yields after taxes to stocks and other taxable bond portfolios," said Bruce Primeau, president of Summit Wealth Advocates in Prior Lake, Minn. He cited the example of managing a portfolio that is 55 percent stocks and 45 percent bonds for a couple that lives in Texas, which has no state income tax. "They do have about $1 million in tax-deferred accounts, but several million dollars in a taxable joint account," he said. "We have to manage a bond component in their taxable account to keep their overall asset allocation in line. In their case, we own a few different municipal bond mutual funds to construct a short-to-intermediate municipal bond portfolio for them, and it's been generating a little over 2 percent after-tax return for them each year."

The market comes with potholes. "The municipal bond market is thin and not efficient for trading," said William Velekei, a CPA and financial advisor with Corbenic Partners in Bethlehem, Pa. "Investors have more attractive pricing trading larger bond lots than those who trade smaller lot sizes. One strategy we recommend is building out and owning individual bonds in a laddered portfolio. It hedges against the risk of rising interest rates by reinvesting maturing bond proceeds, and it diversifies the holdings of the individual bonds across multiple issuing agencies."

Velekei's firm has clients who live in states that have above-average state income tax rates. "This strategy gives us the flexibility to customize a municipal bond portfolio that not only maximizes the benefit at a federal tax level but also at the state income tax level," he said.

But he had one note of caution: "Municipal bonds are often thought of as safe and conservative. The majority are. But individuals should be aware that not all states, municipalities or agencies have the same credit quality," Velekei said.

FINANCIAL ADVISOR

by JEFF STIMPSON

MARCH 18, 2019

Hawkins Advisory: Implementing the Rule 15c2-12 Amendments

This Advisory summarizes guidance that the SEC staff has provided to date in public forums regarding the recent Rule 15c2-12 amendments.

Read the Advisory.

Well, You're Going to Hear About Muni Bond Lawsuits: Joe Mysak

- **Price-fixing, collusion at the center of series of complaints**
- **Minnesota adviser, financial fraud powerhouse seek billions**

There was a scene in the "The Sopranos,'' in which mob boss Tony dreams of talking to a fish. "I don't want to hear it,'' he tells the fish. "Well, you're gonna hear it,'' the fish replies.

That's where we are right now with a series of lawsuits filed against a bunch of banks that served as remarketing agents for variable-rate demand obligations. Nobody wants to talk about it. Nobody wants to comment. Nobody really wants to hear about it. But you're gonna hear about it.

There's so much about this story that is without precedent. First there was the series of lawsuits filed by a whistle-blower on behalf of California, Illinois, Massachusetts and New York, alleging damages and penalties of at least $3.6 billion.

These lawsuits allege that the banks didn't price and remarket VRDOs individually, as they promised, but used something called "robo-resetting,'' basically pricing them as if they were all alike in big buckets. The lawsuits also allege that Wall Street institutions conspired to keep the prices high enough that investors would never put them back, thus saving banks the trouble of having to find new buyers.

Then there was a big antitrust lawsuit filed in the Southern District of New York by Philadelphia, represented by famed financial fraud powerhouse Quinn Emanuel Urquhart & Sullivan. This referenced the whistle-blower as well as its own analysis, alleging that seven banks named in the complaint colluded to inflate prices on VRDOs. The lawsuit also specifically mentioned that the SEC and the Department of Justice were looking into the whistle-blower's allegations, seeking unspecified damages and penalties in the "billions'' of dollars.

And then the whistle-blower, a Minnesota adviser named Johan Rosenberg, revealed himself because of a Massachusetts ruling requiring that only individuals, not corporate entities, could file False Claims Act lawsuits in the state. This was the last piece of the puzzle.

Where to begin? First, you don't get a lot of whistle-blowers making allegations in the municipal bond market, then letting everyone know who they are. Second, you don't get a lot of law firms of the caliber of Quinn Emanuel standing as plaintiff's counsel in the municipal market. Finally, of course, there's the "billions" — probably the least interesting part about all of this, although it's what will get headlines.

We're still only at the very beginning of a process that will presumably take years, marking another gruesome episode in public finance. And yes, I know: You don't want to hear it.

Bloomberg Business

By Joe Mysak

March 19, 2019, 7:03 AM PDT

Pennsylvania Proposes Restrictions on Municipal Interest Rate Swaps

HIGHLIGHTS:

- New legislation has been proposed in Pennsylvania imposing specific restrictions and parameters on interest rate swaps entered into by certain cities, counties and municipal authorities in the Commonwealth, and imposing new obligations on the providers of such interest rate swaps.
- The First Class City and County Interest Rate Management Agreement Act (H.B. 884) has been referred to the House Committee on Local Government for further consideration. It is anticipated that a similar bill will be introduced in the state Senate shortly.

New legislation has been proposed in Pennsylvania imposing specific restrictions and parameters on interest rate swaps entered into by certain cities, counties and municipal authorities in the Commonwealth, and imposing new obligations on the providers of such interest rate swaps. The bill (H.B. 884) – First Class City and County Interest Rate Management Agreement Act – was introduced in the House of Representatives on March 19, 2019. The bill restates certain restrictions first proposed earlier this year in H.B. 320 and S.B. 206, introduced as part of a series of legislation in both houses of the General Assembly intended to address municipal government reform.

The bill has been referred to the House Committee on Local Government for further consideration. It is anticipated that a similar bill will be introduced in the state Senate shortly.

Which Municipal Entities Are Covered (Each a "Contracting Authority")

- Cities of the first class (those having a population of at least 1 million inhabitants)
- Counties of the first class (those having a population of at least 1.5 million inhabitants)
- Certain municipal authorities

Which Agreements Are Covered

- Any agreement which "in the judgment of the contracting authority is designed to manage interest rate risk or interest cost of the contracting authority on any debt or other debt-related obligations a contracting authority is authorized to incur," and expressly references swaps, interest rate caps, collars, corridors, ceiling and floor agreements, forward agreements, float agreements and other similar arrangements.

Restrictions and Parameters

- Each interest rate management agreement or related confirmation must be **authorized and awarded by resolution** of the contracting authority
- No payments may be made to or on behalf of a contracting authority by the other party except **periodic scheduled payments, termination payments and attorney fees and other consultant fees** incurred in connection with entering into an interest rate management agreement

- Periodic scheduled payments must commence **not later than three years** after the date of the related confirmation
- The index or basis used to calculate the periodic scheduled payments to be received by the contracting authority must be **“substantially similar”** to the index or basis used to calculate the interest due on the associated debt
- At the time of execution, the notional amount of each interest rate management agreement, together with the notional amount of outstanding interest rate management agreements, **cannot exceed 30 percent of the total principal amount** of the debt sharing the same source of payment as such interest rate management agreements
- Payments received by the contracting authority **must be deposited in a payment account** and used for certain enumerated purposes
- The scheduled expiration date of an interest rate management agreement **cannot exceed 10 years** from the date of the related confirmation unless the interest rate management agreement allows the contracting authority to **terminate at any time after 10 years without making a termination payment**

Provider Obligations

Each provider of an interest rate management agreement **must acknowledge the following in a certification**:

- that the contracting authority is a political subdivision or municipal authority
- that the provider has read the law
- that the contracting authority may only enter into an interest rate management agreement to manage interest rate risk or interest cost on debt or other debt-related obligations of the contracting authority
- that it will notify the state’s Department of Community and Economic Development, in writing, promptly upon payment of a termination payment by the contracting authority, including the date and amount of the payment and identity of the interest rate management agreement under which it was made

Holland & Knight LLP

by Douglas I. Youngman

USA March 20 2019

TAX - NEW YORK

MSK Realty Interests, LLC v. Department of Finance of City of New York

Supreme Court, Appellate Division, First Department, New York - March 7, 2019 - N.Y.S.3d - 2019 WL 1064041 - 2019 N.Y. Slip Op. 01662

Taxpayer, a limited liability company (LLC) that owned a condominium in New York City, brought article 78 proceeding to annul rules of the Department of Finance of City of New York which retroactively eliminated eligibility for a tax abatement for corporate and other non-individual owners of condominiums and cooperative apartments.

The Supreme Court, New York County, denied the petition, and taxpayer appealed.

The Supreme Court, Appellate Division, held that:

- Department's determination that the term "primary residence" in statute granting a partial tax abatement for cooperatives of condominiums referred to the dwelling place of individuals and did not apply to corporations, LLC partnerships or other entities was not arbitrary or capricious, and
- Department did not violate taxpayer's due process rights when it restored erroneously abated taxes for four years.

Determination by the New York City Department of Finance that the term "primary residence" in statute granting a partial tax abatement for cooperatives or condominiums referred to the dwelling place of individuals and did not apply to corporations, limited liability company (LLC) partnerships or other entities was not arbitrary or capricious; determination was consistent with dictionary definitions and common usage of the term, and was also consistent with legislative history.

New York City Department of Finance did not violate due process rights of taxpayer, a limited liability company (LLC) that owned a condominium in city, when it restored erroneously abated taxes for four years after determining that the statute granting a partial tax abatement for cooperatives or condominiums did not apply to units owned by LLCs; statute's primary residency requirement was made retroactive, and the retroactivity provided for in the statute was not excessive.

TAX - NORTH CAROLINA

Matter of Aaron's, Inc.

Court of Appeals of North Carolina - February 19, 2019 - S.E.2d - 2019 WL 660961

After county board of equalization and review affirmed Tax Administrator's decision to allow assessment of tax deficiency issued by county office of tax assessor against taxpayer for unpaid taxes on goods taxpayer offered to customers through "lease purchase" agreements, taxpayer appealed, arguing that such property was inventory exempt from taxation.

The Property Tax Commission, sitting as the State Board of Equalization and Review, determined that property in physical possession of taxpayer's customers pursuant to "lease purchase" agreements was subject to ad valorem taxation. Taxpayer appealed.

The Court of Appeals held that:

- Taxpayer's transfers of property did not constitute sales, and thus transferred property was not exempt from taxation; and
- Statutory definition of "inventory" did not include goods taxpayer transferred to customers.

Taxpayer's transfers of property to customers through "lease purchase" agreements did not constitute sales, and thus transferred property was not exempt from taxation as "inventor[y] owned by retail and wholesale merchants"; customers were under no obligation to purchase leased property or to pay total purchase price of property, and were permitted to return leased property at any time without penalty, and price to purchase leased property through purchase option was higher than price for purchasing property directly.

Statutory definition of "inventories" as goods "held" for sale in regular course of business did not include goods taxpayer transferred to customers through "lease purchase" agreements, where property was in customers' possession.

[Investors Keep Puerto Rico Bonds After First Chapter of Restructuring.]

Troubled island's financial prospects could be turning around

Investors are hanging on to bonds issued as part of Puerto Rico's massive restructuring effort, a sign of confidence in the fiscally troubled island's prospects.

Prices have edged higher for $12 billion in new debt backed by sales taxes that Puerto Rico issued several weeks ago. The bonds, known by their Spanish acronym as Cofina s, were issued to investors including hedge funds as part of the U.S. territory's financial restructuring, marking the first settlement in ongoing negotiations to fix its broken finances.

Though the bonds' prices have pared some of their earlier gains, one slice of newly issued sales tax bonds recently traded with an average price of about $95.44, up from $93.00 last month, according to Refinitiv's Municipal Market Data.

Continue reading.

The Wall Street Journal

By Gunjan Banerji and Andrew Scurria

Updated March 21, 2019 5:03 p.m. ET

[High-Yield Muni Market Passes a Key Test From Puerto Rico's Sell-Off.]

- **New sales-tax debt is most actively traded in muni market**
- **There was concern it could weigh on performance of junk bonds**

Over the past month, hedge funds and other investors dumped more than $2.5 billion of debt they received in Puerto Rico's record restructuring, a sell-off that made the sales-tax-backed securities the most actively traded in the municipal-debt market.

Yet the prices haven't crashed — and the flood did little, if anything, to dampen the gains for other tax-exempt junk bonds.

The performance shows that the $3.8 trillion municipal market weathered a major test from Puerto Rico's bankruptcy, by far the biggest ever for an American government. The debt restructuring, a precursor of others that will follow, had raised concern that the speculative corner of the market would struggle to absorb the billions of dollars of new debt, pushing up yields on Puerto Rico's new securities and other high-risk debt competing for limited space in investors' portfolios.

Continue reading.

Bloomberg Markets

By Michelle Kaske

March 19, 2019, 6:34 AM PDT

Current Status of Puerto Rico Debt Restructuring.

After a decade-long fiscal decline, Puerto Rico filed for bankruptcy protection and has been in federal court since May 2017 to restructure its $120 billion debt portfolio comprised of public debt and unfunded liabilities. The financial crisis of this U.S. commonwealth has contributed to a high poverty rate, in which 40% of Puerto Rican citizens are living under the poverty line and the unemployment rate has been above double digits, along with a nearly insolvent public healthcare system.

The prospect of Puerto Rico's debt restructuring, negotiations with its creditors, and getting a plan of adjustment approved by the bankruptcy court became even more uncertain after a U.S. Appeals Court ruled in February 2019 that the federal oversight board overseeing the bankruptcy process was unconstitutionally appointed.

The court also set a 90-day period for the U.S. president and the Senate to either validate the appointments or reestablish the oversight board. As things were looking promising and progress was being made to achieve the objective of debt restructuring for Puerto Rico, this new ruling has knocked any progress off its rails.

Continue reading.

municipalbonds.com

by Jayden Sangha

Mar 20, 2019

NFMA Municipal Analysts Bulletin.

The Municipal Analysts Bulletin, Vol. 29, No. 1, is available by clicking here.

Ex-Citadel Quants are Gunning for the $3.8 Trillion Muni Market.

- **Headlands responds to 13,000 municipal bond auctions a day**
- **Greater adoption of electronic trading in munis boosts quants**

The quants are coming for the $3.8 trillion municipal market.

Headlands Tech Global Markets LLC, a firm founded by former senior executives at Citadel LLC, is using complex mathematical formulas and powerful computers to buy and sell state and local government securities, seizing on the sometimes divergent prices in a market where the vast majority of bonds only rarely change hands.

Headlands' five-man band of algorithm-driven traders have become a major, if little known, force in the industry, bidding each day on about 13,000 municipal securities that are put up for sale on electronic trading platforms. That's placed it among a group of companies that are bringing technology that has swept through other corners of Wall Street to state and local-government debt trading, challenging a long-held view that a market that finances everything from factories to state governments requires detailed research to gauge prices.

“This idea that every bond is a unique snowflake and a story — they say ‘balderdash’,” Paul Daley, a managing director at BondWave LLC, a financial technology company, said of Headlands’ approach. “All these bonds are mathematical equations, and if we can model it, we can price it.”

The emergence of Headlands comes as quantitative trading firms are stepping into a gap left by securities dealers, who are holding less debt in inventory and concentrating instead on fulfilling orders for customers. The shift by dealers was spurred in part by regulatory requirements ushered in after the 2008 financial crisis that increased their cost of capital, prodding them to cut their holdings of state and local-government debt by about 60 percent since 2006, according to Federal Reserve Board statistics.

Generating Bids

“The algorithms and technology are bringing more liquidity into the market, which is a good thing,” said Brad Winges, chief executive officer at Hilltop Securities in Dallas. “It’s giving more transparency to the individual retail investor.”

Matt Andresen, a former co-chief executive at Citadel Securities, the New York Stock Exchange’s largest designated market maker, founded Headlands in 2010 with Jason Lehman, who ran Citadel’s global options business, and Neil Fitzpatrick, former chief operating officer of Citadel Execution Services.

They were joined in 2013 by Martin Mannion, who had succeeded Fitzpatrick at Citadel. Headlands started trading municipal bonds in 2014 and focuses its computer-driven approach on lots of $100,000 or less, which represent about 80 percent of daily trade volume, though it also trades large blocks as well.

The Chicago-based firm executes more than 1,000 trades a day and had an inventory of $400 million, Andresen, Headlands’ chief executive officer, told a fixed-income market structure panel in April 2018. He said the firm’s technology can generate prices on more than 700,000 bonds.

“We felt like given our experience providing liquidity to retail-sized orders in other asset classes, even though munis were very different, that we could potentially add value as a liquidity provider,” Mannion said in a phone interview. He declined to disclose Headlands profitability.

Ripe Market

Even with such approaches, the municipal market is unlikely to ever be as uniform as the stock market. The over-the-counter municipal bond market has more than 900,000 separate securities issued by tens of thousands of municipalities, with a big chunk of them held by buy-and-hold individual investors.

In 2011, about 99 percent of the market’s bonds didn’t trade on any given day, according to a report from the U.S. Securities and Exchange Commission. Last year, daily trades averaged 40,400, about half of which had a value of $25,000 or less, according to the Municipal Securities Rulemaking Board.

Yet, several factors have made the the market ripe for the type of quantitative trading that’s already got a major hold on the stock market.

The release of same-day trading prices since 2005 has given firms like Headlands more than a decade of data that can now be used to build pricing models, while electronic trading platforms have increasingly displaced the old-fashioned practice of executing trades over the phone. Regulations enacted in 2016 that require brokers to seek the best prices available has also led them to expose bonds to a large number of bidders on such trading platforms.

Win or lose, through the auction process Headlands gets feedback that allows it to refine its pricing models. Automation allows the firm to respond, in periods of volatility, to a spike in the number of auctions, which would be difficult for an individual trader to do manually.

What makes Headlands different from banks such as Citigroup Inc. and Royal Bank of Canada, underwriters that also use such techniques, is that the company doesn't handle new securities offerings and focuses mostly on small lots of bonds. Quantitative tools have allowed the big banks to free up traders to focus on block trades of more than $1 million, where relationships with counterparties are important.

Winges, a former senior executive at Piper Jaffray Cos. who took over as Hilltop's CEO last month, said the firm is spending more money on data aggregation and trading capability for clients. But he said computers won't replace humans on the trading floor.

"If you want to compete, the perfect combination is technology with historical knowledge," Winges said. "You can have the greatest quant model and still lose money and you can have the smartest trader — but not have a lot of technology — and he or she is going to lose money, too."

Bloomberg Markets

By Martin Z Braun

March 19, 2019, 5:11 AM PDT

Quants in the Muni Market Show Bond Liquidity Will Be Fine.

Debt markets continue to evolve in an era of diminished Wall Street influence.

At least one quantitative trading firm thinks it has finally cracked the code to the widely idiosyncratic, infrequently traded, largely individual investor-based U.S. municipal bond market.

Bloomberg News's Martin Z. Braun has the scoop:

> Headlands Tech Global Markets LLC, a firm founded by former senior executives at Citadel LLC, is using complex mathematical formulas and powerful computers to buy and sell state and local government securities, seizing on the sometimes divergent prices in a market where the vast majority of bonds only rarely change hands.
>
> Headlands' five-man band of algorithm-driven traders have become a major, if little known, force in the industry, bidding each day on about 13,000 municipal securities that are put up for sale on electronic trading platforms. That's placed it among a group of companies that are bringing technology that has swept through other corners of Wall Street to state and local-government debt trading, challenging a long-held view that a

market that finances everything from factories to state governments requires detailed research to gauge prices.

"This idea that every bond is a unique snowflake and a story — they say 'balderdash'," Paul Daley, a managing director at BondWave LLC, a financial technology company, said of Headlands' approach. "All these bonds are mathematical equations, and if we can model it, we can price it."

Continue reading.

Bloomberg Opinion

By Brian Chappatta

March 19, 2019, 10:15 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.

Do Corporate Tax Incentives Work? 20 States, and Most Cities, Don't Know.

Washington state, which gave Boeing $1 billion over the past four years, has a well-established system to evaluate tax deals. Many governments don't.

SPEED READ:

- Boeing has received roughly $1 billion in tax incentives and credits from Washington state over the past four years.
- Washington is one of 30 states that regularly evaluates corporate tax incentives.
- Only a few cities regularly track and assess these business deals to see if the promised results were achieved.

The aircraft manufacturer Boeing has received roughly $1 billion in tax incentives and credits from Washington state over the past four years. That includes tens of millions of dollars for activities in 2017 related to production equipment for the 737 MAX jets, all of which have been grounded in the past week after two fatal crashes.

That information is known because Washington state has one of the more well-established tax incentive evaluation programs in the country. As corporate tax breaks — like the ones used to lure Amazon's HQ2 — have come under increasing scrutiny, more states are tracking them and attempting to ensure that the businesses that receive them are holding up their end of the deals.

Continue reading.

GOVERNING.CCOM

BY LIZ FARMER | MARCH 20, 2019 AT 4:00 AM

Legal Insight - Summary And Analysis Of The Water Infrastructure Improvement Act

Background

Over the last several decades, cities and other municipal entities (such as water reclamation districts) that own and operate wastewater treatment plants and sewer systems have been subjected to additional and increasingly stringent regulatory requirements under the Clean Water Act (CWA).

These requirements emanate from several distinct CWA programs, including those that address control of nutrients and other discharges from municipal treatment plants (also called publicly owned treatment works, or POTWs); systems that combine domestic effluents and stormwater (which give rise to combined sewer overflows, or CSOs); municipal separate storm sewer systems (MS4s); wasteload allocations in total maximum daily loads (TMDLs); and other CWA requirements. Each of these requirements is imposed independently, but the combined impact on the municipal operations, and on the financial status of the community and its residents, can be enormous.

To address these municipal concerns, EPA, in 2012, adopted a policy that allows municipalities to do an “integrated plan” or an IP. In an IP, the municipality can assess all of the CWA requirements that apply to its operations and prioritize them in a manner that seeks to maximize the environmental benefit from using the available resources. Several communities (including Lima, Ohio; Springfield, Massachusetts; and Evansville, Indiana) have used the IP process and have found that it can help them reduce their economic burdens while better protecting water quality.

However, broad implementation of the IP process has not proceeded quickly. Many communities have found that EPA Regions and States within which they operate are hesitant to use this new mechanism. Also, without clear statutory authorization, there is some concern about the long-term stability and continuity of the program. To address these concerns and to provide clear legal authority for IPs, Congress passed the Water Infrastructure Improvement Act – H.R. 7279, now Public Law 115-436, which provides Congressional support for use of the IP process on a long-term basis. The president signed the act into law on Jan. 14, 2019.

The new law’s IP provisions ensure that each community must be informed by their permitting authority (in most cases, the State) that it has the opportunity to develop an IP that can be incorporated into its CWA permit. The permit can then incorporate all regulatory requirements addressed in the IP – and may include projects to reclaim, recycle or reuse wastewater, as well as green infrastructure measures. IP permits can contain compliance schedules, which can last longer than one permit term. IPs can also be developed by communities in enforcement actions, and communities that develop IPs can request that their enforcement orders or decrees be modified based on the provisions in the IP. To ensure that EPA is held accountable for the effective implementation of the IP program, the Agency has to prepare a report to Congress on IPs, and make that report publicly available, within two years after the new law was enacted. The report must contain information on all IPs developed and implemented since EPA’s guidance was issued in 2012.

In addition to codifying the IP process, the new law also contains provisions that promote the use of “green infrastructure” measures, such as porous pavement and green roofs. Many communities have sought to use these measures to reduce stormwater discharges without the need to build extensive and costly “gray infrastructure” (GI) systems, such as storage tanks and underground tunnels. However, implementation of GI concepts by EPA and other federal agencies has been inconsistent – sometimes encouraging and promoting their use, and sometimes imposing such extreme restrictions on their implementation that communities simply build gray systems instead. The GI provisions in the Water Infrastructure Improvement Act are intended to require EPA to work actively to promote GI use (within existing legal authorities), and to coordinate the GI policies that are being implemented by EPA offices and other agencies.

In navigating the myriad CWA requirements that are imposed on their operations, municipalities have often found it difficult to have their community-specific concerns heard by EPA. They have also found it challenging to access financial information and other resources that are available to them through EPA. Therefore, the new law includes one other provision: it creates a new office at EPA for a Municipal Ombudsman. The ombudsman's office will assist municipalities by providing them with information and assistance, and will also have the responsibility of providing information to EPA Administrator to ensure that the Agency policies as to CWA obligations of municipalities are consistently implemented by all EPA offices, including EPA Regions.

Specific Provisions of New Law

1. Integrated Planning

- EPA (or the State if the State has been delegated a National Pollutant Discharge Elimination System NPDES permit authority) must inform communities of the opportunity to develop an integrated plan that may be incorporated into the municipality's permit.
- A permit incorporating an integrated plan may integrate all regulatory requirements addressed in the plan, including requirements related to: (1) a combined sewer overflow, (2) a capacity, management, operation and maintenance program for sanitary sewer collection systems, (3) a municipal stormwater discharge, (4) a municipal wastewater discharge, and (5) a water quality-based effluent limitation to implement an applicable wasteload allocation in a total maximum daily load.
- An integrated plan incorporated into a permit may include the implementation of (1) projects, including innovative projects, to reclaim, recycle, or reuse wastewater; and (2) green infrastructure.

2. Compliance Schedules in Integrated Planning Permits

- A permit incorporating an integrated plan can contain a compliance schedule, which can be longer than one permit term if the compliance schedule is authorized by the State water quality standards and meets the requirements of EPA regulation concerning compliance schedules, 40 CFR 122.47.
- The requirement in EPA regulations (40 CFR 122.47) for compliance by an applicable statutory deadline does not prohibit implementation of an applicable water quality-based effluent limitation over more than one permit term.
- Nothing in the CWA provision regarding compliance with water quality-based requirements (Section 301(b)(1)(C)) precludes including a compliance schedule in an integrated planning permit.
- A compliance schedule can be reviewed each time that the permit is renewed, to determine whether the schedule should be modified.

3. Implementation of Integrated Plans Through Enforcement

- In any CWA enforcement action relating to municipal discharges, EPA must inform the municipality of the opportunity to develop an integrated plan.
- Any municipality under a CWA administrative order or settlement agreement (including a judicial consent decree) that has developed an integrated plan may request a modification of the order or agreement based on the integrated plan.

4. Report to Congress on Integrated Plans

- Within two years after enactment, EPA must submit a report to Congress on integrated plans, which must contain information regarding each integrated plan that has been developed and implemented under the CWA since the publication of EPA integrated planning framework in 2012. The report must also be made publicly available.

5. Municipal Ombudsman

- An Office of Municipal Ombudsman has been created at EPA.
- The ombudsman will have duties that include providing technical assistance to communities seeking to comply with the CWA, and providing information to the administrator to help ensure that Agency policies are implemented by all EPA offices, including Regional offices.
- The ombudsman will work with headquarters and Regional offices to ensure that communities are provided information about available federal financial assistance, about flexibility available under the CWA, and about the opportunity to do an integrated plan.
- The ombudsman will publish, on EPA's web site, general information related to technical and financial assistance to municipalities, flexibility available under the CWA, and resources developed by EPA related to integrated plans.
- The ombudsman will also publish on the website, a copy of each permit, order, or judicial consent decree that implements or incorporates an integrated plan.

6. Green Infrastructure

- EPA must promote the use of green infrastructure in, and coordinate the integration of green infrastructure into, CWA permitting and enforcement, planning efforts, research, technical assistance, and EPA funding guidance.
- EPA must ensure that the Office of Water coordinates efforts to increase use of green infrastructure with other federal agencies, State, tribal and local governments, and the private sector.
- EPA must direct each Regional office, as appropriate based on local factors, and consistent with the requirements of the CWA to promote and integrate the use of green infrastructure within the Region, including outreach and training, and incorporation of green infrastructure into permitting and other regulatory programs, codes, and ordinance development, including requirements under consent decrees and settlement agreements in enforcement actions.
- EPA will promote green infrastructure information sharing, including through a web site.

7. Savings/Transition Provisions

- Nothing in the integrated planning provisions reduces or eliminates available flexibility under the CWA, including the authority of a State to revise a water quality standard after a Use Attainability Analysis, subject to EPA approval.
- A compliance schedule issued in a permit shall not revise a compliance schedule in a judicial order or decree resolving a CWA enforcement action to be less stringent, unless the order or decree is modified by agreement of the parties and the court.
- Nothing in the integrated planning provisions modifies any obligation to comply with applicable CWA technology and water quality-based effluent limitations.

Analysis of New Provisions and Practical Impacts

The Water Infrastructure Improvement Act provides several tools that municipalities can use to improve their programs for CWA compliance – to make them more effective, less confusing, and to reduce the onerous financial burdens on the communities and their ratepayers. Each community should, for example, consider carefully assessing whether developing an integrated plan will be useful to address its particular compliance obligations. The new law emphasizes incorporation of IPs into permits, rather than enforcement orders or decrees, so each community doing an IP will want to explore use of the permit mechanism rather than the enforcement tools that are usually used by EPA and the States. In developing IP permits, long-term compliance schedules should now be available for use, to ensure that the community has enough time to implement its compliance requirements in a reasonable and affordable manner. Also, the community should be able to include innovative projects in its IP, including reclaim/reuse/recycle programs and green infrastructure measures.

Beyond use of the IP process, communities should be able to utilize other opportunities provided by the new law, whether they are developing an IP or dealing with their CWA issues in another way. To the extent that the community wants to use green infrastructure, for example, it can now point to the clear congressional message that EPA should be promoting – not discouraging – use of GI measures. And, even if it is not using GI or developing an IP, a community can seek the help of the new ombudsman if it encounters difficulties in dealing with EPA demands, or if it needs assistance in accessing EPA financial or informational resources.

Role of Barnes & Thornburg in Assisting Communities

The law firm of Barnes & Thornburg – and its Water Team – has assisted many communities in addressing their CWA compliance and enforcement issues.

In 2010, the Water Team began working with the U.S. Conference of Mayors in its efforts to craft solutions to the CWA challenges faced by its members. In that capacity, members of the team were closely involved in the Conference of Mayors' work with EPA to develop the Agency's integrated planning policy. During the development of that policy, the Water Team convened a group of municipalities that were interested in integrated planning ideas – the Municipal Integrated Planning Alliance (MIPA) – and through that group, participated in EPA meetings and submitted detailed comments on EPA draft policies. Once EPA issued its policy, the Water Team began working with communities to develop IPs, and succeeded in obtaining the first EPA approvals of final IPs. Subsequently, as IP issues began to be debated in Congress, the members of the Water Team participated in drafting proposed legislation. During the legislative process, the team lawyers represented the National Association of Clean Water Agencies (NACWA), and worked in cooperation with the Conference of Mayors and other municipal groups, in developing and obtaining passage of the final bill.

