OPEN MEETINGS - MINNESOTA

Funk v. O'Connor

Supreme Court of Minnesota - July 18, 2018 - N.W.2d - 2018 WL 3447688

City residents brought separate actions against mayor and city council members, alleging that mayor and council members had repeatedly and intentionally violated the open meeting law.

On motion brought by mayor and council members, the actions were consolidated. Following bench trial, the District Court found that the mayor and council members, collectively, committed 38 open meeting law violations, imposed civil penalties, but declined to remove mayor and council members from office. Residents appealed. The Court of Appeals affirmed. Residents sought further review, which the Supreme Court granted.

The Supreme Court of Minnesota held that city council members and mayor could not be removed from office for violating open meeting law, since their violations were not proven in three separate, sequential adjudications.

EMINENT DOMAN - NEW MEXICO

Martin v. United States

United States Court of Appeals, Federal Circuit - July 11, 2018 - F.3d - 2018 WL 3370814

Inholders with patented mining and homestead claims within boundaries of national forest brought suit for takings that allegedly occurred after flooding destroyed roads that they had used as means of ingress and egress, and after government refused to rebuild roads and required them to undertake special permitting process.

The United States Court of Federal Claims entered order dismissing suit as unripe, and inholders appealed.

The Court of Appeals held that regulatory takings claims asserted by inholders were not ripe for judicial review.

Regulatory takings claims asserted by inholders with patented mining and homestead claims within boundaries of national forest, following destruction in floods of roads which provided ingress and egress to and from their lands, and following government's refusal to rebuild roads, on theory that special-use permitting process suggested by government as means of ensuring that they had access to their lands would be cost prohibitive, were not ripe for judicial review until inholders had applied for a use permit or otherwise sought authorization to reconstruct roads, and until final cost of compliance with permitting requirements had been determined.

PUBLIC UTILITIES - NEW YORK

Jacobs v. Metropolitan Transportation Authority

Supreme Court, Nassau County, New York - July 9, 2018 - N.Y.S.3d - 2018 WL 3405441 - 2018 N.Y. Slip Op. 28218

Railroad commuters brought purported class action against Metropolitan Transportation Authority (MTA) and commuter railroad for breach of contract and negligence as alleged consequences of extensive infrastructure problems which needed emergency repair and construction work.

Defendants moved to dismiss.

The Supreme Court, Nassau County, held that action fell under the public interest exception to the notice of claim requirement.

Railroad commuters' purported class action against Metropolitan Transportation Authority (MTA) and commuter railroad for breach of contract and negligence arising from alleged extensive infrastructure problems which needed emergency repair and construction work fell under the public interest exception to the notice of claim requirement, where action case sought to vindicate a public interest, namely that MTA and railroad should have maintained safe and adequate facilities and service in accordance with transportation law, and the disposition of that claim would have directly affected the rights of the public.

IMPROVEMENT FEES - OREGON

Portland Metropolitan Association of Realtors v. City of Portland

Court of Appeals of Oregon - May 31, 2018 - P.3d - 292 Or.App. 163 - 2018 WL 2455034

Objectors sought a writ of review challenging, under statutes on improvement fees, aspects of city council's decision to approve an ordinance that revised the fee structure for the city's parks and recreation system development charge (SDC).

The Circuit Court granted the writ in part, but remanded the ordinance to the city for greater specificity in the categories of costs, timing, and percentage of costs eligible for SDC's for capital improvements needed to increase capacity. Objectors appealed.

The Court of Appeals held that city council's passage of ordinance amending the challenged ordinance rendered the case moot.

City council's passage of ordinance that amended a challenged ordinance on the fee structure for city's parks and recreation system development charge (SDC), which objectors claimed violated state statutes on improvement fees, rendered moot objectors' appeal of trial court's decision, in response to objectors' action for a writ of review as to the challenged ordinance, to remand to the city the challenged ordinance for greater specificity in the categories of costs, timing, and percentage of costs eligible for SDC's for capital improvements needed to increase capacity; challenged ordinance never went into effect, and fees under the challenged ordinance were never collected and would never be collected.

WATER LAW - TEXAS

League of United Latin American Citizens v. Edwards Aquifer Authority

United States District Court, W.D. Texas, San Antonio Division - June 18, 2018 - F.Supp.3d - 2018 WL 3046699

Advocacy organization and individuals brought § 1983 action against Edwards Aquifer Authority (EAA), a conservation and reclamation district, challenging apportionment plan for the single member districts used to elect EAA directors, alleging claims including violation of the Equal Protection Clause of the Fourteenth Amendment for alleged dilution of minority votes, and seeking declaratory and injunctive relief and a statutory award of attorney fees and costs.

Several governmental authorities intervened, including one city as a plaintiff, and two cities, county, and river authority as defendants. Plaintiffs moved for partial summary judgment, and defendants cross-moved for summary judgment.

The District Court held that:

- EAA was a special purpose district, rather than a general purpose governmental entity, that fell within exception to one person, one vote requirement, and
- EAA's apportionment plan by subregional water interests was rationally related to statutory objectives of EAA Act, and thus did not violate the Equal Protection Clause.

Texas Legislature established the Edwards Aquifer Authority (EAA) to fulfill Edwards Aquifer Authority Act's limited purpose and scope of management, protection, preservation, and conservation of Edwards Aquifer, and granted EAA limited powers in scope and effect, and thus EAA was a special purpose district, rather than a general purpose governmental entity, that fell within exception to one person, one vote requirement of the Equal Protection Clause; EAA could not impose ad valorem property taxes or sales taxes, did not provide general public services such as the operation of schools and housing, and imposed limited restrictions to protect aquifer from pollution, and EAA's performance of some classic governmental functions such as making rules were incidental to EAA's primary purpose.

Single member district apportionment plan for board of directors for Edwards Aquifer Authority (EAA), a special purpose district, by subregional water interests, rather than by population, was carefully balanced to reflect different water interests in subregions that were disproportionately impacted by aquifer, and thus plan was rationally related to statutory objectives of Edwards Aquifer Authority Act, and therefore plan did not violate one person, one vote requirement of the Equal Protection Clause; population-based representation would have defeated purpose of EAA and destroyed the careful balance of interests upon which EAA was formed, and apportionment plan was not limited to permit holders or landowners with wells as all residents within EAA's jurisdictional boundaries were allowed to vote.

S&P: U.S. State And Local Government Credit Conditions Improve As Economic Growth Picks Up.

Midway through 2018, accelerating economic growth is providing a favorable near-term backdrop for credit conditions in the state and local government sectors. According to S&P Global Ratings' updated baseline forecast, U.S. GDP is on a trajectory to expand by 3.0% in real terms in 2018.

Continue Reading

Jul. 26, 2018

MSRB Holds Quarterly Board Meeting.

Washington, DC – The Board of Directors of the Municipal Securities Rulemaking Board (MSRB) met on July 18-19, 2018, and addressed financial and fee issues, and its strategic focus on information technology and data assets, among other topics.

The Board approved a $40-million budget and an associated operating plan for the fiscal year that begins October 1, 2018. The flat, year-over-year expense budget reflects the MSRB's continuing strategic priorities. A summary of the budget will be made publicly available at the start of the fiscal year.

In conjunction with the FY2019 budget, and consistent with the Board's stated approach to monitor and manage organizational reserve levels, the Board agreed to temporarily reduce the rate of assessment for municipal securities dealers' underwriting, transaction and technology fees related to market activity during the last three months of calendar 2018.

"Temporarily reducing assessments is intended to be sensitive to the financial impact on the industry and to reduce excess reserves by approximately $2.6 million," said MSRB President and CEO Lynnette Kelly. The MSRB previously rebated over $9 million to dealers since 2014.

As part of the MSRB's continued efforts to optimize the use and dissemination of municipal market data, the Board approved a data strategy. The strategy establishes goals to advance the MSRB's mission through data governance, quality and analytics.

"The MSRB plays a recognized and critical role in ensuring fair and efficient access to municipal market data," said Kelly. "Our new data strategy provides the necessary foundation to ensure and enhance the quality and value of our data."

The Board also approved a $5 million budget designation that positions the MSRB's information technology infrastructure for the future. The investment will fund exploration and potential transition to cloud computing, which would support resilient and secure IT infrastructure and data systems. Relatedly, the Board agreed to continue to evaluate the MSRB's data subscription pricing model as part of its effort to diversify funding sources and promote the organization's financial sustainability.

At its meeting, the Board also discussed the MSRB's role in providing guidance and assistance to regulatory authorities in the examination for compliance with, and enforcement of, MSRB rules. It directed staff to advance the important goal of ensuring that MSRB rules are consistently interpreted as intended and enforcement activities are aligned to promote regulatory certainty.

The Board discussed stakeholder reactions to and observations on the MSRB's 2017 advisory on selective disclosure. While the Board appreciates feedback from regulated entities, issuers and investors on this and other MSRB publications, it continues to believe that selective disclosure is an important issue in the municipal securities market and that the advisory is serving its intended purpose of increasing awareness of this topic among market participants and the potential for issuers to use the EMMA website for broad dissemination of information.

Finally, the Board discussed implementation of the MSRB's mark-up disclosure requirements and related guidance on prevailing market price noting that there has been no material market disruption as a result of the new transparency rules.

Date: July 23, 2018

Contact: Jennifer A. Galloway, Chief Communications Officer
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SIFMA: Treatment of Municipal Securities under the Liquidity Coverage Ratio Rules.

SIFMA, together with the Government Finance Officers Association (GFOA), National Association of State Treasurers, sent a letter to the Federal Reserve, the Office of the Comptroller of the Currency, and the Federal Deposit Insurance Corporation (FDIC) on the treatment of municipal securities under the agencies' Liquidity Coverage Ratio (LCR) rules. Congress recently enacted legislation that will require the agencies to amend their LCR rules to provide High Quality Liquid Asset treatment of municipal securities that are investment grade and liquid and readily marketable.

Read the Letter.

Senate Liberals Seek New Puerto Rico Debt Relief.

WASHINGTON — A group of U.S. Senate liberals on Wednesday introduced legislation providing debt relief to Puerto Rico as the island territory struggles to recover from a devastating 2017 hurricane that worsened conditions in an already-suffering economy.

Independent Senator Bernie Sanders and Democratic Senator Elizabeth Warren have joined up with three other liberal Democratic senators in seeking broad debt relief for Puerto Rico and other U.S. territories.

The U.S. commonwealth declared the largest municipal bankruptcy in 2017 under the so-called federal PROMESA law, and is seeking to restructure in court more than $70 billion in debt. It also has another $45 billion or so in unfunded pension liabilities.

“Greedy Wall Street vulture funds must not be allowed to reap huge profits off the suffering and misery of the Puerto Rican people for a second longer,” Sanders said in a statement.

Their initiative is not expected to gain traction in the Republican-controlled Congress, but it could provide hints about what Democrats might pursue if they manage to win majorities in either the Senate or House of Representatives in November's congressional elections.

The bill surfaced on the same day a federal judge took up but did not immediately rule on litigation by the Puerto Rican government challenging the ability of its federally appointed oversight board to enforce certain measures through the budget and fiscal plan. A U.S. House committee also held a hearing on management turmoil at the island's bankrupt electric utility.

The Senate bill would give U.S. territories the option to terminate non-pension debt obligations under certain conditions.

It would provide $7.5 billion for Puerto Rican creditors whose debt is terminated, including Puerto Rican residents, banks and credit unions that did business solely in Puerto Rico.

Another $7.5 billion would be set aside for mainland creditors whose debt was terminated, including individual investors.

Backers of the legislation said the $15 billion in Washington funding would not be made available to hedge funds and their investors, bond insurers or financial firms with consolidated assets greater than $2 billion.

Spokesmen for a bondholders group that includes hedge funds and for bond insurer MBIA Inc declined to comment on the legislation on Wednesday.

Congress passed the PROMESA legislation in 2016, which created a seven-member board to manage Puerto Rico's finances.

In U.S. District Court in Puerto Rico on Wednesday, Judge Laura Taylor Swain, who is overseeing the territory's bankruptcy case, also received an update on privatizing the Puerto Rico Electric Power Authority (PREPA). Attorneys for the island's oversight panel said the private market had "significant amount of interest" in taking over PREPA assets and operations.

Meanwhile, the U.S. House Committee on Natural Resources heard from energy, finance and restructuring experts on ways to depoliticize PREPA and make it a regulated and fully functioning utility in order to attract private investment.

"This has been an ongoing problem we need to break this time," said Committee Chairman Rob Bishop, who rejected the idea of federalizing the utility.

Since mid-July, there have been three executive directors either in place or named to oversee the utility's restructuring and the restoration and upgrading of the U.S. territory's electric grid, which was decimated by Hurricane Maria last year.

Although invited, Puerto Rico Governor Ricardo Rossello declined to attend. In written testimony, Rossello disputed allegations of political interference sparking turnover of the utility's executive directors and board members. He said current PREPA head Jose Ortiz has unassailable credentials and has demonstrated in his previous government roles the ability "to put politics aside."

By Reuters

July 25, 2018

(Reporting by Richard Cowan in Washington; Additional reporting by Karen Pierog in Chicago and Luis Valentin Ortiz in San Juan; Editing by Daniel Bases, Susan Thomas and Matthew Lewis)

Fitch: Trajectory Matters When Assessing Demographics for U.S. States

Fitch Ratings-New York-25 July 2018: While demographics play a pivotal role in the overall health and growth of regions throughout the United States, a new report by Fitch Ratings says that how demographic and economic growth occur is also crucial.

A state's ability to attract and retain residents ultimately can have significant implications for the strength of the region's economy. And trajectory in key indicators matters. "Two state economies may grow at a similar rate over time, but one may have grown more abruptly, possibly with some significant retrenchment in between," said Senior Director James Batterman. "While narrower economies can exhibit solid demographics and growth over extended periods, more diversified economies can sometimes be less volatile over the cycle and more predictable." Consequently, Fitch seeks to measure not just the strength of key demographic indicators but also the stability of these over time.

Continue reading.

If Rich States Need Federal Help, Remember They Paid for It.

It would be a sign that progressive taxation has worked and should continue.

Yes, Connecticut is in trouble. No, it's not going to follow the path of the Greek debt crisis.

My Bloomberg Opinion colleague Brian Chappatta recently wrote about widening credit spreads on its municipal debt, and the prospect that one day the state could default. Other states like New Jersey and Illinois have similar woes.

Mitch Daniels, president of Purdue University and former governor of Indiana, compared the state budget crisis with the European debt crisis, with Connecticut and Illinois playing the role of Greece and Italy. But this analogy gets the relationship backward. Daniels also argued that the structure of the U.S. Senate will prevent "profligate" states like Connecticut from being bailed out by others, but given the structure of U.S. taxation, it's entirely appropriate for some of the overburdened states to get federal help.

Continue reading.