Our Water Team has deep knowledge of the Water Infrastructure Improvement Act because of our direct involvement with the bill. With that knowledge, the Water Team assists clients with how those provisions can be used to address their specific challenges, how to develop detailed IPs, and how to engage with EPA and State agencies to secure approval of IPs.

For more information about the new CWA provisions, please contact the Barnes & Thornburg attorney with whom you work, practice lead of the firm's Water Team, Fred Andes, at 312-214-8310 or fandes@btlaw.com, or chair of the firm's Environmental Law Department, Erika Powers at 312-338-5904 or epowers@btlaw.com.

any specific facts or circumstances. The contents are intended for general informational purposes only, and you are urged to consult your own lawyer on any specific legal questions you may have concerning your situation.

1https://www.epa.gov/sites/production/files/2015 10/documents/integrated_planning_framework.pdf.
2https://www.congress.gov/115/bills/hr7279/BILLS-115hr7279enr.pdf

Barnes & Thornburg LLP

by Fredric P. Andes and Erika K. Powers

March 19, 2019

On the Intersection of Competition Law and Local-Government Conduct .

This post studies an interesting question in competition law: can a local government be sued for money damages based on a federal antitrust violation?

The answer is "no," according to a recent decision from a federal court in Charlotte. *Benitez v. Charlotte-Mecklenburg Hospital Authority* is one of several high-profile antitrust cases involving Atrium Health, the large public-hospital system in Charlotte.

Raymond Benitez had inpatient care at Atrium. After insurance, Mr. Benitez faced a $3000 medical bill.

Mr. Benitez's insurer had an agreement with Atrium. That agreement included what are known as steering restrictions. These restrictions limited an insurer's ability to direct subscribers—like Mr. Benitez—to healthcare providers other than Atrium.

These facts prompted a putative class action. The complaint alleges that the steering restrictions unlawfully drive up prices for inpatient services, inflate the amount of co-insurance that patients must pay Atrium, and thereby violate the federal antitrust laws. The putative class sought money damages and an injunction to stop Atrium's steering restrictions.

Atrium moved for judgment on the pleadings. It argued that a federal statute called the Local Government Antitrust Act barred the claim for monetary damages. The Act provides local governments with absolute immunity against monetary damages brought under section 4 of the Clayton Act.

In its opening brief, Atrium emphasized that it functions as a political subdivision of the state—and that it was created to serve a public purpose. Atrium pointed to numerous cases that have applied the Act to hospitals based on those features.

Judge Robert J. Conrad, Jr. agreed.

Judge Conrad began his analysis by looking at the Act's definition of "local government." That definition includes any "special function governmental unit established by State law in one or more States."

Judge Conrad then noted that courts have broadly construed this definition. That broad construction means that the Act applies to a wide range of decisions that any local-government entity makes.

And, to eliminate any doubt, Atrium is a local-government entity. The General Assembly created Atrium as a public-hospital authority under chapter 131E of the North Carolina General Statutes. Judge Conrad specifically cited section 131E-16(14), which defines a hospital authority as "a public body and a body corporate and politic organized under [North Carolina law]." He explained that the term "body politic" means "a body acting as government."

Judge Conrad then turned to Atrium's powers under the statute. Those powers, he observed, parrot the powers that the General Assembly gave to municipal hospitals under the same chapter. This similarity bears significance, because the Fourth Circuit has granted absolute immunity from antitrust damages to a municipal hospital established under chapter 131E.

By extension, Judge Conrad concluded, a public-hospital authority formed under chapter 131E is likewise immune from antitrust claims that seek monetary damages.

So the Act shields Atrium from claims for money damages. But it does not shield Atrium from claims for injunctive relief.

Judge Conrad put the case on ice nonetheless. He did so because the same injunctive relief being sought in *Benitez* is also being sought in another pending case against Atrium before Judge Conrad. A stay in *Benitez* avoids duplicative litigation, and a resolution of the issues in the other case would resolve the issue in *Benitez*.

That resolution is coming soon, because the parties in the earlier case have reached a proposed settlement. That settlement stops Atrium from enforcing steering restrictions in its insurer contracts and bars Atrium from taking action that would prohibit, prevent, or penalize steering by insurers in the future.

Ellis & Winters LLP

byScottie Lee and Stephen Feldman

Seller's Market Seen Aiding Illinois and Chicago Bond Issues.

CHICAGO (Reuters) – Financial uncertainties swirling around Illinois and Chicago may not deter bond buyers when the two fiscally shaky governments sell more than $1.1 billion of debt this week.

Slim supply in the $3.8 trillion U.S. municipal market, yield-hungry investors, and the shelving of interest rate hikes by the Federal Reserve for the remainder of 2019 have tipped the scale in favor of sellers, investment managers said.

"We believe that if (Chicago and Illinois are) going to pick a time to come to market, now is a pretty good time to be coming," said Dan Heckman, national investment consultant at U.S. Bank.

Illinois, the lowest-rated U.S. state at a notch or two above junk due to its huge unfunded pension liability and chronic structural budget deficit, will offer $452 million of taxable and tax-exempt general obligation (GO) bonds in competitive bidding on Tuesday.

On Wednesday, underwriters led by Barclays are scheduled to price $700 million of GO bonds for Chicago, which is also struggling with pension funding and deficits, just days before the city elects a mayor to replace the retiring Rahm Emanuel, who served two terms.

"My gut tells me these deals are going to get done and done at a level that is pretty attractive for Illinois and the city of Chicago and over a longer period of time will likely prove unattractive for investors," said Nicholos Venditti, a portfolio manager at Thornburg Investment Management.

Illinois' deal comes just weeks after the new Democratic governor, J.B. Pritzker, unveiled a fiscal 2020 budget and a plan to rescue the state's sagging finances by switching to graduated income tax rates via a constitutional amendment process.

Budget measures, including the use of one-time revenue and a more than $800 million reduction in contributions to the state's woefully underfunded pensions, could push Illinois closer to a junk credit rating.

"That is a significant risk," Venditti said, adding that the situation is even "scarier" in Chicago, which already has a junk rating with Moody's Investors Service, along with ratings of BBB-plus with S&P Global Ratings and BBB-minus with Fitch Ratings.

The city's two mayoral candidates – Toni Preckwinkle, who currently heads the Cook County Board of Commissioners, and attorney Lori Lightfoot – have not disclosed detailed plans for addressing a projected $252 million fiscal 2020 budget deficit and escalating pension payments that will top $2 billion in 2023.

"At the city level, I think investors are flying blind," Venditti said.

Meanwhile, demand is strong with municipal bond funds, including high yield, reporting big weekly inflows of investor dollars since early January, according to Lipper.

Muni bond supply totaling $63.8 billion so far in 2019 is 12 percent below the average year-to-date volume in the previous five years, according to Refinitiv data.

Given the "very, very attractive" muni bond environment for issuers, Heckman said there will be appetite for debt from Illinois and Chicago if their deals are "priced appropriately."

Investors have been demanding hefty yields for the governments' GO debt, with Illinois paying the biggest penalty among states.

Reporting by Karen Pierog in Chicago; Editing by Matthew Lewis

MARCH 25, 2019

Court orders Wells Fargo Securities to Pay Over $800,000 for Bond Offering Disclosure Failures.

The penalty stems Wells Fargo Securities's disclosure failures associated with a municipal bond offering it underwrote to finance startup video game company 38 Studios.

A federal court has ordered Wells Fargo Securities to pay more than $800,000 in civil penalties for disclosure failures associated with a municipal bond offering it underwrote to finance startup video game company 38 Studios. The relevant announcement was made by the United States Securities and Exchange Commission (SEC) earlier today.

The Securities and Exchange Commission charged Wells Fargo in 2016.

According to the SEC's complaint filed in federal district court in Providence, the Rhode Island Economic Development Corporation (RIEDC), aka the Rhode Island Commerce Corporation, loaned $50 million in bond proceeds to 38 Studios. Remaining proceeds were used to pay related bond offering expenses and establish a reserve fund and a capitalized interest fund. The bond offering document produced by the RIEDC and Wells Fargo failed to disclose to investors that 38 Studios had conveyed it needed at least $75 million in funding to produce a particular video game.

Therefore, investors were not fully informed when deciding to purchase the bonds that 38 Studios faced a funding shortfall even with the loan proceeds and could not develop the video game without additional sources of financing. When 38 Studios was later unable to obtain additional financing, the video game did not materialize and the company defaulted on the loan.

The SEC's complaint alleged, among other things, that Wells Fargo, which served as the placement agent for the 38 Studios bond offering, failed to disclose that the project being financed by the bonds, the development of a video game, could not be completed with the financing the bonds would provide. The SEC also alleged that the defendants did not disclose that even with the proceeds of the loan financed by the 38 Studios Bonds, 38 Studios faced a known shortfall in funding. Further, the SEC alleged that Wells Fargo and its lead banker on the deal, Peter M. Cannava, failed to disclose to bond purchasers that Wells Fargo was receiving additional compensation from 38 Studios, totaling $400,000, that was directly tied to the issuance of the municipal bonds.

The final judgment against Wells Fargo, entered on March 20, 2019 by the Honorable John J. McConnell, Jr. in federal court in Rhode Island, enjoins Wells Fargo from violating provisions of the federal securities laws that require disclosure of material information and fair dealing in municipal bond transactions, specifically Section 17(a)(2) of the Securities Act of 1933, Section 15B(c)(1) of the Securities Exchange Act of 1934 and Rule G-17 promulgated by the Municipal Securities Rulemaking Board. Wells Fargo is also ordered to pay a $812,500 civil penalty.

Wells Fargo consented to the entry of the judgment without admitting or denying the allegations.

The SEC's litigation against Cannava continues.

financefeeds.com

by Maria Nikolova

March 20, 2019

Wells Fargo Agrees to Pay $800K in Schilling Video Game Deal.

PROVIDENCE, R.I. — Wells Fargo Securities has agreed to pay an $800,000 civil penalty to settle a U.S. Securities and Exchange Commission lawsuit over Rhode Island's failed $75 million deal with former Boston Red Sox pitcher Curt Schilling's video game company.

Wells Fargo and the SEC announced the proposed settlement in filings Monday with the U.S. District Court in Providence. A federal judge must approve it.

According to details of the agreement, Wells Fargo does not admit or deny wrongdoing. If approved, the company would be permanently barred by the judge from violating certain municipal securities and other laws.

A Wells Fargo spokeswoman said she would not comment because the matter is still pending and has not yet been approved.

The case represents the final legal battle over 38 Studios.

Schilling struck a deal in 2010 to move his company from Massachusetts to Rhode Island in exchange for a $75 million loan guarantee. The state's economic development agency used bonds to fund the deal. Less than two years after the move, 38 Studios ran out of money and went bankrupt.

The SEC sued Wells Fargo and Rhode Island's economic development agency in 2016, accusing them of making misleading statements about the bonds.

It said they failed to disclose that 38 Studios needed at least $75 million but would receive only $50 million of proceeds from the offering, leaving a gap of $25 million. It also said Wells Fargo represented 38 Studios while also representing the state economic development agency as bond placement agent, something it failed to disclose.

The economic development agency previously settled the case, paying a $50,000 penalty without admitting wrongdoing.

Claims against a Wells Fargo employee are still pending. A message was left with his lawyer.

In a separate lawsuit in state court, Rhode Island sued several people and companies involved in the deal. It received about $61 million in settlements in that case, which ended in 2017.

By The Associated Press

March 19, 2019

Bond Dealers of America Forms Working Relationship with Michael Decker – Enhancing Representation of Member Firms and Overall Fixed Income Advocacy

Washington, D.C. – March 21, 2019—The Bond Dealers of America today announced it has formed a working relationship with Michael Decker, former co-head of the Municipal Securities Division at SIFMA, to broaden and deepen the BDA's overall fixed income advocacy and representation of member firms. Michael will strategically focus on federal regulatory and legislative issues as well as market practice issues specific to the U.S. fixed income markets. Michael was a co-founder of the Regional Bond Dealers Association in 2008, along with Mike Nicholas, before departing back to SIFMA in 2009 to co-head SIFMA's municipal securities division.

"Over the past ten years, the BDA has expanded from 14 to 70 member firms, has become the "Main Street" thought leader on market structure, and continues to establish itself as the predominant, effective advocate for dealers active in the US fixed income markets. I've worked with Michael since our days at the Public Securities Association in the mid 1990s and I'm confident that this working relationship will immediately provide the BDA more depth, experience and know-how across markets, while enhancing the BDA's DC and industry presence, and resulting in the BDA being more tangibly beneficial to all member firms whether bank or independent, taxable or municipal, retail or institutional focused. Michael will be an excellent complement to the work currently being led by BDA staff" said Mike Nicholas, CEO, Bond Dealers of America.

The addition of Michael also allows the BDA to deepen the Capitol Hill roles for Kelli McMorrow, Brett Bolton and Justin Underwood. This, in turn, will broaden the BDA's Washington, DC presence, resulting in more impactful advocacy for BDA member firms.

"I'm thrilled to be working with BDA again. They are a strong and influential organization, as indicated by their membership growth and their impact on fixed income policy over the past ten years. I look forward to working with BDA's members and staff to promote public policies that will make the US bond markets better for all participants," Michael Decker said.

"Speaking for the BDA Board, we are excited to work with Michael Decker. Michael's experience and industry knowledge will expand and enhance the BDA's focus, resulting in stronger overall advocacy," stated Angelique David, BDA Board Chair, Chief Operating Officer and General Counsel of Ziegler.

Bond Dealers of America

March 21, 2019

Legislation Introduced in the States Raises Privacy and Contracting Concerns.

At least 28 states have legislation pending that would require state vendors to use a software application that would track actual computer time by state vendors who bill for hours of work on computers. Monitoring by the software would include frequent screen shots and logging of key strokes, and the referred to technology is currently only being offered by one company.

An analysis by the Department of Finance and Administration in Arkansas finds that:

> The provisions in this legislation create significant issues with privacy and federal regulatory compliance. It is not possible to take a screen shot every three minutes and not capture individual and personal data. Key logging software would record everything including passwords, healthcare, and other personal information with no mechanism for redaction before being recorded or stored by the tracking software.

The National Association of State Chief Information Officers has issued the following statement.

> NASCIO, which represents state CIOs, opposes state legislation which would mandate contractor monitoring software because of the significant risks to citizen privacy and federal regulatory compliance concerns it could create. While NASCIO certainly

> supports contractor productivity, cost efficiency and successful project outcomes, legislation of this nature could introduce unnecessary risks to citizen data by essentially transferring ownership of private citizen data to a third party. This type of legislation also has the potential for unintended consequences, such as impacting a state's cybersecurity insurance policy coverage. State CIOs inherently understand and appreciate the seriousness of protecting citizens' data, and therefore do not support legislation that could serve to increase or introduce additional risk.

According to NASCIO, legislation has been introduced in the following states: Arizona, Arkansas, Colorado, Connecticut, Hawaii, Iowa, Idaho, Illinois, Indiana, Kansas, Louisiana, Maryland, Minnesota, Mississippi, Montana, Nebraska, New Jersey, New Mexico, Oklahoma, Oregon, Rhode Island, South Dakota, Tennessee, Texas, Virginia, Washington and West Virginia.

NASACT members should be aware that the software company seeking to have the legislation passed is billing it as an important fraud prevention and accountability tool. Your office may receive questions from your state legislators.

Questions should be directed to NASACT's Washington Office at (202) 624-5451.

Will the IRS Include Brownfields Properties in Its Opportunity Zone Regulations?

The Opportunity Zone tax incentives created by the federal Tax Cuts and Jobs Act of 2017 seemed to be a perfect opportunity to spur development of environmentally impaired properties, known as brownfields, in economically distressed communities. But the IRS draft regulations currently under consideration do not appear to allow for inclusion of brownfields in the program. That could mean, for lack of a better description, a real lost opportunity for many communities since brownfields often are in the very areas that the Opportunity Zone program is intended to benefit.

The tax law created Opportunity Zones, which now have been designated in all 50 states, the District of Columbia and five U.S. territories, to provide tax benefits to investors in the form of deferred tax on gains invested in a Qualified Opportunity Fund (QOF) until they sell or exchange the investment in the fund or December 31, 2026, whichever is earlier. Depending on how long the investment is held, up to 15 percent of deferred gain can be excluded. If held for more than 10 years, the investor will not be taxed on any gain from a sale or other disposition of the interest in the QOF. Many investors and economically distressed areas have been eager to take advantage of the program.

Not coincidentally, many Opportunity Zones have properties that could qualify for inclusion in the federal Environmental Protection Agency's (EPA) Brownfield Program, which has existed for a number of years to cleanup and reuse properties that sit idle due to environmental contamination. Although the Opportunity Zone provisions and the Brownfields program seem like a match made in investor-heaven, the EPA pointed out in comments on the IRS proposed regulations and guidance that brownfields may not fall within the definitions of property that qualifies for the incentives.

The statute requires that at least 90 percent of a QOF's assets be Qualified Opportunity Zone (QOZ) property, which ultimately requires direct or indirect ownership of "qualified opportunity zone business property." To be QOZ business property, the "original use" of the property must commence with the QOF or the QOF must make "substantial improvements" in the property within 30 months of acquisition. “Substantial improvements” generally means additions to the property’s basis greater than the adjusted basis of the property at the beginning of the 30-month period.

For brownfields properties, the “original use” and the “substantial improvement” requirements are potentially problematic. A property is a brownfield in the first place because its former use(s) caused environmental contamination that render it uneconomical to redevelop without substantial remediation. Under the current “original use” test, this prior use of a former factory site requiring extensive remediation means that the “original use” cannot begin with the QOF. Further, in Rev. Rul. 2018-29, which provides guidance on the meaning of “substantial improvement,” the IRS indicated that the substantial improvement rules do not apply to land. Even if the remediation qualified as “substantial improvements,” they do not have much chance of completion in the 30-month window for “substantial improvement.”

The EPA’s comments to the IRS recommend defining “original use” to incorporate brownfields properties located in QOZ. Thus, if a brownfields remediation firm buys a contaminated property in a QOZ with the intent to remediate the property and redevelop it for a new use, the EPA suggests that the brownfield status should qualify as the “original use.” Similarly, the EPA recommended that the IRS treat the “original use” of property that has been vacant or underutilized for a year or more as commencing with the QOF, and allow foreclosed and tax-reverted properties held by local governments to be treated as “underutilized or abandoned” property. If adopted, this recommendation would allow the QOF to satisfy the 90 percent test during the remediation period.

The EPA also recommended that the IRS treat the environmental assessment, cleanup and other site preparation costs as expenses meeting the “substantial improvement” test. Rev. Rul 2018-29 appears to apply only to improvements to a building, which would leave out the critical improvements to the land necessary to make a brownfield ready for redevelopment. If adopted, this recommendation would resolve the potential ambiguity as to whether improvements to the land itself count towards the necessary investment to constitute a substantial improvement. Finally, the EPA recommended that IRS allow carryover of gains from QOF investments in brownfields properties to other QOF investments and stacking of QOF investments of brownfield properties.

The IRS held a public hearing last month after having to delay the hearing from January 2019 due to the government shutdown. The final version of the regulations are expected any time. It is, however, unclear whether the IRS will adopt any of these recommendations in its next iteration of the regulations. The IRS’s clarification on this and other issues is time sensitive — the elimination of the 15 percent of capital gains invested in a QOF requires a seven-year holding period in the QOF. This means December 31, 2019, is the last day to make the investment to meet this holding period by the end of 2026, the year in which the deferred gain is recognized.

Lane Powell PC

March 15, 2019

Investors Eagerly Await Trump Rules on Opportunity Zones.

AVONDALE, Ariz. — A hotel groundbreaking ceremony here in an old cotton field not far from Interstate 10 last month featured two United States senators, a hot catered lunch and a stream of speeches about driving economic investment to this corner of the Southwest that is still recovering from the Great Recession.

Whether they were celebrating the beginnings of a wave of investment in distressed parts of America, or just another Marriott property, could hinge on a coming decision by the Trump administration.

A new batch of tax regulations from the Treasury Department will establish the most comprehensive guidelines yet for what sorts of investments qualify for tax benefits associated with opportunity zones, which were created by the 2017 tax law, and how investors must proceed in order to take advantage of them.

Potentially billions of dollars are waiting on the Treasury's decision. Civic leaders in areas like Avondale, which is still hurting from the 2008 housing crisis, are hoping the rules will be broad enough to improve the odds of attracting new businesses that offer well-paying jobs to residents. Investors, eager to put money into the tax-advantaged opportunity zones, are also clamoring for guidelines that could determine the types of projects they can back.

Among the money dependent on the Trump administration's rules is $22 million in investment guarantees, to be announced Monday by the Kresge Foundation, to support two socially conscious investment funds that hope to pour $800 million into manufacturing, clean energy and other business development in Opportunity Zones.

The zones are a creation of President Trump's signature tax law that use tax advantages to lure capital to economically lagging cities, suburbs and rural areas. So far, they have stirred growing investor interest, including from Wall Street, and criticism from some tax experts who worry they will serve mostly as a handout to the rich.

Most of the projects spurred so far by the zone designations are real estate, like condominium developments, or hospitality, like the SpringHill Suites by Marriott project started here in Phoenix's west suburbs by a private equity group called Virtua Partners.

Whether the zones can ultimately spur other types of investment, like small businesses and start-up technology companies, will depend on how the rules are structured. Treasury officials have sent the White House a draft version of what will be the second batch of regulations governing so-called opportunity funds, which invest in Opportunity Zones, and what types of investments can qualify for the special tax treatment.

The tax break works by allowing investors to roll capital gains from other investments into the funds. Taxes on those original gains are deferred and, if the investment is held for several years, can be sharply reduced. Adding to the attraction is the potential for investors who hold their money in the opportunity fund for a full decade to be exempt from any capital gains taxes on that investment.

Conflict over the regulations reflects, in part, a tension among officials concerned most with limiting the potential for investors to exploit loopholes in the program in order to reduce their tax bills, and those most concerned with maximizing investment in struggling parts of America.

In the first batch of regulations, Treasury officials took a more restrictive approach, according to documents obtained through a Freedom of Information request. But those were ultimately overruled by the White House, which prevailed on several points that investors had championed, those records show.

A recent Internal Revenue Service hearing on what will be the second batch of regulations was dominated by investors and civic leaders requesting changes and additions to the rules in several areas that could deter investment in start-up companies.

Those include a provision that currently requires qualifying businesses to earn 50 percent of their income inside the zones, which would seem to limit businesses that make money by exporting goods or selling them online. Investors are also seeking flexibility to sell their stake in a business before the end of a decade and use the proceeds to invest elsewhere in an opportunity zone.

Investors also want to clarify a rule that forces them to “substantially improve” an asset in order to qualify for the tax benefit, to ensure that biotech, software and other start-ups that deal largely with intellectual property can meet the test.

“The second tranche of regulations is a moment of truth for investors and communities,” said John Lettieri, the president of the Economic Innovation Group think tank, who was an architect of the Opportunity Zone concept. The difference in potential investment in the zones between favorable and unfavorable regulations, he said, “is orders of magnitude.”

While investors wait for clarity, the existing regulations have “frozen some of the market for business investment,” said Steve Glickman, another architect of the concept who now runs an Opportunity Zone-related consulting business called Develop L.L.C., and who has produced an Opportunity Zone Index to help investors find and select promising zones for projects.

The Kresge guarantees, for example, are meant to help two funds — run by Arctaris in Boston and Community Capital Management in Fort Lauderdale, Fla. — deploy $800 million into Opportunity Zone projects like solar farm development in Flint, Mich. In exchange, the funds are committing to a set of rules that would require them to invest in creating living-wage jobs, form community advisory boards and seek to avoid displacing residents from those zones. They will also compile and share data on the quality and impact of their investments, which is not currently required by the federal government.

But they are dependent on the outcome of the regulations, and whether they will encourage business projects. “These are practical concerns for us,” said Aaron Seybert, a social investment officer at Kresge. “We need to quantify the risk that we’re taking.”

The existing regulations have made that calculation relatively easy for real estate investors, who are accelerating previously planned projects in the zones and starting new ones that might not have worked without the special tax treatment. That activity has already paid off for incumbent landowners in Opportunity Zones, according to research by the real estate firm Zillow: Average sales prices in the zones jumped 25 percent last fall, compared with the year before.

City officials welcomed the new hotel to Avondale, a majority-Hispanic city of 84,000 people that is still recovering from the burst housing bubble a decade ago. At one point, 40 percent of the city’s homeowners were underwater on their mortgage or had fallen into foreclosure.

Conditions have improved, slowly, and developers have added 200,000 square feet of new retail space in the last five years, city officials said. But Kenn Weise, the mayor, said the city still needed help — and real-estate development won’t do it alone.

The city, Mr. Weise said, needs to revitalize its historic downtown, which has fallen on hard times, and it needs businesses to employ the more than 80 percent of workers who live here but endure long commutes to other parts of the metro area, where the jobs are.

“This part of it is easy,” Mr. Weise said under the shade of a white tent here recently, gesturing toward the row of shovels that were about to break ground on what will be the latest in a recent string of new hotels near the freeway in and around Avondale. “This is the low-hanging fruit.”

The more far-flung dignitaries gathered for the ceremony made similar points, even as they praised Virtua and Hotel Equities, the company that will manage the new hotel. “At the end of the day, real estate development is a very important step forward,” Senator Tim Scott, Republican of South Carolina and the principal champion of the Opportunity Zone provision in the tax law, said in a brief speech. “Bringing jobs into the community is a leap forward.”

Virtua Partners has 15 projects in the works in the Phoenix area alone, including a townhouse development on the site of a crumbling RV park in nearby Surprise, and more than 100 total projects planned in zones around the country. Construction in the Avondale cotton field will create 120 temporary jobs and 30 permanent ones in the hotel, which officials at the groundbreaking promised would provide pathways for employee advancement.

“Our goal is to give everyone the opportunity to move into the middle class,” Quinn Palomino, Virtua’s chief executive, said at the groundbreaking, which along with Mr. Scott also featured Senator Martha McSally, Republican of Arizona, and Jan Brewer, the state’s former governor.

But even real estate investors would like more from the Treasury in the next round of regulations. In an interview, Ms. Palomino said she hoped the government would mandate reporting on metrics such as the number of jobs and affordable housing units created in the zones.

“Everyone’s running to this industry,” including a lot of people without the background in real estate development, she said. “It’s pretty scary out there, some of the projects that are coming in. Kind of, two guys in the back of a van, trying to get an Opportunity Zone project done.”

The New York Times

By Jim Tankersley

March 17, 2019

[Real Estate Investors Expected to Unlock Trillions as Feds Finalize Opportunity Zone Rules. Here's Where the Money is Likely to Flow.]

Washington’s political rancor is rippling across the nation’s real estate industry, as the recent federal shutdown has delayed a plan to unleash trillions in property investment in the country’s biggest cities and most impoverished communities.

Specifically, the delay has affected new rules for investing in so-called Opportunity Zones, and in the process has prevented many investors from exploiting one of program’s key benefits: the ability to sell long-held properties, more or less tax free.

The potential payoff, which limits capital gains taxes on investment gains that are then reinvested in Opportunity Zones, stems from a little-known provision in the federal tax code changes passed by Congress in 2017.

Continue reading.

By Jeff Jeffrey – National Digital Producer, The Business Journals

Mar 15, 2019, 1:12pm EDT

CDFA Federal Policy Conference.

With the 116th Congress now in session, the time is ripe for a focused, national discussion on the federal development finance landscape. On **April 16-17 in Washington DC**, CDFA will host its **2019 CDFA Federal Policy Conference**, featuring development finance experts and practitioners from key federal agencies, congressional offices, and policy organizations. The CDFA Federal Policy Conference will highlight rural and urban financing programs, the Opportunity Zones incentive, programs for supporting small business development, as well as financing programs for infrastructure, energy, brownfields remediation, and water systems financing.

Conference panels and workshops will be led by our federal financing partners at the Departments of Housing and Urban Development, Agriculture, Transportation, and Treasury, as well as the Economic Development Administration, the Environmental Protection Agency, and the Small Business Administration. Additionally, CDFA will highlight the development finance plans of key Congressional representatives from the House Committee on Ways and Means and the Senate Committee on Finance.

Don't miss this opportunity to unlock the federal financing toolbox in your community. The event will be held at the Washington Marriott Georgetown, and space is limited to the first 250 attendees – register early to secure your seat!

CDFA will hold its spring Capitol Hill Day on April 18. Attendance for Capitol Hill Day is optional, but all participants in the CDFA Federal Policy Conference are encouraged to attend.

Click here to learn more and to register.

What to Think About Next With Opportunity Zones? Community Input For One Thing.

"If you simply try to impose something on a community, you do so at your own peril," says one mayor. This and other themes emerged this week at a summit focused on the program.

STANFORD, Calif. — Mayor Sly James, of Kansas City, Missouri, says the Opportunity Zones in his city are getting ample attention from investors and developers, but emphasizes that it's going to take more than that to make the program a success.

"There's a high level of interest," he told Route Fifty here Monday during a summit of about 400 state and local leaders, investors and others gathered to discuss the economic development program. "There's people that want to make the investments."

But some, James says, are eying ventures that may not mesh with the city's overall vision for developing the zones—census tracts that are eligible for investment under the program.

"We're saying, 'No, no, no, no, no.' We're not going to have these little scattershot one-off projects," he said. "We want transformative things. So everybody cool your jets. Let's focus this."

Monday's summit shed more light on how governments, the investor community, and nonprofit organizations are approaching Opportunity Zones, a program designed to stimulate investment in low-income areas by offering taxpayers a federal tax break on their capital gains.

Attendees stressed that community engagement will be crucial in any places where investment does take place. There was also discussion about the need for working across agencies and levels of government as the public sector interacts with potential investors in the zones.

And there was talk about the key role philanthropic organizations and foundations may have to play as the program continues to unfold.

“This is one of those moments when we have to go on offense,” said Mary Ellen Wiederwohl, CEO of Louisville Forward, an economic development agency in Louisville, Kentucky.

Wiederwohl says there’s a need for cooperation among agencies involved in economic development, land use and permitting, with the aim of providing “concierge service” when inquiries comes in from prospective Opportunity Zone investors and developers.

“You don’t have to go: ‘Well, call the planning department and get back to me on what they say,’” she said. “You’re going to lose that deal.”

Ben Seigel is Baltimore’s point person for Opportunity Zones. In his remarks he bemoaned that he was appearing at the event days after The New York Times Magazine published an article headlined: “The Tragedy of Baltimore,” billed as a look at “the crackup” of the city.

But he said in his work he’s trying to serve as sort of a “Match.com” for investors and projects in the city that might be a good fit for them.

He noted that Baltimore has launched a “neighborhood impact investment fund” backed by lease revenues from city-owned parking facilities and that the fund will operate alongside the so-called “opportunity funds” that will make investments in zones.

Route Fifty

By Bill Lucia,
Senior Reporter

MARCH 19, 2019

[Activated Capital: Blockchain Technology for Opportunity Zone Investing (Podcast Episode #17)]

Can blockchain technology revolutionize Opportunity Zones real estate investing? Security token offerings utilizing distributed ledger technology enables tokenization of assets, increased liquidity, reduction of costs, and improved transaction speed. And it has the potential to change how properties are sold and how deals are recorded. Josh Burrell and Lane Campbell at Activated Capital have an

[Continue reading]

Opportunity Db

March 20, 2019

City Clarifies Possible Confusion Over Bond Language.

In less than three weeks, Norman voters will consider three propositions on the ballot at the April 2 Special Election, which, if passed, will authorize three city ordinances that dictate how voter-approved funds will be spent.

The first two propositions are a transportation bond and a stormwater bond, and the third is a stormwater utility, which would be established as an enterprise fund that only allows collected fees to be used for stormwater needs.

There are several categories of bonds under the Oklahoma Constitution available to municipalities, each of which has specific guidelines for allowed use. The city worked with its bond counsel to develop the two separate general obligation bonds authorized by Oklahoma bond laws.

"The authorization and issuance of general obligation bonds by a city are governed by specific provisions set forth in the Oklahoma Constitution and related Oklahoma statutes," said Nathan Ellis, of the Public Finance Law Group, PLLC. "Propositions, or what appears on the ballot, are limited by State of Oklahoma election law to 200 words or less. After including the required technical language, there is little room for more than a general statement of purpose. However, all of the detail within the ordinance is incorporated as a matter of law."

The ordinances for the transportation and stormwater bonds list specific projects for which voters would be approving funds and direct the city on where to spend any excess funds.

The proposed transportation bond, or Proposition 1, which would fund needed transportation infrastructure projects, is authorized under the Oklahoma Constitution Article X, Section 27 — "indebtedness for purchase, construction or repair of public utilities." It is a $72 million bond and is limited to the purpose of constructing, reconstructing, improving or repairing streets or bridges.

The Bond Issue Proceeds Act, Title 62, Oklahoma Statutes Section 571 et seq., requires that the city state the general purpose of the bond issue and further identify specific projects for which at least 70 percent of the bond proceeds shall be expended. The city specifically described the 19 transportation projects, outlined in Ordinance O-1819-25 of the city, which represent 100 percent of the bond proceeds; remaining funds, if any, after completion of all of the specific projects will be used for other projects in the city's comprehensive transportation plan.

The proposed stormwater bond, or Proposition 2, which would fund critical stormwater infrastructure projects, is a $60 million bond authorized under the Oklahoma Constitution Article X, Section 35 — "Municipal and county levy for securing and developing industry" — as further governed by the provisions of the Municipal and County Economic and Community Development Bonds Act found in Title 62, Oklahoma Statutes Section 801 et seq.

The act allows cities to call bond elections for a "qualified economic or community development purpose." Public infrastructure facilities, including specifically stormwater projects, are defined as having a qualified economic or community development purpose.

Although it was not possible to list all of the specific projects and adhere to the word limit, the city did, in its Ordinance O-1819-26, further specify that the purpose of the bonds is "to include, constructing, improving and equipping stormwater drainage facilities." In this ordinance, the city listed the 33 specific stormwater projects that will be completed with the bond proceeds so the public will know exactly how the funds will be spent.

Moreover, should funds remain after the stormwater projects are complete, the ordinance states that any surplus funds shall be utilized to complete other projects identified in the Storm Water Master Plan. The SWMP was completed in 2009 and contains only stormwater projects.

“It is certainly true that the city could use the same act to ask the citizens to authorize indebtedness for a variety of other projects,” Interim City Attorney Kathryn Walker said. “However, that is not the case here, and the language in the ordinance clearly does not contemplate or allow for the use of the bond proceeds for anything that is not a stormwater project identified either in the provided list or in the SWMP.”

Additionally, because the two bonds up for election April 2 are authorized under separate constitutional provisions, Proposition 1 does not impact Proposition 2’s borrowing capacity and vice versa. Also, while a cap on the interest rate percentage must be set in the bond ordinances, these are not the expected interest rates.

For example the not-to-exceed interest rate defined for Proposition 1 is 10 percent per year. However, Finance Director Anthony Francisco said bids for municipal bonds are competitive and based on current market rates.

“By statute, we cannot exceed 10 percent for transportation bonds or 14 percent for community development bonds, but based on current market conditions and the city’s AA rating, we expect to be way below that, somewhere in the 4 to 3.5 percent range,” Francisco said. “In my time here, when market rates were higher we’ve had some bonds at 6 percent, but certainly nothing close to 10 percent.”

Voters can read the ballot language and see the ordinances, as well as other information, at VisionForNorman.com.

The Norman Transcript

Mar 18, 2019

- New TEFRA Regulations for PABs Set to Go into Effect: Hunton Andrews Kurth
- Frequently Asked Questions Regarding the 529 Plan Share Class Initiative.
- SIFMA Interpretive Guidance on Application of MSRB Rules.
- BDA Comment Letter: Draft Interpretation of Application of MSRB Rules to Certain Prearranged Trading
- The Bond Market’s Watchmen Keep an Eye on Each Other, Too.
- IRS Submits OZ Guidance to OIRA for Review.
- Creating a New Marketplace for Resilient Infrastructure Investment.
- And finally Godzilla, City Manager is brought to us this week by *Davidson v. Baird*, in which a former city manager sued a reporter who wrote that the manager had “destroyed” her former place of employment. To which, the court dryly noted that, “No reader would take such a statement literally – clearly Kemmerer, Wyoming still exists, and has not been reduced to rubble by Davidson’s actions.” Are we sure? Has someone checked?

PUBLIC UTILITIES - ALASKA

[Regulatory Commission of Alaska v. Matanuska Electric Association, Inc.]

Supreme Court of Alaska - February 22, 2019 - P.3d - 2019 WL 847828

Protesting electrical utilities appealed the decision of Regulatory Commission of Alaska (RCA), which concluded that RCA had jurisdiction over electrical utility's tariff applications.

The Superior Court reversed, concluding that RCA did not have authority. Applicant utility's and RCA's petitions for review were granted and converted to appeals.

The Supreme Court of Alaska held that:

- RCA order was an appealable order;
- Issue of RCA's authority was ripe for decision;
- The Superior Court was not required to wait for agency record to be prepared;
- Petition for reconsideration tolled time for appeal of RCA order; and
- RCA lacked authority over electric utility's tariff applications.

Regulatory Commission of Alaska (RCA) lacked authority to regulate wheeling rates, under statute and agreements regarding purchase and transmission of energy from hydroelectric project to utilities in distant service areas, and thus RCA lacked authority over electric utility's tariff applications; agreements clearly demonstrated parties' intent to restrict setting of wheeling rates to schedule set in services agreement, and therefore to exclude it from the RCA's jurisdiction, and statute precluded RCA from asserting jurisdiction over rates for services covered by agreements.

PUBLIC PENSIONS - CALIFORNIA

[Cal Fire Local 2881 v. California Public Employees' Retirement System]

Supreme Court of California - March 4, 2019 - P.3d - 2019 WL 1008413 - 2019 Employee Benefits Cas. 71, 491 - 19 Cal. Daily Op. Serv. 1989

Labor union petitioned for writ of mandate and injunctive relief to compel California Public Employees' Retirement System (CalPERS) to continue to apply prior state law that provided eligible public employees the option to purchase at cost up to five years of additional retirement service credit.

The Superior Court denied petition. Union appealed, and the Court of Appeal affirmed. The Supreme Court granted petition for review.

The Supreme Court of California held that:

- Statute did not create vested right of a contractual nature;
- Opportunity to purchase retirement service credit was not a form of deferred compensation and thus was not entitled to contract clause protection on that basis;
- Even if statute could be viewed as an offer of a unilateral contract, performance required the filing of a written election and the payment of required sums of money rather than mere engaging in public employment; and
- Opportunity to purchase additional retirement service credit within was not a vested "pension right" protected by the contract clause of the California Constitution.

OPEN MEETINGS - CALIFORNIA

Preven v. City of Los Angeles

Court of Appeal, Second District, Division 1, California - February 22, 2019 - Cal.Rptr.3d - 2019 WL 1012134 - 19 Cal. Daily Op. Serv. 2055

Meeting attendee brought petition for writ of mandate and complaint for declaratory relief against city, alleging city violated Brown Act open meeting law in refusing to let attendee address special city council meeting.

The Superior Court dismissed action. Attendee appealed.

The Court of Appeal held that provision of Brown Act, allowing exception to general requirement for public comment opportunity for items already considered by a committee, applies only to regular meetings and not to special meetings.

FIRE PROTECTION DISTRICT - CALIFORNIA

Southcott v. Julian-Cuyamaca Fire Protection District

Court of Appeal, Fourth District, Division 1, California - March 7, 2019 - Cal.Rptr.3d - 2019 WL 1075256 - 19 Cal. Daily Op. Serv. 2217

After board of directors of fire protection district passed resolution to apply to local agency formation commission to dissolve district and failed to act on residents' subsequent referendum petition seeking to prevent district's dissolution, residents filed petition for writ of mandate seeking either to compel district to rescind resolution or to set an election on resolution.

The Superior Court denied petition. Residents appealed.

The Court of Appeal held that district's resolution was not subject to referendum process.

Cortese-Knox-Hertzberg Local Government Reorganization Act provides the exclusive method for dissolving a fire protection district; Fire Protection District Law, which authorizes the formation of fire protection districts to provide for fire protection services on a local level, does not contain any specific provisions covering dissolutions of fire protection districts, except to mandate compliance with Reorganization Act.

Fire protection district's resolution to apply to local agency formation commission to dissolve district, which proposed a plan of dissolution for commission to consider, was not subject to referendum process; resolution was not a legislative act, Cortese-Knox-Hertzberg Local Government Reorganization Act contained detailed provisions regarding method of protesting a proposed dissolution of a district and when elections were required and provided the sole and exclusive method for challenging proposed dissolution, and resolution of application was administrative in nature under Reorganization Act as a prerequisite to obtaining a decision from the commission, which held power to approve or disapprove proposed dissolution.

ANNEXATION - GEORGIA

Fulton County v. City of Atlanta

Supreme Court of Georgia - March 4, 2019 - S.E.2d - 2019 WL 1006321

County brought action for declaratory and injunctive relief against city, asserting that the annexation of property within county's industrial district was prohibited by a local constitutional amendment.

The trial court entered judgment for city. County appealed.

The Supreme Court of Georgia held that amendment was never properly adopted because its enactment violated single subject rule.

Local constitutional amendment that created county industrial district and prohibited municipalities from annexing such land was never properly adopted because its enactment violated single subject rule, and thus city's annexation ordinance was not barred by amendment; amendment also prohibited county from levying school tax within city, which had nothing to do with industrial district, and because amendment provided that there could be no overlap between district and city, taxation of properties in city did not and could not relate to creation of district.

LIABILITY - KANSAS

Nash v. Blatchford

Court of Appeals of Kansas - January 4, 2019 - P.3d - 2019 WL 102254

Patient brought action against physician, who practiced at municipal hospital, for medical malpractice alleging physician negligently performed surgery.

The District Court granted physician's motion for summary judgment. Patient appealed.

The Court of Appeals held that:

- Physician was an employee of hospital;
- Provision of Health Care Provider Insurance Availability Act did not apply in patient's claim;
- Amendments to statutory notice requirement applied to patient's claim; and
- For purposes of equal protection, rational basis existed for statutory notice requirement that medical malpractice victims provide written notice to municipal hospital prior to filing suit against employee physicians.

Health care provider was not excluded from the definition of employee under the Kansas Tort Claim Act (KTCA) as required for patient's claim against physician for medical malpractice to fall under the KTCA; definitions in tort statute specifically excluded independent contractors as employees which suggested that the list of employees was not exclusive, and tort statute specifically included "employee" in its definition of employee, which meant the legislature intended to provide a broad definition of the term.

Physician working for municipal hospital was an employee of hospital, not an independent contractor, for purposes of the Kansas Tort Claims Act and written notice requirement for patient's medical malpractice claim, despite physician's contract stating hospital could not direct, supervise, or control physician's care of individual patients; hospital had final authority over physician's acceptance of new patients and could remove a patient from his care, hospital required physician to comply with the rules and regulations, work full time, obtain and maintain his privileges, and perform his work up to community professional standards, and hospital had long-term contractual relationship with physician which paid him an annual salary with bonuses, paid for his medical malpractice insurance, and provided facilities, equipment, supplies and support staff.

Provision of Health Care Provider Insurance Availability Act, which stated health care provider shall have no vicarious liability or responsibility for injuries arising out of the rendering or failure to render professional services by any other health care provider, did not apply in patient's medical malpractice claim against physician who was employed by municipal hospital; patient asserted no claims against municipal hospital, and thus, the case did not involve another health care provider's potential vicarious liability for physician's alleged negligence for his acts or omissions while performing surgery or when providing patient's care and treatment.

Amendments to statutory notice requirement requiring that patient provide written notice to municipal hospital of claim against physician employee prior to filing the medical malpractice suit against physician applied to patient's claim, despite the alleged malpractice occurring prior to enactment of the amendments; patient had about one and a half years after the enactment of the amendments to comply with the notice requirements before his medical malpractice suit was barred by the statute of limitations.

Rational basis existed for statutory notice requirement that medical malpractice victims bringing claim against municipally employed physician provide presuit written notice of the claim to the municipal hospital, despite fact it cannot be held vicariously liable, and thus, notice requirement did not violate equal protection; notice requirement afforded a municipality 120 days to investigate a claim, obtain legal advice and conduct discovery, and approve or deny a claim before a suit was filed, and even though concern about costly litigation was greatly mitigated by the fact municipal hospital could not be held liable for physician's actions hospital had a legitimate competency and patient care interest that justified notice.

ZONING & PLANNING - MINNESOTA

Schulz v. Town of Duluth

Court of Appeals of Minnesota - February 11, 2019 - N.W.2d - 2019 WL 510023

Neighboring landowners brought action seeking judicial review of township commission's approval of a zoning-variance application.

The District Court granted the township's motion to dismiss the action. Neighboring landowners appealed.

The Court of Appeals held that:

- Civil procedure rule governing persons to be joined if feasible applied to the action, and
- Landowners seeking variance from zoning ordinance were necessary and indispensable parties.

Civil procedure rule governing persons to be joined if feasible applied in an action brought by neighboring landowners seeking judicial review of a township's decision on an application for a zoning variance.

Landowners seeking variance from zoning ordinance were necessary and indispensable parties, in action brought by neighboring landowners seeking judicial review of township commission's approval of zoning-variance application; landowners had an interest in the township's zoning-variance decision, landowners had a significant financial investment in the real property that they wished to use as a residence after building, and they clearly claimed an interest relating to the subject of the action and were so situated that the disposition of the action in their absence could as a practical matter impair or impede their ability to protect that interest.

PUBLIC PENSIONS - OHIO

Sherman v. Ohio Public Employees Retirement System

Court of Appeals of Ohio, Tenth District, Franklin County - January 29, 2019 - N.E.3d - 2019 WL 365115 - 2019 Employee Benefits Cas. 27, 944 - 2019 -Ohio- 278

Public employment retiree who returned to public employment brought action against Ohio Public Employees Retirement System (OPERS), alleging it violated his right to equal protection under the State Constitution by reducing his health insurance subsidy while continuing to provide the full subsidy to other similarly situated retirees.

The Court of Common Pleas granted OPERS's motion to dismiss for failure to state a claim upon which relief could be granted. Retiree appealed.

The Court of Appeals held that:

- Retiree was similarly situated to OPERS retirees who were reemployed in non-OPERS-covered positions, and
- OPERS's motion to dismiss for failure to state a claim upon which relief could be granted was deficient.

Public employment retiree who was reemployed in Ohio Public Employees Retirement System (OPERS)-covered position was similarly situated to OPERS retirees who were reemployed in non-OPERS-covered positions for purposes of equal protection analysis under State Constitution; OPERS pension was identical compensation provided to reemployed OPERS retirees who returned to private sector, payment of OPERS pension and salary to same person was not relevant distinction for equal protection purposes, and regardless of who filled a position, an employer was required pay salary and benefits, and employee's status as OPERS retiree did not impose additional costs to State, but policy of withholding health insurance premium subsidies treated OPERS retirees differently.

Ohio Public Employees Retirement System's (OPERS) motion to dismiss for failure to state a claim upon which relief could be granted was deficient in OPERS retiree's action alleging OPERS retirees who returned to public employment were treated differently from OPERS retirees who returned to private sector regarding health insurance subsidy; OPERS did not show how different classification of OPERS retirees who gained reemployment in OPERS-covered position from OPERS retirees who were reemployed in non-covered positions furthered stated rational basis, to protect public fisc, as required to defeat equal protection claim under State Constitution, since OPERS did not explain how policy reduced administrative burdens in a way that linked classification to stated goal.

LABOR & EMPLOYMENT - PENNSYLVANIA

Fraternal Order of Police Fort Pitt Lodge No. 1 v. City of Pittsburgh

Supreme Court of Pennsylvania - February 26, 2019 - A.3d - 2019 WL 922394 - 2019 L.R.R.M. (BNA) 62, 785

Union sought to appeal police-union interest arbitration award. City filed cross-appeal and moved to quash appeal.

The Commonwealth Court quashed appeal. Union sought allowance of appeal.

The Supreme Court of Pennsylvania held that Commonwealth Court did not have jurisdiction to review award.

Police-union interest arbitration award did not deviate from municipal financial recovery plan by allegedly failing to provide for competitive compensation, and thus Commonwealth Court did not have jurisdiction to review award on that ground, even if police officer compensation under award was too low to be competitive with other police departments; union's claim ultimately reflected a disagreement with substantive content of plan, which could not form basis for determination that award, by adopting salary increases in plan, deviated from plan.

Police-union interest arbitration award was not subject to appeal to Commonwealth Court on ground that maximum allocations set forth in municipal financial recovery plan were arbitrary, capricious, and established in bad faith.

BANKRUPTCY - PUERTO RICO

In re Financial Oversight and Management Board for Puerto Rico

United States District Court, D. Puerto Rico - February 5, 2019 - F.Supp.3d - 2019 WL 511323

Financial Oversight and Management Board for Puerto Rico filed debt adjustment plan for Puerto Rico Sales Tax Financing Corporation (COFINA) as part of restructuring of debts of Commonwealth of Puerto Rico and its instrumentalities pursuant to Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA).

The District Court held that:

- COFINA's debt adjustment plan complied with applicable provisions of bankruptcy code and procedural rules;
- COFINA's debt adjustment plan was proposed in good faith with legitimate and honest purpose to provide method for Puerto Rico to achieve fiscal responsibility and access to capital markets;
- COFINA's debt adjustment plan sufficiently met requirement for acceptance by each class of claim holders;
- COFINA's debt adjustment plan did not contain any provisions which would require it to violate Puerto Rico or federal constitution or laws;
- COFINA's debt adjustment plan obtained all necessary legislative, regulatory, and electoral approvals;
- COFINA's debt adjustment plan was in best interests of its bondholders; and
- COFINA's debt adjustment plan was feasible.

EMINENT DOMAIN - SOUTH CAROLINA

Georgetown County v. Davis & Floyd, Inc.

Court of Appeals of South Carolina - February 13, 2019 - S.E.2d - 2019 WL 575898

County brought inverse condemnation action against city and state Department of Transportation, alleging that defendants' water drainage project caused sinkholes that damaged public buildings and real property owned by county and seeking compensation.

The Circuit Court granted defendants' motion to dismiss. County appealed.

The Court of Appeals held that:

- Takings Clause language prohibiting "private property" from being taken without consent or compensation did not refer to property owned by state or political subdivisions;
- "Home rule" statute and amendment permitting county to own property in own name and requiring provisions to be construed in county's favor did not sever county's relationship with state;
- Eminent Domain Procedure Act did not apply to action; and
- Public policy did not compel Court of Appeals to find that Takings Clause reached inverse condemnation of public property.

County, as a political subdivision of state, was not permitted to bring inverse condemnation claim against state Department of Transportation after Department's water drainage project allegedly caused sinkholes that damaged public buildings and county's property.

"Home rule" statute and constitutional amendment permitting county to own property in its own name and requiring constitutional provisions to be liberally construed in favor of local government did not sever county's symbiotic relationship with state regarding application of Takings Clause, as necessary for county to bring inverse condemnation action against state; "home rule" concept did not endow counties with separate sovereignty for purposes of Takings Clause.

Eminent Domain Procedure Act did not apply to inverse condemnation action brought by county against city and state Department of Transportation after defendants' water drainage project allegedly caused sinkholes that damaged public buildings and county's property, and thus county was not entitled to just compensation under Act for alleged damages; although definitional section of Act included public entity as "person," and subsequently condemnee, section did not supplant plain meaning of "private property" in constitution, which excluded county property, and inverse condemnation claim sprang from constitution, not from Act.

Public policy did not compel finding that Takings Clause reached inverse condemnation of public property, and thus that county was entitled to just compensation in action brought against city and state Department of Transportation after defendants' water drainage project allegedly caused sinkholes that damaged public buildings and county's property, where the people ratified state constitution's Takings Clause, whose reference to private property did not include public property.

PUBLIC PENSIONS - TEXAS

Eddington v. Dallas Police and Fire Pension System

Supreme Court of Texas - March 8, 2019 - S.W.3d - 2019 WL 1090799 - 62 Tex. Sup. Ct. J. 560

Pensioners filed petition against city police and fire pension system and its board chair for declaratory relief, requesting declaration that amendments to pension plan that reduced future interest rate and accelerated withdrawal requirements on accounts established pursuant to deferred retirement option plan offered under pension system violated state constitution.

Following bench trial, the District Court concluded amendments did not violate constitution and dismissed pensioners' claims. Pensioners appealed. The Court of Appeals affirmed. Pensioners filed petition for review.

The Supreme Court of Texas held that amendments to police officers' pension plans that reduced the future interest rate paid on deferred retirement option plan (DROP) accounts did not violate state constitutional provision protecting certain public pension benefits against reduction, where the account interest rate change was prospective and would not impact funds deposited before the amendments became effective.

IMMUNITY - TEXAS

[CHW-Lattas Creek, L.P. by GP Alice Lattas Creek, L.L.C. v. City of Alice]

Court of Appeals of Texas, San Antonio - October 31, 2018 - 565 S.W.3d 779

Property developer filed action against city, alleging breach of contract, declaratory relief, and fraud arising from a development agreement entered into by city and developer concerning land conveyed to city for purpose of development.

City filed a plea to the jurisdiction asserting immunity from suit. The District Court granted city's plea. Developer appealed with regard to its breach of contract and declaratory relief claims.

The Court of Appeals held that:

- City was engaged in governmental functions;
- City did not waive its sovereign immunity;
- Law relating to exercise of municipal legislative discretion did not apply;
- City was not estopped from asserting sovereign immunity;
- Affidavit of manager of developer's general partner was inadmissible; and
- Full deposition transcript of manager's testimony was inadmissible.

City was engaged in governmental functions, and therefore retained its sovereign immunity from suit, when it entered into development agreement with property developer concerning land conveyed to city for purpose of development, where stated purpose of development agreement was to promote economic and community development.

City which engaged in a governmental function when it entered into development agreement with property developer for purpose of promoting economic and community development by developing land conveyed to city for the purpose did not waive its sovereign immunity, despite developer's argument that development agreement was a contract for provision of services; city was a facilitator of the project, but development agreement did not obligate or require developer to provide any services to city and city did not agree to pay developer for any services, actions taken by developer in furtherance of development were motivated by developer's desire to develop its land and were not services provided to city, and although development agreement recited that it was a written contract for providing goods and services to city, recital could not be used to contradict operative terms of the contract.

City was not estopped from asserting sovereign immunity or denying its waiver of that immunity in action against it by developer arising from parties' execution of a property development agreement, although city officials contractually agreed to waive city's immunity; both city officials and developer engaged in negotiating development agreement and were aware of the applicable law, under which city's immunity would only be waived in agreement required developer to provide services to city, but development agreement did not require such a provision of services.

LIBEL & SLANDER - UTAH

Davidson v. Baird

Court of Appeals of Utah - January 10, 2019 - P.3d - 2019 WL 150669 - 882 Utah Adv. Rep. 18 - 2019 UT App 8

City manager, city official employed by manager, and consulting company brought defamation action against member of city council, online newspaper, and individual who posted comments online after defendants voiced concerns over management of city.

The Seventh District Court granted summary judgment in favor of defendants, and plaintiffs appealed.

The Court of Appeals held that:

- Statements made about city manager, which included a statement that city manager "destroyed" the previous city that employed her, were expressions of pure opinion;
- Statements concerning the number of employees who left employment at city manager's previous location of employment, were substantially true;
- City official and consultant company hired by city manager were public figures;
- Plaintiffs did not provide sufficient evidence to show that defendants acted with actual malice;
- Plaintiffs could not sustain defamation claim based on statements from journalist;
- Plaintiffs failed to provide evidence that city council member knew, or recklessly disregarded the possibility, that any of his statements were false;
- Plaintiffs could not sustain intentional interference with economic relations claim; and
- Plaintiffs could not sustain intentional infliction of emotional distress claim.

Frequently Asked Questions Regarding the 529 Plan Share Class Initiative.

FINRA is providing these Frequently Asked Questions about its 529 Plan Share Class Initiative (the "Initiative") in response to a number of inquiries it has received from firms and trade associations. In order to allow firms sufficient time to consider the additional information provided here and to provide firms more time to review their supervisory systems and procedures with respect to 529 plan sales, FINRA is extending the due dates set forth in Regulatory Notice 19-04. **New due dates**: Participating firms must provide FINRA Enforcement notice of their self-report by **April 30, 2019**, and then must confirm their eligibility by submitting the additional information specified in Regulatory Notice 19-04 by **May 31, 2019**.

1. Is FINRA asking firms to review all of their 529 plan sales and to identify unsuitable transactions?

No. Firms that choose to participate in the Initiative should review how they have supervised sales of 529 plan shares since January 2013. Firms should assess for such matters as: whether their procedures require that appropriate supervisory personnel review share class suitability and obtain the information necessary to do so; whether they actually conducted reviews for share class suitability; and whether the firm provided training to its registered representatives so that they could make suitable recommendations. For example, FINRA has observed firms that: were unable to review 529 plan transactions for suitability because they failed to keep records of those transactions1 or failed to capture information relevant to the suitability determination, such as the age of the beneficiary and the number of years until the funds are needed for the beneficiary's qualified education expenses; failed to have a process or procedures in place to review 529 transactions for suitability; or failed to provide training or guidance to registered representatives regarding 529 share classes and the factors to consider, such as beneficiary age. These are the types of issues that firms participating in the Initiative might review.

If a firm reviews its supervisory systems and procedures and concludes that they were reasonably designed and implemented, that is the end of the assessment. There is nothing more to do. A firm might choose to test some transactions according to risk-based criteria as part of its review concerning the reasonableness of its supervision, but that is not required. **FINRA is encouraging firms to undertake a qualitative review, not a quantitative analysis.**

If, however, a firm discovers that there was a weakness in its systems, procedures or training, so that the firm concludes that it may not have had a supervisory system reasonably designed to achieve compliance with its suitability obligations, then the firm should self-report to take advantage of the Initiative. FINRA will then discuss with the firm how the firm has responded or plans to respond to the issue, including different ways to assess impact on customers. Assessing customer impact is likely to require firms to review transactions, but FINRA would work with firms to identify an appropriate, risk-based way to analyze transactions.

2. Do all firms have to conduct this assessment? Is my firm required to participate?

No. This is a voluntary program.

3. Will a firm that chooses not to participate incur a penalty or an increased sanction should FINRA find violations in this area post-Initiative?

There is no penalty for choosing not to participate. If FINRA later determines that a firm that did not participate in the Initiative failed to reasonably supervise 529 plan sales, it will evaluate that matter in the ordinary course based on the facts and circumstances presented. The firm would not be eligible for an automatic fine waiver. However, FINRA will not increase the sanctions that it otherwise would have imposed solely because the firm did not participate in the Initiative.

4. What concerns prompted FINRA to create this Initiative?

In several ongoing examinations and investigations, FINRA found deficiencies in firms' supervision of 529 plan recommendations. For example, FINRA found that firms did not:

- keep records of 529 plan transactions and were therefore unable to review those transactions for suitability;
- capture information relevant to the suitability determination, including the age of the beneficiary and the number of years until the funds are needed to pay for the beneficiary's qualified education expenses;
- have a process or procedures in place to review 529 transactions for suitability; or
- provide training or guidance to registered representatives regarding 529 share classes and the factors to consider, such as beneficiary age.

FINRA has also observed some firms that have reasonably designed supervisory systems for 529 plan recommendations, so this has not been a uniform issue across the industry. However, given the number of firms that have had issues, FINRA determined that many member firms could quickly address weaknesses in their supervision and return money to harmed customers if FINRA were to identify this compliance issue promptly, offer firms the opportunity to voluntarily report potential supervisory deficiencies, and work collaboratively with firms to fix any supervisory deficiencies and remediate affected customers.