Bloomberg Economics

By Conor Sen

July 27, 2018, 4:00 AM PDT

TAX - LOUISIANA

Beer Industry League of Louisiana v. City of New Orleans

Supreme Court of Louisiana - June 27, 2018 - So.3d - 2018 WL 3216508 - 2018-0280 (La. 6/27/18)

State alcoholic beverage foundation and state restaurant association filed separate petitions against city and city's chief financial officer and director of finance, seeking injunctive relief and declaratory judgment that provisions municipal code allowing for imposition and collection of occupational license tax or excise tax on dealers of alcoholic beverages were unlawful and unenforceable.

After petitions were consolidated, the Orleans Civil District Court, Orleans Parish, granted plaintiffs partial summary judgment, declaring the provisions in question to be unlawful, unconstitutional, and unenforceable. Defendants appealed.

The Supreme Court of Louisiana held that state gallonage tax levied on dealers who handled high alcohol content beverages was an "occupational license tax" authorized by state constitution and, thus, municipal ordinance authorizing similar tax was likewise constitutionally permissible. Such tax indirectly taxed the handling of liquor rather than constituting a property tax upon the liquor itself, was triggered by business conduct consisting of the professional handling of alcohol, and designated specific class of merchants, namely dealers, who were responsible for payment.

IRS Releases New "Issue Snapshot" on Single-Family Housing Bonds: Squire Patton Boggs

The IRS has released another "issue snapshot," which deals with qualified mortgage bonds (or, as they are often called in our lingo, single-family housing bonds). An issuer uses the proceeds of qualified mortgage bonds to make loans to private homeowners. Because of the private loan limitation, the bonds are private activity bonds. To be tax-exempt, then, the bonds must meet all of the requirements for qualified mortgage bonds (which recapitulate most of the other tax-exempt bond requirements, filtered through a fish-eye lens). Private activity bonds involving loan programs (such as single-family housing bonds or student loan bonds) rather than project financing raise the question of what to do when the issuer receives repayments of the loans made with the proceeds of the bond issue – can they be used to originate more loans, or must they be used to pay down bonds?

This new issue snapshot analyzes this issue, walking through the mechanics of a refunding of single-family housing bonds where the issuer has on hand repayments of some of the mortgage loans (often referred to as "replacement refunding" transactions). The issue snapshot also describes how long the refunding bonds can be outstanding without getting more volume cap. For most bonds subject to volume cap, refunding bonds don't need additional volume cap as long as the amount of the refunding bond doesn't exceed the amount of the refunded bond. For qualified mortgage bonds, there's an additional back-stop – you can't go longer than 32 years from the issuance date of the original mortgage bond without getting more volume cap. (The 32-year rule is intended as a rough-justice substitute for the fact that there isn't truly a bond-financed "asset" with a "useful life," in qualified mortgage bond financings in the same way that one exists in, say, a solid waste disposal facility financing; the typical length of a residential mortgage is around 30 years.) In addition, in general, mortgage repayments can be used to originate new mortgage loans only within 10 years after the issuance date of the original mortgage bond.

The issue snapshot contains "Issue Indicators or Audit Tips" for examining agents (and, by extension, us), which are worth a read. The full list of issue snapshots can be found here; the aspects regarding tax-exempt bonds continue to form quite an eclectic mix.

The Public Finance Tax Blog

By Johnny Hutchinson on July 24, 2018

Squire Patton Boggs

Fitch: Good 2018 Returns Are Little Help for US Public Pensions.

Fitch Ratings-New York-24 July 2018: Several public pension plans have announced solid investment returns as of fiscal year-end 2018, which for most pensions was on June 30, 2018, says Fitch Ratings. Fiscal 2018 gains for most are likely to be firmly ahead of their investment return targets. However, most public pensions still face an uphill climb to improve funding levels, due to the depth of past losses, a historically slow economic recovery, the continued use of favorable but unrealistic actuarial assumptions, and for many plans, inadequate pension contribution practices.

Indices for corporate stocks, the largest component of most pensions' asset portfolios, rose by double digits, as of fiscal year-end June 30, 2018, with the Russell 3000 rising by almost 13%. The California Public Employees' Retirement System (CalPERS), the nation's largest public defined benefit pension system, reported a fiscal 2018 portfolio gain of 8.6%, propelled by 11.5% growth in holdings of public equities, while the Florida Retirement System estimated a portfolio gain just below 9.0%, according to press reports. Investment gains in this range are modestly higher than pensions' own long-term targets for asset gains, the all-important investment return assumption, which pensions use to measure liabilities. As of fiscal 2017, this target averaged about 7.4% for major defined benefit plans, compared to the 6.0% level Fitch uses to reflect the magnitude of liabilities.

While fiscal 2018 returns will have a modestly positive effect on funding levels, they are unlikely to change broader pension funding challenges. The gap between projected liabilities and the value of asset portfolios remains stubbornly high, pushing the actuarially determined contribution (ADC) paid by participating governments higher. The median ADC for major plans was 74% higher in fiscal 2017 than in fiscal 2010. We expect ADCs to continue growing in the near term, as plans recoup past asset underperformance, shift gradually to less favorable but more realistic actuarial assumptions, and absorb rising retirement outlays.

Looking forward, pension portfolio returns face additional near-term uncertainty. Volatility in financial markets is notable with the Russell 3000 gaining just under 1.5% in the second half of fiscal 2018. The current economic expansion, even with the recent strong investment returns, has been weaker than in past cycles, and likely is closer to its end than its beginning. Market gains that fall short of pension targets, or outright market losses, would erode recent gains and leave participating governments susceptible to further contribution increases.

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Additional information is available on www.fitchratings.com. The above article originally appeared as a post on the Fitch Wire credit market commentary page. The original article can be accessed at www.fitchratings.com. All opinions expressed are those of Fitch Ratings.

Fitch Updates Rating Criteria for Infrastructure and Project Finance.

Link to Fitch Ratings' Report(s): Rating Criteria for Infrastructure and Project Finance

Fitch Ratings-Paris/London-27 July 2018: Fitch Ratings has updated its Rating Criteria for Infrastructure and Project Finance.

The update only includes minor clarifications. No rating changes are expected as a result of the updated criteria.

The report replaces the version dated August 2017. It is available at www.fitchratings.com or by clicking on the link above.

27 JUL 2018 08:54 AM ET

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New Jersey May Borrow $450 Mln to Protect Schools From Guns.

- **Borrowing is part of $1 billion sale, including expansion**

• **It could boost state's general-obligation debt by 50 percent**

New Jersey voters in November may decide to raise $1 billion in the bond market, about half of which would be used to protect schools against shootings.

The borrowing initiative — which will also fund expansion programs at vocational institutions — has received widespread support in the legislature, which earlier this month approved putting it on the ballot by a nearly unanimous vote, with just one senator dissenting. Governor Phil Murphy is reviewing the bill and his office declined to say whether he would sign it.

If approved, the borrowing would allow New Jersey to increase its outstanding general-obligation debt by 50 percent to $3 billion, according to the state's latest debt report. Historically, New Jersey has relied on appropriation-backed debt sold through various agencies, with about $33 billion outstanding.

The voter-approved bonds would probably draw strong interest from investors because such securities are scarce and debt service doesn't rely on annual legislative appropriations, said Daniel Solender, head of municipal investments at Lord Abbett & Co., which manages $20 billion of state and local debt, including some issued by New Jersey.

"For people looking for higher quality, looking for not having to worry about the appropriation, they'd probably get good reception," Solender said.

Student Safety

About $450 million would finance school facility security grants to improve entryways and security systems to defend public schools from mass shootings or attacks.

More than 215,000 students have experienced gun violence at a school since 1999, according to a database of such shootings compiled by The Washington Post. The issue attracted renewed attention after several deadly incidents this year, including one in Parkland, Florida, in February that left 17 dead and another in Santa Fe, Texas, that killed 10 people.

"The safety of the students is paramount," Republican state Senator Steve Oroho, a co-sponsor of the bond bill, said in an interview.

Another $400 million would help vocational institutions expand their facilities and buy equipment to accommodate more students. County vocational school districts had to turn away about 17,000 students in 2017 because of a lack of facilities, according to the legislation.

Employers in the state are seeking more skilled workers, Oroho said. Fulfilling the needs of people who want to pursue a skill and providing employers with more qualified employees will benefit New Jersey in the long run, Oroho said.

"Not all debt is bad debt as long as you get the proper rate of return," Oroho said. "And education will always have a high rate of return."

Increasing the debt means the state will need to pay more principal and interest every year. About 7.5 percent of New Jersey's fiscal 2019 budget, or $2.8 billion, will go toward debt service, not including payments on school-construction bonds, according to state budget documents. Adding another $1 billion of general-obligation debt will increase principal and interest payments by as much as $72.3 million per year, according to a fiscal analysis of the bond bill.

Pension Predicament

While the borrowing initiative would add to New Jersey's debt load, the bigger credit concern for the state is its retirement obligations, said Baye Larsen, an analyst at Moody's Investors Service. New Jersey has about 56 percent of the funds needed to pay current and future retirees enrolled in its state pension plans, as of July 1, 2017. It has an unfunded pension liability of nearly $41 billion.

"The growth in their adjusted net pension liability is going to significantly outweigh the growth in their bonded debt and that is really going to continue to be more of a credit driver for the state," Larsen said.

New Jersey general obligations maturing in 2028 traded Wednesday at an average yield of 2.7 percent, or about 74 basis points more than top-rate municipals, according to data compiled by Bloomberg.

Debt sold in the state gained 0.9 percent this year through Wednesday, beating the 0.05 percent advance in the broader municipal-bond market, according to Bloomberg Barclays indexes.

Bloomberg Markets

By Michelle Kaske

July 26, 2018, 7:08 AM PDT Updated on July 26, 2018, 7:54 AM PDT

Wells Fargo Bucks Muni-Market Herd With Push Into Local Bonds.

- **Lyle Fitterer says firm overweight general-obligation bonds**
- **As others avoid them, 'we've found pockets of opportunity'**

Since Detroit collapsed into bankruptcy five years ago, some investors have favored municipal bonds secured by specific taxes and revenue, wagering they'll fare better than debt backed by only a promise to repay should a local government run into financial distress.

But, lately, Wells Fargo Asset Management's Lyle Fitterer isn't among them.

Fitterer, who oversees $39 billion in municipal debt, said his firm has expanded its allocation to general-obligation bonds and bought those issued by localities in Michigan, Illinois, and Pennsylvania — states where some governments have struggled with fiscal strains even amid the second-longest economic expansion on record.

"Because people have been avoiding a lot of local general-obligation bonds, we've found opportunities there," Fitterer said.

Fitterer said doing extensive research on factors like a town's cash reserves, debt levels, taxes and demographic trends can help locate the most resilient bonds. He also considers how much revenue is derived locally, as opposed to from state revenue-sharing.

One bet that has paid off is Southfield, Michigan, a Detroit suburb that Fitterer said has performed well. The city sold 10-year bonds in 2015 at a 2.72 percent yield, or about 73 basis points above the benchmark at the time, according to data compiled by Bloomberg. In June, it sold securities with a similar maturity for a 2.99 percent yield, about 50 basis points more than top-rated debt.

Bloomberg Markets

By Amanda Albright

July 23, 2018, 8:00 AM PDT

S&P: Is Long Island Power Authority's Fiscal Gain Local Governments' Credit Pain?

In 2010, the Long Island Power Authority (LIPA) filed property tax grievances with numerous local governments on Long Island, asserting that the property taxes embedded in the payments it makes to National Grid in connection with the power purchase agreements it has with that generation supplier reflect substantial tax overvaluations by local taxing jurisdictions for four power plants.

Continue Reading

Jul. 26, 2018

Letter To the Editor: Why Muni Debt Managers Reject OAS Methodologies.

Re: "Kalotay cites higher muni costs, need for MA training due to advance refunding halt," The Bond Buyer, July 16:

As a 30-year public finance practitioner who has the privilege of working with some of the largest and most sophisticated issuers in the country, I have an answer for Mr. Kalotay as to why, referring to option-adjusted-spread (OAS) methodologies, "municipal debt managers have largely disregarded it, in favor of questionable seat-of-the-pants methods."

Firstly, finance is not physics. Newton's second law of motion has held up since the late 17th century because it is imposed on us by the realities of nature. Finance, however, is pure convention. It is a science/art that is organic and constantly evolving. It is the responsibility of debt managers to constantly seek superior decision making methodologies, not lock themselves into a generation old methodology that was never designed to address their programmatic realities.

Secondly, it is not correct to say that debt managers have largely disregarded OAS methodologies. Rather than disregarding OAS methodologies, my experience is that a large majority of sophisticated issuers have evaluated and rejected them in favor of more organic and integral methodologies.

The black box gang has always mistaken complexity for sophistication in the realm of financial modeling and it is both denigrating and arrogant to characterize non-OAS methodologies currently utilized by debt managers as "questionable seat-of-the-pants methods."

They are, in fact, methodologies developed by earnest and sophisticated public finance professionals over the course of the generation that has passed since the advent of OAS methodologies who are not willing to cede complex decision making processes to antiquated black box models that do not in any meaningful way capture the broad range of programmatic considerations inhered in modern municipal debt programs. (How could they? They were developed for a completely different purpose.)

As the article states, Mr. Kalotay is a fixed-income expert and of that there is no doubt. I both acknowledge and applaud his significant contributions in this area. But the reality is that the fixed-income analytics he espouses, which are at best of dubious value for their intended security analysis purposes, as proven during the calamitous financial crises, have even less value for public finance debt managers. Rather than weld himself to OAS methodologies, I encourage Mr. Kalotay to channel his unique intellect and insights into the development of new methodologies that are more relevant to the realities faced by modern public finance debt managers.

Frank Lloyd Wright, the great architect, wrote that "five lines where three are enough is always stupidity." That is the lesson I recommend the MSRB impose on municipal advisors as our profession continues its efforts to improve public finance decision making through the development of more organic and integral decision making processes.

Sincerely,

Laurence H. Wadler

The Bond Buyer

By Laurence H. Wadler

Published July 26 2018

CA Pension Fund Earnings Up, but Crushing Debts Remain.

California's two immense public employee pension funds this month reported investment earnings higher than their assumed rate for the second straight year.

The California Public Employees Retirement System (CalPERS) said its investment portfolio earned 8.6 percent during the year that ended June 30, while the California State Teachers Retirement System (CalSTRS) topped that with an 8.96 percent gain.

That's certainly better than the minuscule earnings the two funds had seen earlier in the decade, but despite public crowing by union advocates, the earnings reports merely underscore the wide gaps between pension promises and assets to pay for them.

For one thing, making money on investments in the past year has been a no-brainer and relative to the stock market and other indices, the performance of both funds was modest.

That's because both were burned badly in the recession a decade ago when their speculative investments tanked and since then, both have adopted safer and more stable investment strategies that have limited upside potential.

Safer may be better in the long run, but modest earnings, by themselves, cannot cover the funds' asset shortages, called "unfunded liabilities." Both have scarcely two-thirds of the assets they would need to cover pension commitments, even assuming they meet their earnings projections of 7 to 7.5 percent a year.

CalSTRS' chief investment officer, Christopher Ailman, put it this way in a statement that accompanied its earnings report:

“We will rank high compared to similar funds, but it is only one year. We need to repeat that performance year in and year out, on average, over the next 30 years.”

As they lower investment expectations, CalPERS and CalSTRS have turned to the state and other public employers to close their asset gaps, requiring them to raise their “contributions” by billions of dollars.

CalPERS is increasing its bite on employers on its own, as it is empowered to do, while the Legislature and Gov. Jerry Brown adopted a plan to prevent CalSTRS from slipping into insolvency by increasing payments from the state and teachers modestly while hitting school districts hard, more than doubling their mandatory payments into the fund.

Making the increased payments has caused financial turmoil in local governments, especially cities, and in school districts.

As CalSTRS was reporting its 2017-18 earnings, CALmatters published a deep dive into how pension payments are clobbering the state’s school systems, focusing on those in Los Angeles, Fremont and Sacramento.

“Over the next three years, schools may need to use well over half of all the new money they’re projected to receive to cover their growing pension obligations,” CALmatters’ Jessica Calefati wrote, “ leaving little extra for classrooms, state Department of Finance and Legislative Analyst’s Office estimates show.”

“Some districts are predicting deficits and many districts are bracing for what’s to come by cutting programs, reducing staff or drawing down their reserves – even though per-pupil funding is at its highest level in three decades and voters recently extended a tax hike on the rich to help pay for schools,” she continued.

Schools and local governments are feeling immense stress from ever-rising pension payments even though California’s economy has been booming and tax revenues have been surpassing projections.

That’s why we’ll see dozens of cities and other local governments asking their voters for tax increases in November, and why school officials are pleading with Brown and legislators for more money.

By Dan Walters | July 25, 2018

Senator Slams Muni Bond Regulator as ‘Incestuous’

Kennedy of Louisiana says ex-industry leaders have the ‘public’ seats

Sen. John Kennedy, a Republican of Louisiana, on Tuesday slammed the self-regulatory body that oversees the $3.8 trillion muni-market “an incestuous…little club” that needs to be overhauled.

Kennedy called for reform of the Municipal Securities Rulemaking Board during comments at a Senate Banking confirmation hearing for Elad Roisman to be a member of the Securities and Exchange Commission. The SEC has oversight responsibilities for the MSRB.

Kennedy noted that the Dodd Frank Act required the MSRB board to have 11 public members and 10 representatives of regulated entities.

Kennedy said he didn't think that anyone on the board represented consumers. He noted that some of the public seats are taken by former industry executives, including JP Morgan JPM, +1.03% .

According to the MSRB website, Donna Simonetti, a former executive director at JP Morgan, is on the MSRB board for a term that expires in 2021. Ronald Dieckman, a former senior vice president and director of the public finance and municipal bond trading and underwriting department at J.J.B. Hilliard, is also a board member.

"They're insiders. The whole thing is incestuous," Kennedy said.

"Do you know how the board is picked? I'm glad you asked," he said to Roisman, who did not ask. "They pick themselves. It is a little club," he added.

A spokesman for the senator said he was working on legislation to address his concerns.

Roisman, currently the chief counsel of the Senate Banking Committee and also previously an aide to former SEC Commissioner Dan Gallagher, said it was important for self-regulatory organization to have transparency.

Michael Post, the MSRB's general counsel, defended the board's makeup in a phone interview.

He said the agency's standard on who can be a public member of the agency's board was approved by the SEC.

"We have standards set out in federal law and approved by the SEC and we consistently apply them," he said.

Under the by-laws, public members must have had no association with a municipal securities broker, municipal securities dealer or municipal adviser for two years, he said. Of the 11 public members, one slot is reserved for a representative of institutional or retail investors, one slot for a representative of municipal entities and one slot for a member of the public with knowledge or experience in the municipal industry, Post noted.

MARKETWATCH

By GREG ROBB
SENIOR ECONOMICS REPORTER

July 24, 2018

TAX - CALIFORNIA

Time Warner Cable Inc. v. County of Los Angeles

Court of Appeal, Second District, Division 1, California - July 19, 2018 - Cal.Rptr.3d - 2018 WL 3471088 - 18 Cal. Daily Op. Serv. 7224

Telecommunications company filed refund petition, contesting valuation of its possessory interests in public rights-of-way based on television, broadband, and telephone revenue.

The Superior Court reversed in part, and county appealed.

The Court of Appeal held that:

- Assessor was not required to value possessory interests in public right-of-way by capitalizing cable television franchise fee and could include broadband and telephone revenue;
- Evidence did not support assessor's determination that five percent of gross income from all three income streams represented the fair market value of the possessory interests;
- Assessor was required to allocate portion of economic rent to nontaxable intangible assets; and
- Substantial evidence supported use of 10-year term of possession.

In light of lack of evidence of an open and competitive market, assessor was not required to value telecommunications company's possessory interests in public right-of-way, which company used to provide cable television, broadband internet, and telephone services, by capitalizing cable television franchise fee, but rather could base value on the economic rent the possessory interests would command in a rational market; while company argued that possessory interests were available to any prospective cable operator at five percent of television revenue, there was no evidence prospective cable operators were purchasing new franchises or there was an actual, working market for cable television possessory interests, and subject possessory interests generated a considerable amount of revenue for company beyond television services.

Evidence did not support assessor's determination that five percent of gross income from all three income streams, including cable television, telephone, and broadband internet, represented the fair market value of telecommunications company's possessory interests in public right-of-way; while there was evidence cable companies paid five percent of television revenue as franchise fee for the possessory interest to provide cable television service, and company may have previously paid a franchise fee on cable modem service, there was no evidence as to purported similarities in the way possessory interests were used to provide television, broadband, and telephone services, and television, broadband, and telephone businesses did not operate in similar competitive environments.

When assessing tax on telecommunications company's possessory interests in public right-of-way, county assessor was required to allocate portion of economic rent to nontaxable intangible assets.

Substantial evidence supported assessor's use of 10-year term of possession when assessing telecommunications company's possessory interests in public right-of-way which company used to provide cable, telephone, and broadband internet services, even though average remaining term of company's franchises was five years; there was substantial evidence that company and the franchisors understood that the acquired franchises would last as long as company wanted them to last, and company acknowledged that all parties implicitly understood that it would physically occupy its rights-of-way for as long as it chose to do so, notwithstanding anticipated change from local to state control.

Muni Market Recap: Summer Lovin' for Munis.

Municipal bond markets go into summer slumber right around the last day of the school year. This year, the muni slumber has so far lead to an outperformance of municipal bonds relative to US treasuries.

As schools let out, bond traders, bankers and community financial officers stop making excuses for working too hard and everyone goes on vacation. In addition to taking some time for R&R, there's also a greater willingness to take vacation due to the collective liberation that comes from knowing your opponent is likely resting with a pina colada too.

The environment is self-fulfilling because the lack of activity breeds a more relaxed market environment. The most surprising aspect of the absence of market participants and lower trading activity is the trend for municipal bonds to outperform US Treasury bonds during the summer.

The muni/treasury ratio is the best measure of the relationship between Municipal bonds and US Government bonds. The muni/treasury ratio is the yield of Munis divided by the yield of US Government bonds, eg. 1.55%/2.60% (based on market clearing trade data as per MSRB and Bloomberg). This ratio usually reflects the tax benefit for owning a Municipal bond versus US Government bonds.

Munis have had good performance through the quiet of the summer. The 2 year part of the municipal curve has performed the best, with ratios decreasing from 65% to 60% (based on Bloomberg BVAL yields). 10 year ratios have decreased from 85% to 84%. The term used for this experience is outperformance or richening of Munis versus US Treasuries.

So why have munis outperformed? With everyone on vacation, literally and figuratively, everything slows, bankers stop calling communities to fund projects and community leaders make plans to begin the funding of future infrastructure again in September.

Still, while we're all getting some much needed sun, the July 1 coupon payments and principals for past deals are paid into mutual fund accounts and the cash demands to be put to work in the form of new issue municipal bonds. The imbalance between consistent/increasing demand is met with lower new issue supply during the summer and this imbalance leads to municipal bond outperformance.

PS. Don't get any crazy ideas, the market is quiet for a reason: it is a delicate balance and the market participants could not handle heavy supply of municipal deals.

Note: The data are an amalgamation of market clearing yields from MRSB trade data. They are approximate Muni Yields and are not transactable.

Investing in municipal securities contains risks, including loss of principal. Please read the official statement before investing in any municipal security. Securities offered through Neighborly Securities, Member FINRA, SIPC and registered with MSRB.

Posted 07/20/2018 by Homero Radway

Neighborly Insights

States Finalize Fiscal 2019 Budgets - Updated July 26

As of July 26th, all states have enacted a new or revised budget for fiscal 2019. 46 states began fiscal 2019 on July 1 (New York began on April 1, while Texas begins on September 1 and Alabama and Michigan on October 1). Last year, 17 states enacted budgets covering both fiscal 2018 and fiscal 2019.

For the most current information on states' budgets, please visit NASBO's state-by-state listing of proposed and enacted budgets.

Additionally, for summaries of governors' budget proposals for fiscal 2019 please click here.

By Brian Sigritz posted 05-09-2018

NASBO

In Wake of Tax Reform, Muni Bond Market Gains Footing.

As banks sell munis, and the Fed hikes rates, supply and demand take over

Six months after the sweeping tax-reform package that cut corporate and individual rates rattled the $3.7 trillion municipal bond market, financial advisers say the fallout has proven to be a good thing for investors.

With deductions for state and local taxes now capped at $10,000, in many high-tax states muni bonds are "the only game in town," said Timothy Heaney, a muni bond portfolio manager at Newfleet Asset Management.

"Our clients are as interested in muni bonds as ever," said Theodore Haley, president of Advanced Wealth Management in Portland, Ore. "Many people lost deductions due to the new tax law, and especially here in Oregon, the limit on deductions for state and local taxes is a big hit for some," he said.

Continue reading.

Investment News

Jul 23, 2018

By Jeff Benjamin

Tax Exemption Offsets Lack of Competition in Municipal Bond Markets.

The tax exemption for earnings on municipal bonds cost the federal government almost $31 billion in 2017. The exemption is intended to promote state and local investment, but many analysts argue the policy is an inefficient way to provide such a subsidy.

In a paper presented at the 2018 Municipal Finance Conference at Brookings, Duke University economists Juan Carlos Suárez Serrato, James W. Roberts, Andrey Ordin, and Daniel Garrett show that each dollar of tax exemption for interest paid on municipal bonds generates about $1.80 in savings for municipal authorities. In the paper "Tax Advantages and Imperfect Competition in Auctions for Municipal Bonds," using data on submitted and winning bids at municipal bond auctions, the authors estimate that each percentage point increase in the effective personal income tax rate on taxable bonds reduces municipal borrowing costs by roughly 9 percent, implying state and local governments receive a significant subsidy via the tax exemption.

How is it that the tax benefit has such a large impact on state and local borrowing costs? Suárez Serrato and coauthors say lack of competition in muni bond auctions—which often include few participants who need specialized information about each municipality and bond issuance—allows powerful bidders to suppress the price of the bond below what they would be willing to pay in a competitive auction. When a tax increase raises the value of the tax exemption, additional investors join the auction and bid higher prices. The tax hike not only raises the price investors are privately willing to pay, but also makes the auction more competitive. As evidence for this hypothesis, the authors show the pass through from tax savings to borrowing costs is larger for bonds issued by school districts and smaller jurisdictions, where auctions tend to have very few bidders and often are private.

[T]ax exemption is an effective policy for subsidizing state and local governments, and that its removal could place substantial burden on municipalities.

What does this mean for the importance of muni bond tax exemptions? The Suárez Serrato analysis implies the tax exemption is an effective policy for subsidizing state and local governments, and that its removal could place substantial burden on municipalities. In an analysis of the effects of the recently enacted Tax Cuts and Jobs Act, the authors find the new law—which limits the deductibility of state and local taxes and hence raises the effective tax rate—may lower interest costs for municipalities by 2.5 percent. An Obama-era proposal to limit the deductibility of muni interest income, on the other hand, would lead to an increase in state and local borrowing costs of around 31 percent, on average.

Suárez Serrato and coauthors note that these large policy effects exist primarily because of inefficiencies in primary municipal bond markets. If the tax advantages turn into public savings because bond auctions tend to be uncompetitive, then policies aimed at increasing competition in municipal bond auctions could significantly lower borrowing costs without sending the bill to federal and state taxpayers.

The Brookings Institute

Sage Belz and Louise Sheiner

Monday, July 23, 2018

Sports Stadium Subsidies Continue Unabated, Despite No Good Justification.

Less than two miles from the Capitol building sits the brand new Audi Field. Home of the D.C. United soccer team, the new stadium hosted its first match on July 14, 2018, and gave D.C. taxpayers a first look at their $150 million “investment.”

Audi Field officially won the title of “largest stadium subsidy in MLS history” after the D.C. city council voted 12-0 for the stadium in 2014. The team achieved this despite owners Jason Levien, Erick Thohir, and soon-to-be majority owner Patrick Soon-Shiong pegging their net worth in the billions. Soon-Shiong himself is worth almost $8 billion, and will become the wealthiest owner in the league.

The ownership group’s $250 million contribution to the project, combined with the $150 million it received from taxpayers, makes it the most expensive soccer stadium in American history, as well. This raises the question of why local taxpayers had to fork over $150 million to build a stadium that would represent a small percentage of D.C. United's billionaire ownership's wealth.

Continue reading.

The Washington Examiner

by Curtis Kalin & Adam Kazda | July 22, 2018 12:00 AM

IRS PLR: City Agreement to Deliver Water to Power Company Won't Result in Private Business Use of Bonds.

The IRS ruled that a city's agreement to deliver water to a company won't cause tax-exempt bonds used by a governmental entity to construct a new reservoir to meet the section 141(b) private business tests, finding that the agreement isn't an output contract and even though the company will receive a special economic benefit from the project, it won't be making private payments for it.

Read the IRS Private Letter Ruling.

IRS PLR #201830006

Four Ways to Make Wiser Infrastructure Investments.

America's public infrastructure, particularly its transportation [1]and water systems[2], is decaying, underperforming our nation's needs and goals. But the solution to our infrastructure problem is relatively straightforward. America, at all levels of government and in conjunction with the private sector, needs to: **Invest. More. Wisely.**

Each of these three words contains an idea and corresponding set of policies. This paper focuses mostly on the final idea: Wisely. At its core, 'wisely' means that whatever level of investment is chosen, it ought to be invested in the smartest manner possible. While straightforward in theory, the application of a wiser approach to infrastructure is more complicated in practice. There is generally a reason why sub-optimal choices that fail to maximize total social benefits or minimize total social costs are frequently made and often encouraged by problematic policy or outmoded regulations. Despite bipartisan recognition of the problem and proposals by both the Administration and Democratic leadership, Congress has yet to, and remains unlikely to, pass major new infrastructure legislation.