5. What is the benefit of participating in the Initiative?

A firm that participates in the Initiative will avoid any fine that FINRA might otherwise impose in an Enforcement action concerning the firm's failure to supervise the suitability of 529 plan share class recommendations. In addition, a firm that participates in this Initiative will have the benefit of a discussion with FINRA about the steps it plans to take to remediate its supervisory failures and pay restitution to customers. FINRA believes dialogue is an important part of this process, and is centralizing and coordinating its responses to best provide consistent feedback to participants in the Initiative. FINRA staff working on this Initiative may be able to provide the firm with guidance or observations to help the firm achieve compliance and make harmed customers whole in a manner that is fair and efficient. As a result of information that FINRA learns through these discussions, it may also identify additional information or guidance that would be helpful for the industry.

6. Can a firm participate in the Initiative and not face formal disciplinary action?

Yes. It is possible that, as a result of participating in the Initiative, a firm could receive a cautionary action, or FINRA could close the matter with no action. As with every case, FINRA will consider a number of factors in making this determination, such as the impact of the misconduct, the scope, the timeframe and the cause of the supervisory failure.

7. Does FINRA take the position that certain 529 plan share classes are per se unsuitable? For example, does FINRA believe that Class C shares are inappropriate for 529 plans because 529 plans are long-term investments?

MSRB rules and guidance do not take the position that there is a *per se* inappropriate share class.2 The obligation to recommend a suitable share class under MSRB rules requires a case-by-case analysis, and there may be circumstances in which a recommendation to purchase Class C shares is suitable in light of the customer's facts and circumstances. This underscores how important it is for representatives to know each customer's unique needs and understand the impact of 529 share classes, and for firms to train representatives and supervise their recommendations of 529 plan share classes.

8. Is FINRA establishing a new rule about the suitability of 529 plan share classes through the Initiative?

No. A representative's obligation to recommend a suitable share class when recommending a 529 plan transaction is well established, as is a firm's obligation to supervise such recommendations.3 This Initiative does not change that, nor does it mandate that a broker or a firm recommend a specific share class under certain circumstances. Rather, the Initiative encourages firms to review information about a potential risk – the risk that their supervision may not be reasonable – and work with FINRA to address any deficiencies efficiently and promptly. In return for this effort, FINRA would waive the fine it might otherwise impose.

9. Does FINRA expect firms' supervision of 529 plan share classes to be perfect? Can a firm determine that it has a reasonable supervisory system even if it identifies one or two

isolated transactions that might be problematic?

FINRA and MSRB rules require that a firm establish and maintain a supervisory system that is reasonably designed to achieve compliance with applicable laws and regulations, including suitability rules. In addition, firms are required to establish, maintain and enforce written supervisory procedures that are reasonably designed to achieve compliance with those rules. The Initiative encourages firms to qualitatively assess whether their supervisory systems and procedures were **reasonably designed** and enforced. As described in question 1 above, FINRA is not asking firms to review all of their 529 transactions in order to participate in the Initiative. If, however, a firm knows of a specific unsuitable transaction, it should reasonably respond to such a "red flag" in the normal course of its supervision of its registered representative.

10. What if a firm identifies a potential supervisory deficiency related to its sale of 529 plan shares but determines that there was no resulting customer harm; should the firm still self-report?

FINRA would encourage the firm to participate in the Initiative under those circumstances. After self-reporting, the firm can discuss with FINRA how it has changed its supervisory system to address the problem, and FINRA may be able to provide the firm with additional guidance or observations to help the firm achieve compliance. While that is a clear benefit of self-reporting, some firms may be concerned that the self-report would also trigger a formal Enforcement action. But not all self-reports will necessarily result in formal disciplinary action. (See question 6 above.) Under these circumstances, FINRA would consider the lack of customer harm when determining an appropriate outcome and may, based on the facts and circumstances, determine that the matter should be resolved informally or with no further action.

11. If firms identify concerns about the reasonableness of their 529 plan supervisory systems that are unrelated to the share class recommended, should firms self-report these concerns?

This Initiative only encompasses potential deficiencies with respect to firms' supervision of 529 plan share class recommendations. Firms are encouraged to immediately correct any additional supervisory deficiencies detected during their self-evaluation and to report those deficiencies under FINRA Rule 4530 if required by that rule. See Reg. Notice 19-04, fn. 14.

12. If a firm identifies a potential issue in its supervision but has not concluded that its overall supervision was unreasonable, can it participate in the Initiative?

Yes. FINRA encourages firms to self-report potential supervisory issues, so that FINRA staff and the firm can discuss the potential issue and whether it requires remediation. If it does require remediation, the firm will be eligible for a fine waiver if applicable. If it does not, no additional steps will be necessary.

13. If FINRA examiners previously reviewed a firm's supervision of 529 plan sales and did not recommend formal action, should the firm still conduct this self-assessment?

Firms are **not required** to participate in the Initiative; it is voluntary. A firm might consider a previous exam, or a previous internal audit or other analysis, and decide that based on the information the firm has, it will not perform any additional review. There is no penalty for that decision.

But there may be reasons that the firm decides that a new review could still be helpful. It may be, for example, that FINRA's review was limited to a particular aspect of the firm's supervision, or FINRA's consideration of 529 plan supervision might have been part of a larger, thematic review of the firm's supervisory system and therefore wasn't focused on 529 plan supervision. Alternatively, it may be that the firm's process for supervising 529 plans has changed or that the firm's sale of 529 plan shares has grown exponentially, but the firm failed to adjust its supervisory system accordingly. If the firm self-reports those issues as part of the Initiative, it will avoid any fine that might otherwise have resulted.

14. If a firm participates in the Initiative, must it also file a report pursuant to FINRA Rule 4530?

Not necessarily. Rule 4530 requires a firm to self-report if it concludes, or reasonably should conclude, that it violated the securities laws if the conduct has widespread or potential widespread impact to the firm, its customers or the markets, or if conduct arises from a material failure of the firm's systems, policies or practices involving numerous customers, multiple errors or significant dollar amounts. In contrast, firms can participate in the Initiative when their conduct does not meet the criteria set forth in Rule 4530.

15. Should firms document their self-assessment under the Initiative?

Firms do not have to document their review. Indeed, as noted, firms may choose not to conduct any review at all. If, however, a firm chooses to conduct a review, it is a good practice to document that review, and may assist the firm in responding to questions from FINRA in any future exams and investigations.

16. Regulatory Notice 19-04 advises firms to provide certain information regarding their 529 plan share class supervision for the period January 2013 through June 2018 (the "disclosure period"). When calculating customer harm, should firms use that same period?

As a first step, firms choosing to participate in the Initiative need only determine whether there was a potential supervisory violation; they need not calculate customer harm. After the self-reporting due date of April 30, FINRA will confer with self-reporting firms on an acceptable methodology and period for calculating restitution. Our focus will be on the firm's customers who paid more in fees than they would have if they purchased a different share class during that relevant time period.

17. Why did FINRA select a 5 1/2 year time-period (from January 2013 through June 2018) for this Initiative? What should firms who improved their supervisory system during the disclosure period do with respect to this Initiative?

FINRA sought to select a period that is fair for investors who might have been affected by any supervisory failures, but not so broad that reviewing the supervisory system becomes onerous. To the extent that a firm conducts a review and determines that its 529 plan supervision may not have been reasonably designed and implemented at any point before or during the disclosure period, we encourage that firm to self-report pursuant to the Initiative so that FINRA and the firm can have a dialogue about the firm's remediation, whether there was customer impact, and, if so, how to address it.

18. Can a firm receive an extension of the April 30 self-reporting deadline?

Yes. Firms that cannot complete their supervisory review before the new April 30 deadline may request an extension by emailing 529Initiative@finra.org. Firms may also request an extension of time to provide FINRA the additional information due by May 31, 2019.

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1. Some matters concerning 529 supervisory failures may also include related violations of securities laws and rules, such as failure to retain required books and records. Where such violations are considered to be integrally related to the firm's supervisory failures, FINRA Enforcement would recommend including such violations in a no-fine settlement pursuant to the Initiative.

2. See, e.g., MSRB Rules G-19, on suitability of recommendations and transactions and G-17, on conduct of municipal securities and municipal advisory activities; MSRB Interpretation on Customer Obligations Related to Marketing of 529 College Savings Plans (Aug 7, 2006).

3. FINRA and the MSRB repeatedly have stated that firms and their representatives must select a share class tailored to the customer's investment profile, both in the context of mutual fund shares generally and with respect to 529 plan shares in particular. See, e.g., NASD Regulatory & Compliance Alert (Summer 2000); MSRB Interpretation on Customer Obligations Related to Marketing of 529 College Savings Plans (Aug. 2006); and MSRB Fair Practice Notice, Application of Fair Practice and Advertising Rules to Municipal Fund Securities (May 2002). In particular, the MSRB has stated that information known about the designated beneficiary generally would be relevant in weighing the investment objectives of the customer, including information regarding the age of the beneficiary and the number of years until the funds will be needed to pay qualified education expenses of the beneficiary. See MSRB Interpretation on Customer Obligations Related to Marketing of 529 College Savings Plans (Aug 7, 2006). For more than a decade, FINRA and the SEC have brought enforcement actions against broker-dealers who failed to reasonably supervise representatives' sales of 529 plan shares. See, e.g., In re 1st Global Capital Corp., SEC Rel. No. 34-54754 (Nov. 15, 2006); MetLife Securities, Inc., AWC No. EAF0401020003 (Nov. 6, 2006); and American Express Financial Advisors Inc., AWC No. EAF0400340002 (Sept. 20, 2005).

SIFMA Interpretive Guidance on Application of MSRB Rules.

SUMMARY

SIFMA responded to MSRB Notice 2019-01 in which the MSRB is requesting comment on draft interpretive guidance on application of MSRB rules and prior interpretive guidance to certain prearranged trading in connection with primary offerings of municipal securities.

SIFMA and its members reiterates its call for the MSRB to withdraw the Notice, or otherwise defer proceeding on any related guidance or rulemaking until the SEC concludes its enforcement activity in this area.

Read the SIFMA Comment Letter.

BDA Comment Letter: Draft Interpretation of Application of MSRB Rules to Certain Prearranged Trading

After consultation with various members and committees, the BDA has submitted a comment letter in response to the MSRB request for comment on draft interpretive guidance concerning the application of MSRB rules and prior interpretive guidance to certain prearranged trading in connection with primary offerings of municipal securities.

The comment letter can be viewed here.

The BDA letter focuses on the following points:

- Opposition to the extension of issuer restrictions to non-syndicate dealers; and
- The belief that the Guidance should focus on the misrepresentation by a syndicate member as the violation of Rule G-17; and
- The belief that the MSRB should be very clear about the kind of evidence that would establish a violation of G-17; and
- The MSRB should be more precise about the timing of events set forth in the scenarios.

Background

Specifically, the draft interpretive guidance illustrates how MSRB Rule G-11, on primary offering practices, Rule G-17, on the conduct of municipal securities and municipal advisory activities, and other rules and existing interpretive guidance related to certain prearranged trading of primary offerings. The draft guidance would remind dealers of MSRB requirements and how prearranged trading may violate those requirements.

Additional Information

In the summer of 2018 the BDA, at the request of the MSRB, responded to an inquiry on the topic of prearranged trading. The response can be view here.

Bond Dealers of America

March 11, 2019

Fitch Ratings: California Ruling Leaves Pension Status Quo Intact for Now

Fitch Ratings-New York-12 March 2019: California's Supreme Court ruling last week leaves the status quo intact on the legal protection of pension benefits in place in the state for decades, according to Fitch Ratings. However, as the first of several pending legal challenges to public pension reforms implemented at the state and local levels since the Great Recession, the court may yet provide further clarity on the extent of protections provided by the "California rule", a decades-long state judicial precedent holding that pension benefits – granted when employment begins – are constitutionally protected and cannot be impaired.

The decision, in Cal Fire Local 2881 v. California Public Employees Retirement System (Cal Fire case), upheld a signature reform provision of the state's Public Employee Pension and Retirement Act of 2013 (PEPRA), but otherwise left intact the aforementioned California rule. The impact of PEPRA is reflected in the pension liabilities that Fitch incorporates in its analysis, and thus the ruling has no impact on Fitch's rating of the state of California or local governments.

The 2013 reform provision at issue in the Cal Fire case eliminated the ability of existing employees to purchase additional service credit toward their own retirement, known as "airtime". The ruling, in Fitch's view, was significant insofar as it upheld a pension reform eliminating a benefit previously available to existing employees, but it was narrow in scope. The court essentially held that airtime was not intended by the state legislature to be irrevocable when it was authorized in 2003, nor was airtime a form of deferred compensation in the same manner as core pension benefits. Instead, airtime was viewed as an optional benefit similar to other fringe benefits available to employees.

However, by ruling that airtime is outside of core pension benefits, the court avoided, for the time being at least, ruling on the protection of accrued pension benefits under the California rule. This precedent, which dates back to the Allen v. City of Long Beach case of 1955, holds that reducing pension benefits, once vested, would constitute an impairment of contract. In California, the practical impact of this protection has been to lock in past legislative decisions to increase benefits, while preventing any effort to decrease benefits, except for new employees.

Roughly a dozen other states have modelled their own pension legal protections on the California rule, where it has generally constrained pension reforms that might materially reduce liabilities. In a few states, courts have narrowed which benefits are considered vested, for example by allowing lower accruals for benefits earned following a reform (such as in Oregon) or excluding some components of benefits, such as cost-of-living adjustments, from contractual protections (such as in Colorado).

It remains to be seen whether California's Supreme Court is willing to reconsider the extent of the California rule's pension protections more directly, although several pending cases may provide an opportunity. Two upcoming cases have to do with pension "spiking", the practice of inflating compensation just before retirement in order to boost future benefit payments; PEPRA narrowed which elements of compensation counted in this calculation in order to curb spiking.

The first case, Alameda County Deputy Sheriff's Association v. Alameda County Employees' Retirement Association (Alameda case), like the Cal Fire case, challenges another provision of PEPRA applicable to existing employees that exclude several elements of pensionable compensation from benefit calculations. The provision was overturned in a lower court ruling and has been appealed by the state to the Supreme Court. In a similar case, Marin Association of Public Employees v. Marin County Employees Retirement Association, the narrowing of pensionable compensation was upheld, but is expected to be ruled on by the Supreme Court after the Alameda case. The timing of both reviews is not yet known.

Fitch notes that former Governor Brown vigorously pursued a favorable outcome on the Cal Fire case, to the point of replacing the Attorney General in arguments before the Supreme Court with attorneys from the governor's office. Whether Governor Newsom will pursue the upcoming cases in the same manner is unclear at this point. That said, press reports during the last election campaign indicated that he supported maintaining the California rule even if it were weakened by courts.

In the event that the Supreme Court had overturned PEPRA's elimination of airtime, the impact could have been costly for employers. Airtime provisions were intended to be cost neutral, given that employees would have to purchase the incremental value of their higher benefits. However, in reality the cost of incremental benefits was based on the pension's actuarial and economic assumptions at the time of purchase, leaving employers responsible if these assumptions later proved inaccurate. The Cal Fire ruling noted CalPERS' assessment that the actual cost of airtime was underestimated by 12% to 38%, depending on the category of employee.

PEPRA covers the California Public Employees Retirement System, the California State Teachers Retirement System, and 20 county retirement systems established under the 1937 County Employee Retirement Law. PEPRA was signed by Governor Brown in 2012 and became effective Jan. 1, 2013, although many provisions of the law only became effective upon the expiration of collective bargaining agreements in place at the time. The state estimated at the time the law passed that it would lower its own cost of pensions by $55 billion over time, with billions more in savings for local governments. In addition to the provisions at issue in the California court cases, PEPRA lowered benefits for new workers, capped pensionable wages, restricted granting of retroactive benefit increases and prohibited pension contribution holidays.

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Airbnb Loses Major Fight Over California City's Rental Law.

- **Appeals court rejects challenge citing internet immunity law**
- **Ruling deals setback to Airbnb, HomeAway in fights with cities**

Airbnb Inc. and Expedia Group Inc.’s HomeAway failed to persuade a U.S. court of appeals to strike down a Santa Monica law that makes the companies liable for illicit rentals in the Southern California beach city.

The ruling Wednesday by a three-judge panel of the Ninth Circuit is a setback for the home-sharing platforms in their effort to avoid regulation by cities that blame the rapid proliferation of short-term rentals for a shortage of affordable housing and a disintegration of residential communities.

The Santa Monica ordinance holds the companies responsible for booking rentals of residences that aren’t licensed by the city. The appellate panel agreed with the city that the restriction doesn’t violate the U.S. Communications Decency Act of 1996, which shields online services from liability for the content that their users post on their sites.

San Francisco-based Airbnb is the largest home-rental platform with more than 6 million listings around the world. The company is gearing up to be ready to go public by the end of the year, but is still fighting various cities in court over efforts to curtail its operation. In January, Airbnb and other home-sharing sites won a ruling granting a temporary reprieve from a New York City law that would compel them to turn over renter data, a requirement that threatens to cut their bookings in the city by half.

“Airbnb has seen setbacks like this over the years,” Bloomberg Intelligence analyst Mandeep Singh said. “They will continue to work with the regulators on tax collection and other fees but it should not have much of an impact on its IPO.”

Airbnb is also fighting Paris where it faces as much as 12.5 million-euro ($14 million) in fines for allegedly posting illegal advertisements, and in November it sued Boston over a new ordinance that it says would limit short-term home rentals and impose unfair restrictions and financial penalties on the company.

The courts’ interpretation of the 1996 law and the protection it affords interactive online businesses has become a central theme in legal challenges to Airbnb and its rivals. Federal judges in San Francisco and Los Angeles have found that cities can hold the companies liable for processing transactions, as opposed to simply listing information from users. Yet in a separate case in Los Angeles, a judge concluded that Airbnb can’t be made responsible for renters breaking their leases when they list their apartments on the site.

Airbnb and HomeAway argued that the Santa Monica ordinance makes it impossible for them to operate, particularly if other municipalities adopt similar laws, because it would require them to monitor and remove listings for unregistered residences. If they don’t, users would be stuck looking at listings that they won’t be able to book, according to the companies.

The Ninth Circuit panel concluded the city’s statute only puts an “incidental” burden on the companies’ constitutional right to free speech.

“Even assuming that the ordinance would lead the platforms to voluntarily remove some advertisements for lawful rentals, there would not be a ‘severe limitation on the public’s access’ to lawful advertisements, especially considering the existence of alternative channels like Craigslist,” the judges said in the ruling.

Airbnb said in a statement that the Santa Monica case doesn’t reflect the progress it has made working with local governments across the country.

“Airbnb has made great strides around the world, working with dozens of cities to develop more than 500 partnerships including fair, reasonable regulations, tax collection agreements, and data sharing that balance the needs of communities, allow hosts to share their homes in order to pay the bills and provides guests the opportunity to affordably visit places like the California Coast,” the company said.

Expedia said Wednesday’s ruling is out of step with other court decisions and runs contrary to the Communications Decency Act’s protections for innovation on the internet.

Santa Monica said in a statement that the unanimous ruling confirms the city’s right to regulate home sharing to protect its limited housing stock for residents.

“We are thrilled to have confirmation from the Ninth Circuit that our balanced approach to home sharing is working at a time when housing and affordability continue to challenge the region,” Santa Monica Mayor Gleam Davis said. “This is a big win for Santa Monica residents and our residential neighborhoods.”

The case is HomeAway.com Inc. v. City of Santa Monica, 18-55367, U.S. Court of Appeals, Ninth Circuit.

Bloomberg Markets

By Edvard Pettersson

March 13, 2019, 9:55 AM PDT Updated on March 13, 2019, 2:55 PM PDT

— With assistance by Eric Newcomer, and Olivia Carville

San Francisco's Version of a Green New Deal Is Taking Over Its Power Company.

Think flower power – but literally.

What happens when a famously left-leaning city dives into the buttoned-down business of electric utilities? San Francisco may soon find out.

City officials are studying the possibility of creating their own utility out of the wreckage of PG&E Corp., the energy giant that filed for bankruptcy in January. The city would buy the company's local wires—or possibly seize them through eminent domain—to create a utility that would be, well, very San Francisco.

If all goes according to plan, PG&E's system would serve as the backbone of a full-service municipal utility that San Francisco's politicians could use to make an all-out push for 100 percent renewable power.

Continue reading.

Bloomberg

By David R Baker

March 12, 2019, 2:00 AM PDT Updated on March 12, 2019, 9:27 AM PDT

The Bond Market's Watchmen Keep an Eye on Each Other, Too.

It's healthy and transparent for Kroll to make the rare objection to a Morningstar credit rating.

Who watches the watchers?

The age-old question is littered throughout political and economic thought, as well as popular culture, from the graphic novel "Watchmen" to episodes of "Star Trek" and "The Simpsons." It's typically asked as a prompt for pondering how to provide a check to those in power.

In the bond market, the major credit-rating companies are the gatekeepers. Corporations, governments and structured products must pass muster with them to receive more favorable treatment from investors (or get access to funding at all). The competition for business is intense: S&P Global Ratings, Moody's Investors Service and Fitch Ratings are the "Big Three," with other firms vying for a smaller share. Still, it’s rare for any of them to publicly acknowledge one another, let alone question a rival’s grades. Usually that’s left to money managers, who like to say their in-house analysts are ahead of the game.

That’s why it came as such a surprise that Kroll Bond Rating Agency directly criticized Morningstar Credit Ratings’ grades on a commercial mortgage bond last week. From Bloomberg News’s Adam Tempkin:

> A bond that Morningstar graded is backed by property loans which only have to suffer losses of 4.5 percent before a group of investment-grade noteholders potentially lose money, according to Kroll. Most deals have a bigger cushion now, usually above 5 percent, for the securities rated a step above junk at BBB-.
>
> In a report on Thursday, Eric Thompson, senior managing director of the real estate group at Kroll, called Morningstar’s ratings a “head scratcher.”
> …
>
> “For Morningstar to come out with this now doesn’t bode well for the broader credit rating agency space,” Thompson said in a phone interview. “It’s important for the market that rating agencies maintain their discipline, particularly at the late point where we are in the credit cycle.”

That sort of commentary is stunning because it just doesn’t happen. I’ll give you an example. A few years ago, I wrote about how S&P was winning market share over Moody’s in the U.S. municipal-bond market, and how some strategists were concerned it was because a methodology change boosted many ratings. Here was S&P’s response, which is more or less what you’d expect to hear:

> “Whether someone decides to use one rating or another, we don’t control that,” said Jeff Previdi, one of the primary analysts on the criteria change for S&P. “What we do control is our analytics. We’re going to be measured on our opinions as to how they perform over time, so you can be certain that we’re going to be very careful and informed.”

It’s hard to argue with that. For the largest credit raters, which trace their roots back more than a century, you can understand why the short-term benefit of lowering standards to win more business might not outweigh the longer-term ramifications of their grades not holding up. After all, no history of the financial crisis seems complete without questioning how these companies could have possibly awarded their top scores to subprime mortgage investments, even if the reality is more complicated.

It’s important to note that Kroll isn’t just saying that this commercial mortgage deal is one bad rating, but rather that it’s a red flag for industry practices as a whole. The pool, titled MSC 2019-L2, had a BBB- rating from Morningstar, the lowest investment grade, while Fitch considered it BB-, three steps lower. As Tempkin noted, Morningstar had avoided rating these specific kinds of mortgage bonds, known as “conduit deals,” for two years, before updating its methodology in November. Such changes are by no means nefarious, of course — it would arguably be more alarming if they always remained static — as long as they’re done based on sound analysis.

Kurt Pollem, the head of CMBS ratings and analytics at Morningstar, said the firm was comfortable with its ratings, providing a similar answer as S&P gave me almost five years ago.

> "This pool of loans is of lower leverage, and has better metrics than other pools," Pollem said. "Our methodology is transparent and calibrated off a data set of 80,000 loans through history. Our view is different than other rating agencies, and the market welcomes diverse credit opinions."

Investors should also welcome this type of back-and-forth between competing companies. It's too soon to say whether Kroll's critique is justified, given its inherent self-interest, but any sort of self-policing among the "watchers" nonetheless feels more noteworthy than a similar rebuke from a strategist or fund manager.

For better or worse, the incentive structure within the credit-rating business tends to tilt toward higher grades — issuers pay for them, so they'll seek out the best ones. But if the agencies can agree on lines they won't cross, or at least call each other out from time to time, that only enhances their overall credibility and could help prevent any missteps in the future.

Bloomberg Opinion

By Brian Chappatta

March 12, 2019, 2:00 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.

Follow @BChappatta on Twitter

S&P: With Oil Price Volatility, Recent Economic Gains In U.S. Oil-Producing States Are At Risk

Over the past year, economic performance among oil-producing states stabilized following a lingering economic downturn that began in mid-2014. A changing economic outlook and a wide range of fiscal adjustments resulted in an easing of the negative pressure facing overall state credit quality.

Continue Reading

Mar. 12, 2019

New TEFRA Regulations for PABs Set to Go into Effect: Hunton Andrews Kurth

Read the Client Alert.

Hunton Andrews Kurth | Mar. 13

S.C.'s Massive Debt Load Partly Based on Misleading State Finance Report.

When it comes to debt, the state of South Carolina is swimming in billions of it.

Yet an important report on the state's finances, issued by Comptroller General Richard Eckstrom – the state's chief accountant – and considered a key document by credit rating agencies in evaluating state debt, according to an expert, paints a misleading picture of South Carolina's government structure and authority over state agencies, a review by The Nerve found.

A description of state government and a related organizational chart in the fiscal 2018 Comprehensive Annual Financial Report (CAFR) do not accurately reflect the structure of many state agencies or the Legislature's control over the other two branches of government.

Continue reading.

THE NERVE

By RICK BRUNDRETT

March 15, 2019

NYSE Move That Never Happened Leaves NYC Still Paying Debt.

- **Project scuttled amid budget shortfalls in wake of recession**
- **NYC sells bonds Thursday to refinance debt left from deal**

It was 1998. The Internet bubble was building, day-trading was in full swing and the New York Stock Exchange was given the biggest subsidy in the city's history to stop it from leaving Wall Street for New Jersey — keeping the Y in the NYSE.

The plans for a new home for the world's biggest stock exchange were shelved after the Sept. 11 terrorist attacks and a recession that saddled New York with a big deficit. But the city is still paying for more than $60 million of bonds that were left behind.

The expense, though tiny for a city with a $92 billion budget and a fraction of what it would have shelled out if the project had gone forward, puts New York among a long line of governments that turned to the $3.8 trillion municipal-bond market to bankroll ill-fated business ventures and became stuck with the debt for years. Rhode Island was burned by a foray into the video-game business. A trash incinerator pushed Harrisburg, Pennsylvania, into financial ruin. And a Detroit suburb saw its dreams of transforming itself into the Hollywood of the Midwest dashed when the debt-financed movie studio was shelved.

Such missteps helped fuel a long-simmering backlash against subsidies routinely handed out to corporations by local governments. It reached a new pitch this year, when Amazon.com Inc. scuttled plans for a headquarters in Queens after a mounting political protest over steering taxpayer money to a company run by the world's richest man.

"This reconfirms how misguided the use of public subsidies were for a project for something as large as the New York Stock Exchange," said Bettina Damiani, a former project director for Good Jobs

New York, an advocacy group that opposed the NYSE deal. She said it's "frustrating" that it's still costing taxpayers decades later. "Its almost like the stock-exchange deal was a precursor of all the things we are talking about now."

On Thursday, New York's Industrial Development Agency sold about $32 million of bonds to refinance some debt left from the episode. With demand for New York debt high, the city paid a top yield of 1.82 percent on debt due in nine years, 0.16 percentage point less than what investors demand on the highest-rated securities.

Kristen Kaus, spokeswoman for the New York Stock Exchange, didn't respond to a request for comment. Christian Ficara, a spokesman for the city's Economic Development Corp., which includes the industrial development agency, said the refinancing, by saving money, will help the city with current redevelopment projects.

"The NYSE serves as a critical asset within the city's financial infrastructure, but the decision to invest resources into its redevelopment was born of a different time," he said. "Today, we are working to grow and diversify New York City's economy in other ways."

When the deal was struck, Mayor Rudy Giuliani said the more than $1 billion in cash, tax breaks and other subsidies extended to the NYSE were a "Christmas gift to the city" that would keep New York the financial center of the world.

The deal called for the NYSE to move to a new office tower and trading complex across the street from its historic spot on Wall Street. Under the agreement, the city and the state were to buy an entire block in the financial district for $450 million, according to a report by the Independent Budget Office in 2001. The city and state also were to extend $480 million in grants to build the complex, in addition to other aid.

Before construction started, New York spent tens of millions of dollars on pre-development, design and site acquisition costs, according to bond documents.

But after Michael Bloomberg replaced Giuliani as mayor in early 2002, he pushed for the NYSE to contribute more for the project, saying his predecessor left the public bearing too much of the cost at a time when the recession had left the city facing a $5 billion budget shortfall. Bloomberg is the founder and majority owner of Bloomberg LP, the parent company of Bloomberg News.

Richard Grasso, then the NYSE chairman, called off the move later that year, though the exchange later shifted nearly all its trading to a data center in Mahwah, New Jersey. NYSE executives still work out of its historic building in downtown Manhattan.

New York issued about $108 million of municipal bonds in 2003 to recover what it had already spent, including $3 million per month to hold onto land for the project and a $22 million down payment for an office building, according to the New York Times.

The 2003 bonds were refinanced at a lower rate through debt issued in 2009, and those securities were refinanced again by Thursday's sale. According to a cost-benefit analysis from the city, the refinancing will save taxpayers about $4 million.

The last of the new bonds will be paid off in 2028, three decades after the NYSE deal was cut.

Bloomberg Technology

By Danielle Moran

March 14, 2019, 6:00 AM PDT Updated on March 14, 2019, 11:54 AM PDT

— With assistance by Henry Goldman, and Nick Baker

Could New York City Go Bankrupt? The Muni Market Doesn't Think So.

It wasn't quite "Headless Body in Topless Bar." A New York Post column published online last weekend blared: "New York City is edging toward financial disaster, experts warn." But that is news to the municipal bond market.

"New York City could go bankrupt, absolutely," the Post quoted an economist as saying—yet that didn't even happen during the fiscal crisis of the 1970s. And as for how the muni market is viewing the Big Apple's credit quality, it sees it more as gilt-edged than junk. (Barron's and the New York Post are both owned by News Corp .)

Moody's Investors Service recently raised its rating on New York City general obligation, or GO, bonds to Aa1, just a single notch below the top-grade of Aaa. General obligation bonds are backed by tax revenues and the full faith and credit of the issuer (as opposed to a bond backed by stream of revenues, such as tolls from a bridge or highway).

Standard & Poor's and Fitch Ratings both rate New York City AA, one grade lower than Moody's, but still a very high-quality credit.

In raising its rating, Moody's wrote:

"The upgrade…reflects continued strengthening and diversification of New York City's economy, reducing its reliance on volatile financial services. The city's competitive advantages include a young and highly skilled labor pool, access to higher education and medical centers, strong domestic and international transportation links, and low crime rates. Those fundamentals position New York City for strong future growth, especially in media, medical research, and technology, while maintaining its deep strength in financial services."

The column ignored those positives and instead concentrated on New York City's high spending and debt levels. The city, which has earmarked $750 million in savings in its preliminary fiscal 2020 budget, faces a "bloodbath if New York's economy is hit by financial shocks—including a recession, which some see on the horizon—analysts warn," the column asserted.

"In general, we find Moody's more believable here," the Municipal Market Analytics advisory wrote in reaction to the Post piece.

"The city's immense and well-diversified economy provides government managers with sufficient tools to navigate modest projected deficits," the advisory added. "So while lender caution is well placed regarding the city's looming budget struggles, not to mention fears that the current mayor may be too slow in changing course if conditions erode faster than expected, the city's long-term credit profile remains resilient, in particular compared with other government and corporate borrowers nationwide."

Indeed, the muni market, which has no political ax to grind, snapped up a recent offering of $900 million New York City GOs, according to MMA. After the bonds were offered at yields within a basis point or two of the triple-A benchmarks, the notes rallied in price to lower their yields by an additional seven basis points. (A basis point is 1/100 of a percentage point.)

That alone contradicts the column's assertion that another fiscal crisis is looming. When the Big Apple's credit was crumbling in the 1970s, it took some arm-twisting to get the city's major banks to underwrite even its short-term notes. By contrast, New York City's long-term debt trades strongly.

From the perspective of one who was born and raised in New York City, who lived in Brooklyn during the fiscal crisis (and before it was cool), and who cut his teeth covering the muni market during those dark days, the comparisons between then and now are a stretch. To be sure, rising homelessness and the deteriorating transit system (the purview of the Metropolitan Transportation Authority, a state agency) raise warning flags amid the boom of billionaires' condos.

Bankruptcy is possible for major cities, as Detroit has shown. And there is life afterward, as Barron's Mary Childs has reported. But New York City is far from that, and the muni market knows it.

Barron's

By Randall W. Forsyth

March 13, 2019 7:30 a.m. ET

IRS Submits OZ Guidance to OIRA for Review.

Following last month's hearing on Qualified Opportunity Funds, the IRS has completed its second tranche of regulatory guidance.

Yesterday, the proposed rules were submitted to the Office of Information and Regulatory Affairs for review. OIRA is a branch of the White House's Office of Management and Budget.

OIRA will now review the proposed guidance for at least 10 days before releasing them for publication in the Federal Register.

Issues that the publication may clarify include: Opportunity Zone business qualification requirements, 70% and 90% asset test requirements, interim gains reinvestment, treatment of land, treatment of refinance proceeds, the substantial improvement test, treatment of multi-asset funds, treatment of carried interest, and depreciation recapture treatment, to name a few.

OpportunityDb

By Jimmy Atkinson

March 13, 2019

Illinois's Credit Problems Are Far From Over.

Illinois, the state with the lowest-rated municipal credit, has managed to hang on to its investment-grade status. But that doesn't mean that the Land of Lincoln is out of its fiscal quagmire, analysts say.

The back story. It doesn't take much change to constitute an improvement in Illinois' fiscal situation; during the previous governor's administration the state went for a stretch of more than two years without passing a single budget. It still has more than $8 billion of unpaid bills and a pension funding gap of more than $133 billion.

Continue reading.

Barron's

By Alexandra Scaggs

March 15, 2019 1:24 p.m. ET

New Event Notices for Municipal Bond Disclosure.

February 27, 2019 is the compliance date for newly adopted Securities and Exchange Commission (the "SEC") amendments to Rule 15c2-12, adding two new event notices. The event notices are aimed at prompting timely, continuing disclosures by issuers and other obligated persons of direct purchases, direct loans or bank placements and other private placements. Along with the new event notices, the amendments define "financial obligation" to capture debt obligations of issuers that are not municipal securities for which a final official statement has been provided to the Municipal Security Rulemaking Board's electronic portal, the Electronic Municipal Market Access ("EMMA") system.

Read the Hunton Andrews Kurth Client Alert.

Creating a New Marketplace for Resilient Infrastructure Investment.

Summary of Contents

- Understanding the stormwater investment challenge and opportunity
- What do we mean by a resilience marketplace?
- Better define the environmental and economic benefits of more resilient infrastructure
- Develop technical understanding and capacity around new financing tools
- Scale innovation and realize market potential

Climate change is getting harder to ignore, from alarming new reports about its impacts to debates around a Green New Deal. Yet for all this attention, individual places—from the biggest cities to the smallest towns—are still struggling to do something about it.

An unpredictable climate should serve as a strong motivator for every community to better maintain its manmade and natural stormwater infrastructure to be more flexible and responsive. Increased flood risks are among the clearest challenges, with climate change already having generated billions of dollars in flooding costs. But as we saw in Houston during Hurricane Harvey—and in several other places along the Gulf Coast, Mississippi River, and beyond over the past few years—many communities currently have failing systems of water pipes, plants, and natural wetlands. Even more troubling is how communities cannot even handle runoff from daily rainfall, as well as additional pollution.

Communities need a new approach to accelerate investment in infrastructure that is resilient to growing climate pressures. They should carry out proactive repairs of their aging, inefficient stormwater systems as a way to deliver fiscal savings and long-term environmental and economic benefits. They also should invest in new technologies and green infrastructure to better protect properties and improve livability.

Continue reading.

The Brookings Institute

by Joseph Kane & Adie Tomer

March 18, 2019

MSRB Compliance Corner.

Read an update on the MSRB's Compliance Advisory Group, newly available compliance resources, an FAQ on dealers' obligations related to SMMPs and more in the latest Compliance Corner.

CUSIP Request Volume for Corporates and Municipals Increases.

NEW YORK, NY, MARCH 11, 2019 – CUSIP Global Services (CGS) today announced the release of its CUSIP Issuance Trends Report for February 2019. The report, which tracks the issuance of new security identifiers as an early indicator of debt and capital markets activity over the next quarter, found a noteworthy increase in requests for new corporate and municipal debt identifiers, while requests for international security identifiers declined in February.

Read Report.

BDA Hosts Capitol Hill Infrastructure Fly-in and Congressional Briefing.

Read more.

Fitch Ratings: No Immediate Impact Likely on US Colleges in DoJ Investigation

Fitch Ratings-Chicago/New York-14 March 2019: This week's charges of fraudulent admissions brought on by the U.S. Department of Justice (DoJ) are not likely to lead to near-term negative rating actions for U.S. colleges and universities, according to Fitch Ratings. Over the longer term, credit risks may arise from related legal costs, as well as from reputational damage contributing to any weakened demand and/or philanthropic efforts.

The DoJ has charged multiple individuals with federal crimes tied to seeking fraudulent admissions into various institutions of higher education. Eleven employees at eight universities were named in the filings, along with dozens of other individuals. No universities were named as defendants in the released criminal complaint.

These prominent institutions maintain sufficient expense flexibility, liquidity and student demand to mitigate minimal near-term effects. However, longer term, less definite fallout could include litigation, reputational damage, erosion of philanthropic support and other challenges arising from legislative or regulatory reactions. Highly rated universities have historically shown considerable resiliency through near-term legal and reputational risks. Additionally, the institutions involved generally exhibit strong demand profiles and robust financial positions.

Effective governance and leadership is necessary for long-term viability. As such, we view this as an important rating factor in assessing the creditworthiness and potential performance of a rated institution. As an asymmetric (downside risk only) credit factor, Fitch generally highlights instances where governance and management are weak in ways that constrain or pressure the rating. Our baseline expectation for rated entities is that governance practices and organizational structure are adequate and neutral to ratings with notably strong management to be reflected in operating and financial performance over time.

Notably, the sector as a whole continues to face scrutiny over the value of higher education. Any tempering of the broad public and private financial support the sector has benefitted from over time would pose longer term risks.

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Fitch Ratings: SALT-Linked US State Revenue Volatility to Decline

Fitch Ratings-New York-11 March 2019: Recent US state tax revenue data affirms Fitch Ratings' view that the passage of the federal Tax Cuts and Jobs Act (TCJA) in December 2017 would contribute to abnormal state revenue volatility and uncertainty. We expect volatility to continue in 2019, but lessen over the next several years as taxpayers and states adjust to the changes, particularly the cap on State and Local Tax (SALT) deductions. Long-term state credit implications from the TCJA should be broadly limited but there are risks of variable effects depending on the state and reduced revenue-raising flexibility.

State personal income tax (PIT) revenue data for January showed a notable deterioration. The median change in PIT revenue for 33 reporting states was basically flat, growing only by 0.1% yoy. A significant majority (29) of those states showed either a deceleration in the rate of PIT revenue growth or an outright yoy contraction. The weak PIT data for January was a marked contrast to the same period in 2018, where 100% of reporting states showed acceleration in revenue growth and the median growth rate was 8.8% yoy.

PIT revenue data also contrasted with sales and use taxes (SUT), which broadly increased. For reporting states, median SUT revenue grew by 4.6% yoy in January versus 3.3% in January 2018. Furthermore, 34 of 36 reporting states that have a SUT showed an increase in the SUT revenue growth rate in January.

The contrasting trends in PIT and SUT revenue growth and the significant volatility on the PIT side point to direct state revenue effects from the TCJA. It is notable that PIT revenue, on average, declined even as economic growth and labor market indicators showed positive trends during the period – factors which likely contributed to the improving SUT revenue trends.

The scale of PIT revenue growth change between January 2018 and 2019 is highly abnormal and points to specific taxpayer incentives caused by the TCJA, namely the $10,000 cap on SALT deductions. Taxpayers were incentivized to push non-withholding income into calendar and tax year 2017 to maximize deductions in the last year of uncapped SALT deductions, which bolstered December 2017 and January 2018 PIT revenue dramatically. Without this incentive, taxpayers may now push non-withholding income to the end of the tax filing season in April and May 2019. Under the pre-TCJA unlimited SALT deduction, taxpayers always had the incentive to pay their taxes by December 31 versus later in the tax filing season to bring the benefits of the deduction forward. Stronger capital markets performance in 2017 and sharp declines in December 2018 also contributed to these trends.

PIT revenue volatility is leading to uncertainty for state revenue outlooks this year. States generally anticipated some level of decline in PIT collections from last year's record highs but the depth of the decline in December and January was a surprise. Some states experiencing yoy declines in PIT revenue through January, such as California, are anticipating strong rebounds in PIT collections by the end of the fiscal year. Other states, such as Maryland, are revising revenue forecasts downward to account for relative weakness seen to date. April and May revenue results will be particularly informative for states as they could confirm a significant shift in timing of tax filings and payments. In most cases, the data will come in before final budgets for fiscal 2020 are enacted, allowing states to make any final budgetary adjustments before the start of the new fiscal year.

We believe the recent revenue volatility is not likely to be sustained and should not have a direct, long-term fundamental credit effect for states, as TCJA results on PIT non-withholding collections peter out. However, unintended and indirect effects from the TCJA could have consequences for states. In particular, the SALT cap could affect revenue growth prospects and revenue-raising flexibility. Uncertainty over how individuals and companies adjust to the changes imposed by the TCJA could also lead to lingering complications for states' revenue forecasting, making the budgeting process more unpredictable.

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Even SALT-Pinched Minnesotans Flocking to 'Last Great Tax Haven'

- **Minnesota has 4th-highest state income tax rate in the U.S.**
- **Municipal bonds seen as way to reduce federal tax liability**

It's not only residents of high-cost coastal states that are plowing into municipal bonds as a haven from the new deduction limits. It's happening in Minnesota, too.

Pinched by the new cap on state and local tax deductions, Minnesota residents are buying up municipal debt to reduce their tax burden because the securities pay interest that's exempt from federal and state taxes. New York and California investors have gotten plenty of attention for helping drive a $20 billion influx of cash into municipal mutual funds in 2019. But there's also more interest in the asset class by investors living in smaller high-tax states, asset managers say.

Minnesota had the fourth-highest top state income-tax rate in the country last year at 9.85 percent, according to TurboTax. That's driven more interest in Eaton Vance's $135 million Minnesota Municipal Income Fund, said Craig Brandon, co-director of state and local government bond investments at Eaton Vance Management. Of the company's 17 state-specific municipal mutual funds, 16 have seen positive net inflows in 2019.

Continue reading.

Bloomberg Markets

By Amanda Albright

March 13, 2019, 10:32 AM PDT

Inside Trump's Budget: 6 Things State and Local Governments Should Know

The president's 2020 proposal would slash domestic spending by nearly 10 percent and increase defense spending by 5 percent.

SPEED READ:

- President Trump's 2020 budget proposes major cuts for the Environmental Protection Agency, Medicaid, food stamps, cash welfare, public housing, transportation, clean energy and economic development.
- State and local organizations are noticeably quiet in response.
- It would run a $1 trillion federal deficit for the next four years.

This week, President Trump introduced his vision for the federal government's 2020 budget. It proposes slashing domestic spending by 9 percent, including a 31 percent cut to the Environmental Protection Agency (EPA). Defense spending, on the other hand, would increase by 5 percent, or $34 billion.

Here are six things state and local officials should consider when reviewing the administration's proposal.

Continue reading.

GOVERNING.COM

BY LIZ FARMER | MARCH 14, 2019 AT 3:12 PM

Jackson County, Georgia Pays Hackers $400,000 After Ransomware Attack.

Cities and towns continue to be a profitable target for successful ransomware attacks. As we previously reported [view related posts], the list of cities and towns getting hit with ransomware attacks continues to grow.

Last week, Jackson County, Georgia admitted that it paid hackers $400,000 to obtain access to its information that was locked down by a ransomware attack. The ransomware attack locked agencies out of almost all of their systems, including the sheriff's office that does criminal bookings, causing the county to try to do business the old-fashioned way—using paper.

According to the County Manager, rebuilding the networks from scratch (apparently there was no back-up system in place), would be a long and costly endeavor. The City Manager said they were facing closure of operations for many months, so paying the ransom was an easier option.

After payment was made, the hacker sent the decryption key, which allowed county employees to get back on their computers and resume work. The ransomware involved was Ryuk, which has been rampant and is believed to originate from Eastern Europe or Russia.

The message to state and municipal governmental entities? Check that back-up system and test it to see if it works in an emergency.

Robinson & Cole LLP

by Linn Foster Freedman

March 14 2019

IRS Signals New OZ Tax Break Details to Come Shortly.

In possibly less than two weeks, financial advisors and their clients may hear the answers they've been anticipating from the IRS about additional regulatory guidance on the Opportunity Zones-based capital gains tax waivers.

On March 12, the IRS dispatched to the White House's Office of Information and Regulatory Affairs and the Office of Management and Budget its second tranche of proposed OZ program regulations.

This new set of rules will likely: "address what types of property qualify as qualified OZ business property; steps an OZ business must take to be qualified; the penalty for a qualified opportunity fund's failure to meet the 90 percent investment standard; and more," according to Novogradac, an organization of accountants that closely follows the new tax-sheltering option.

Plenty of FAs and their employers will welcome more details from the IRS about the program.

"While the proposed regulations addressed a number of key questions, many investors, practitioners, and community stakeholders are awaiting clarification on a number of open items," Andrew Lee, who is head of Americas sustainable and impact investing at UBS Global Wealth Management, wrote in a report issued in January.

"Opportunity Zone" investments became an option for clients following the passage of the Tax Cuts and Jobs Act of 2017. Congress identified capital gains tax relief as a way to induce investment into long-neglected U.S. neighborhoods. Ultimately, the U.S. Treasury approved some 8,700 census tracts, located in all 50 states, as economically disadvantaged enough to be eligible for OZ investments.

But investors have been waiting for the IRS to finalize the regulations for the new program.

The IRS sent a first set of proposed regulations last year, and the White House and the OMB reviewed those for 36 days before releasing them for public comment. The OMB has a required 10 days of review before releasing any new proposed rules.

At a public hearing in mid-February on the IRS's first set of rules, an overflow crowd lobbed a wide array of questions and recommendations at agency officials. Many commenters focused on ways to make it easier for investors to purchase stakes in operating businesses rather than just real estate properties in the OZ census tracts and still preserve the preferential capital gains tax treatment.

"This is obviously an exciting area of the tax law with a great deal of potential to have significant impact throughout various parts of the country. It's also, as you well know, rules that are not particularly specific," and leave a great deal of questions, Scott Dinwiddie, associate chief counsel for the IRS, told the audience at the start of that hearing.

Financial Advisor IQ

By Miriam Rozen

March 13, 2019

These Opportunity Zone Investors Want to Support Local Businesses.

Through the Tax Cuts and Jobs Act passed in 2017, the federal government has created nearly 9,000 "Opportunity Zones" in the U.S. to stimulate investment in low-income communities. Thanks to the tax incentive attached to this program, around $20 billion in capital has already been raised in investment funds for development in the designated areas. However, money alone won't be enough, according to Rachel Reilly, director of impact strategy at the Economic Innovation Group. Reilly sees the potential to unlock significant benefits through the Opportunity Zone program, but she says achieving that means overcoming obstacles.

"Across the nation, what I'm seeing are investors trying to find places to put capital and communities struggling with capacity issues and figuring out how to connect to investors and elevate the types of deals and the types of businesses that are going to be long-term beneficial for those communities," Reilly says.

Neighborhoods that are Opportunity Zones have been short on investment for years so capital markets lack experience working in these communities. That means, Reilly says, working with local partners is critical to making sound investment decisions.

Continue reading.

NEXT CITY

by ZOE SULLIVAN

MARCH 12, 2019

TAX - WASHINGTON

Eyman v. Ferguson

Court of Appeals of Washington, Division 2 - January 23, 2019 - 433 P.3d 863

Tax protester sought declaration that separate advisory votes were required for each tax increase in tax legislation.

The Superior Court dismissed the action. Protester appealed.

The Court of Appeals held that:

- Protester's appeal was moot;
- Public interest exception to mootness doctrine applied;
- Phrase "not subject to appeal" applied only to short description to be placed on ballot for advisory vote; and
- Protester's petition for declaratory judgment was untimely.

Exception to mootness doctrine for matters of continuing and substantial public interest applied to tax protester's appeal from trial court's denial of his petition for declaratory judgment as untimely, in protester's action claiming that a separate advisory vote was required for each tax increase enacted by tax legislation; the content of a ballot and issues of statutory interpretation were generally matters of substantial public interest, the timeliness and appealability issues did not depend on the nature of the tax increases at issue, and whether separate advisory votes were required was an issue that would likely recur with each package of legislative tax increases.

TAX - OHIO

State ex rel. St. Clair Township Board of Trustees v. City of Hamilton

Supreme Court of Ohio - March 5, 2019 - N.E.3d - 2019 WL 1032378 - 2019 -Ohio- 717

Township brought mandamus action against city, city manager, and city finance director, seeking order compelling defendants to calculate and pay lost tax revenue associated with territory annexed to the city and subsequently excluded from the township 14 years later under conformity of boundaries statute.

The Supreme Court of Ohio held that:

- Current version of statute imposing duty to pay for lost tax revenue applied, but
- Township failed to show clear right to payments, as required for mandamus relief.

Current version of statute imposing legal duty to pay lost tax revenue to township upon annexation of territory and exclusion under conformity of boundaries statute, rather than prior version requiring payment only upon annexation, applied in township's mandamus proceeding against city seeking payment of lost tax revenue with respect to territory annexed while prior version was in effect, but excluded after current version became effective; uncodified language of intervening version requiring application of prior version for annexations occurring while prior version was in effect did not apply, city's claim of overpayment required evaluation of wisdom of current statute's payment scheme, and application of current statute did not violate prohibition against retroactive legislation.

Township failed to demonstrate a clear legal right to payment of lost tax revenue for territory annexed by city, thus precluding mandamus relief; township did not identify the extent of annexed territory excluded from the township under conformity of boundaries statute, as required to calculate the amount of lost revenue, there was no evidence of the tax rate applicable to the territory, and failure of county auditor to create a millage rate for portion of township's territory that overlapped with city did not excuse township's failure to establish a clear legal right to the requested relief.

Give Schools Taxing Power? Officials Have Concerns.

What if school districts were independent fiscal authorities, with budgeting and taxing powers separate from municipal finance boards, mayors and selectmen? A bill before the legislature proposes just that, and is drawing concern from local officials.

"Oh yeah. It showed up over the weekend," First Selectman Rudy Marconi said of 'HB-7319, An Act Concerning The Fiscal Independence Of School Districts.'

“This bill is concerning for a lot of us,” he said.

The bill would require local and regional school districts with fewer than 15,000 students — Ridgefield’s school system is about a third that size — to become taxing authorities, separate from any municipality.

Continue reading.

THE RIDGEFIELD PRESS

BY MACKLIN K. REID

MARCH 12, 2019

TAX - OHIO

Kohl's Illinois, Inc. v. Marion County Board of Revision

Supreme Court of Ohio - November 6, 2018 - 154 Ohio St.3d 281 - 113 N.E.3d 546 - 2018 - Ohio- 4461

County board of revision and school board sought judicial review of a decision of the Board of Tax Appeals adopting an appraisal valuation that reduced the value of owner’s property.

The Supreme Court of Ohio held that Board properly applied collateral estoppel to preclude relitigation as to covenant that prohibited valuation complaints.

Non-enforceability of a covenant in a tax-increment-financing (TIF) agreement that purportedly prohibited property owner from contesting county auditor’s valuations of the property was actually determined in a prior decision of the Board of Tax Appeals, and thus the Board properly applied collateral estoppel to preclude school board’s attempt to relitigate the issue in owner’s subsequent appeal to the Board contesting the property’s valuation; the prior decision included a finding that the proponents of applying the covenant failed to prove that they were entitled to its enforcement, the prior decision made no statement about retaining jurisdiction in remanding to county board of revision, and Board’s remand order did not call for county board to reconsider whether to enforce the covenant.

House and Senate Members Move to Make New Markets Tax Credit Permanent.

Bipartisan Call to Make Permanent the Federal Tax Credit that Leverages Private Investment in Economically Distressed Communities, Expands Businesses and Creates Jobs

Washington, D.C. March 12, 2019 – Legislation was introduced in the House and Senate to secure the future of the New Markets Tax Credit (NMTC). Congresswoman Terri Sewell (D-AL) and Congressman Tom Reed (R-NY), introduced the House bill. In the Senate, the bill was introduced by Senators Roy Blunt (R-MO) and Ben Cardin (D-MD). The bills, both titled The New Markets Tax Credit Extension Act of 2019, would ensure that rural communities and urban neighborhoods left outside the economic mainstream have access to financing that stimulates economic growth and job creation.

Established in 2000, in the Community Renewal Tax Relief Act (P.L.106-554), also called the New Markets Tax Credit, is a bipartisan effort to drive economic growth in low-income urban neighborhoods and rural communities. Congress extended the NMTC for five years as part of The PATH Act. (P.L. 114- 113) in December 2015. As Congress and the Administration continue to push tax reform, organizations, businesses and communities that have seen the positive impact of the NMTC have increasingly urged Congress to make the credit a permanent part of the tax code.

"Last Congress, over 125 members of Congress from both parties cosponsored NMTC extension legislation. The strong support of the New Markets Tax Credit was a direct result of the tangible impact it makes in distressed rural and urban communities that have been left outside the economic mainstream," said Bob Rapoza, spokesperson for the NMTC Coalition. "The NMTC has generated over 1,000,000 jobs and delivered $90 billion in total capital investment through public-private partnerships."

A majority of the members of the House Ways and Means Committee cosponsored NMTC extension legislation last session, and the new bill starts off with support from 17 members of the powerful tax-writing committee.

U.S. Department of the Treasury data indicates that more than 72 percent of NMTC activity is in severely distressed communities with unemployment rates at least 1.5 times the national average or with poverty rates of at least 30 percent. In FY 2018 alone, the CDFI Fund, which operates the program at the Treasury, reported that the NMTC delivered nearly $4 billion in financing to 680 businesses, community facilities and economic revitalization projects. Communities put the capital to work, creating nearly 9,500 permanent jobs and almost 30,000 construction jobs in areas with high unemployment and poverty rates.

House and Senate lawmakers have added their own perspective to the introduction of this legislation:

"The New Markets Tax Credit is an essential tool for revitalizing rural and urban communities across the country, and is a proven, cost-effective incentive that spurs investment in areas by providing businesses with flexible, affordable access to financing. I am confident that extending the tax credit will continue to help attract new investment in Alabama's 7th District. New Markets Tax Credits have helped spur a number of important projects in the 7th District, including financing the Entrepreneurial Center in Birmingham and transforming the Huyck Felt brick plant into a new wood pellet manufacturing facility in Aliceville, creating 275 jobs," said Congresswoman Terri Sewell.

"We care about boosting jobs here in New York and across the country, but unfortunately some small businesses – the backbone of our economy – still struggle to secure a fair amount of capital to spur revitalization. By creating a better environment for businesses we will see transformative projects to thrive – boosting wages, services and economic development where it's needed most," said Congressman Tom Reed.

"The New Markets Tax Credit is a critical tool for encouraging new investment in areas that need it most. This program has a successful record of expanding economic opportunities and improving quality of life in areas across our state, whether it's financing a training center for sheet metal workers in St. Louis or the first new grocery store in more than a generation in Pagedale. This program benefits families and local economies and urban and rural areas alike, and I urge all of our colleagues to support it," said Senator Roy Blunt.

“In Maryland, the New Markets Tax Credit has been deployed across our state on a diverse range of infrastructure and community development efforts, from an affordable housing project to provide apartments for educators and teachers in my home city of Baltimore, to a multicultural center for low-income minority families in Langley Park. I am pleased once again to be a supporter of this bipartisan legislation, which will create jobs and stimulate our economy in communities across Maryland and across America,” said Senator Ben Cardin.

Senators Roy Blunt and Ben Cardin were joined by four original cosponsors, including Senators Chuck Schumer (D-NY), Rob Portman (R-OH), Tim Scott (R-SC) and Maria Cantwell (D-WA). In the House, Representatives Terri Sewell and Tom Reed were joined by Representatives Gwen Moore (D-WI), Earl Blumenauer (D-OR), Brian Higgins (D-NY), Suzan DelBene (D-WA), Bill Pascrell (D-NJ), John Larson (D-CT), Daniel Kildee (D-MI), Danny Davis (D-IL), Ron Kind (D-WI), Linda Sanchez (D-CA), Brad Wenstrup (R-OH), Jackie Walorski (R-IN), Mike Kelly (R-PA), Jason Smith (R-MO) and Darin LaHood (R-IL).

For examples of how the NMTC is making an impact in each state, see the NMTC Coalition’s NMTC at Work in Communities report or check out its Project Profile Map.

Posted on March 12, 2019 By Paul Anderson

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How The Rooftop Solar Financing Model Can Alleviate "Water Poverty"

Celebrities have had a bit of a rough news cycle this week, but earlier this month came a feel-good story about actor Jaden Smith providing money to help Flint, MI residents get “The Water Box”, a relatively small-scale drinking water treatment system.

We shouldn’t have to rely upon the generosity of celebrities to make sure everyone has access to clean, safe drinking water. And yet, nevertheless, here we are. While we’re all probably at least a little familiar with pictures of villagers in developing countries facing scarce water supplies, the problems exist right here in America as well, and they’re getting worse.

This isn’t a problem isolated to Flint, despite all the media attention there. Recently 21 cities and towns in New Jersey learned they have elevated lead levels in their own tap water. There are an estimated 240,000 water main breaks in the United States each year, and degrading water infrastructure in the country is expected to cost businesses $147B in losses from 2013 through next year. And meanwhile, there are few signs that at the Federal level, policymakers are about to get serious anytime soon about the hundreds of billions of dollars of investment deemed necessary to fix our crumbling drinking water and sewage infrastructure.

Continue reading.

Forbes

by Rob Day

Mar 14, 2019

New Report Highlights Benefits of Utility Consolidation.

The US Water Alliance and the Environmental Finance Center at the University of North Carolina have released a new report titled Strengthening Utilities through Consolidation: The Financial Impact. The report synthesizes the financial impacts of consolidating water utility service by looking at the real-world, diverse experiences of eight communities from across the country.

There are tens of thousands of water utilities and authorities in the United States. According to many experts across the sector, collaboration could be essential to securing the nation's water future. Consolidating water utilities is one of many options communities may consider to pool resources, streamline decision-making, and increase efficiency.

While complex, consolidation may be an appropriate consideration when the community value proposition outweighs costs. The report is intended to inform water leaders about the financial effects of consolidating utility service.

For more information on the US Water Alliance visit uswateralliance.org.

For more information on the EFC, visit efc.sog.unc.edu.

BY WFM STAFF

MARCH 11, 2019

National League of Cities Pushes for Federal Government to Invest in Infrastructure.

Mayor Muriel Bowser and over 2000 municipal leaders met this week during the National League of Cities (NLC) Congressional City Conference held this week in Washington. Bowser, who is chair of the NLC's Housing Taskforce, pushed for federal corporation in improving infrastructure and housing for all.

"Washington D.C. is a growing city. We're 700,000 people strong with a strong local economy- in fact one of the strongest in the region," Bowser said during a press conference. "With our growth and prosperity we have developed other problems, where we have an expanding income gap, opportunity gap and in some cases achievement gap for our young people."

"So at this year's conference, cities and jurisdictions of all sizes, people from both side of the ideological spectrum are here today to focus on the big issues that affect us. Mayors will frequently say 'there's no Democrat or Republican way to pick up the trash.'