This paper explores a set of core ideas that can help America make wiser infrastructure investment choices. Changes are needed at all levels of government, especially the state and local levels including infrastructure authorities, where most infrastructure decisions are made. The federal government has an important, but limited, role in structuring these choices. The federal government's most impactful role is to promote wiser federal infrastructure investment choices and to incentivize wiser decision-making at the local level. Incentive programs, even small ones, from the federal government such as the TIGER[3] competitive transportation grant program, or the Race to Top education program[4]have shown that "competitive programs have impact"[5]in promoting change at the state and municipal level.

Continue reading.

The Brookings Institute

Aaron Klein

Wednesday, July 25, 2018

Federal Aviation Administration Announces that Municipalities May Not Regulate Airspace — Even for Drones

The Federal Aviation Administration (FAA) recently issued a press release clarifying the abilities of municipalities to regulate drone operations in the navigable airspace. State and local governments "are not permitted to have their own rules or regulations governing the operation of aircraft," as it would conflict with superseding federal law, according to the release. The FAA reiterated that "[s]tate and local governments are not permitted to regulate any type of aircraft operations, such as flight paths or altitudes, or the navigable airspace."

However, state and local governments *may* utilize laws traditionally related to state and local police powers in order to regulate land use, zoning, privacy, and law enforcement operations. Hence, state and local governments may generally regulate the locations of aircraft takeoff and landing sites through their land use powers, which includes where drones can take off or land.

The FAA and the federal government's approaches on drone operations continue to evolve. Other issues we're monitoring include counter-drone technology, real-time flight waivers applications, and identification sensor systems.

Harris Beach PLLC

July 30, 2018

Fixing America's Forgotten Places.

Opportunity Zones, created by Trump's tax law, are meant to help the heartland thrive and make the country more equal—but can they pull it off?

FRESNO, Calif.—Census tract 06019000100 has a lot going for it. Locals cheer the melting-pot atmosphere, the arts scene, the nearby nature, and the affordable housing—affordable in national terms, which feels all the more amazing given that it is a quick drive both to the grandeur of Yosemite and to the tech hub of the Bay Area. Start your car up and grab a coffee here at 9 a.m., and you could be standing in downtown San Francisco or in front of Apple's headquarters by noon.

For all that, though, this tract has its problems. There is the stifling summer heat, the poverty, and the pollution. Technology companies have not flooded into the area like they have in the Bay and in Reno, and the city faces underinvestment and blight. Roughly two-thirds of the families in 06019000100 live below the poverty line. The surrounding county is economically depressed too, with an unemployment rate above 8 percent, one of just a handful of places nationally where that is still true. Moreover, the income gap between households in Fresno County and Santa Clara County, where Apple is headquartered, has widened in the past 10 years.

Still, Fresno is a place that feels on the cusp, as if just a little more investment, a little more infrastructure, and a little more spit and elbow grease might help it thrive. It has what a real-estate broker might call “good bones,” with plenty of lower-cost real estate and highway saturation. It has a steady supply of educated workers, by virtue of being home to Fresno State, among other schools. And it has a powerful industrial base, in terms of agriculture as well as in other industries. “If you are a company that is looking at having a West Coast presence, especially a distribution or an e-commerce center, there’s no better place than Fresno County right now,” said Lee Ann Eager, the president of the Fresno County Economic Development Corporation (motto: “Living the California dream”).

Continue reading.

THE ATLANTIC

ANNIE LOWREY

JUL 24, 2018

Overpromising has Crippled Public Pensions. A 50-State Survey.

Introduction

The real problem plaguing public pension funds nationwide has gone largely ignored. Most reporting usually focuses on the underfunding of state plans and blames the crises on a lack of taxpayer dollars.

But a Wirepoints analysis of 2003-2016 Pew Charitable Trust and other pension data found that it’s the uncontrolled growth in pension promises that’s actually wreaking havoc on state budgets and taxpayers alike.[1] Overpromising is the true cause of many state crises. Underfunding is often just a symptom of this underlying problem.

Wirepoints found that the growth in accrued liabilities has been extreme in many states, often growing two to three times faster than the pace of their economies.[2] It’s no wonder taxpayer contributions haven’t been able to keep up.

Continue reading.

Wirepoints

By Ted Dabrowski and John Klingner

July 19, 2018

Understanding the Impact of Local Governments’ Financial Planning On Muni

Investors.

Indra Nooyi, CEO of PepsiCo, once said that you can either run an organization for your duration or you can strive to run it for the organization's duration. The latter simply alludes to a strategic mindset to understand the implications of your actions in the future and preparedness towards future contingencies.

After some of the well-known bankruptcies of U.S. municipalities, including Detroit and Stockton, more and more local governments are breaking the monotony of simply following their revenue and expenditures and turning toward building a sustainable framework of long-range financial strategy to make budget decisions over future budget cycles.

In this article, we will take a closer look at understanding the need for long-range financial plans (L-RFPs) for local governments and how they can bring sustainable growth.

Continue reading.

municipalbonds.com

by Jayden Sangha

Jul 26, 2018

Municipal Bonds Weekly Market Report: Jobless Claims Hits 49-Year Low

MunicipalBonds.com provides information regarding the performance of muni bonds for the past week in comparison with Treasury yields and net fund flows, as well as the impact of monetary policies and relevant economic news.

- Treasury yields were all up big, while most municipal yields saw smaller gains this week.
- Muni bond funds saw large inflows this week.
- Be sure to review our previous week's report to track the changing market conditions.

Continue reading

municipalbonds.com

Brian Mathews

Jul 24, 2018

As States Legalize Sports Gambling, Convenience and Tax Rates Are Key.

There isn't a one-size-fits-all approach to legalization, but one analysis says states should see serious budget revenue gains with the right policies.

WASHINGTON — States legalizing sports gambling will not only see more in-state gross gaming revenue but also private sector economic activity that boosts their gains beyond any tax on proceeds, according to an analysis by Regional Economic Models, Inc.

Gross gaming revenue, or GGR, refers to the amount of money retained by betting operations after payouts.

Following the Supreme Court's May 14 decision, in *Murphy v. National Collegiate Athletic Association*, striking down federal restrictions on sports gambling, many states are considering GGR taxes to fund highway construction, pay for social services or make infrastructure repairs.

"Some of these priorities may be harder to get at with a smaller budget," said Peter Evangelakis, a senior economist at REMI, at a Thursday discussion of sports betting policies in D.C.

While illegal bookies and office pools will also crop up, state legalization of sports gambling will increase sporting event sales from travel to food to merchandise. States that tax GGR will likely increase state spending, which will in turn generate more growth as the money is fed back into their economies, Evangelakis said.

The Professional and Amateur Sports Protection Act of 1992, the federal prohibition on sports betting that the Supreme Court overturned this year, allowed licensed sports pools to continue in Nevada. In 2007, the Nevada Gaming Control Board reported $248.8 million in state revenue from sports wagering.

An estimated 69 million people, 28 percent of U.S. adults, bet on sports—averaging $1,554 per bettor annually, according to a 2015 Ernst & Young survey.

States have two main choices when considering legalizing sports gambling: how convenient to make access and how much to tax GGR.

REMI's model considers "low convenience" gambling to be limited to brick and mortar casinos, "moderate convenience" to include gas stations and convenience stores, and "high convenience" to add online betting to the mix. A low tax is 6.75 percent, base tax would be 10 percent, and a high tax is 15 percent.

Kentucky has horse racing with legal gambling and a state lottery but no casinos, so it's considered moderate convenience. REMI's 10-year model projects Kentucky would see a $93.6 million increase in GGR if the state legalized sports gambling this year, which translates to a $9.4 million increase in state revenue with a base tax of 10 percent.

State employment would spike in 2019 with two-thirds of new jobs in the gaming sector, dipping slightly as prices rise. Migration would more gradually increase before leveling off around 2029.

The gross domestic product in Kentucky would increase by about $150 million and personal income by $80 million, the analysis concludes.

Connecticut, which is home to the second- and third-largest casino in the U.S., is otherwise a low convenience gambling state. Should Connecticut legalize sports betting, REMI says it would see a $139.5 million increase in GGR and $9.4 million increase in state revenue with a low tax of 6.75 percent.

"I will say here the impacts are more muted," Evangelakis said. "Connecticut's gaming sector has much higher productivity, so even though the size of the sales and the revenue rises faster, they need less employment."

Route Fifty

By Dave Nyczepir,
News Editor

JULY 26, 2018

U.S. Bond Funds Draw Most Cash in Nearly 6 Months.

NEW YORK, July 25 (Reuters) – U.S. fund investors pushed the most cash in nearly 6 months into bonds in the latest week and inched back into stocks for the first time in 5 weeks, Investment Company Institute data showed on Wednesday.

The data, collected over the seven-day period through July 18, shows investors tip-toeing into a market despite ongoing concern over the U.S. conflict with its trading partners.

During that week, Federal Reserve Chairman Jerome Powell expressed an optimistic view on the U.S. economy and early earnings reports mostly bolstered the outlook for the most recent quarter.

Bond mutual funds and exchange-traded funds based in the United States collected nearly $8.7 billion during the week and stock funds pulled in another $1.5 billion, according to the trade group.

The strong sales for debt funds were helped by nearly $1.8 billion pumped into municipal bond funds that offer tax-free income, the most cash for those products since late January, ICI's records show.

Seen as a lower-risk source of income than equities, bond funds have drawn strong demand despite the risk of rising interest rates and inflation, not to mention the year-to-date negative performance of many such debt funds.

Bond ETFs, in particular, have also drawn interest from institutions that traditionally favored trading individual bonds.

Nearly 87 percent of the cash that moved into stock funds went into products primarily invested within the United States, according to the ICI.

After strong demand for stocks outside the country in 2017 and earlier this year, investors started pulling cash in recent weeks as anxiety spiked about U.S. interest rate hikes as well as the consequences of a growing trade war for the dollar and equity markets around the world.

The following table shows estimated ICI flows for mutual
funds and ETFs (all figures in millions of dollars):

	7/18	7/11	7/3	6/27	6/20/2018
Equity	1,492	-3,155	-10,614	-17,948	-5,173
Domestic	1,297	-1,546	-11,376	-12,535	-3,880
World	195	-1,609	762	-5,413	-1,293
Hybrid	-1,829	-1,048	-2,552	-1,134	-857
Bond	8,659	7,445	4,587	2,980	4,549
Taxable	6,894	6,416	4,231	2,455	3,806
Municipal	1,765	1,028	356	525	742

Commodity -308 101 -1,027 -612 -264
Total 8,013 3,343 -9,606 -16,714 -1,745

(Reporting by Trevor Hunnicutt; Editing by Dan Grebler)

Municipal-Bond Funds Draw Flood of Cash as Market Extends Gains.

- **Funds got a $1.68B inflow last week, most since January**
- **Eleven straight weeks of inflows follows positive return**

Bondholders are no longer seeing losses from their investments in state and local-government debt — and they're pouring money back into the market.

Mutual funds that focus on municipal bonds picked up $1.68 billion in the week through July 18, the biggest influx of cash since the end of January, according to the Investment Company Institute. It was and the eleventh straight weekly gain.

Strong demand comes as the market recovers from losses in January that left it in the red for much of the year. Municipal bonds have since swung to a 0.04 percent gain, a relatively strong showing given the 1.47 percent loss for Treasuries and 2.79 percent drop for corporate debt, according to Bloomberg Barclays indexes.

"Solid returns of the muni market over all relative to other fixed income sectors is what's drawing in the interest," said Michael Pietronico, chief executive officer of Miller Tabak Asset Management in New York, which manages $1.2 billion of municipal debt.

He said there's also "a lot of uncertainties in regards to tariffs and trade issues globally that is driving money into defensive sectors, particularly munis."

Bloomberg Markets

By Danielle Moran

July 25, 2018, 10:41 AM PDT

The Downsides of Property Tax Caps.

They have created fiscal stress for states and municipalities, and exacerbated inequality. A new report offers a simple solution to alleviate those issues.

Property tax caps are hampering municipalities' ability to fund basic services and are exacerbating inequality, according to a report released by the Center for Budget and Policy Priorities (CBPP) last week.

The tax caps, which first became popular during the 1970s tax revolt and have since spread to 44 states plus the District of Columbia, have created fiscal stress for the states that adopted the limits. As a result, states have cut aid to cities and counties, and municipalities have become more reliant on sales taxes and fees that disproportionately hurt the poor and people of color.

Prior to the first state cap in 1977, property taxes accounted for an average of 50 percent of local revenue across the country, according to the report. In 2015, property taxes accounted for 39 percent of local revenue.

Property tax revenue is shared by states and their localities. The study focused on the impact of caps in Michigan, Massachusetts, Oregon and New York. When adjusted for inflation, Massachusetts cut its unrestricted aid to municipalities by 44 percent from 2001 to 2015. In New York, more than three-quarters of cities and half of the counties reported significant fiscal stress due to the state's adoption of its tax cap in 2011 and subsequent cuts in state aid. And in Michigan, state aid declined in every city outside of Detroit from 2008 to 2014, dropping 17 percent across the state.

Because of property tax caps, "states are pushing too many costs down to the lower level," said Ron Deutsch, executive director of the Fiscal Policy Institute, during a press call about the report.

Property tax caps, according to the analysis, also contribute to inequality. For one, the caps strangle funding for public education, which the researchers see as a pathway for minority and low-income children to move up the socioeconomic ladder.

"I think in particular with schools we have a great imbalance between our high-needs school districts and our well-off school districts in terms of per pupil spending. The tax cap is institutionalizing these inequities," Deutsch said.

Secondly, white homeowners reap the largest benefits from the cap because they have historically owned homes at a greater rate than people of color and on average own more valuable homes.

And because the caps have led municipalities to turn to fees and sales taxes to make up the difference, those costs fall disproportionately on poor residents and people of color since they account for a larger portion of their income. Across the country, the share of local revenues derived from fees went from 16 percent in 1977 to 23 percent in 2015.

"Property tax caps lock in those inequities," says Iris Lav, former deputy director of the Center for Budget Policy and Priorities.

The study points to a report from the U.S. Department of Justice that examined the use of fees in Ferguson, Mo., and warned of "the illegal enforcement of fines and fees in certain jurisdictions around the country — often with respect to individuals accused of misdemeanors, quasi-criminal ordinance violations, or civil infractions." The DOJ report went on to explain that people facing these fines and fees "may confront escalating debt; face repeated, unnecessary incarceration for nonpayment despite posing no danger to the community; lose their jobs; and become trapped in cycles of poverty that can be nearly impossible to escape."

A Proposed Solution

The report has a recommendation to alleviate some of these issues: Flip the current property tax cap formula.

Right now, most states limit the annual increase in property taxes to 1.5 or 2.5 percent or the rate of inflation — whichever number is lower. Setting the limit instead at whichever number is higher, the researchers say, would provide more cash for governments and make revenues more predictable.

"We never thought the tax cap was the right solution," said Deutsch. "Property tax caps should be eliminated. If they aren't eliminated, at the very least, they should be amended."

To control runaway costs for homeowners living on more modest incomes, states could adopt “circuit breakers,” which caps property taxes for people who make below a certain amount.

The report is being released in a year when federal tax reform is being upended. President Trump signed a tax package in December that caps the mortgage interest deduction and the state and local tax deduction. New York is one of four states suing the federal government over both.

The states claim the mortgage interest deduction cap violates the 10th Amendment, which protects states’ rights. Furthermore, they contest the tax reform was intended to undermine their ability to raise taxes and point to Treasury Secretary Steven Mnuchin’s statement this year that the cap was intended to “send a message” to high-tax states.

“The capping of SALT deductions has made it harder for states to raise the revenue they need to rely on,” says Michael Leachman, CBPP’s senior director of state fiscal research. “We are seeing it play out that people are not willing to pay higher property taxes.”

GOVERNING.COM

BY J. BRIAN CHARLES | JULY 26, 2018

Bill Introduced to Authorize Additional $1 Billion in Rural NMTC Allocation.

Rep. Jason Smith, R-Mo., and Rep. Terri Sewell, D-Ala., today introduced the Rural Jobs Act, which would authorize an additional $500 million in new markets tax credit (NMTC) allocation per year for 2018 and 2019 for certain rural areas. Under H.R. 6627, the new allocation would target Rural Jobs Zones, which are NMTC-eligible census tracts in rural communities that are eligible for the United States Department of Agriculture (USDA) Business & Industry program. At least 25 percent of the new allocation would be prioritized for persistent poverty counties and high-migration rural counties.

Friday, July 27, 2018

CDFA Announces Opportunity Zones Conference.

Opportunity Zones: Maximizing Impact in Your Community

September 5-6, 2018 | Washington, DC

Click here to learn more and to register.

S&P: The U.S. Not-For-Profit Senior-Living Sector Remains Stable, Supported By Favorable Demand And Growing Liquidity And Financial Flexibility.

The U.S. not-for-profit rated senior-living sector demonstrated continued stability in 2017, highlighted in part by ongoing strength in macro-level factors related to the economy and housing sector, as well as by sector-specific trends related to strong demand and growing liquidity and financial flexibility, particularly relative to operations.

Continue Reading

Jul. 23, 2018

Steel Tariffs Tightening Supplies, Raising Costs for City Construction Projects.

Columbus won't need steel for the next phase of the Route 315/West North Broadway interchange project until February, but it's putting in its order now.

That might not be early enough.

City officials say it recently has become harder to acquire the materials they need for public projects since federal steel tariffs took effect, and they have been unable to get waivers for federal Buy American policies that require domestically produced parts for public projects.

It could take six to eight months to obtain the girders, bearings and other steel parts for the highway ramp, so the city needs to order now — months before it even selects a contractor — if the project is going to stay on track to open in May.

"Currently, right now in the country, steel is at a premium," Public Service Director Jennifer Gallagher told City Council members before they approved spending $1.6 million on those parts last week.

Tariffs that President Donald Trump's administration announced in May could be a boon to U.S. steel producers, but they also could make it more expensive for local governments to pay for public infrastructure.

And the tariffs could jeopardize timelines for completing projects if steel orders aren't made early enough. Fabricators that take raw steel and turn it into usable components are seeing delays in acquiring the material because domestic producers have been overwhelmed by demand.

"For us to get the raw plate material to fabricate it used to be we would order steel today and get the steel two months later. Now, it's five to six months," said Evan Morrison, vice president of Ohio Structures Inc. in Canfield, southwest of Youngstown.

Buying steel for a construction project is an unusual step for the city. Typically, contractors include materials in their bids, but the city won't put the Route 315/West North Broadway project's second phase out to bid until the fall. By then, it could be too late to get steel in time.

"It's just like anything else: You place an order and you get put in line," said Jim Pajk, the city's assistant administrator for design and construction. "You've got to get yourself in line as early as you can. We're seeing that line was stretching out."

Morrison said his company is considering bidding on the city's steel contract for the interchange, but it already has asked whether the delivery date can be extended. Even if fabricators already have placed orders, barges, rail lines and trucks that deliver it are backed up, too, he said.

“There’s no fabricator that’s going to have this much inventory on hand,” he said.

Ohio Contractors Association President Chris Runyan said he hasn’t heard about significant delays on projects yet because contractors have submitted their orders early. But project price tags are rising as contractors bake steel price volatility into their bids, he said.

When the city received bids for a new police substation and fire station, the cost was more than $2 million higher than expected, said Joe Lombardi, the city’s finance director. Council members approved two contracts totaling about $18 million for those projects last week.

Construction prices have been increasing steadily for the past several years, and the Ohio Department of Transportation has “not seen recently anything that would be out of line with that trend,” spokesman Matt Bruning said.

As prices rise, public projects often are delayed or scaled back, said Kent Scarrett, executive director of the Ohio Municipal League.

“It sort of feeds on itself, because the more you delay, these costs aren’t going down. The delay is costing our communities on the residual side by missing opportunities now,” he said.

Columbus also is contending with potential delays because the Buy American policies are making it harder to acquire nuts and bolts for a project that would allow the city to treat more raw sewage at its Southerly Wastewater Treatment Plant during heavy rain.

The city is paying for the project using U.S. Environmental Protection Agency loans, but it has received waivers for the Buy American policy for nuts and bolts in previous years. Purchasing those components from domestic producers is backed up by about four months, said John Ivanic, assistant director in the Department of Public Utilities.

Buy American policies have existed for decades, but Trump issued an executive order in 2017 that doubles down on them. Under that order, the executive branch can require those who receive federal financial assistance to use materials produced in the United States.

The federal EPA has taken public comments on providing waivers to Buy American policies in 2018, but it has not taken any formal action, said James Lee, a spokesman for the Ohio EPA. Columbus is the only loan recipient that has expressed difficulty in complying with the requirement, he said.

“The policies were poorly executed, the tariffs and such. We’re all dealing with that. The people who are really suffering are the workers in the construction industry because these projects have to be scaled back,” said Robin Davis, a spokeswoman for Mayor Andrew J. Ginther.

By Rick Rouan

Jul 29, 2018 at 5:33 AM

The Columbus Dispatch

[How State Tax Cuts in Kansas Raised Municipalities’ Borrowing Costs.]()

New research reveals that big tax cuts can sometimes be worse for the fiscal health of states and localities than previously estimated. This is the finding of a new paper entitled [“State Tax Cuts and]()

Debt Market Outcomes," to be presented at the 2018 Municipal Finance Conference at Brookings. In their paper, Komla Dzigbede of SUNY Binghamton and Rahul Pathak of Baruch College find that large tax cuts enacted in Kansas increased interest rates and reduced credit ratings on state and municipal bonds, compounding on the state's already significant fiscal woes. Utilizing the Kansas tax cuts as a natural experiment, the authors show that the state-wide tax cuts created spillover into local municipalities that made it harder for them to borrow money.

In 2012, the Kansas legislature passed a bill that reduced individual income tax rates, reduced the number of income brackets from three to two, and eliminated taxes on so-called pass-through businesses, or S-corporations. A year later, the legislature passed another bill further reducing income tax rates, raising the state sales tax, and reducing the standard deduction. Newly elected Governor Sam Brownback described the tax cuts as a means to accelerate economic growth and job creation, calling them "a shot of adrenaline into the heart of the Kansas economy." Despite increasing the state budget deficit by a wide margin, Brownback reasoned that an increase in economic growth spurred by the tax cuts would offset the initial decline in revenue. However, after facing significant budget shortfalls, the Kansas legislature in 2017 voted to override Gov. Brownback's veto, and raised taxes by $1.2 billion, effectively reversing the tax cuts of 5 years earlier.

While there is contention over whether or not tax cuts increase economic growth, the direct effects of lower revenues can lead the fiscal condition of a state or locality to worsen.

Dzigbede and Baruch's analysis expands upon the economic literature related to tax cuts and economic growth more broadly. While there is contention over whether or not tax cuts increase economic growth, the direct effects of lower revenues can lead the fiscal condition of a state or locality to worsen. This in turn could lead to higher borrowing costs and a lower credit quality of the securities issued by the borrowers, further compounding budgetary stress. If the effects on borrowing costs and credit quality are particularly large, the fiscal challenges of the state as a whole could also spill over into the fiscal picture of individual counties.

Utilizing data on individual bonds issued by the state of Kansas, as well as by Kansas municipalities, from 2005-2015, the authors estimate the change in total interest costs as well as changes in credit ratings after the tax cuts went into effect. The study compares the financing outcomes in Kansas to that of surrounding states. Controlling for factors related to the characteristics of each bond, the authors find that on average, the tax cuts led to an increase in interest rates for Kansas state-issued bonds of 0.43 percentage points and for local government-issued municipal bonds of 0.34 percentage points, compared to the neighboring states of Colorado, Nebraska, Missouri, and Oklahoma. In addition, the financial strain placed on the state and counties reduced the probability of municipal bonds receiving higher credit ratings (AA/Aa2 or above). This decline in credit ratings can account for roughly half of the increase in overall borrowing costs.

In light of these findings, the authors argue that the indirect financial implications of tax changes should be considered as part of states' budget constraints when assessing the merits of any major tax policy. Additionally, the results from bond issuances among local municipalities suggest spillover effects from state to local financing conditions. Therefore, the authors argue localities should be given a voice in major state-level tax changes.

The Brookings Institute

Michael Ng and David Wessel

Monday, July 16, 2018

Wisconsin City to Offer Mini-Bonds to Residents.

Mini-bonds are similar to traditional municipal bonds, but on a smaller scale.

The city of Madison, Wisconsin, will sell mini-bonds to residents to help fund an expansion of a botanical garden, an approach to raising money officials there haven't tried in 40 years.

The Olbrich Gardens expansion project includes construction of a learning center and an energy-efficient greenhouse. The project is being financed jointly by the city and the Olbrich Botanical Society, with each providing up to $6 million.

"Working alongside the capital campaign overseen by the Olbrich Botanical Society, this bond offering is another way to be a part of a facility that will serve all ages and demographics for years to come," Mayor Paul Soglin said in a statement. "I am excited to give our residents easier access to investing in our community and getting a good return on that investment."

The mini-bonds will provide an additional funding stream, allowing residents to invest in the project and reap tax-free interest on the returns. Mini-bonds are similar to traditional municipal bonds, which are typically issued to banks and other financial institutions, but on a smaller scale. They're usually sold in denominations of $5,000, but will be lowered to $500 to "make the bonds more accessible to community investors," the city said in a release.

Via broker-dealer Neighborly Securities, the city will sell up to $2.1 million in bonds during a seven-day order period from Oct. 3 to 9. Bonds will be issued on a first-come, first-served basis, with orders ranging from $500 to $50,000. Residents can set up an account online to purchase the mini-bonds rather than working through a traditional arrangement with a broker, said David Schmiedicke, the city's finance director.

Other cities have had success issuing mini-bonds to help fund projects. In February, Cambridge, Massachusetts sold $800,000 in mini-bonds in one day to help pay for a variety of improvements, including solar panels at the public library. Four years ago, Denver sold out of $12 million in mini-bonds in one hour—during what was supposed to be a five-day sale.

It's the first real mini-bond offering for Madison, though the city "issued something akin to mini-bonds in the 1970s," Schmiedicke told Route Fifty. "It was a short-lived program. Today's technology provides a more streamlined approach for issuing smaller denomination bonds to give more Madison residents a chance to invest in their city."

The city will hold two as-yet unscheduled informational sessions for residents, one in late September and the other in early October.

Route Fifty

By Kate Elizabeth Queram,
Staff Correspondent

JULY 25, 2018

Key GOP Lawmaker Releases Last-Ditch Infrastructure Plan.

U.S. Rep. Bill Shuster's draft bill includes gasoline and diesel tax hikes.

The Republican chairman of the House Transportation and Infrastructure Committee released a draft public works bill on Monday that calls for phasing in a gas tax increase of 15 cents per gallon over three years, along with a raft of other measures.

For U.S. Rep. Bill Shuster, of Pennsylvania, who is not seeking reelection, the proposal amounts to a last ditch attempt during his final months in office to spark movement on an infrastructure package, after efforts to do so by the Trump administration lost steam.

In the long-term, parts of the bill are geared toward shifting how the U.S. pays for transportation infrastructure away from taxes on gasoline and diesel fuel, despite a nearer-term hike in those taxes.

Continue reading

Route Fifty

By Bill Lucia,
Senior Reporter

July 23, 2018

Critics of Online Sales Tax Ruling Urge Congress to Rein in States.

Meanwhile, the top Republican on the House Judiciary Committee warns the U.S. Supreme Court decision could "unleash chaos."

WASHINGTON — Republican lawmakers left open the possibility on Tuesday that Congress could take action to legislate around a recent U.S. Supreme Court decision that paves the way for states to collect greater sales taxes from internet retailers.

But there are no signs yet that any legislation is gaining serious traction on Capitol Hill.

Tuesday's discussion unfolded as the House Judiciary Committee convened to consider the ramifications of the June ruling in *South Dakota v. Wayfair, Inc.*, which overturned a legal precedent that blocked states from gathering sales taxes from out-of-state online vendors.

Continue reading.

Route Fifty

By Bill Lucia,
Senior Reporter

July 24, 2018

[FRA Announces $318 Million in CRISI Grant Funding Availability.]

Last week the Federal Railroad Administration issued a notice of grant funding of $318 million for rail infrastructure and safety improvements through the Consolidated Rail Infrastructure and Safety Improvement Grants Program known as CRISI. The deadline for applications is September 17, 2018.

CRISI grants are designed to assist with financing passenger and freight rail system improvements to achieve safety, efficiency, and reliability benefits. Eligible applicants include states, public agencies, Amtrak, and Class II and Class III rail carriers and railroad or equipment manufacturer working with eligible applicants.

FRA will consider CRISI funding for intercity passenger rail service, to reduce rail congestion, and to improve short-line and regional rail infrastructure; projects to enhance passenger or freight multimodal connections; and other safety improvements, including deployment of non-PTC safety technology.

FRA's share of total costs for CRISI projects is not to exceed 80%, but FRA prefers applications where the Federal projects costs is under 50 percent.

This is the second round of CRISI funding this year. In May, FRA issued a funding opportunity for $250 million in CRISI grants for Positive Train Control.

Nossaman Infra Insight Blog

By Justin Marks on July 24, 2018

S&P: The U.S. Not-For-Profit Senior-Living Sector Remains Stable, Supported By Favorable Demand And Growing Liquidity And Financial Flexibility.

The U.S. not-for-profit rated senior-living sector demonstrated continued stability in 2017, highlighted in part by ongoing strength in macro-level factors related to the economy and housing sector, as well as by sector-specific trends related to strong demand and growing liquidity and financial flexibility, particularly relative to operations.

Continue Reading

Jul. 23, 2018

S&P: U.S. Not-For-Profit Acute Health Care Ratios: Sector Is Buffeted By Disruption, Yet 2017 Median Trends Remain Unchanged From Last Year.