"Infrastructure will put American's back to work. Infrastructure will offer good paying jobs and infrastructure will allow us to compete region to region, nation to nation across the globe. This is the focus that we have had in the NLC housing task force," the District of Columbia mayor said.

Bowser touched on some specific issues around infrastructure and housing saying, "We still have housing pressures big and small. We know that the demand on housing, like housing shortages have to be met, and we also know that cities that seamingly have nothing in common sadly have homelessness in common."

The NLC has a robust agenda for federal government including:

- Act as a champion for tax-exempt municipal bonds, the primary financing mechanism for state and local infrastructure projects. Any policy to alter the tax-exempt status of these bonds will cost local governments billions of dollars and prevent many projects from going forward;
- Support adequate and reliable long-term funding for infrastructure reflecting local needs and priorities;
- Support a vibrant web of connected transportation options — from transit and air to railways, roads, and waterways — as a means to reduce congestion, protect the environment, and stimulate economic development;
- Encourage and promote deployment of broadband networks in a competitive and technologically neutral manner, while preserving local authority to take action to ensure that residents have access to high-speed Internet and other communications services.

"Having safe and reliable infrastructure is a priority of every single leader because all communities will benefit from reliable water infrastructure, great streets and highways, a trained workforce and broadband infrastructure no matter where you live, said Mayor Karen Freeman-Wilson of Gary, Ind. and president of the National League of Cities.

"Investing in our infrastructure and investing in the people who can build our infrastructure should be one of the most single most priorities of government at every level. So as local leaders were are here this week calling on our federal government to rebuild with us," Freeman-Wilson said.

"We understand that no branch of government can do it alone," the NLC president added.

According to the Congressional Budget Office, federal, state and local governments spent $441 billion on infrastructure in 2017, ranging from aviation, water transportation, water resources and highways. The bulk of the funds, $177 billion, went to highways, water utilities and mass transit and rail according to a [summary report](#).

By AFRO Staff – March 15, 2019

By George Kevin Jordan, AFRO Staff Writer

States See Sales Tax Growth After Supreme Court Ruling.

South Dakota v. Wayfair opened the door for new collections from online retailers, with several states currently considering plans.

State sales tax collections in the third quarter of 2018 outpaced average levels in recent years, a trend due at least in part to a Supreme Court ruling last summer that cleared the way for states to bring in additional tax revenues from online sales, new research suggests.

Last June, the U.S. Supreme Court in *South Dakota v. Wayfair* overturned prior rulings that had made it difficult for states to collect taxes on sales by out-of-state, or "remote," online retailers. States made legislative and regulatory changes in the wake of the case, seeking to ensure they didn't continue to lose out on these tax dollars.

Research the Urban-Brookings Tax Policy Center published this month shows general state sales tax collections grew 6.5 percent in the third quarter of last year, or 4.1 percent when adjusted for inflation, compared to the third quarter of 2017.

Continue reading.

Route Fifty

By Bill Lucia,
Senior Reporter

MARCH 15, 2019

Lawmakers Press Treasury Secretary Mnuchin for Opportunity Zones Oversight.

"I want to make sure it works the way it was intended," one Ways and Means Committee member said of the new program.

Congressional lawmakers stressed to Treasury Secretary Steven Mnuchin on Thursday that they want to see data and metrics for the Opportunity Zones program so that the initiative is transparent and its effectiveness can be assessed.

Their comments came during a House Ways and Means Committee hearing where Mnuchin testified. He fielded other questions related to Opportunity Zones as well, like whether the program could be expanded to more places and when people could expect a second round of promised regulations for it to be released.

Opportunity Zones were created under the massive tax package President Trump signed into law in December of 2017.

Under the program people and companies can get tax breaks on capital gains by funneling money into special funds that invest in economically distressed census tracts designated as zones.

U.S. Rep. Ron Kind, a Wisconsin Democrat, was one of the lawmakers who brought up the initiative in Thursday's hearing.

"Right now there's no accountability or data reporting requirements as far as where these investments are going," he said. "Nor is there government data at this time tracking the number or the characteristics of the qualified opportunity funds."

Kind expressed optimism about the program, but added: "I want to make sure it works the way it was intended."

Mnuchin agreed that data collection and accountability are concerns. He told the lawmaker that if there is specific information he'd like to see collected, he should send the Treasury Department a letter describing it. "We will take that into consideration," Mnuchin said.

Terri Sewell, an Alabama Democrat, also raised data collection and reporting issues, saying she wants to make sure metrics are tracked to show whether communities are benefiting from the program.

Mnuchin told her that the only reason Treasury has not issued guidelines around reporting and data collection is that the department did not want to rush the process of coming up with them.

“We want to have the proper reporting,” Mnuchin said. “We’ll work with you very closely.”

Sewell and Kind were among 16 House and Senate members who signed onto a letter in January that outlined concerns about the first round of proposed Opportunity Zones rules, issued last October.

One issue they addressed was to urge Treasury to include reporting requirements to prevent waste, fraud and abuse in the program and to help verify that is achieving desired results.

Sewell and a Pennsylvania Republican, Rep. Mike Kelly, both asked Mnuchin about the status of additional Opportunity Zones regulations Treasury and the IRS are working on. The secretary did not offer a specific date for when further guidelines might be issued, saying that they are going through a review process.

“I ask my team every day: ‘Where are they?'” Mnuchin said. “I hope this is a matter of weeks that we can get these out,” he added. “I can assure you this is on the top of my list when we have tax meetings every day.”

There are currently about 8,700 census tracts designated as zones around the U.S. These areas were selected by governors and approved by the federal government.

Mnuchin told the lawmakers that he does not believe the Treasury Department has legal authority to allow for any more zones to be designated, but that the department would be willing to work with lawmakers to pass the appropriate legislation to expand the program to more tracts if that is something that Congress is interested in.

Route Fifty

By Bill Lucia,
Senior Reporter

MARCH 14, 2019

Triple Bottom Line Returns in Opportunity Zones (Podcast Episode #16)

How can real estate investing in opportunity zones create triple bottom line returns? And what are some ways we can measure the social impact of these investments? Loren Schirber is project pipeline manager for Minnesota Opportunity Zone Advisors, which recently started raising capital for their DREAM Fund. DREAM stands for “Developing Real Estate in Emerging

Continue reading.

March 13, 2019

CDFA // BNY Mellon Development Finance Webcast Series: The Landscape of Mega Project Incentives

The Landscape of Mega Project Incentives | June 18, 2019 @ 1:00 PM Eastern

Mega projects are arguably the most fascinating developments that can be undertaken. From developers to average citizens, projects of such a grand scale attract the attention of everyone. In order to make development dreams become a reality, proposals call for public entities to solve myriad financing challenges. This trend has continued to show up in projects such as the new Foxconn plant in Wisconsin and Amazon's recent decision on the location for HQ2. During this installment of the CDFA // BNY Mellon Webcast Series, expert speakers will provide an in-depth overview on the approaches currently being used by cities, counties and states across the U.S. to attract mega projects.

Speakers will be announced soon.

Register

Fitch Ratings: N.J. Exec Budget; A More Restrained Proposal With Projected On-Track Fiscal 2019

Fitch Ratings-New York-13 March 2019: The New Jersey governor's executive budget for fiscal 2020 largely continues current fiscal initiatives, including the gradual pension contribution ramp up, apart from a proposal to raise the top income tax rate on taxpayers earning between $1 million and $5 million. Updates to current fiscal 2019 are included in the executive budget and point to an anticipated budgetary surplus despite reported revenue weakness year-to-date through January. Differing from the governor's inaugural budget proposal for fiscal 2019, the millionaires' tax is the lone substantial tax policy item. Instead, this year's proposal is more notable for its focus on expenditure savings to create space for other spending initiatives. The recommended consistency in state fiscal policies supports the Stable Outlook on New Jersey's 'A' Issuer Default Rating (IDR), says Fitch Ratings.

The proposed $38.6 billion operating funds budget includes modest $651 million (1.7%) overall net growth from fiscal 2019 as compared to 6% estimated growth in fiscal 2019, which ends on June 30. The budget proposal counts on a significant $798 million in employee health benefit savings and $475 million in recoverable Medicaid funds, that together with proposed revenue initiatives will fund higher appropriations for pensions ($546 million), PreK-12 education ($282 million), debt service ($173 million), and contract settlements ($159 million), along with an increased ($100 million) general fund appropriation for New Jersey Transit (NJT) that includes replacing prior transfers from the New Jersey Turnpike and NJT capital funds.

Fitch believes the employee health care savings goals are attainable as $333 million reportedly have already been secured and the balance appears achievable based on historical results and announced agreements with collective bargaining units. The state recently reached a tentative contract agreement with its 32,000 member Communications Workers of America unit that provides 2% annual wage increases through fiscal 2023 in exchange for $70 million in annual health care savings.

The largest appropriation increase is the additional pension contribution (84% of net proposed budget growth), raising the contribution to almost $3.8 billion. The payment represents 70% of the actuarially determined contribution (ADC) and continues the state on the path of a gradual 1/10th annual phase-in to the full ADC for pensions in fiscal 2023. Pending full contributions in fiscal 2023, Fitch would expect further deterioration in the funded condition of the plans, even if all plan assumptions are met. The $3.8 billion pension contribution accounts for 10% of the operating budget and includes a $2.7 billion appropriation from the general fund and just over $1 billion from the state lottery.

The state's well above average long-term liability burden and pension contribution ramp-up are reflected in Fitch's 'A' IDR on the state. Beyond the governor's proposal, the state recently received responses from a request for qualifications to pursue additional state asset deposits to the pensions. The state's underfunded commitments to retired state employees and teachers have weighed on the state's rating and remain a negative rating factor absent further policy action.

REVENUE INITIATIVES

As noted above, the only significant revenue initiative in the governor's proposal is the increase of the 10.75% personal income tax (PIT) rate to taxpayers earning more than a $1 million, from the current $5 million threshold (projected to generate $447 million). In addition, the budget assumes revenue from legalization and taxation of adult use cannabis for $60 million over six months partly offset by an increase in appropriations for start-up costs; an increased fee on opioids distributors and manufacturers; and an assessment on corporations that employ 50 or more people that are on Medicaid. Estimated revenue from these initiatives totals approximately $550 million. Should the measures fail to be approved; other revenue solutions or expenditure reductions will need to be identified to balance the fiscal 2020 budget.

Including the new revenue, the state forecasts just over $1 billion (2.9%) in growth from expected revenue in fiscal 2019. The forecast incorporates an $800 million reduction in the fiscal 2019 revenue base from one-time revenue measures included in the current-year budget and projects steady growth in the state's economy through the remainder of calendar 2019, with some slowing in 2020, for estimated 3.5% natural growth in the revenue base. The state's forecast is premised on continued growth in personal income, gross state product, and nonfarm employment through the forecast period. Fitch believes these forecasts to be reasonable based on recent quarterly experience and expects that future economic growth will remain below that of the nation.

Revenue in excess of budget growth and required appropriations for open space acquisition is applied to bolstering the state's ending budgetary fund balance to almost $1.2 billion (3% of appropriations). While Fitch believes the fund balance would remain slim in relation to the state's historical economic and revenue cyclicality, the planned addition is a positive step.

APRIL REVENUE UPTICK EXPECTED TO BALANCE FISCAL 2019 OPERATIONS

Updates to fiscal 2019 financial operations are included in the executive budget and point to an anticipated budgetary surplus despite reported revenue weakness year-to-date through January. Revenues from the personal income tax (PIT) and sales tax were reduced, while corporation business taxes (CBT) were boosted. Significant one-time receipts include $282 million from the state's tax amnesty program, $200 million in deemed repatriated dividends, and $200 million in CBT receipts. Total estimated revenue of $37.7 billion is a $328 million increase (0.9%) from the enacted budget, for 4.5% revenue growth (inclusive of tax policy actions and one-time receipts) from fiscal 2018.

The cut to the PIT forecast incorporates the effects of changes to federal tax law in 2017 (Tax Cut and Jobs Act; TCJA) that resulted in a significantly larger proportion of taxpayers prepaying estimated taxes on income earned in 2017 (fiscal 2018.) While the state anticipated some change to taxpayer behavior in fiscal 2019, the state reports the 72% of taxpayers that remitted estimated PIT payments by Dec. 31, 2017 plunged to 19% in Dec. 31, 2018, as the TCJA's $10,000 deduction cap on state and local tax payments removed the incentive to prepay PIT. This sharply reduced fiscal 2019 PIT collections through January (down 6% year over year.) While downgrading the PIT forecast, the state believes the balance of PIT revenue expected in fiscal 2019 will be collected by April as state economic conditions and employment remain stable.

Additional updates to the state's fiscal 2019 budget include $382 million in appropriation lapses and $629 million in increased appropriations. In combination with a higher beginning fund balance of $990 million, the state estimates an ending fund balance of just over $1 billion (2.9% of appropriations). Should the state's April revenue collections fall short of expectations, the balance is available to apply to solving the gap in addition to the governor's ability to unilaterally forestall appropriations.

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Fitch Webinar: State Revenue Trends after Review of Executive Budgets

March 21, 2019 at 2PM EST

Laura Porter will speak to Douglas Offerman and Eric Kim about the latest developments in state credit ratings. Topics will include revenue volatility related to last year's federal tax changes, key themes in governors' executive budget proposals, and an update on state pension issues. Plus we will have a live Q&A session to take on hot topics from the investor community.

Register Now.

View Conference Sessions for GFOA's 113th Annual Conference in Los Angeles.

GFOA's Annual Conference will include more than 75 concurrent sessions featuring leading practitioners, subject matter experts, and top researchers. Each session will contain speakers carefully selected to provide best practice guidance, discussion of current events, case studies, debate, and interactive exercises.

View Conference Sessions.

Nominate a GFOA Hero.

The government finance officer often goes unnoticed, but in many situations is the unsung hero. Government finance officers serve their organizations by managing day-to-day accounting operations, balancing the budget, establishing financial policies and behind-the-scene roles that improve their communities. For the first time, GFOA would like to publicly recognize these influencers through a new "GFOA Hero" program.

Read more

- S&P OPEB Brief: The Credit Impacts Of OPEB Obligation Bonds
- Treasury will Consider Changes to Proposed Reissuance Regulations.
- Reissuance for State and Local Bonds: SIFMA Comment Letter
- CDFA – PFM Capital Markets Webinar Series – What Your Bond Finance Team Worries About
  Ed. Note: Please note that the next webinar in the series goes down on 3/14. In addition, we apologize for the fact that 3 of the 6 webinars have have already been presented.
- Shutdown Is Still Taking a Bite as Schools Report Missing Payments.
- How Philadelphia Says It Got Ripped Off by Bank Bond 'Robots'
- Mystery Man Behind $3.6 Billion in Muni Lawsuits Steps Forward.
- Nuveen Sued by Preston Hollow Over 'Campaign of Intimidation'
- Davis v. Detroit Public Sch*ools Community Distric*t – Court of Appeals holds that opponents of public financing for construction of sports arena lacked standing to seek declaratory and mandamus relief to require school board to place on next city election ballot question asking city voters to approve or disapprove of tax increment finance entities' use of property tax revenue intended for school operating purposes to finance sports arena, where opponents were not affected by school board's decision in any personal and individual way, and school board's failure to place tax question on ballot affected all city voters equally.
- And finally, BCB's Department of Gratuitous Pedantry is proud to present *Sugamele v. Town of Hempstead*, in which the court stated that "a speedboat occupied by seven people allided with Goose Island." No, that's not a typo, but rather the technical nautical term for colliding with a fixed object (such as Goose Island). Good grief. But then we remembered that the New York bar (which your editor has, shocking, passed) is one of the few that covers maritime law. We're sure that the use of such precise terminology is a great comfort to the 4 survivors. Wether it comes as a comfort to the 3 deceased passengers depends on your personal eschatological inclinations.

PUBLIC UTILITIES - CALIFORNIA

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

United States Court of Appeals, District of Columbia Circuit - January 15, 2019 - 913 F.3d 127 - Util. L. Rep. P 15, 089

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

The Court of Appeals held that:

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

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

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

EMINENT DOMAIN - FLORIDA

[Florida Gas Transmission Company, LLC v. Johnson]

District Court of Appeal of Florida, First District - February 5, 2019 - So.3d - 2019 WL 436594 - 44 Fla. L. Weekly D378

Natural gas transmission pipeline company brought eminent domain proceeding to obtain a pipleline easement, resulting in a stipulated order of taking that reduced the scope and size of the taking from what was originally anticipated.

Thereafter, the Circuit Court entered a final order awarding landowner attorney's fees. Company appealed.

The District Court of Appeal held that the benefits achieved method, not the lodestar method, was the applicable standard in calculating attorney's fees.

District Court holds that the benefits achieved method, not the lodestar method, was the applicable standard in calculating attorney's fees for landowner in an eminent domain action brought by natural gas transmission pipeline company, despite a change in scope of pipeline easement, where company submitted a written offer of compensation to landowner for the easement, which landowner rejected to obtain legal representation, resulting in a final judgment substantially ($12,127.80 vs. $420,000.00!) more beneficial to landowner.

PUBLIC FINANCE - MICHIGAN

Davis v. Detroit Public Schools Community District

United States Court of Appeals, Sixth Circuit - August 9, 2018 - 899 F.3d 437 - 357 Ed. Law Rep. 66

Sports arena opponents brought action seeking declaratory judgment and mandamus relief alleging that school board had authority and obligation to place on next city election ballot question asking city voters to approve or disapprove of certain tax expenditures.

The United States District Court for the Eastern District of Michigan dismissed claims, and entered partial final judgment. Opponents appealed.

The Court of Appeals held that opponents lacked standing to seek declaratory and mandamus relief.

Opponents of public financing for construction of sports arena lacked standing to seek declaratory and mandamus relief to require school board to place on next city election ballot question asking city voters to approve or disapprove of tax increment finance entities' use of property tax revenue intended for school operating purposes to finance sports arena, where opponents were not affected by school board's decision in any personal and individual way, and school board's failure to place tax question on ballot affected all city voters equally.

EMINENT DOMAIN - NEBRASKA

Pinnacle Enterprises, Inc. v. City of Papillion

Supreme Court of Nebraska - February 22, 2019 - N.W.2d - 302 Neb. 2972019 WL 847876

City initiated condemnation proceedings. Condemnee filed a notice of appeal challenging the amended return of the appraisers' award.

The District Court dismissed the appeal for lack of jurisdiction. Condemnee appealed.

The Supreme Court of Nebraska held that:

- Law-of-the-case waiver rule did not prohibit second district court judge from sua sponte reconsidering earlier denial of motion to dismiss;
- District court had power to review its previous interlocutory order denying motion to dismiss condemnation appeal for lack of jurisdiction;
- District court acquired jurisdiction over challenge to amended return of the appraisers' award;

- District court lacked statutory authority to impose sanctions against condemnee for failing to timely file petition on appeal; and
- Trial court did not abuse its discretion in denying condemnee's motion for sanctions against city.

LIABILITY - NEW YORK

Sugamele v. Town of Hempstead

Supreme Court, Appellate Division, Second Department, New York - February 13, 2019 - N.Y.S.3d - 2019 WL 575597 - 2019 N.Y. Slip Op. 01118

Passengers on speedboat, who were injured when speedboat allided with marshy body of land located off the coast of Long Island, and estates of passengers, who were killed as result of this accident, brought action against town to recover damages for personal injuries and wrongful death, alleging that town was negligent in its installation and placement of buoys marking a channel around the marshy body of land.

The Supreme Court, Nassau County, granted town's motion for summary judgment, and passengers and passengers' estates appealed.

The Supreme Court, Appellate Division, held that issue of fact regarding town's comparative fault based on its placement and maintenance of buoys marking a channel around marshy body of land precluded grant of summary judgment to town.

EMINENT DOMAIN - NORTH DAKOTA

Lenertz v. City of Minot

Supreme Court of North Dakota - February 21, 2019 - N.W.2d - 2019 WL 759559 - 2019 ND 53

Property owner filed a claim for inverse condemnation against city.

The District Court dismissed the claim and awarded city costs and disbursements. Property owner appealed.

The Supreme Court of North Dakota held that:

- Evidence supported finding that there had been a partial taking of property owner's property;
- Exclusion of testimony from property owner's expert appraiser as to the measure of damage sustained to property was not an abuse of discretion.

Evidence supported finding that there had been a partial taking of property owner's property, in property owner's inverse condemnation action against city; the city's construction of road and storm sewer project caused three flooding events of property owner's property, city established that owner's property continued to have economic value despite the flood events, the buildings on the property were occupied before and after the flood events, owner did not lose any tenants as a result of the flood events, and owner earned on average $85,000 in gross rental income.

The trial court's exclusion of testimony from property owner's expert appraiser as to the measure of damage sustained to property was not an abuse of discretion, during inverse condemnation proceeding; expert opined the property should have been valued at $750,000, but was worthless, because of recurring flooding, the court explained it refused to allow expert to testify because his valuation was at odds with the court's conclusion only a "partial taking" occurred, and the court reasoned that because owner did not establish a total taking of his property, the diminution in value was not total and expert's testimony would not assist the jury in deciding damages.

TAX - OHIO

City of Athens v. Testa

Court of Appeals of Ohio, Tenth District, Franklin County - January 29, 2019 - N.E.3d - 2019 WL 367034 - 2019 -Ohio- 277

Municipalities brought action against state and Tax Commissioner to challenge constitutionality of statutes on state collection and administration of municipalities' net profit taxes.

The Court of Common Pleas entered judgment in favor of defendants. Municipalities appealed.

The Court of Appeals held that:

- Inserting into appropriations bill statutes limiting municipalities' ability to collect and administer net profit taxes on income earned within their boundaries did not violate One-Subject Rule;
- Statutes did not violate Home Rule Amendment, but were permitted by constitutional provision allowing state to pass laws to limit power of municipalities to levy taxes;
- Uncodified statute requiring municipal corporations to adopt, by ordinance or resolution, limits on ability to collect and administer net profit taxes was constitutional; and
- Statutes authorizing Tax Commissioner to withhold 50 percent of net-profit-tax revenues and directing treasurer to retain one-half percent of net profit taxes were constitutional.

PUBLIC UTILITIES - OHIO

U.S. Bank National Association v. Columbia Park East MHP, L.L.C.

Court of Appeals of Ohio, Eighth District, Cuyahoga County - December 20, 2018 - N.E.3d - 2018 WL 6819427 - 2018 -Ohio- 5234

Mortgagee brought an action against mortgagor of commercial property seeking judgment on a matured promissory note, foreclosure on the premises and fixtures, and appointment of a receiver to oversee the property subject to the mortgage and other liens.

The Court of Common Pleas entered an order appointing a receiver. Mortgagor appealed.

The Court of Appeals held that:

- Mortgagee complied with statute governing prerequisites to appointing a receiver and obtaining foreclosure;
- Wastewater treatment plant located on mortgaged property was a fixture which receiver had authority to oversee; and
- Trial court acted within its discretion in appointing a receiver, despite argument that such appointment stymied mortgagor's efforts to sell the property.

Wastewater treatment plant that provided drinking water and sanitary sewer service to residents of mobile home facility located on mortgaged property was a fixture which receiver appointed in mortgagee's foreclosure action against mortgagor had authority to oversee, even though it was not covered by the subject mortgage, where plant existed solely to serve mobile home facility, plant was permanently affixed to the property, plant was integral to the mortgaged property in that it provided the source of sanitary sewer services to residents, and ongoing environmental violations directly affected the value of the mortgaged property such that receiver was required to manage the remediation efforts in order to protect the value of the property.

EMINENT DOMAIN - PENNSYLVANIA

Szabo v. Department of Transportation

Supreme Court of Pennsylvania - February 20, 2019 - A.3d - 2019 WL 763674

Pennsylvania Department of Transportation (PennDOT) filed declaration of taking to acquire property for the expansion of state roadway. Property owners filed petition for appointment of viewers to determine amount of just compensation as a result of condemnation and filed petition for evidentiary hearing.

The Common Pleas Court denied petition for evidentiary hearing. Property owners appealed. The Commonwealth Court reversed. PennDOT filed petition for allowance of appeal.

The Supreme Court of Pennsylvania held that declaration of taking did not establish extent or effect of taking, and thus property owners' failure to file preliminary objections within 30 days of service did not result in waiver of right to assert ownership and seek just compensation, where Pennsylvania Department of Transportation (PennDOT) served plot plan that showed section of property taken from one parcel but not from two other parcels.

ZONING & PLANNING - PENNSYLVANIA

Cornerstone Residence, Inc. v. City of Clairton, Pennsylvania

United States Court of Appeals, Third Circuit - December 31, 2018 - Fed.Appx. - 2018 WL 6839723 - 58 NDLR P 100

Nonprofit corporation sued city and zoning officer, claiming discrimination against recovering addicts in violation of Fair Housing Amendments Act (FHAA) by denying corporation's application for certificate of occupancy to operate sober living residence for recovering drug and alcohol addicts in residential zone within city limits, pursuant to zoning ordinance that allegedly was discriminatory on its face.

The United States District Court for the Western District of Pennsylvania granted defendants' motion to dismiss for lack of subject matter jurisdiction and for failure to state claim and denied reconsideration. Corporation appealed.

The Court of Appeals held that ordinance was not facially discriminatory against recovering addicts.

City's zoning ordinance, prohibiting treatment centers from being located in residential area, and defining treatment center as providing housing for three or more unrelated persons who needed specialized housing, treatment, and/or counseling because of current addiction to controlled substance that was used in illegal manner or alcohol, did not facially discriminate against recovering addicts, as protected group under Fair Housing Amendments Act (FHAA); under Pennsylvania law governing interpretation of municipal ordinance, plain meaning of ordinance's definition of treatment center included only current addicts, not recovering addicts, and ordinance, read as whole, reflected familiarity with and intent to conform to FHAA.

BANKRUPTCY - PUERTO RICO

In re Financial Oversight and Management Board for Puerto Rico

United States District Court, D. Puerto Rico - February 7, 2019 - F.Supp.3d - 2019 WL 539709

In the debt adjustment case of the Puerto Rico Sales Tax Financing Corporation (COFINA) under Title III of the Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA), proceeding was held pursuant to section of COFINA's confirmed plan of adjustment requiring court to determine whether and to what extent monies had to be withheld from plan distribution to COFINA bondholder to cover legal fees and expenses that indenture trustee for COFINA bonds might incur in connection with bondholder's litigation against trustee for its alleged gross negligence, willful misconduct, and/or intentional fraud in connection with alleged events of default affecting COFINA bonds.

Hearing was held at which the court, inter alia, sustained trustee's objection to bondholder's effort to cross-examine declarants whose evidentiary declarations had been submitted in support of trustee's position. Bondholder filed motion for reconsideration of the court's ruling precluding cross-examination.

The District Court held that:

- Further cross-examination would not be allowed;
- COFINA had obligation to indemnify indenture trustee for its litigation fees and expenses, which could be held back from distributions to bondholder;
- Indenture trustee would be authorized to withhold $20 million, to be withdrawn from the funds otherwise payable under the plan of adjustment to bondholder; and
- Trustee was entitled to be reimbursed for fees and expenses on a current basis during the life of bondholder's actions.

District court appropriately precluded party from cross-examining declarants whose evidentiary declarations had been submitted in support of opposing party's position where the court's procedural orders required party to notify the court and other parties of its intention to cross-examine and to identify the subject matter and exhibits it intended to use in cross-examination, and, contrary to the court's procedural orders, party had not, in fact, made the required disclosures.

In proceeding arising within the Puerto Rico Sales Tax Financing Corporation's (COFINA) debt adjustment case under Title III of the Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA), pursuant to section of COFINA's confirmed plan of adjustment requiring court to determine if monies had to be withheld from distribution to COFINA bondholder to cover legal fees and expenses that indenture trustee for COFINA bonds might incur in bondholder's litigation against it, the court declined to allow further cross-examination of declarants whose declarations had been submitted in support of trustee; bondholder had submitted declarants' depositions which presumably indicated the cross-examination that it would have pursued at hearing, any cross-examination clearly would focus on proper amount of holdback, and, absent a showing that any facts not now before the court would be elicited, further cross-examination would delay proceedings for no purpose and harm plan beneficiaries.

In debt adjustment case of the Puerto Rico Sales Tax Financing Corporation (COFINA) under Title III of the Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA), pursuant to COFINA's confirmed plan of adjustment and the Amended and Restated Sales Tax Revenue Bond Resolution which defined relationship between COFINA bondholder and indenture trustee for COFINA bonds, COFINA was required to indemnify trustee for fees and expenses incurred in connection with bondholder's litigation against it, unless it was found to have engaged in gross negligence or willful misconduct, and such fees and expenses could be held back from any distributions to bondholder; under Resolution, COFINA had obligation to indemnify trustee for its litigation fees and expenses, trustee had charging lien on COFINA funds to protect its right to payment, and trustee's lien was prior to that of bondholders or other plan beneficiaries, and plan mandated holdback before any distributions to bondholder.

In debt adjustment case of the Puerto Rico Sales Tax Financing Corporation (COFINA) under Title III of the Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA), pursuant to COFINA's confirmed plan of adjustment and the Amended and Restated Sales Tax Revenue Bond Resolution which defined relationship between COFINA bondholder and indenture trustee for COFINA bonds, trustee would be authorized to withhold $20 million from funds otherwise payable under plan of adjustment to bondholder, in order to satisfy potential litigation fees and expenses that might be incurred by trustee in connection with litigation by bondholder concerning trustee's performance of its duties; such holdback was reasonably necessary to cover trustee's reasonably anticipated litigation expenses, but was not so high as to ensure coverage of every conceivable litigation expense.

In debt adjustment case of the Puerto Rico Sales Tax Financing Corporation (COFINA) under Title III of the Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA), where, pursuant to COFINA's confirmed plan of adjustment and the Amended and Restated Sales Tax Revenue Bond Resolution which defined relationship between COFINA bondholder and indenture trustee for COFINA bonds, trustee would be authorized to withhold $20 million from funds otherwise payable under plan of adjustment to bondholder, in order to satisfy potential litigation fees and expenses incurred in connection with litigation by bondholder concerning trustee's performance of its duties, trustee was entitled to current payment of its reasonable fees and expenses, and did not have to await a final judgment on the merits; Resolution provided that trustee had right to payment "from time to time," and that trustee would not be required to expend any of its own funds in the execution of its duties.