The 2017 U.S. not-for-profit acute health care medians highlight the same sector issues as seen in 2016 and we expect this trend to continue for the year ahead. Operating income and operating cash flow show continued declines while balance sheets remains stable at levels exceeding the prior peaks before the Great Recession.

Continue Reading

Jul. 17, 2018

[S&P: U.S. Not-For-Profit Acute Health Care Speculative Grade Median Financial Ratios -- 2017 vs. 2016]

Overall speculative grade credit metrics in 2017 are largely consistent with 2016 with stand-alone organizations dominating the category and some modest overall deterioration in ratios; There is continued movement of credits into speculative grade categories as operations weaken; however, historically this has been offset by ratings being removed as a result of mergers and acquisitions;

Continue Reading

Jul. 17, 2018

S&P: U.S. Not-For-Profit Acute Health Care Stand-Alone Hospital Median Financial Ratios -- 2017 vs. 2016

Medians for stand-alone hospitals in 2017 saw a continuation of the broad trends identified in last year's median reports—namely, operating margin compression combined with general balance sheet stability with some variability among individual balance sheet metrics.

Continue Reading

Jul. 17, 2018

S&P: U.S. Not-For-Profit Health Care Small Stand-Alone Hospital Median Financial Ratios -- 2017

S&P Global Ratings defines a small stand-alone hospital–which is a subset of our stand-alone hospital universe–as one having annual total operating revenues of less than $150 million.

Continue Reading

Jul. 17, 2018

S&P: U.S. Not-For-Profit Health Care Children's Hospital Median Financial Ratios -- 2017 vs. 2016

Children's hospitals rated by S&P Global Ratings continue to exhibit healthy credit characteristics. This has led to favorable rating distributions and overall healthy financial median ratios reflecting stable and strong credit fundamentals.

Continue Reading

Jul. 17, 2018

S&P: U.S. Not-For-Profit Health Care System Median Financial Ratios -- 2017 vs. 2016

The fiscal 2017 medians for U.S. not-for-profit health care systems continue the broad trends identified in last year's median reports, including growing operating margin pressure and some modest balance sheet improvement from already very strong levels.

Continue Reading

Jul. 17, 2018

- IRS Revises Rate for "Taxpayer Exposure" Penalty Calculations.
- How the Volcker Rule Affected Tender Option Bonds.
- SIFMA's Response to MSRB Request for Comment on Draft MSRB Rule G-36, on Discretionary Transactions in Customer Accounts, and Related Draft Amendments.
- MSRB Requests Comment on Amendments to Primary Offering Rules.
- What Dodd-Frank Has Done for Muni Ratings.
- S&P Ratings And Outlooks for: Toll Roads, Public Port Facilities, and Public Parking Facilities.
- And finally, Honey, Have You Seen the Mental Floss? is brought to us this week by *Garcia v. New York City Department of Health and Mental Hygiene*. Mental Hygiene? Hygiene? Like a Q-Tip to the Occipital Lobe? In which case, we're gonna need a fire hose and a couple gallons of industrial bleach here at the BCB workplace.

CHARTER SCHOOLS - LOUISIANA

Tab–N–Action, Inc. v. Monroe City School Board

Court of Appeal of Louisiana, Second Circuit - May 23, 2018 - So.3d - 2018 WL 2324941 - 51, 969 (La.App. 2 Cir. 5/23/18)

After city school board voted against extension of charter school's charter, charter school filed a mandamus lawsuit alleging school board had a duty to extend the charter.

The District Court granted school board's motion for involuntary dismissal. Charter school appealed.

The Court of Appeal held that school board operated within its discretion when it declined to extend the charter for charter school for an optional fifth year.

City school board operated within its discretion when it declined to extend the charter for charter school for an optional fifth year; statute provided that a charter school had an initial term of four years, following the initial four-year term, the charter school's term "may be extended" to a maximum term of five years, pending a review after the third year, the charter agreement stated the term of agreement was for five years and that "Approval to operate during the fifth year of the initial term shall be contingent upon the results of a review conducted after the completion of the third year as provided for in state statute," and company that performed an extension review of charter school recommended in its report that the charter not be extended for a fifth year based on unsatisfactory findings in the financial and organizational areas.

EDUCATION - NEW YORK

Garcia v. New York City Department of Health and Mental Hygiene

Court of Appeals of New York - June 28, 2018 - N.E.3d - 2018 WL 3147611 - 2018 N.Y. Slip Op. 04778

Parents of children enrolled in child care programs brought action against city department of health and mental hygiene, commissioner of department, and city board of health, challenging board's amendments to city health code mandating that children who attended city-regulated child care or school-based programs receive annual influenza vaccinations.

The Supreme Court, New York County, granted parents' motion to permanently enjoin defendants from implementing and enforcing amendments and defendants appealed. The Supreme Court, Appellate Division, affirmed. Defendants appealed.

The Court of Appeals held that:

- Rule was not result of choice between competing public policies;
- Rule was written without benefit of legislative guidance pursuant to board's significant delegated power;
- Legislative inaction did not support finding that rule violated separation of powers doctrine;
- City board of health used special expertise to develop rule;
- Rule did not conflict with state law; and
- State did not preempt field of mandatory school vaccinations.

PUBLIC UTILITIES - NEW YORK

Jacobs v. Metropolitan Transportation Authority

Supreme Court, Nassau County, New York - July 9, 2018 - N.Y.S.3d - 2018 WL 3405441 - 2018 N.Y. Slip Op. 28218

Railroad commuters brought purported class action against Metropolitan Transportation Authority (MTA) and commuter railroad for breach of contract and negligence as alleged consequences of extensive infrastructure problems which needed emergency repair and construction work.

Defendants moved to dismiss.

The Supreme Court, Nassau County, held that action fell under the public interest exception to the notice of claim requirement.

Railroad commuters' purported class action against Metropolitan Transportation Authority (MTA) and commuter railroad for breach of contract and negligence arising from alleged extensive infrastructure problems which needed emergency repair and construction work fell under the public interest exception to the notice of claim requirement, where action case sought to vindicate a public interest, namely that MTA and railroad should have maintained safe and adequate facilities and service in accordance with transportation law, and the disposition of that claim would have directly affected the rights of the public.

ZONING & PLANNING - TEXAS

Collin County v. City of McKinney

Court of Appeals of Texas, Dallas - May 10, 2018 - S.W.3d - 2018 WL 2147926

Home-rule city brought action against landowner and county for declaratory and injunctive relief requiring landowner to obtain plat approval and building permits from city for storage facility within city's extraterritorial jurisdiction and to correct violations and prohibiting county from issuing permits. Landowner sought declaratory and injunctive relief that city lacked authority to require development approval.

The District Court granted and denied each party's summary judgment motion in part, declared that agreement between county and city ceding extraterritorial jurisdiction to city was enforceable, declared landowner was not required to obtain plat approval or building permits from the city, and awarded attorney fees to landowner. County and city appealed.

The Court of Appeals held that:

- City lacked authority to force landowner to obtain permits, inspections and approvals, and pay fees related to developing property;
- Neither agreement between city and county nor local government code gave city authority to require landowner to obtain permits to build;
- Landowner was required to obtain plat approval by city according to terms of agreement between city and county;
- Award of attorney fees was not appropriate.

IMMUNITY - VERMONT

Lorman v. City of Rutland

Supreme Court of Vermont - June 29, 2018 - A.3d - 2018 WL 3203432 - 2018 VT 64

After suffering sewage backups in their homes, homeowners sued city for negligent design, construction, and maintenance or repair of city's public sewer lines, and asserted nuisance, trespass, and constitutional takings claims.

The Superior Court granted city summary judgment. Homeowners appealed.

The Supreme Court or Vermont held that:

- City was immune from homeowners' negligence claim;
- City was immune from homeowners' trespass claim;
- As a matter of first impression, city was immune under discretionary-function immunity from nuisance claim; and
- Sewage backups did not amount to a taking by city.

City was immune from homeowners' claim that city was negligent in its decision to slip-line damaged clay pipes rather than replace the system entirely, in action stemming from sewage backups on homeowners' property; decision on how best to upgrade pipes once they were found to be in disrepair represented a discretionary policy judgment, rather than a ministerial maintenance decision, and required city to balance safety, cost, and environmental factors, as well as other federal and state restrictions on its actions, homeowners true complaint was that city failed to update pipes, and proper design of city's sewer system was required to be left the city.

City was immune from homeowners' trespass claim against city, stemming from sewage backup on homeowners' property after city slip-lined damaged clay pipes, since trespass claim was simply a restated version of negligence claim from which city was immune; homeowners alleged that sewage, wastewater, and water entered their properties due to city's negligence, there was no allegation that city acted intentionally, and there was no indication that any intentional trespass by the city amounted to a physical taking of property.

City was immune under discretionary-function immunity from homeowners' nuisance claim stemming from sewage backups on their property after city slip-lined damaged clay pipes; claim was essentially a restated version of homeowners' negligence claim, from which city was immune, that rested on same discretionary acts, and allowing claim to proceed would have led to same result discretionary-function immunity was designed to avoid, which was having the court second-guess city's discretionary decisions regarding the design of the sewer system.

Sewage backups on homeowners' property after city slip-lined and angled damaged clay pipes did not amount to a taking by city; sewage backups were intermittent, limited, and transient and occurred over a long period of time.

PUBLIC UTILITIES - VIRGINIA

Barr v. Atlantic Coast Pipeline, LLC

Supreme Court of Virginia - July 5, 2018 - S.E.2d - 2018 WL 3300317

Natural gas pipeline company brought action for declaratory judgment against landowners, seeking order affirming company's authority to enter their properties to conduct preliminary surveys and other activities within range of dates.

The Circuit Court entered judgment for pipeline company, and landowners appealed.

The Supreme Court of Virginia held that:

- Companies may enter properties either to satisfy a regulatory requirement or to select the most advantageous location or route for a pipeline;
- Company's proposed activities on landowners' properties fell within scope of statute giving company right to enter and conduct certain activities; and
- Range of dates provided complied with statutory requirement that notice "set forth the date of the intended entry."

PUBLIC PENSIONS - WISCONSIN

[Milwaukee Police Association v. City of Milwaukee]

Supreme Court of Wisconsin - July 6, 2018 - N.W.2d - 2018 WL 3341721 - 2018 WI 86

Police union and firefighters union brought action against city, challenging city's amendment of charter ordinance which changed composition of employee retirement system's pension board.

The Circuit Court granted city's motion for summary judgment. Unions appealed, and the Court of Appeals affirmed. The Supreme Court granted review.

The Supreme Court of Wisconsin held that:

- Term "other rights" in statute included right of each individual employee-member of the system to vote for three employees of his or her choice to become members of the pension board;
- City was prohibited from altering or modifying number of board members; and
- Voting rights were intertwined with a matter of statewide concern.

Term "other rights" in statute granting city opportunity to manage employee retirement system through home rule charter ordinance but prohibiting city from modifying "annuities, benefits or other rights of any persons" included right of each individual employee-member of the system to vote for three employees of his or her choice to become members of the pension board and thereby oversee the continued financial stability of the system; it was these other financially-related rights of individual employee-members that the state required the city not amend or alter.

Term "other rights" in statute granting city opportunity to manage employee retirement system through home rule charter ordinance but prohibiting city from modifying "annuities, benefits or other rights of any persons" included having a meaningful voice on system's pension board, which had three employee board members, and thus city was prohibited from altering or modifying number of board members and could not increase number of board members to 11 by adding three mayoral appointments.

Voting rights of individual municipal employees for membership on municipal employee retirement system's pension board that did not unduly dilute their participation supported and was intertwined with a matter of statewide concern such that city's home rule powers did not permit city to regulate the issue of the board's composition in conflict with state law; legislative protection of retirement benefits for employees, as well as for widows and children of deceased employees, was a matter of public welfare, and therefore, primarily of statewide concern, and financially stable system was promoted by legislature's grant of right to each employee-member to elect three employees to serve on the board in numbers giving meaningful voice to employees' concern for the financial stability of the system.

[MSRB Requests Comment on Amendments to Primary Offering Rules.]

Washington, DC – The Municipal Securities Rulemaking Board (MSRB) today [requested comment on draft amendments to MSRB rules on syndicate practices and disclosure of information related to primary offerings.]

"Today's proposed rule changes are grounded in input we received in response to a retrospective review of primary offering practices in fall 2017," said MSRB President and CEO Lynnette Kelly. "In light of evolving market practices, the MSRB seeks feedback on how these proposed changes might improve the exchange of information among members of the syndicate, and increase transparency for issuers and investors."

The request for comment includes several potential amendments to MSRB Rule G-11 regarding syndicate practices, including requiring senior syndicate managers to provide specified information to issuers and standardizing the process for issuing a "free-to-trade wire" to communicate to all syndicate members at the same time that the new issue is free to trade. The MSRB's request for comment also includes potential changes to MSRB Rule G-32 to, among other things, collect additional information on Form G-32 to support municipal market transparency efforts.

"We are cognizant of the benefits of enhanced information sharing among industry participants and streamlined mechanisms for reporting of data. For example, our proposed changes to Form G-32 seek to leverage data already being submitted by underwriters during the new issuance process," Kelly said.

Comments should be submitted no later than September 17, 2018. Read the request for comment.

Following the public comment period, the MSRB will carefully consider the comments received and may amend the proposal, seek additional input or take no further action at this time. Should the MSRB determine to advance the proposal in the current or amended form, the MSRB would likely be required to submit some or all of the proposal, as amended, to the Securities and Exchange Commission (SEC) for its consideration and approval, in which case there would be a further public comment period. Read more about the rulemaking process.

Date: July 19, 2018

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

SIFMA's Response to MSRB Request for Comment on Draft MSRB Rule G-36, on Discretionary Transactions in Customer Accounts, and Related Draft Amendments.

SUMMARY

SIFMA provided comments to the Municipal Securities Rulemaking Board (MSRB) in response to MSRB Notice 2018-09; request for comment on draft MSRB Rule G-36, on discretionary transactions in customer accounts, and related draft amendments.

Read the SIFMA Comment Letter.

IRS Revises Rate for "Taxpayer Exposure" Penalty Calculations.

When you enter into a closing agreement with the IRS to fix a problem with a tax-exempt bond issue, the IRS will often require a penalty payment in an amount relating to the "taxpayer exposure" on some or all of the bond issue. Taxpayer exposure "represents the estimated amount of tax liability the United States would collect from the bondholders if the bondholders were taxed on the interest they realized from the bonds during the calendar year(s) covered under the closing agreement," as section 4.81.6.5.3.1.1 of the Internal Revenue Manual says. To make this estimate of the tax that the IRS would've collected on the bonds, one must choose an appropriate hypothetical tax rate. In the past, the IRS has typically used 29% as tax rate, representing the IRS's approximation of the average investor's highest tax bracket.

On July 16, the IRS modified this hypothetical tax rate for interest on tax-exempt bonds accruing in tax years after 2017, in a memorandum from Christie Jacobs, the Director of the Indian Tribal Governments and Tax-Exempt Bonds section of the IRS.

Continue Reading

The Public Finance Tax Blog

By Johnny Hutchinson on July 17, 2018

Squire Patton Boggs

How the Volcker Rule Affected Tender Option Bonds.

The Volcker Rule is a federal regulation that went to effect on April 1, 2014. The rule, which is named after former Federal Reserve Chairman Paul Volcker, is actually section 619 of the *Dodd-Frank Street Reform and Consumer Protection Act.*

This rule prohibits banks from using their own accounts for short-term proprietary trading or to invest in hedge or private equity funds. Essentially, this rule prohibits banks from taking on too much risk in an effort to increase profits.

Tender Option Bonds, or TOBs, are structured products that use leverage to increase the overall yield of a municipal bond portfolio. So, let us take a look at how the Volcker Rule impacts these structured muni debt instruments.

Continue reading.

municipalbonds.com

Brian Mathews

Jul 19, 2018

What Dodd-Frank Has Done for Muni Ratings.

WASHINGTON – Federal financial reforms designed to reduce the less favorable treatment by rating agencies of municipal bonds compared to corporate bonds have resulted in higher ratings, fewer downgrades and lower bond yields, according to a just-released research paper.

The paper, titled "The Impact of Dodd-Frank on Credit Ratings and Bond Yields: The Municipal Securities' Case," is among those featured at the Brookings Institution's 7th annual Municipal

Finance Conference. The paper's lead author is Craig Johnson, a professor at Indiana University's School of Public and Environmental Affairs. His co-authors are Yulianti Abbas and Chantalle LaFontant.

The analysis, which focuses on S&P Global Ratings' muni ratings from 2004 to 2014, stems from Johnson's interest in determining whether the Dodd-Frank Act affected munis differently than corporates.

Johnson was starting from some conclusions established by previous work on the corporate market, which found that Dodd-Frank caused credit rating agencies (CRAs) to issue lower ratings in the municipal market.

In academic literature this effect has been termed the "reputational hypothesis," the idea that tighter regulation will cause credit rating agencies to issue more pessimistic ratings in order to protect their reputations.

Johnson and his fellow researchers found the opposite case or "disciplining hypothesis" to be true in the muni market. The disciplining hypothesis states that rating agencies react to new regulation by trying to improve their methodologies to avoid running afoul of the new rules. That's the effect new laws and regulations intend to achieve.

Former Congressman Barney Frank, the Massachusetts Democrat for whom Dodd-Frank was partly named, was particularly interested in trying to get rating agencies to represent risk in the muni market the same way they did for corporates, which would result in higher muni ratings.

Muni market participants have griped for years that this has not been the case, as munis have defaulted at lower rates than similarly rated corporate bonds. While Johnson's study did not analyze the differences in default rates between munis and corporates, he said the question of whether Dodd-Frank was working to level the playing field was central to his work.

"Was this going to put the risk/reward between municipals and other sectors on par?" he asked.

Johnson said his study used S&P ratings because S&P was the only one of the three largest agencies to have not publicly announced a change to its methodology following Dodd-Frank.

Johnson found that the probability a state general obligation bond will be rated higher after Dodd-Frank is 2.7 times greater than before Dodd-Frank. Further, the study revealed that total S&P actions (including rating changes, outlook changes, and watches) decreased by 17.3% and negative actions decreased by about 11.6%. Rating downgrades decreased by 9.51%, while rating upgrades increased by 8.29%.

"Our results provide evidence of greater rating stability after Dodd-Frank and are consistent with the disciplining hypothesis," the researchers wrote.

The study also looked at bond yields and found that they were lower across all asset classes after Dodd-Frank. It found no change among unrated bonds, suggesting that the ratings were affecting the yields rather than other market forces.

Johnson and his colleagues concluded that their results highlighted "the consequences of the gaping holes in the patchwork system of municipal disclosure."

Unlike in the more tightly regulated corporate market, he told The Bond Buyer, credit rating agencies may play an outsize role in providing information to municipal investors.

“Even though the municipal market in general, and state government GO bonds in particular, represent a low-risk sector of the fixed income market, CRAs not only certify to the interpretation of publicly available information, but they may also reduce the uncertainty associated with a system lacking complete and timely disclosure,” Johnson wrote.

Johnson, who has his PhD from the State University of New York at Albany, has been researching municipal finance topics for many years. He previously published work on tobacco bonds, government borrowing costs, and the impact of Dodd-Frank on the fiscal management of state and local governments. Before that, he worked as a budget analyst for the state of New York and as a legislative policy analyst at the New York State Assembly.

By Kyle Glazier

BY SOURCEMEDIA | MUNICIPAL | 07/16/18 07:04 PM EDT

Why Munis are a Great Buy.

All the focus in the fixed income world is currently centered around whether the yield curve will invert. However, investors should know something-the yield never inverts in municipal bonds. That’s right, the muni yield curve has never inverted. The reason why being that short-term munis are always very rich, with small supply and high demand. However, looking at longer-term yields, munis look like a great buy. While the average ten-year muni yield is only 2.43% versus 2.86% for Treasuries, for any investor in a tax bracket above 15%, buying munis makes more sense.

FINSUM: *The current spread between ten-year munis and Treasury bonds makes the former look like a smart purchase right now, especially because the market seems to be in healthy shape.*

Nasdaq

July 18, 2018, 10:03:13 AM EDT By dkorth@finsum.com (FINSUM), FINSUM

Blockchain Bonds – Raising Money for City Projects.

When Berkeley vice mayor Ben Bartlett saw President Donald Trump announce the December 2017 tax bill that would reduce corporate tax by 14 percent, it sparked an idea in him, and blockchain bonds were born.

The tax decrease implemented by the Trump administration decreased any real incentive corporations had to seek tax breaks by investing in projects that the government deemed “noble,” such as affordable and senior housing.

Issuing micro-bonds

The answer, according to Bartlett, may rest in a pilot program that was recently approved unanimously by the city council to use blockchain technology to issue micro-bonds that could raise money for various city projects, such as affordable housing.

The blockchain bonds pilot program is still at the fine-tuning stage, but it would allow the city to issue micro-bonds in amounts of $10 to $25, which is substantially lower than the current minimum of $5,000.

Such a move would make the bonds more accessible to more people.

“These bonds — we call them micro-bonds because they’re small — are really cool because you can target them to make one building,” claimed Bartlett.

“They’re extremely flexible like that because the cost is so low, and they’re fast, too. The micro bond proposal is leveraging the blockchain to crowdfund bonds, essentially. You can also do geotargeting to the bond.”

“Blockchain technology is attractive because it allows you to instantly record transactions indelibly, and it can’t be altered,” Bartlett said.

“When you can do that, you lower the cost so much on issuance that you can make the bond available for 25 cents, honestly.”

Affordable and homeless housing

Initial plans are for the blockchain bonds pilot test to begin sometime in the fall, with the first project being a USD 3 million firetruck, which Bartlett believes will provide something “attractive and visual for the community to see.”

The firetruck is just the beginning, with more pressing issues on Bartlett’s mind, such as affordable and homeless housing.

He’s also looking at the idea of using blockchain technology to secure voting, as well as managing internet of things (IoT) applications like connected city vehicles and street lighting.

Working towards this goal, Bartless and Mayor Jesse Arreguin have launched the Berkeley Blockchain initiative in partnership with the Blockchain Lab at the University of California, which applies technology to municipal finance.

“Currently, governmental entities sell their bonds to banks who then resell the bonds to numerous intermediaries before reaching an investor,” Bartlett wrote on Medium.

“Each intermediary charges fees and markups. The UC Berkeley Haas Institute estimates that bond issuers lose approximately $4 billion annually as a result of this process.”

“There’s a lot more people using facilities, a lot more people needing housing and a lack of funding,” Bartlett said. “How do you avoid bankruptcy, how do you stall the growth of homelessness? How do you keep people well? One way to do that is to let the jurisdiction increase wealth for itself.”

Crypto Disrupt

by David Cullinan
Lover of all things crypto, blockchain and AI, professional tech scribe & part of the editorial team at Crypto Disrupt.

July 17, 2018

Bonds on the Blockchain: Streamlined, Low-Cost, Transparent Funding

Berkeley, Calif., is getting ready to test using blockchain to issue micro bonds to raise money for city projects, such as affordable housing.

City staff are fine-tuning plans for a pilot test of a program the city council unanimously approved on May 2 that would let the city issue micro bonds in amounts of $10 to $25 — much lower than the current minimum of $5,000. That would make bonds more accessible to more people.

“These bonds — we call them micro bonds because they’re small — are really cool because you can target them to make one building,” said Ben Bartlett, the city’s vice mayor. “They’re extremely flexible like that because the cost is so low, and they’re fast, too. The micro bond proposal is leveraging the blockchain to crowdfund bonds, essentially. You can also do geotargeting to the bond.”

Blockchain is a decentralized digital ledger in which transactions are quickly recorded. Benefits of the technology include greater security and transparency.

“Blockchain technology is attractive because it allows you to instantly record transactions indelibly, and it can’t be altered,” Bartlett said. “When you can do that, you lower the cost so much on issuance that you can make the bond available for 25 cents, honestly.”

The pilot test will likely start in the fall and raise funds for a $3 million firetruck, he said — something “attractive and visual for the community to see.”

But Bartlett has bigger applications in mind. One is to address Berkeley’s shortfall in affordable and homeless housing. Beyond that, he’s looking to use blockchain to secure voting and managing internet-of-things applications such as street lights and connected city vehicles. For this goal, Bartlett and Mayor Jesse Arreguin launched the Berkeley Blockchain Initiative with the Blockchain Lab at the University of California at Berkeley and Neighborly, which applies technology to municipal finance.

“Currently, governmental entities sell their bonds to banks who then resell the bonds to numerous intermediaries before reaching an investor,” Bartlett wrote on Medium. “Each intermediary charges fees and mark ups. The UC Berkeley Haas Institute estimates that bond issuers lose approximately $4 billion annually as a result of this process.”

Issuing bonds via blockchain would disrupt this process by letting government entities, nonprofit organizations and owners of properties that provide low-income housing, for example, to issue micro bonds directly, removing the middle man and democratizing asset ownership, he wrote.

The idea came to Bartlett after a series of actions by President Donald Trump. One was the December 2017 tax bill that reduced corporate tax rates from 35 percent to 21 percent. That decreased the incentive corporations had to seek breaks for investing in things the government finds “noble,” such as affordable and senior citizen housing, Bartlett said.

Last year, Trump suggested pulling federal funding from UC-Berkeley after protests turned destructive, and as part of his immigration reform plan, he’s threatened to withhold funding from sanctuary cities such as Berkeley, which limit their cooperation with federal agencies on immigration enforcement.

"There's a lot more people using facilities, a lot more people needing housing and a lack of funding," Bartlett said. "How do you avoid bankruptcy, how do you stall the growth of homelessness? How do you keep people well? One way to do that is to let the jurisdiction increase wealth for itself."

Because the municipal bond market is worth about $3.8 trillion, Berkeley's proposal is attracting attention. Bartlett said he's spoken about the idea in front of 120,000 people at various conferences and fielded calls from at least 30 cities, several states and even other countries. "Everyone's seeking this new way to speed capital and improve their communities," he said.

The Berkeley city council isn't the first public-sector entity to consider blockchain for government applications. Delaware is looking into using blockchain to streamline the incorporation process for companies that want to form Delaware-based businesses.

The Illinois Blockchain Initiative, a consortium of state and county agencies that explores ways to leverage the technology, has partnered with identity solutions firm Evernym to provide self-sovereign digital identities.

According to a 2017 report by the National Association of State Chief Information Officers, potential use cases for blockchain include property, finances, public and private records and physical asset keys.

GCN.Com

By Stephanie Kanowitz

Jul 16, 2018

About the Author
Stephanie Kanowitz is a freelance writer based in northern Virginia.

U.S. SEC Panel Recommends Review of Electronic Bond Trading Rules.

July 16 (Reuters) – The U.S. Securities and Exchange Commission should form a working group with two of its regulatory counterparts to review and harmonize the rules they use to police electronic corporate and municipal bond-trading platforms, an SEC subcommittee said on Monday.

The regulation of electronic fixed income trading venues varies depending on the business models and trading protocols of the venues, increasing the potential for investor harm, systemic risk and unfair competition, said a subgroup of the SEC's Fixed Income Market Structure Advisory Committee.

The group of industry professionals recommended that the SEC, the Financial Industry Regulatory Authority and the Municipal Securities Rulemaking Board consider creating a unified regulatory framework for all fixed income electronic trading platforms.

Some bond trading venues are regulated as alternative trading systems (ATSs), some are regulated as broker-dealers, while other major platforms operating similar models are not regulated at all, the group said.

"Without a unifying regulatory framework for all fixed income electronic trading platforms, market structures will likely fragment further as regulators adopt new regulations that apply to only one type of platform," they said in a statement.

For example, the regulation of ATSs largely reflects how trading occurs in the equity markets, and excludes electronic platforms that use a "request for quote" model, which are regulated as broker dealers. There is also at least one major municipal and corporate bond trading platform that does not fall under any U.S. regulatory oversight, the subcommittee said in its recommendation.

"These distinctions in regulatory oversight complicate efforts to improve the efficiency and resiliency of the fixed income electronic trading markets," the group said.

(Reporting by John McCrank in New York Editing by Marguerita Choy)

Public Pension Funding Crisis: Who Was Jeremy Gold And Why Should You Care?

The bottom line: public pension plans' poor funding levels would be even worse if they were accounted for the way that private pension plans are, the fact that their accounting methods differ has contributed to the funding crisis, and Jeremy Gold was either a prophetic or foolish in attempting to call attention to this fact.

Let's start with more actuary-splaining:

Actuarial valuations . . . in the corporate world

In the corporate pension world, there are two types of actuarial valuations: accounting valuations and funding valuations. The former determine what liabilities and expense are recorded on the company's books, and the latter determine what contributions the employer will make to the pension fund, or define a range of choices.

The interest rate — or, in actuarial terminology, the discount rate (since you're discounting to the present, the present value of a future benefit) — for accounting valuations is pretty nearly the corporate bond rate; once upon a time, it was just a generic bond rate; then more attention was paid to ensuring that the duration of the bond rate is equivalent to the duration of the plan liabilities (that is, simply defined, that the weighted average of the future payouts of the bond index match the future payouts of the pension plan); now most companies use a yield curve to determine the discount rate.

Continue reading.

Forbes

by Elizabeth Bauer
Contributor

Jul 17, 2018

An Assumed 'Treasury Put' May Have Doomed Puerto Rico Bond Investors.

Was the Detroit bankruptcy a turning point in the municipal bond market?

For years, bond investors snatched up debt issued by the Puerto Rican government, even as the island's economic and fiscal situation deteriorated. What's more, bond yields never rose high enough to reflect the risk Puerto Rico clearly displayed.