PUBLIC UTILITIES - RHODE ISLAND

In re A & R Marine Corp.

Supreme Court of Rhode Island - January 16, 2019 - 199 A.3d 533

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

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

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

Blockchain Could Cut Middleman Costs, If It Catches On.

FORT MYERS, Fla. — Blockchain technology has the potential to cut costs for municipal bond issuers by reducing the need for some intermediaries in transactions and it is here to stay, a distributed ledger and cryptocurrency expert told bond lawyers Thursday.

At a National Association of Bond Lawyers conference in Florida, Stevie Conlon, vice president and tax and regulatory counsel at Wolters Kluwer spoke about the potential effects of cryptocurrency and blockchain on the public finance sphere. While Conlon urged the attendees to accept the changes blockchain and cryptocurrency may bring to public finance, some lawyers in attendance continued to be skeptical of blockchain's ability to flourish in the muni space.

A blockchain system could allow investors to buy bonds directly and standardize documents, therefore it could cut fees normally paid out to lawyers and underwriters, she said.

A member of the audience asked Conlon about the effect of blockchain on smaller investors, using $100 bonds as an example.

"I'm skeptical as to whether it's real for mom and pop investors, who will they trust, blockchain or underwriters?" he asked.

Conlon said blockchain could work and be used by younger generations who are more apt to use their phones to bank and avoid fees.

"Those small quantities that weren't attractive in a hundred dollars before, it's just the opposite now," Conlon said.

In the corporate world, blockchain and cryptocurrency caused some concern due to a multitude of security issues. There have been some high-profile hacks, and cryptocurrency still carries a negative stigma among some people for having served as a defacto coin of the realm for illegal online activity.

In a blockchain, every block has to have a consensus from 50% of the other blocks, making it less likely to be obstructed by hackers. Hackers can become more apparent in smaller blockchains, where people can buy the computing power to gain that 50% and commit fraud, Conlon said.

"Anyone involved, whether it's the finance attorneys or whether it's the underwriter or whether it's the issuer — all of those people have to say, am I comfortable with the related risks of the complete process?" Conlon said.

Lori Lea Shelley, a partner at law firm Mickes O'Toole LLC, said the conversation as a whole is interesting but is hesitant on whether blockchain and cryptocurrency would take off. Hacking and the use of blockchain for illegal activities taints the practice, Shelley said.

"I feel like a lot of that underworld activity or illegal activity is being financed that way and it just might sabotage the whole idea for legitimate business reasons," Shelley said. "So I have a hard time buying into it."

By Sarah Wynn

BY SOURCEMEDIA | MUNICIPAL | 03/07/19 03:04 PM EST

Considering a State Bank for Local Governments.

Proponents say it could help with infrastructure financing, particularly for smaller jurisdictions. Bankers are skeptical.

OLYMPIA, Wash. — Lawmakers and researchers have been taking a fresh look here at creating a public bank, specifically to provide state agencies and local governments with improved access to infrastructure financing and other financial services.

The type of “state-chartered, public cooperative bank” under consideration would not be open to consumers or businesses.

But depending on how the bank were to take shape—if it ever takes shape at all—it’s possible that its scope and offerings would be broader than state “infrastructure banks” that typically offer low interest loans and other financing assistance for transportation projects.

Continue reading.

Route Fifty

By Bill Lucia,
Senior Reporter

MARCH 5, 2019

Judge Denies Puerto Rico Fiscal Board Request to Compel Certain Bond Insurer Documents.

SAN JUAN – U.S. Magistrate Judge Judith Dein has denied a request from Puerto Rico’s Financial Oversight and Management Board to compel insurers of Puerto Rico Electric Power Authority bonds to provide certain documents related to their request to put the utility into receivership.

Last October, National Public Finance Guarantee Corp., Assured Guaranty Corp., Assured Guaranty Municipal Corp. and Syncora Guarantee Inc. filed a motion seeking relief from the automatic stay on litigation to allow them to have a receiver appointed for Prepa. The motion asserted that they were entitled to seek a receiver because the value of their collateral is diminishing or is being impaired by mismanagement at Prepa.

The receiver motion occurred after the First Circuit Court of Appeals had reversed a prior ruling that the insurers were not entitled to the seek a lift of the stay to pursue a receiver for Prepa.

The fiscal oversight board then sought to have the insurers disclose documents reflecting the value of their collateral and documents related to the claim that their collateral has been diminishing in the Title III bankruptcy proceedings under the Puerto Rico Oversight, Management and Economic Stability Act (Promesa) and the causes of the diminution.

In addition, the fiscal board asked the insurers for information related to estimates of the amounts they expected to pay in relation to claims made on their respective Prepa bond insurance policies.

The insurers said they were willing to share documents they decided were sufficient to show the value of the collateral and documents they intended to rely on to demonstrate the collateral's value is diminishing as a result of alleged mismanagement. However, other documents such as the amounts they expected to pay on bond insurance policies, was privileged.

In a ruling Tuesday, Judge Dein said the insurers will provide, within seven days, a list to the board identifying the internal documents the insurers intend to rely on in support on the lift-stay motion, to the extent they will seek to establish the value of collateral securing bonds issued by Prepa.

By Eva Lloréns Vélez on March 6, 2019

Caribbean News

Market Seeing Tremendous Flow Into Muni Bonds: Portfolio Manager

Part of the investor noise affecting the capital markets in 2018 was rising interest rates. The Federal Reserve didn't show much dynamism in 2018 with respect to monetary policy, obstinately sticking with a rate-hiking measure with four increases in the federal funds rate.

That appears to have changed given the current economic landscape, and especially in the capital markets as Fed Chair Jerome Powell is now preaching patience and adaptability. Powell's latest comments come as U.S. equities finished their worst year in over a decade–the Dow fell 5.6 percent, while the S&P 500 lost 6.2 percent and the Nasdaq Composite fell 4 percent.

This has posed challenges for not only equities, but the fixed income markets–specifically areas that were tried-and-truel safe-havens when stock markets go awry.

"Think about investment grade, high duration–that's seen a lot more volatility than many investors had expected," said Josh Rogers, Beta Specialist at JP Morgan Asset Management. "We believe that not only is that a challenge it's also an opportunity, especially when you look at the ultra short side of the curve where you can actually get paid now. Whereas if we rewound the clock two years ago you weren't getting anything."

While investors are flocking to safe haven assets like bonds, there's still a need for products that capture the upside potential in U.S. equities. At the same time, however, there's also a need for strategies that offer downside protection built into the product.

One area that has been experiencing an increased interest in the bond markets is municipal bonds. In the video below, Nisha Patel, portfolio manager with Eaton Vance, and Rachael Aiken, vice president and portfolio manager with Rockland Trust.

by ETF TRENDS on MARCH 5, 2019

Treasury will Consider Changes to Proposed Reissuance Regulations.

BONITA SPRINGS, Fla. — A senior Treasury official said Thursday that consideration will be given requests by municipal bond market trade groups for allowing issuers of tax-exempt bonds to elect to declare when a reissuance has occurred.

Treasury also will consider requests for allowing qualified tender bonds to be remarketed at a premium after being converted to fixed interest rates to maturity, John Cross, associate tax legislative counsel at the Treasury's Office of Tax Policy told attorneys attending a National Association of Bond Lawyer conference here.

"We are certainly receptive to relooking at that issue," Cross said in reference to the request for permission to continue the remarketing at a premium.

Cross noted it wasn't included in the proposed Internal Revenue Service rule on reissuance because of technical reasons.

All four industry groups that submitted comments on the proposed rule requested a continuation of the practice that allows remarketing reissuances at a premium.

The request was made in separate letters by NABL, the Bond Dealers of America, the Government Finance Officers Association and the Securities Industry and Financial Markets Association.

"If qualified tender bonds are forced to be sold only at par to avoid a reissuance, demand will decrease and issuer costs will increase, GFOA said. "Similarly, if a transaction does trigger a reissuance because they are sold at a premium, issuers would incur extra issuance costs."

SIFMA said, "A rough estimate of the cost to a municipal securities issuer, of issuing par bonds instead of premium bonds, is approximately a 30-60 basis point differential on a 30-year level debt service structure."

"Particularly in a rising interest rate environment, as a result of the de minimis rule, investors have an incentive to purchase premium bonds," wrote Leslie Norwood, SIFMA managing director and associate general counsel.

The request for issuers to be able to declare a reissuance came from NABL but GFOA's letter signed by Emily Brock, director of the federal liaison center, also asked for clarity as to when a reissuance takes place.

"Case in point – as state and local governments and entities continue to suffer the economic costs related to the loss of advanced refundings, many are looking for different ways to achieve the benefits that advance refundings provide, including interest savings for taxpayers," GFOA wrote. "This includes executing 'Cinderella' bond transactions where taxable advance refunding bonds convert to tax-exempt bonds at the time of the call date for the refunded bonds."

The BDA letter pointed out that remarketing at a premium has been allowed under IRS rules issued in 2008 as part of Notice 2008-41.

Cross, in his opening remarks for a panel discussion on reissuance, said tender bonds have become less important since the 2008 financial crisis and amounted to about $10 billion annually over the last two years.

"Since that time, the topic of tender option bonds has become less significant in the market because of the Fed's zero interest policy and the last 10 years worth of really low interest rates," Cross said. "Just to illustrate, in 2007 there were probably $100 billion in primary market tender option bonds."

However, Cross emphasized that Treasury does not intend to use the proposed rules to change its policy. He said Treasury will "continue the special protection for the structure of tender option bonds and otherwise send people to the general significant modifications standard in Section 1001."

As an illustration of how the proposed regulations will not change current practices, Cross said, "For tax exempt bond purposes, the intent was that both that the existence and exercise of qualified tender rights, basically the put option with certain features, do not give rise to a reissuance nor does the change in interest rate mode in the connection with the exercise of one of these puts."

The comment letters submitted by NABL and GFOA also requested that Treasury address the phase-out of Libor and the transition to SOFR.

Cross said that issue will be addressed separately.

"We expect IRS and Treasury to put out guidance," Cross said. "It's really in more general tax guidance that would provide pretty broad relief for movement from Libor to some benchmark of this new benchmark rate by the Fed called SOFR."

By Brian Tumulty

BY SOURCEMEDIA | MUNICIPAL | 03/07/19 03:19 PM EST

Reissuance for State and Local Bonds: SIFMA Comment Letter

SUMMARY

SIFMA provides comments to the Internal Revenue Service (IRS) in response to request for comment on proposed regulations that address when tax-exempt bonds are treated as retired for the purposes of section 103 and sections 141 through 150 of the Internal Revenue Code. (Re: REG–141739–08: Reissuance of State or Local Bonds)

Read Comment Letter.

2019 Crain Grant Program Request for Research.

Read the request for research.

Muni Bonds Enjoy Historic Run Despite Tax Overhaul.

Investors this year have poured the most money into municipal bond funds in at least 13 years

Municipal bonds are enjoying their strongest start to a year since at least 2006, defying expectations that President Trump's sweeping tax overhaul would depress demand in the market.

Investors poured more than $15 billion into municipal-bond funds in the first eight weeks of the year, the most over that period in at least 13 years, according to net inflows tracked by research firm Municipal Market Analytics. Demand stayed strong through the end of February, Investment Company Institute data show.

Many observers had expected Mr. Trump's tax changes in 2017, which cut corporate levies to the lowest point since 1939 and lowered individual taxes for many households, to reduce the market's appeal. Muni bonds are often exempt from federal taxes, making them valuable to people seeking tax-free investment income.

Continue reading.

The Wall Street Journal

By Gunjan Banerji

Updated March 6, 2019 6:47 p.m. ET

Fitch On-Demand: How Prepared are California Credit for the Next Recession

California credits, specifically the state, counties and cities and school districts, are all better prepared to manage through the next economic downturn; however, some school districts throughout the state may feel its effects more acutely. Please join us as we discuss how prepared California credits are for the next recession.

Listen on Demand

How Philadelphia Says It Got Ripped Off by Bank Bond 'Robots'

When numbers are big, little things can add up. That's why Philadelphia says that price-fixing by seven Wall Street banks has cost states and municipalities billions of dollars — and why the city says it was unaware of the scam until whistle-blower Johan Rosenberg came forward. Philadelphia's charges are echoed in suits filed by the whistle-blower on behalf of California, Illinois, Massachusetts and New York. The banks are contesting the whistle-blower's charges. The suits, over what are known as variable-rate demand obligations, or VRDOs, represent the biggest legal challenge to the generally staid municipal bond market in over a decade.

1. What are VRDOs?

Long-term bonds issued by states and municipalities whose interest rate resets on a monthly, weekly or sometimes even daily basis.

2. What's their appeal?

For borrowers like Philadelphia, VRDOs combine long-term maturities of as much as 30 years with short-term interest rates, which are generally lower. For the investors who buy them, VRDOs have a selling point that sets them aside from other kinds of municipal bonds: they come with a "put,'' that is, a promise by the issuers who sell them that they'll buy them back if an investor wants out. That limits their risk if, for instance, yields fall when a VRDO rate is rest.

3. Then who bears the risk?

Ultimately, the issuers. VRDOs carry bank liquidity facilities, such as letters of credit or a standby purchase agreement, although remarketing agents usually take bonds that are put back into inventory for resale. VRDOs that are put back to the issuer are presented to the bank providing the liquidity, and become so-called bank bonds, their payment accelerated so that those bonds maturing in 30 years become due in four or five years, with the municipality making quarterly payments.

4. What do the lawsuits say?

That to avoid having investors put the bonds back, the banks set their interest rates a little bit higher than market conditions would have otherwise justified. And that to avoid having borrowers switch to a bank offering a lower rate, they conspired to keep rates in line with each other. According to one of the suits filed by the whistle-blower, the banks "engaged in a coordinated 'Robo-Resetting' scheme where they mechanically set the rates en masse without any consideration of the individual characteristics of the bonds, the associated market conditions or investor demand."

5. How does the whistle-blower know about this?

According to the suits, Rosenberg became suspicious that the remarketing agents were "working in coordinated fashion" and resetting VRDO interest rates "on an algorithmic or some other mechanical basis." He confirmed these suspicions by performing a forensic analysis of interest rates and other market data.

6. Is there other evidence to back up these claims?

Philadelphia's lawsuit says there is. It says that emails and other communications exist showing bank officials sharing information about VRDO rate-setting. And it cites an analysis of the VRDO market by Rosenberg showing banks may have set interest rates higher than was warranted.

7. How much would that add up to?

The total size of the outstanding VRDO market has been estimated at $150 billion. An additional 25 basis points on that much debt could have cost borrowers billions of dollars, although the Philadelphia lawsuit doesn't specify how much and merely asks that the amount be determined at trial. The series of whistle-blower qui tam suits seeks at least $3.6 billion in damages.

8. What do the banks say?

Philadelphia is suing seven banks who acted as remarketing agents for $1.6 billion in VRDOs. They are JPMorgan Chase & Co., Bank of America Corp., Citigroup Inc., Goldman Sachs Group Inc., Wells Fargo & Co., RBC Capital Markets LLC and Barclays Plc. Philadelphia is also seeking class status for other states and municipalities that sold VRDOs. So far, the banks have declined to comment on the Philadelphia suit and have asked that the qui tam whistleblower lawsuits be dismissed, although in Illinois, a judge decided that the matter must proceed to trial. The other lawsuits are making their way through the system.

9. What else might happen?

The Philadelphia lawsuit says that both the Securities and Exchange Commission and the Department of Justice are conducting investigations into the whistle-blower's allegations.

The Reference Shelf

- A primer on VRDOs by Morgan Stanley.
- The case filings in Philadelphia's lawsuit. is City of Philadelphia v. Bank of America Corp., 1:19-c--01608, U.S. District Court, Southern District of New York (Manhattan).
- The Encyclopedia of Municipal Bonds, by Joe Mysak (Bloomberg Press/Wiley) 2012.

Bloomberg Quicktake

By Joe Mysak

March 8, 2019, 8:11 AM PST

Mystery Man Behind $3.6 Billion in Muni Lawsuits Steps Forward.

- **Whistle-blower is Minnesota bond adviser with checkered past**
- **Johan Rosenberg was involved but never charged in past cases**

In 2015, Johan Rosenberg was granted U.S. Patent No. 8,935,181 on an unusual invention: software that he claimed could ferret out Wall Street chicanery.

With the help of MuniPriceTracker, Rosenberg combed through thousands of deals in the vast U.S. municipal-bond market.

Now, after working for years under a cloak of anonymity, Rosenberg has finally stepped forward — and put his name to some startling allegations. He says 16 banks colluded to set the interest rates artificially high on a certain kind of municipal debt, potentially profiting at taxpayers' expense.

The claims are all the more remarkable because they're coming from Rosenberg, 52, whose former muni advisory firm in Minnesota had its own brush with trouble.

Three false-claims lawsuits, in Illinois, Massachusetts, and California, are demanding $3.6 billion in damages. They were filed by an entity called Edelweiss Fund LLC, which was revealed Friday for the first time to be Rosenberg. He stands to get millions of dollars if he wins the suits. The Bond Buyer was first to identify him. Rosenberg confirmed to Bloomberg News that he is behind the litigation.

Continue reading.

Bloomberg Markets

By Amanda Albright

March 8, 2019, 7:24 AM PST

Shutdown Is Still Taking a Bite as Schools Report Missing Payments.

The longest-ever government shutdown may have ended, but it's still having an impact on the municipal-bond market.

Eight school districts in Oklahoma were late making interest payments on tax-credit bonds because they're still waiting on checks from the federal government, according to filings made today by trustee BancFirst.

Keys Public Schools in Park Hill, Oklahoma, made a late interest payment on qualified school construction bonds due March 1 because it still hasn't received payment from the Internal Revenue Service, according to a filing Tuesday. Bondholders receive a tax credit from the government for holding that type of tax-credit bond.

Sand Springs Public Schools also reported it was late with interest payments due on Build America Bonds, whose payments are partially covered by the U.S. government. "The Trustee has yet to receive payment from the Internal Revenue Service due to delays caused by the federal government shutdown," the filing said.

Other issuers have said they didn't have any problem receiving subsidy payments on bonds as a result of the shutdown. Chuck Tombarge, a spokesman for the University of Minnesota, said in an email last month that the school received a subsidy payment from the federal government that was due in February.

Bloomberg Politics

By Amanda Albright

March 5, 2019, 2:06 PM PST

— With assistance by Ariana Mika

Moody's Scolds New York City on Amazon, Then Gives It a Pat.

A puzzling turn of events for one of the municipal-bond market's biggest issuers.

Last Friday afternoon, as U.S. financial markets were winding down for the week, Moody's Investors Service pushed out an upgrade on New York City's $38 billion of general obligation bonds. Normally this would be a big deal for the $3.8 trillion U.S. municipal-bond market. After all, it's one of the largest borrowers in an otherwise highly diffuse market comprising villages, towns, local park districts and school systems.

Yet in some ways, this Moody's upgrade was a surprise. As recently as December, the company's outlook on New York's Aa2 rating was stable, generally an indication that analysts are comfortable with its current rank (in this case, the third-highest investment grade). The outlook never moved to positive. 1 The new Aa1 grade is one step higher than S&P Global Ratings and Fitch Ratings, which kept theirs at AA, the equivalent of Moody's previous score.

Continue reading.

Bloomberg Opinion

By Brian Chappatta

March 5, 2019, 2:00 AM PST

Nuveen Sued by Preston Hollow Over 'Campaign of Intimidation'

- **Nuveen threatened to pull business from banks, lawsuit says**
- **Preston Hollow Capital seeks injunction in Delaware Court**

Nuveen's head of municipal bond investments, John Miller, engaged in a "campaign of intimidation" to coerce banks that underwrite high-yield state and local government debt deals from doing business with Preston Hollow Capital, the Dallas-based lender alleged in a lawsuit.

Miller and his staff at Nuveen, which oversees more than $140 billion in municipal assets and is the biggest buyer of the market's high-yield debt, threatened to use its power to pull tens of millions of dollars in business from banks that engaged in limited offerings with Preston Hollow, the firm said. Chicago-based Nuveen also made threatening, anti-competitive and defamatory statements about Preston Hollow to the firm's primary lender, the suit said.

"If broker-dealers do not make Preston Hollow aware of investment opportunities, or if they refuse to serve as underwriter for transactions that Preston Hollow directly originates, Preston Hollow's business of investing in municipal bonds that are the product of its custom-structured solutions will be significantly impaired," Preston Hollow said in the suit filed in Delaware Chancery Court.

A Nuveen spokesman said the company and Miller believe the claims are without merit and intends to vigorously defend itself against the allegations.

Preston Hollow, founded in 2014 by Jim Thompson, a former chief executive officer at Orix USA, occupies a growing niche in the $3.8 trillion municipal bond market by lending directly to risky projects. Preston Hollow has extended $2 billion in loans, financing projects like 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.

Preston Hollow is "highly dependent" on its relationships with investment bankers who can help the firm find deals, the suit said. Since Preston Hollow typically buys all of a borrowers securities in a limited offering, that would potentially put it in direct competition with Nuveen as a buyer.

Miller allegedly defamed Preston Hollow by saying that the firm charged excessive rates, causing borrowers to overpay for projects. He boasted he had secured commitments from several banks to discontinue or curtail doing business with Preston Hollow, the suit alleged.

On Feb. 25, one bank told Preston Hollow it wouldn't participate in certain deals with the firm because of Nuveen's threats, according to the complaint.

Details on the alleged calls that Miller and his team made to banks were redacted in the complaint.

Preston Hollow wants the court to stop Nuveen from further "unlawful and tortuous communications" with banks and direct Nuveen to disavow Millers comments and adopt supervisory procedures to ensure Miller and Nuveen employees don't engage in future misconduct.

"Miller's efforts to weaponize Nuveen's considerable market power and use its leverage with those institutions pose a serious risk to Preston Hollow and its businesses, causing Preston Hollow to suffer irreparable harm," the suit said. Left unchecked "Miller and Nuveen will be emboldened to similarly attack other, smaller competitors to the detriment of the municipal markets as a whole."

The case is Preston Hollow Capital LLC v. Nuveen LLC. Docket Number: 2019-0169 in Delaware Court of Chancery.

Bloomberg Markets

By Martin Z Braun

March 6, 2019, 9:51 AM PST

Drama Erupts in the Tiny Corner of High-Yield Munis.

A lawsuit involving Nuveen and Preston Hollow shows there's money for ambitious capital projects.

There's nothing quite like big drama in a relatively small market.

The latest public spat isn't about manipulation on a global scale, like foreign exchange or the London Interbank Offered Rate. Nor is it about trading stocks on inside information. It centers on the U.S. municipal-bond market, specifically a dispute between investors involved in the small corner devoted to high-yield state and local government debt. Bloomberg News's Martin Z. Braun has the details:

Continue reading.

Bloomberg Opinion

By Brian Chappatta

March 7, 2019, 2:00 AM PST

Banks In Record Retreat From Muni-Bonds After Tax Cut Makes Them Less Attractive.

- **State Street, JPMorgan, Bank of America report cutting stakes**
- **Signals first annual pullback from the market since 1995**

Big banks cut their holdings of state and local-government bonds during the last three months of 2018 as the corporate tax cut reduced the benefit of owning the securities, signaling the industry's biggest annual pullback from the market on record and its first in more than two decades.

State Street Corp., JPMorgan Chase & Co., Bank of America Corp. and Goldman Sachs Group Inc. together reduced their holdings of municipal debt during the fourth quarter by $5 billion, according to filings with the Securities and Exchange Commission. While some, including Wells Fargo & Co. and Citigroup Inc., stepped up their purchases at the end of the year, it wasn't enough to make up for the cutbacks by other lenders.

The fourth-quarter reduction comes after banks slashed nearly $40 billion from their state and local-government bond holdings from January through September, according to Federal Reserve Board figures, marking a stark reversal for an industry that had been a steadily growing source of demand. The filings indicate that banks' holdings declined overall last year for the first time since 1995 and eclipsed the record drop of $29 billion in 1987.

Continue reading.

Bloomberg Markets

By Michelle Kaske

March 6, 2019, 7:33 AM PST

New Jersey Millionaires' Tax a Double-Edged Sword for Bonds.

- **State's bonds could get more valuable as tax shelters sought**
- **But some risk seen that wealthiest could move out of state**

A millionaire tax is a Catch-22 for New Jersey's bondholders.

Taxing the rich at higher rates — which Governor Phil Murphy proposed Tuesday as part of his $38.6 billion budget — would likely boost demand for municipal bonds because the interest is exempt from federal and state taxes. But at the same time, some investors say the Garden State's precarious finances could be worsened if wealthy people start moving out of a state where high property taxes are already a major complaint.

"It's going to be a tremendous balancing act because they're going to see how far they can push these taxes without losing the entire population of wealthy individuals," said Brad Harris, director of fixed income for Lantern Investments, which manages money for clients living in New Jersey.

Murphy came away from last year's budget negotiations with a higher levy on incomes above $5 million, affecting about 6,700 people in and out of the state. In his budget speech in Trenton today, he said he could raise another $447 million on those earning at least $1 million. The hunt for extra money comes after New Jersey's income-tax collections, the state's biggest revenue source, fell 6 percent this fiscal year through January, in part because of a rush by wealthy residents to shift bonuses and other income into 2017 before President Donald Trump's tax overhaul took effect.

That law has since driven a stampede into New Jersey bonds as residents seek to drive down their taxable income after being hit by the $10,000 cap on state and local deductions, which was broadly felt in the state. As a result, the extra yield that investors demand on New Jersey general-obligation bonds maturing in 10 years has fallen to 59 basis points, lower than the one-year average of 67 basis points, according to data compiled by Bloomberg, while bonds sold by borrowers in the state have outperformed the market.

A millionaire's tax would add to the already-strong demand, said Gary Pollack, head of the private clients fixed-income desk at Deutsche Bank Wealth Management.

That demand has drive yields closer to the benchmark for certain New Jersey bond issuers, particularly the ones that don't need state support, he said. Issuers that rely on funding from New Jersey's general budget trade "much cheaper" because of concerns surrounding the state's finances, he said. While both types of bonds will likely benefit from a millionaires' tax — driving down borrowing costs for the state and local governments — he said it could act as a drag on the economy in the longer term.

It is "a mixed blessing for the state's overall economy," Pollack said. "While there's an immediate boon to the state's tax receipts, on a long-term basis it might be negative as affluent taxpayers flee the state for lower-tax states."

But such concerns have been raised for years in states with high taxes, and whether such levies actually compel residents to move is still a subject of debate. Analysts from Morgan Stanley, for example, expressed skepticism that residents are fleeing high-tax states, saying the population loss in New York reflects the hollowing out of its manufacturing strongholds.

Taylor Financial Group, a wealth management company that specializes in high-net worth clients, has increased allocations to New Jersey municipals because of the new limit on state and local tax deductions, said Debra Taylor, principal of the firm in Franklin Lakes, New Jersey.

While buying more municipal bonds would blunt the impact of a millionaires' tax on investors, residents are becoming increasingly squeezed by the high cost of living, she said. Taylor said she's seeing more and more investors concerned about their taxes. In a Feb. 12 Monmouth University poll, 45 percent of residents said property taxes were the most important issue facing the state.

"The folks that are subject to this millionaires' tax have options," she said. "They'll figure out a way to avoid the tax or declare residency in another state."

Bloomberg Markets

By Amanda Albright and Claire Ballentine

March 5, 2019, 10:31 AM PST Updated on March 5, 2019, 11:35 AM PST

— With assistance by Martin Z Braun, and Elise Young

Big California, NYC Bond Deals Test Demand for SALT Tax Havens.

- **'Demand has been huge' as residents see their new tax bills**
- **New York City and California deals total around $3.3 billion**

Wealthy investors from big coastal states will find an opportunity for refuge from the federal tax overhaul as California and New York City sell about $3.3 billion of tax-free bonds over the next two days.

Key Insights:

- The federal cap on state and local tax deductions has hit high-net-worth residents of states like New York and California hard. Analysts say they are now looking for investments that will help

shelter some of their income, which has spurred demand for municipal bonds in their home states.
- Investors have poured $10 billion over eight straight weeks into municipal-bond mutual funds, according to Lipper US Fund Flows data.
- Supply of new municipal securities is also depressed because of a more direct effect of the federal tax overhaul: it banned a kind of refinancing known as advance refundings, contributing to a steep slowdown in new sales last year.
- While local governments have issued nearly $50 billion of new debt during the first two months of the year, that’s less than what was sold during the same period in 2015, 2016 and 2017, according to data compiled by Bloomberg.
- Demand outstripping supply had led to high prices of munis, with 10-year benchmark state and local government yields on Friday hitting the lowest against Treasuries since Bloomberg’s records began in 2001.

California’s $2.3 Billion Deal

- Individual investors on Tuesday can place orders for the state’s biggest general-obligation deal since August 2017, followed by institutional firms Wednesday. The offering is also the biggest for the municipal market in six months.
- Yields on California’s bonds have fallen close to those on top-rated securities, spurred by brisk demand and fiscal gains that have left the government with swelling surpluses. The state’s 10-year bonds yield about 2.23 percent, or 0.08 percentage point over the benchmark. That gap, a key measure of perceived risk, is down from 0.32 percentage point two years ago.

New York City’s $986 Million Deal

- The city’s sale comes after Friday’s rating upgrade to Aa1, the second-highest level, by Moody’s Investors Service. Individual investors are getting the first crack, with the bonds initially offered for yields of 0.05 percentage point to 0.20 percentage point over the benchmark, according to a person familiar with the matter.
- Pricing for institutional buyers will end Wednesday
- As with California, yields on the city’s bonds have fallen close to those on top-rated securities. On Thursday, the gap over the benchmark was just 0.07 percentage point in trading of already issued securities, the lowest since at least 2013, according to Bloomberg BVAL indexes.

Expectations

- California and New York will easily sell their deals, said Dora Lee, vice president at Belle Haven Investments.
- “Demand has been huge,” she said. “Everyone is getting their tax bills and realizing that munis are a very attractive place to be.”

Bloomberg Markets

By Romy Varghese

March 5, 2019, 5:19 AM PST

— With assistance by Danielle Moran, and Martin Z Braun

[The Problem With Opportunity Zones.]

They're supposed to help distressed communities. We need strong reporting requirements to make sure they're really doing that.

When President Trump signed the Investing in Opportunity Act into law in 2017, it caught the attention of mayors and entrepreneurs as well as developers and investors. They all saw the promise to increase economic opportunities for the many communities that have increasingly watched those opportunities slip away.

By waiving capital-gains taxes for long-term investments in more than 8,000 designated low-income census tracts across the country — referred to as "opportunity zones" — the incentive is intended to stimulate commerce and create jobs in economically distressed communities.

But how will we know if it's really working? The legislation currently has no built-in reporting requirements to make clear which projects received investment. Nor does it require managers to track or measure the impact on their communities.

An opportunity zones framework released in February by the U.S. Impact Investing Alliance and the Beeck Center at Georgetown University aims to elevate these essential considerations, ensuring that opportunity zone returns accrue equally to communities and to investors. The framework, funded in part by the Kresge Foundation, is an important first set of principles to guide this rapidly emerging market. But those principles are only as useful as their adoption. Unless the federal legislation is amended to include requirements for transparency, measurement and impact reporting, we'll simply never know the full impact of opportunity zones in our communities. We won't know if incentivizing investors with tax relief results in them making investments they otherwise wouldn't have made.

Early media reports on projects receiving investment under the program have added to my worries. In Texas, for example, a commercial real estate company made a $16 million purchase of 10 acres of land outside San Antonio to build a storage warehouse. A waterfront hotel is being developed as part of a mixed-use project in Seattle. And luxury apartments are going up in Baton Rouge, La.

Perhaps there are unseen community benefits built in to these projects. But in principle, disinvested communities need more than storage, fancy hotels or unaffordable condos. They need deep investment in affordable housing, living-wage jobs and infrastructure. It's hard to see how a facility for affluent homeowners to deposit their excess belongings will provide significant benefits to struggling neighborhood families.

Opportunity zone investments should breathe life into forgotten communities by funding public spaces and revitalizing shopping centers, schools or small-business corridors. They should give small entrepreneurs the boost they need to create jobs and economic opportunity for residents. Otherwise, capital will always flow to the lowest-risk, highest-return investments. It's simple economics. The natural winners will not be residents of the economically distressed areas this legislation is supposed to help.

What if, as intended, opportunity zone investors were truly incentivized to focus on small storefronts and new ventures in rural Michigan or central-city Phoenix and not only on shovel-ready projects? In an age of growing income inequality, this program could facilitate an investment pipeline that lifts working families and that does not just reward the rich.

At the U.S. Conference of Mayors' winter meeting in January, I joined a room full of policymakers from across the country to lay out the true promise of the opportunity zones program and how its risks can be mitigated. Simply adopting current reporting standards in place for another federal program, the New Markets Tax Credit Program, would largely remediate many concerns. It's an easy fix.

At the Kresge Foundation, we've launched incubators for opportunity zone funds with measurable community impact objectives, and we're implementing loan guarantees for organizations that will commit to reporting their true community impact. We're also calling on philanthropic and financial institutions and policymakers across the country to speak out against investment strategies that do not create jobs and expand opportunities for the people who need them most.

This is a crucial moment. As we await the next round of regulatory guidance on opportunity zones, it's an important inflection point for a piece of legislation that could do a lot of good in a lot of places. To fully realize that potential, policymakers need to incorporate guidelines that ensure that transparency, meaningful community benefit and broad geographic impact are achieved. If that happens, opportunity zones could chip away at inequality and increase opportunities for working families across the country.

governing.com

By Kimberlee Cornett | Contributor
Managing director of the Kresge Foundation's Social Investment Practice

MARCH 7, 2019 AT 6:15 AM

Private Money Takes On Bigger Role in Airport Projects.

When Paine Field, about 25 miles north of Seattle in Everett, Wash., was born in the 1930s as a New Deal project, it was envisioned as a major commercial airport for the region. But that never happened. Instead, it became known as the place where Boeing offers "North America's only publicly available commercial jet assembly plant tour."

That is about to change. Thanks to private investment, Paine Field is finally set to offer air service to the public. A sleek, new, $40 million two-gate terminal was built by Propeller Airports, a Seattle company, and commercial flights are set to begin this month.

Brett Smith, Propeller's founder and chief executive, expects that travelers will be attracted by the convenience of avoiding traffic jams near Seattle-Tacoma International Airport. "No reason why tax dollars should be used to build passenger travel while there's private-sector money ready and willing to do it," he said.

Continue reading.

The New York Times

By Amy Zipkin

March 3, 2019

[5 Ways Congress May Try to Fix the Highway Trust Fund.]

Better mileage and slower growth in miles traveled have combined to produce less revenue than Congress voted to spend

For nearly half a century, taxes on gas and diesel fuel funded what Congress spent from the Highway Trust Fund on roads, bridges and, after a 1982 compromise, mass transit.

For the past decade, however, better mileage for cars and trucks and slower growth in the number of miles Americans traveled combined to produce less revenue than Congress voted to spend.

The current five-year transportation law, which expires in September 2020, covered that shortfall by transferring $70 billion from the general fund. To spend similar amounts from 2021 through 2025, Congress would have to find an extra $17 billion to $23 billion a year, or $94 billion over five years, according to the Congressional Research Service.

And that's to maintain a spending level that is inadequate, according to business and transportation advocates, many lawmakers and, at times, President Donald Trump.

The American Society of Civil Engineers' national infrastructure report card in 2016 said there was a $1.1 trillion shortfall over the coming decade between total needs for surface transportation and estimated funding available. When other public works such as water and sewer systems, the electrical grid and airports are included, the shortfall exceeds $2 trillion.

The House Ways and Means Committee will discuss the need for "immediate action" on "crumbling infrastructure" on Wednesday. Rep. Earl Blumenauer, D-Ore., said Tuesday the House tentatively has set aside floor time in "the late spring" to take up a still-undefined infrastructure package.

Here's a look at some of the ways to cover a funding shortfall that Congress is considering.

Gas and diesel taxes

Last raised in 1993, the federal gas tax is 18.3 cents a gallon, and the diesel tax is 24.3 cents a gallon. If those rates had been indexed to inflation, in 2017 they would have been 31.7 cents for gas and 42.1 cents for diesel, according to the CRS.

In 2015, the Congressional Budget Office said a 1-cent increase in fuel tax rates would generate about $1.7 billion a year, but that would drop to $1.5 billion within 10 years.

That indicates that a 10-cent increase in the gas tax, indexed to inflation, would come close to plugging the first year's shortfall, but it would not accommodate any major increase in spending.

As the traditional funding source, fuel taxes are the most discussed option for closing the trust fund shortfall. They are also the easiest to implement and have the lowest administrative costs. But any tax increase, even one sold as a user fee, comes with political danger, especially in a politically polarized environment a year ahead of a presidential election.

Supporters have been arguing that Democratic and Republican state legislators and governors in more than two dozen states have raised their gas taxes without being punished by voters. Newly elected Michigan Gov. Gretchen Whitmer, a Democrat who ran on a promise to "fix the damn roads," announced in her budget speech Tuesday she wants to raise the state gas tax by 45 cents a gallon.

Blumenauer said that as a national funding model, the gas tax would not be reliable in 10 or 15 years. “But in the short term, the fuel tax, I anticipate, will be what we hear people feel most comfortable with,” he said.

The U.S. Chamber of Commerce has endorsed a 25-cent increase over five years. The American Trucking Associations has endorsed a 20-cent increase over four years. Representatives of both groups will testify Wednesday.

Miles-traveled tax

Taxing miles traveled would require plug-in electric cars that do not fill up at the pump — which comprised 1.1 percent of vehicle sales in 2017 — and hybrids that use less fuel to contribute more toward their wear and tear on roads and bridges.

But such taxes are only in the experimental stage in some states, and taking them national would incur new administrative and enforcement costs, which CRS said could range from 5 percent to 13 percent of collections.

The system would also have to address privacy concerns, since putting a global positioning tracker in a vehicle to measure how far it travels would also tell the government where it went and when. And there would have to be a way for motorists who do not have credit cards or bank accounts to pay.

House Transportation and Infrastructure Chairman Peter A. DeFazio, D-Ore., has said he would prefer the next transportation bill to create a national pilot program, and that the tax be designed to charge less for using lightly traveled rural roads and more for adding to rush-hour congestion.

Tolls and private financing

While the number of miles of roads with tolls grew by 1,280, to a total of 6,001, from 1990 through 2017, toll revenue as a share of total transportation spending has remained steady at about 5 percent to 7 percent for more than 50 years, according to the CRS.

“While there may be many existing roads on which tolling would be financially feasible, the vast majority of mileage on the federal-aid system probably has too little traffic to make toll collection economically viable,” the research service said.

Future upgrades or replacements could be made to federal projects by allowing private companies to collect tolls to recoup construction costs through public-private partnerships, often called P3s. But local officials may resist new tolls on bridges that were previously free, for example, and such projects would need enough guaranteed traffic to make the private investment feasible.

“Private-sector financing generated through P3s might best be seen as a supplement to traditional public-sector financing rather than a substitute,” CRS wrote.

Other proposals have included “asset recycling,” which is the sale of existing public works to private operators to use the revenue to build new projects; and developing national “infrastructure banks” that could lend money for projects and use repayments from states or other borrowers to fund new projects.

Roll back tax cuts

Senate Democrats in 2018 released an infrastructure plan that included a proposal to roll back parts of the Republican-crafted 2017 tax overhaul. Specifically, it called for raising the top individual tax rate back to 39.6 percent from 37 percent for couples with more than $600,000 in income and individuals with more than $500,000; increasing the Alternative Minimum Tax, the estate tax, taxes on the income of hedge fund operators, and raising the top corporate tax rate to 25 percent from 21 percent.

The proposal has little chance of being signed by Trump as he goes into his 2020 re-election bid, however. And the president of the U.S. Chamber of Commerce, Thomas Donohue, said last month that while he would work to support any member of Congress who ends up in danger of losing re-election for voting for a gas tax increase, he would fight any effort to roll back the 2017 tax law's provisions.

Blumenauer, a member of the Ways and Means Committee, indicated it is not a route the House is preparing to take.

"Of all the ways that we could have to fund the rebuilding and renewing of America, I think that is fraught with peril," Blumenauer said. "You're stepping on toes, you have little landmines, you have conflicting priorities, and you don't need to do it, because there are paths forward that do not involve a food fight."

Spend less

The Highway Trust Fund was set up to be a temporary program to fund the construction of the interstate highway system. And while Trump said during the 2016 campaign that he wanted to fund a $1 trillion infrastructure program, some in his party have said the federal government could pull back.

Some lawmakers argue that the highway fund should be dedicated solely to roads and bridges and that Congress should end setting aside for transit the first 2.86 cents of the 18.3-cent gas tax. Mass transit has expanded since the dedication, however, and systems in both red and blue states rely on it, though the biggest systems tend to be in states with Democratic senators.

Marc Scribner of the Competitive Enterprise Institute, who will testify at Wednesday's Ways and Means hearing, said Congress should focus transportation spending on areas intended by the Constitution, particularly interstate routes used for commerce and shipping.

"As important as the New York City subway system is, I don't think it's a nationally significant project," he said.

Roll Call

by Herb Jackson

Posted Mar 6, 2019 12:20 PM

S&P OPEB Brief: The Credit Impacts Of OPEB Obligation Bonds

Other postemployment benefit (OPEB) underfunding of obligations is pervasive across U.S. state and local governments, and costs are likely to continue to rise rapidly. Although, compared with pensions, these obligations may have some more flexibility in how they're provided, we recognize that funded levels are almost universally lower than those of pensions and could quickly become a challenge to

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Mar. 11, 2019

[S&P Pension Brief: The 'California Rule' Survives The First Round Of The State Supreme Court](#)

The California State Supreme Court issued an opinion March 4, 2019, regarding a long-discussed and anticipated California Firefighters Union (Cal Fire) case dealing with the “California Rule.”

[Continue Reading](#)

Mar. 6, 2019

[What Makes Muni Bonds Attractive in 2019?](#)

The municipal bond market has experienced its fair share of headwinds over the past few years, including credit issues in Illinois and Puerto Rico and rising interest rates. While the economy has been improving, many municipalities have been hesitant to issue new bonds given the rising interest rates. However, demand among investors has remained robust given the favorable yields.

In this article, we will take a look at three reasons why muni bonds remain attractive to investors in 2019 as well as some lingering concerns in the market.

[Continue reading.](#)

municipalbonds.com

by Justin Kuepper

Mar 06, 2019

[S&P Webcast Replay: 2019 Global Not-for-Profit Higher Education Outlook](#)

Jan. 31, 2019 | New York, NY

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

View The Webcast Replay

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

Jan. 22, 2019 | New York, NY

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

View The Webcast Replay

Atlanta Issues Environmental Impact Bond for Green Infrastructure.

For a long time, says Amanda Hallauer, a watershed manager in Atlanta's Department of Watershed Management, Proctor Creek was an integral part of the neighborhoods that surround it. The creek, which runs from downtown Atlanta to the Chattahoochee River, "was healthy and an asset," Hallauer says. But as the upstream neighborhoods were developed with impervious surfaces, over decades, the downstream neighborhoods suffered the impacts of living alongside an increasingly polluted creek: stream degradation, sewage overflows, brownfields, blight, and disinvestment.It's an environmental justice hot zone as well," Hallauer says.

"It's an environmental justice hot zone as well," Hallauer says.

In 2013, the Urban Waters Federal Partnership named the Proctor Creek watershed as a priority location, and created partnerships among city, state, and federal governments and institutional organizations to coordinate solutions to environmental problems in the watershed. Now, the Department of Watershed Management is embarking on a series of green infrastructure projects along the creek that are aimed at reducing pollution and improving overall quality of life. To pay for them, the city is turning to a publicly offered environmental impact bond. The $14 million bond was officially released last month. (Atlanta won a grant from the Rockefeller Foundation last year to help design the bond.)

Continue reading.

NEXT CITY

BY JARED BREY

MARCH 11, 2019

Corporations Often Secretly Renegotiate Their Tax Incentives, Study Finds.

Tax breaks to corporations in exchange for jobs are often modified — in secret — after the fact, a new study finds.

Governing magazine reports that the University of Texas at Austin studied 165 awards given out by the Texas Enterprise Fund, which manages such corporate incentives for the state. In 46 of those cases — about a quarter — the fund changed contracts after they had been finalized. In most cases, the changes were favorable to the company, lowering the number of jobs required to get the tax breaks, or changing the schedule for meeting those requirements. And many times, Governing says, the changes happened right before a company would be subject to provisions requiring it to pay back the incentives it received for not creating those jobs.

There might be more amended deals than included in the study, as many companies challenged UT Austin's public-records requests during its research. "This finding, from a single state, is troubling," Nathan Jensen, the study's co-author, told Governing. "If companies can not only secretly renegotiate the rules, they can also make sure that public records laws shield them from revealing these renegotiations."

Continue reading.

NEXT CITY

by RACHEL KAUFMAN

MARCH 7, 2019

CDFA - PFM Capital Markets Webinar Series - What Your Bond Finance Team Worries About

CDFA – PFM Capital Markets Webinar Series

November 28, January 10, February 7, March 14, April 16, May 7

Monthly: 2:00 – 3:30 PM Eastern

CDFA has partnered with Public Financial Management (PFM) to host a six-part webinar series on current events and latest trends in the capital markets. The CDFA – PFM Capital Markets Webinar Series will offer in-depth, market-driven discussions about bond financing in the United States and will provide insights about structuring techniques, regulatory matters, strategies for ongoing monitoring and continuing disclosure, and predictions for the future of the capital markets.

The Webinar Series will feature the industry's top leaders discussing case studies, challenges, opportunities and critical issues in today's capital markets. Topics covered include bond market insights, understanding the regulatory environment, refunding and structuring strategies, effects of tax reform, and tips for engaging municipal advisors. Participants are encouraged to bring their questions and financing challenges related to bonds and the capital markets. Webinars will be recorded and made available to all registered participants.

Click here to learn more and to register.

Launch Pad: Creating Coworking Hubs and Startup Investments in Opportunity Zones (Podcast Episode #15)

What will business investing in opportunity zones look like? Coworking hub and startup incubator Launch Pad may offer the best example I've seen so far. The husband-wife team of CEO Chris Schultz and president Anne Driscoll are on a mission to create the world's strongest community of entrepreneurial workers. They believe in a world where

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opportunitydb.com

March 6, 2019

New Law Aims to Improve Water Infrastructure Planning for Municipalities: Barnes & Thornburg

The Water Infrastructure Improvement Act (H.R. 7279), which became law on Jan. 14, 2019, amends the Clean Water Act (CWA) to codify 2012 EPA guidance on flexible, cost-effective approaches to integrated infrastructure planning for municipalities. The act provides municipalities with the tools to prioritize investments in wastewater and stormwater projects and to more easily comply with CWA requirements.

Barnes & Thornburg worked closely with U.S. Conference of Mayors and the National Association of Clean Water Agencies in developing the Water Infrastructure Improvement Act and lobbying for its passage.

The act allows communities to incorporate integrated plans directly into their National Pollutant Discharge Elimination System (NPDES) permits to update water infrastructure and achieve CWA compliance. NPDES permits that incorporate integrated plans can address CWA regulatory requirements related to any or all of the following:

- combined sewer overflows
- capacity, management, operation and maintenance programs for sanitary sewer collection systems
- municipal stormwater discharges
- municipal wastewater discharges
- water quality-based effluent limitations to implement an applicable wasteload allocation in a total maximum daily load

Additionally, a permittee's integrated plan can include innovative water reuse projects and green infrastructure. The act allows NPDES permits to include compliance schedules to allow for the implementation of integrated plans, and those schedules, if authorized, can exceed a single permit term.

The act also includes several important provisions that relate to CWA municipal issues other than integrated planning. For example, it establishes an Office of Municipal Ombudsman within EPA to support cities in complying with the CWA by providing technical assistance, federal financial assistance information, and information on integrated planning opportunities.

Further, the act requires EPA to promote the use of green infrastructure in CWA permitting, enforcement, planning, research, technical assistance, and guidance. The act is also designed to ensure coordination in the use of green infrastructure between EPA, other federal agencies, state governments, tribal and local governments, and the private sector.

Within two years of enactment, EPA will provide an update to Congress regarding all integrated plans that have been developed and implemented under the CWA since the publication of EPA's 2012 guidance.

by Ashley E. Parr

USA March 7 2019

Barnes & Thornburg LLP

TAX - OHIO

State/Village of Put-in-Bay v. Mathys

Court of Appeals of Ohio, Sixth District, Ottawa County - January 18, 2019 - N.E.3d - 2019 WL 259737 - 2019 -Ohio- 162

Village filed criminal complaints against business operator and business, claiming that they had violated ordinance imposing a license fee upon owners of vehicles used for transportation or property, for hire and for use in the village.

After transfer from village's mayor court, the Court of Common Pleas granted defendants' motions to dismiss. Village appealed. Appeals were consolidated.

The Court of Appeals held that:

- Ordinance imposing a license fee upon owners of vehicles used for the transportation of persons or property, for hire and for use in the village, was a valid exercise of village's taxing power;
- Home Rule Amendment's did not bar village's imposition of license fee; and
- Village's argument that the trial court erred when it failed to apply the doctrines of res judicata and stare decisis when it considered motions to dismiss was moot.

TAX - WASHINGTON

End Prison Industrial Complex v. King County

Supreme Court of Washington - December 27, 2018 - 431 P.3d 998

Objector brought declaratory judgment action against county, challenging county's assessment of increased property taxes.

The Superior Court, King County, dismissed action as untimely. The Court of Appeals reversed.

After grant of review, the Supreme Court of Washington held that:

- Proposed measure for increase in property taxes sufficiently described taxation structure which county later implemented, and therefore ten-day time limit for challenging measure's ballot title applied;

- Challenges to a ballot title based on failure to comply with statute requiring a ballot title for a levy lid lift to contain an express statement in certain circumstances must be raised during the statutory ten-day time limit for challenges to a ballot title; and
- Challenges to a ballot title based on failure to comply with statutory accuracy and clarity requirements must be raised during the statutory ten-day time limit for challenges to a ballot title.

Santa Fe Wastewater Project Touted as a First.

SANTA FE, N.M. — Late last month, Santa Fe city government achieved several firsts on the financial front.

It was the first city in New Mexico to sell green bonds, the first in the state to have bonds certified as green by an international bonding agency in London, and the first in the world to have the construction of an anaerobic digester financed by green bonds.

Anaerobic digesters are part of a $15 million "green" project at Santa Fe's wastewater treatment plant. (Eddie Moore/Albuquerque Journal)

That's no small thing, says Mayor Alan Webber.

"This is significant in the context of climate change, and what cities nationally and internationally are doing to achieve sustainability," Webber told the Journal, adding that the sale of green bonds for a $15 million upgrade at the city's wastewater treatment plant is in step with the 25-year sustainability plan the City Council adopted last year.

Continue reading.

ALBUQUERQUE JOURNAL

BY T.S. LAST / JOURNAL STAFF WRITER

Sunday, March 10th, 2019 at 12:02am

Brown v. Board is brought to us this week by *Perez v. County of Monterey*, in which two brothers challenged the constitutionality of a county ordinance requiring that "no one may keep more than four roosters on a single property without a rooster-keeping operation permit." So many questions, but we're gonna skip them in order to bring you the following delightful snippets from the opinion: "minors who keep roosters for an educational purpose"; "poultry hobbyists"; "plaintiffs assert the rooster keeping ordinance imposes a burden on interstate commerce"; "it does not force all rooster owners to immediately divest themselves of all but four roosters"' and, "plaintiffs have provided no evidence to support their assertion that the ordinance will result in roosters being sold, nor have they provided evidence of how that would affect interstate commerce". Mr. Leghorn, please state your name for the record.

LIABILITY - ARKANSAS

Perkins v. Hastings

United States Court of Appeals, Eighth Circuit - February 7, 2019 - 915 F.3d 512

After her son was shot and killed by police officer, mother, acting as personal representative of her son's estate, brought § 1983 action against the officer, police chief, and city, alleging that city maintained widespread custom of excessive force and that police chief and city failed to train or supervise police officers.

The United States District Court granted summary judgment in favor of police chief and city and denied mother's motion for reconsideration. Mother appealed.

The Court of Appeals held that:

- City did not engage in pattern of constitutional violations, as would show that city was deliberately indifferent to pattern of excessive force by its police officers, and thus, city did not maintain municipal custom of failing to adequately investigate excessive force incidents;
- Police officer's unjustified use of deadly force was not plainly obvious consequence of police chief's decision to hire the officer, and thus, police chief could not be held individually liable for son's death based on his decision to hire the officer; and
- Police chief did not have notice that his training and supervision were inadequate and likely to result in police officer's unjustified use of deadly force, and thus, police chief could not be held individually liable based on his alleged failure to adequately train or supervise the officer.

MUNICIPAL ORDINANCE - CALIFORNIA

Perez v. County of Monterey

Court of Appeal, Sixth District, California - February 14, 2019 - Cal.Rptr.3d - 2019 WL 621483 - 19 Cal. Daily Op. Serv. 1493

Residents brought action for declaratory relief, challenging as unconstitutional a county ordinance prohibiting more than four roosters on a single property without a rooster keeping operation permit.

The Superior Court entered judgment for county, and residents appealed.

The Court of Appeal held that:

- Residents could not maintain claim that ordinance was a regulatory taking in light of agreement to

limit the scope of the issues tried to solely whether the ordinance was valid on its face;
- Residents failed to establish that burden which ordinance imposed on interstate commerce outweighed the benefit of the regulation;
- Exceptions to ordinance applicable only to minors did not violate equal protection on basis of age discrimination;
- Ordinance was not an unconstitutional bill of attainder;
- Residents failed to establish that ordinance violated right to privacy; and
- Ordinance was a valid exercise of the county's police power.

ZONING & PLANNING - CALIFORNIA

McCorkle Eastside Neighborhood Group v. City of St. Helena

Court of Appeal, First District, Division 5, California - December 18, 2018 - 31 Cal.App.5th 802 - 42 Cal.Rptr.3d 379 - 19 Cal. Daily Op. Serv. 502 - 2019 Daily Journal D.A.R. 337

Objectors to proposed development of eight-unit multifamily residential building within city's high density residential district filed petition for writ of mandate, alleging that the city's and city council's approval of resolution granting demolition and design permits to property owner violated California Environmental Quality Act (CEQA) and local zoning laws.

The Superior Court denied petition. Objectors appealed.

The Court of Appeal held that:

- City council did not improperly delegate its decision-making authority to planning commission;
- City council's discretion was limited to design review and did not extend to addressing environmental effects under CEQA;
- Issues addressed during design review process did not require invocation of CEQA review.

City council did not improperly delegate its decision-making authority under California Environmental Quality Act (CEQA) to unelected city planning commission in finding that proposed development of multifamily residential building within city's high density residential district was nondiscretionary project not subject to CEQA or fell within CEQA's infill exemption, though objectors asserted city council improperly limited its scope of review and that municipal ordinances required environmental review of project; planning commission found project exempt and objectors took appeal to full elected city council, city council held full hearing and issued findings, city did act, just not in way objectors hoped, and ordinances did not require city council to consider environmental consequences of project.

City council's discretion in considering proposed development of multifamily residential building within city's high density residential district was limited to design review required by city ordinance, and did not extend to addressing environmental effects under California Environmental Quality Act (CEQA); city ordinance made multi-family dwellings a permitted use within high density residential districts, such that no conditional use permit requiring exercise of discretion was necessary, other city ordinance subjected such multi-family dwelling projects to design review, and CEQA did not apply to nondiscretionary projects.

Issues addressed by city council during design review process of proposed development of multifamily residential building within city's high density residential district under local ordinance did not require invocation of California Environmental Quality Act (CEQA) review, though objectors asserted that project was inconsistent with design of nearby historical homes; design review ordinances prevented city from disapproving project for non-design-related matters, city council determined that proposed project would not result in design-related CEQA impacts, and no environmental impact report (EIR) was required if sole environmental impact was aesthetic merit of building in highly developed area.

BALLOT INITIATIVES - HAWAII

City and County of Honolulu v. State

Supreme Court of Hawaiʻi - December 20, 2018 - 143 Hawaiʻi 455 - 431 P.3d 1228

Counties brought action against various state election officials, seeking declaratory and injunctive relief invalidating legislation and enjoining a ballot question from being placed on the election ballot.

The Circuit Court denied counties' motion for a preliminary injunction, and certified the order for interlocutory appeal. Instead of appealing, counties petitioned for an extraordinary writ.

The Supreme Court held that:

- The Supreme Court would consider counties' petition for extraordinary writ;
- Ballot question was incompatible with statutory and constitutional requirement to not mislead voters; and
- Ballot question was not sufficiently clear.

Supreme Court would consider counties' petition for extraordinary writ challenging ballot question authored by state legislature proposing constitutional amendment, even though counties could have appealed trial court's denial of injunctive relief, where counties could not have obtained final resolution before general election even if they had sought to expedite appeal, and it was in public interest to resolve case prior to general election, in light of concerns inherent in after-the-fact invalidation of democratically approved ballot measure.

Ballot question that asked voters whether constitution should be amended to authorize legislature "to establish, as provided by law, a surcharge on investment real property to be used to support public education" was incompatible with statutory and constitutional requirement to not mislead voters; ballot question suggested surcharges on investment real property were not authorized under current law, and voters, to fully appreciate scope of proposed change, would have needed to know that proposed amendment would have made an exception to counties' exclusive authority to tax real property by granting State concurrent authority to tax what was presumably a subset of real property.

Ballot question that asked voters whether constitution should be amended to authorize legislature to establish "a surcharge" on investment real property was not clear, as required by statute and state constitution; if amendment would have allowed State to impose independent tax on real property, term "surcharge" did not obviously convey this meaning, and if, instead, amendment would have authorized only a dependent, supplemental charge added to existing tax imposed by counties, ballot question failed to accurately state upon what basis surcharge would have been calculated and levied.

PUBLIC UTILITIES - FLORIDA

Oviedo Town Center II, L.L.L.P. v. City of Oviedo, Florida

United States Court of Appeals, Eleventh Circuit - December 28, 2018 - Fed.Appx. - 2018 WL 6822693

Owners of affordable housing complex brought action against city under federal Fair Housing Act, Florida Fair Housing Act, and § 1983, challenging utility rate increase.

The United States District Court for the Middle District of Florida granted summary judgment to city on fair housing claims, and dismissed § 1983 claim for failure to plead substantive due process violation. Owners appealed.

The Court of Appeals held that:

- Owners failed to establish prima facie case of disparate impact, and
- Rate increase was rationally related to city's legitimate purpose of generating sufficient funds to operate utility systems.

Owners of affordable housing complex failed to establish prima facie case of disparate impact on racial minorities, as required to state claims against city under federal Fair Housing Act and Florida Fair Housing Act in connection with utility rate increase; although owners proffered survey evidence indicating that 75.73% of heads of households in complex were members of racial minorities, in contrast to census data indicating that only 32.7% of households in city were of racial minorities, owners did not draw comparison between percentage of racial minorities occupying multifamily properties throughout entire city which were impacted by utility policy and percentage of non-minorities living in such properties.

City's policy change, raising utility service charges for residential water and sewage, was rationally related to city's purpose of generating sufficient funds to operate utility systems and periodically updating rate policy consistent with historical practice, and thus did not deprive real property developers of substantive due process.

EMINENT DOMAIN - FLORIDA

Shands v. City of Marathon

District Court of Appeal of Florida, Third District - January 2, 2019 - 261 So.3d 750 - 44 Fla. L. Weekly D164

Landowners brought suit against city for inverse condemnation of island property.

City moved for summary judgment, which was stayed pending a decision on another case before the Circuit Court and was ultimately granted. Landowners appealed.

The District Court of Appeal held that genuine issues of material fact regarding valuation of Residential Rate of Growth Ordinance (ROGO) points for property precluded summary judgment on landowners' as applied takings claim against city in inverse condemnation action.