Many investors are now suffering. A 2009 Puerto Rico general obligation bond traded last month at 42 cents on the dollar.

A new academic paper suggests those market conditions may not have been as off-base as they look now, in the aftermath of a debt default, the creation of an oversight board, and bitter battles between bondholders, government officials, bond insurers, and many other counterparties.

Continue reading.

Market Watch

July 19, 2018

Wall Street Banks Want Muni Whistle-Blower Suit Dismissed.

- **Top underwriters say complaint lacks specificity, knowledge**
- **Size of municipal VRDO market estimated at about $160 billion**

Eight banks that help sell municipal bonds for Illinois asked a judge to dismiss a $1 billion lawsuit accusing them of fraud and collusion.

The remarketing agents for variable-rate demand obligations say that the suit filed on April 5 by Edelweiss Fund LLC under the Illinois False Claims Act doesn't identify specific statements made by any of the defendants, false or otherwise. They also claim that it's based upon conjecture rather than inside knowledge; and that the majority of deals cited were done through conduits "made on behalf of non-State entities who bear all of the financial risks of the transactions."

The banks seeking dismissal of the lawsuit are: Morgan Stanley; JPMorgan Chase & Co.; Citigroup Inc.; Bank of America Corp.; Barclays Capital; Fifth Third Bancorp; William Blair & Co.; and BMO Capital Markets Corp.

Michael Lissack, a spokesman for Edelweiss, declined to comment.

'Robo-Reset'

Variable-rate securities are long-term municipal bonds whose rates are reset periodically and are puttable back to the issuer. Remarketing agents set the rates and often take bonds that have been put back into inventory for resale.

Instead of "actively and individually" marketing and pricing bonds at the lowest possible interest rates, 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," the Edelweiss lawsuit alleged. The suit was filed by a group of whistle blowers on behalf of the state of Illinois.

"Defendants 'Robo-Reset' these rates in order to keep the bonds in the hands of their holders, and thus alleviate the need for defendants to remarket the bonds," the suit said.

The lawsuit alleged that this method of setting rates kept those rates artificially high, and that it cost Illinois issuers $349 million. It sought triple that amount in damages and penalties.

In the early years of this century, issuers sold between $30 billion and $60 billion of such debt annually, often in conjunction with interest-rate swaps, according to Thomson Reuters Deals Intelligence.

In 2008, they sold more than $115 billion in such paper as they refinanced both auction-rate and insured floating-rate debt, as the auction market froze and insurance companies were downgraded. Since then issuance has dwindled, totaling $5 billion in 2017. The total size of the outstanding VRDO market is about $160 billion, according to data compiled by Bloomberg.

Bloomberg Markets

By Joe Mysak

July 17, 2018, 7:33 AM PDT

Why Didn't Investors Demand Higher Yields for Buying Puerto Rican Government Bonds?

For years, Puerto Rico's economic and fiscal picture was deteriorating. Between 2005 and 2013, real GDP declined by 15 percent, while between 2000 and 2015 Puerto Rico's government liabilities to GDP grew from 70 percent to 109 percent. Nevertheless, investors continued to purchase millions of dollars of Puerto Rico's bonds with only a modest risk premium. In a paper to be presented at the 2018 Municipal Finance Conference, *"What Went Wrong? The Puerto Rican Debt Crisis and the 'Treasury Put,'"* three economists from the University of Illinois at Chicago ask why investors were so willing to continue to lend to Puerto Rico.

Their answer: investors assumed the federal government would ultimately bail out Puerto Rico.

[T]he Treasury Put is an "implicit guarantee by the federal government to provide support in the event of financial distress by the issuer of Puerto Rican bonds as perceived by investors."

"The expectation of a federal bailout was perfectly reasonable given past behavior by the federal government, especially the prior bailout of New York," authors Robert Chirinko, Ryan Chiu, and Shaina Henderson say. However, when the government refused to bail out the city of Detroit in 2013, investors realized their assumptions about a federal bailout for Puerto Rico were wrong. This provided a natural experiment to measure the value of what they call the "Treasury Put." Per the authors, the Treasury Put is an "implicit guarantee by the federal government to provide support in the event of financial distress by the issuer of Puerto Rican bonds as perceived by investors." The authors say their work challenges the view of some analysts, including the Government Accountability Office, that the Puerto Rico debt crisis was the result of inadequate disclosure by Puerto Rico of its financial condition. The authors begin by comparing the yields on privately insured and uninsured Puerto Rican general obligation bonds issued on the same days between the years

2000 and 2013, relative to the yields on Aaa, Baa, and junk-rated corporate bonds. Using that data, they estimate the risk premium that investors demand for buying uninsured Puerto Rican debt, and find it to be "exceptionally low," given Puerto Rico's fundamentals. This, they say, "was eminently reasonably given the expectation of financial support from the U.S. Treasury."

Continue reading.

The Brookings Institute

by Joseph Figueroa and David Wessel

Monday, July 16, 2018

Present Consequences of Unfunded Pension Liabilities and Ways Forward.

State governments with large unfunded pension liabilities are paying more to borrow from capital markets than are other states, according to Chuck Boyer of the University of Chicago Booth School of Business.

In the paper, *"Public Pensions, Political Economy and State Government Borrowing Costs,"* to be presented at the 2018 Municipal Finance Conference at Brookings this week, Boyer argues that markets view states with large pension deficits as riskier investments. His evidence suggests that states are already paying for municipal government's unfunded pension liabilities in the form of higher borrowing costs. He asks two questions: 1) how are state governments' borrowing costs affected by unfunded pension obligations? and 2) do states with political constraints face higher borrowing costs?

Boyer constructs a panel dataset using each state's Comprehensive Annual Financial Reports for the period 2005 to 2016. He focuses on balance sheet variables—revenues, expenses, assets, and liabilities—to capture a state's financial health and credit default swap (CDS) spreads – the premium paid to protect buyers from an issuer defaulting – to measure borrowing cost. The author reasons that CDS reflects market sentiments better than market yields because CDS are more liquid, and because they are standardized, whereas market yields may be affected by additional features of a particular bond.

Continue reading.

The Brookings Institute

by Jeffrey Cheng and David Wessel

Monday, July 16, 2018

MSRB Chief Economist Examines Decline of Transaction Costs for Customer Trades in the Municipal Bond Market.

Washington, D.C. – The Chief Economist of the Municipal Securities Rulemaking Board (MSRB), the self-regulatory organization that oversees the municipal securities market, today shared his analysis on the steady decline of the effective spreads for customer trades in the municipal bond market. Dealer-to-customer spreads (also known as "mark-up"), which measure costs paid by investors to execute a trade, dropped by 51 percent to 73 basis points between 2005 and early 2018, signaling a more efficient market.

"Our analysis shows that effective spreads have fallen substantially since 2005 for customer trades of less than $1 million par," said MSRB Chief Economist Simon Wu. "We found that while bond characteristics, such as percentage of insured bonds, average yield and average trade size, had an impact on the declining spreads, it was likely MSRB regulatory activities, transparency initiatives and advancements in trading technology that drove more than half of these changes."

Transaction Costs for Customer Trades in the Municipal Bond Market: What is Driving the Decline? summarizes previous research on spreads and emerging issues regarding municipal market liquidity and municipal bond transaction costs. Using transaction data between January 2005 and April 2018, and methodologies to control for idiosyncratic municipal bond characteristics, Wu confirmed the results of previous studies. His research affirmed that dealers earn lower average mark-ups on trades over $1 million, while also showing that these high par trade spreads have remained relatively consistent since 2005.

The report also proposes considerations for future research to evaluate the post-dealer compensation disclosure environment arising from MSRB Rule G-15 mark-up changes that went into effect on May 14, 2018.

The MSRB studies market structure issues related to municipal securities as part of its mission to promote a fair and efficient market. It welcomes input from stakeholders on additional research ideas that would contribute to a better understanding of market dynamics. Access MSRB data reports and analysis.

Wu is responsible for economic analysis of MSRB rulemaking and municipal market transparency initiatives and leads related economic analysis of the financial markets. His previous report, *Municipal Bond ETFs: Liquidity Impact on the Municipal Bond Market*, explores the growth of exchange-traded funds in the municipal securities market.

Date: July 18, 2018

Contact: Jennifer A. Galloway, Chief Communications Officer
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MSRB Adds New Municipal Market Yield Curves to EMMA.

Check 'em out here.

EMMA Now Provides Free Access to Bloomberg BVAL's AAA Callable Yield Curve.

Here she is.

MSRB Adds a AAA Callable Yield Curve from IHS Markit.

MSRB adds a AAA callable yield curve from IHS Markit to the free tools and resources on its EMMA website for understanding muni market trends.

States Sue U.S. to Void State and Local Tax Deduction Cap.

NEW YORK — Four U.S. states sued the federal government on Tuesday to void the new $10,000 cap on federal deductions for state and local taxes included in President Donald Trump's 2017 tax overhaul.

The lawsuit by New York, Connecticut, Maryland and New Jersey came seven months after Trump signed the $1.5 trillion overhaul passed by the Republican-led Congress, which cut taxes for wealthy Americans and slashed the corporate tax rate.

Critics have said the cap would disproportionately harm "blue" states that tilt Democratic.

Tuesday's lawsuit adds to the many legal battles between such states, including several with high taxes, and the Trump administration, which was accused of unconstitutionally intruding on state sovereignty by imposing the cap.

"The federal government is hell-bent on using New York as a piggy bank to pay for corporate tax cuts and I will not stand for it," said Andrew Cuomo, New York's Democratic governor.

A spokeswoman for the Department of the Treasury said that agency was reviewing the complaint. The department, Treasury Secretary Steven Mnuchin and the Internal Revenue Service are among the defendants.

Taxpayers have long typically enjoyed unlimited federal deductions for state and local taxes, known as SALT deductions.

Under the cap, individuals and married taxpayers filing jointly who itemize deductions may deduct only up to $10,000 annually for state and local income, property and sales taxes.

The four states said the cap will depress home prices, spending, job creation and economic growth, and impede their ability to pay for essential services such as schools, hospitals, police, and road and bridge construction and maintenance.

According to the Tax Foundation, the four states and California, which all favored Democrat Hillary Clinton in the 2016 presidential election, may be particularly hard hit, based on SALT deductions as a percentage of adjusted gross income.

New Yorkers claimed an average $22,169 SALT deduction in 2015, the Tax Policy Center said.

UPHILL BATTLE

David Gamage, an Indiana University tax law professor, said the lawsuit faces an uphill battle, despite suggesting that keeping the SALT deduction was a factor when states in 1913 gave Congress power to levy income taxes through the 16th Amendment.

"I think it's very unlikely that it succeeds," he said. "The Supreme Court has generally given Congress wide latitude in carrying out its taxing power, especially in setting deductions. It would be a pretty dramatic change of direction to allow this lawsuit."

In the complaint filed with the U.S. District Court in Manhattan, the four states said a $10,000 cap "effectively eviscerates" a deduction that has been on the books since 1861.

They also said it will force New York taxpayers alone to pay $14.3 billion more in federal taxes this year, and another $121 billion through 2025, when the cap is scheduled to expire.

By imposing the cap, Congress was able to "exert a power akin to undue influence" over states by interfering with their authority to decide taxes and fiscal policy, the lawsuit said, quoting Supreme Court Chief Justice John Roberts.

In May, the Treasury Department said it would propose regulations to stop states from circumventing the cap.

New York, Connecticut and New Jersey had already adopted "workarounds" letting taxpayers fund municipal services by paying into specified funds, and claiming deductible charitable contributions.

The case is New York et al v Mnuchin et al, U.S. District Court, Southern District of New York, No. 18-06427.

By Reuters

July 17, 2018

(Reporting by Jonathan Stempel in New York; Additional reporting by Jason Lange in Washington; Editing by Susan Thomas and James Dalgleish)

U.S. Conference of Mayors and Ohio Mayors Alliance Release Report on Ohio Metro Economies.

The U.S. Conference of Mayors and the Ohio Mayors Alliance today released a report on July 19, 2018 on the importance of Ohio city metro areas to the future growth of the Ohio economy. The report highlights that in 2017, 83.5% of the State's jobs and 86.1% of its wages were generated in Ohio's 14 metro areas. 85.1% of the State's economic output in 2017 occurred in its metro regions. All three economic indicators have risen over the last two decades.

Since 2000 Ohio's city metros accounted for all of the State's job gains and 87% of its economic output gains. During the same period the metro proportion of state jobs is 1.3% higher.

By the end of 2018, the report projects that the unemployment rate in five Ohio metros will be at or below 4.0% (Columbus 3.3%; Cincinnati 3.5%; Dayton 3.7%; Springfield 3.7%; and Lima 4.0%). All but three Ohio metros will have unemployment rates of 5.0% or below.

The report also forecasts that over the two year period (2019-2020) Columbus will lead Ohio job employment growth with an average annual gain of 1.60%. But in the 2021-2022 period, Columbus will be the only Ohio metro with employment gains.

The report concludes that Ohio cannot grow unless its city metro areas do, and that Ohio's regional economies will best be served by aggressively transitioning to new and emerging industries while preserving their manufacturing base.

The report was released in conjunction with the Ohio Mayors Alliance and was prepared by IHS Markit.

Oregon Weighs Record Bond for Housing as Real Estate Prices Jump.

- **Metro put $653 million affordable housing bond on ballot**
- **As people flock to area, home prices are rising out of reach**

The Oregon agency that runs Portland's zoo is behind the biggest bond measure in the state's history to build homes. For humans.

Metro, a municipal entity known for running the Oregon Zoo and natural areas around Portland, is asking voters in November whether they want to borrow $653 million to build and renovate housing for people priced out of the booming local real estate market. The move would expand the purview of Metro, which was created in 1978 to oversee the zoo, as well as land use, transportation and waste management in three counties.

Over the years, Metro, which is the only directly elected regional U.S. government, has expanded its responsibilities. It's a "natural evolution" of the agency to take on affordable housing as an influx of high-income earners puts homes out of reach for many residents, said Nick Fish, an elected Portland commissioner who's helping to lead the bond campaign.

"Working-class families are being priced out of every part of the region," Fish said in an interview. "We're seeing a one strike and you're out economy, where people are one job loss, one medical emergency, one unforeseen crisis away from being on the street."

Up and down the West Coast, cities are grappling with the downside of a nearly decade-long economic boom that's brought skyrocketing residential real estate prices and an increase in homelessness. In November, California voters will consider $6 billion in housing-related bonds on the state ballot, and San Franciscans may tax large businesses to provide services to the large homeless population in the technology-industry hub.

While high housing prices typically boost municipal tax collections, they can also limit economic growth, said Chris Morgan, director at S&P Global Ratings. Amid constrained supply of homes and labor shortages in the construction industry, growth in economic output in the far west — which includes Alaska, California, Hawaii, Oregon and Washington — fell to the third fastest in the U.S. last year from first in 2016, according to an April report from the company.

"We're seeing the cost of housing as potentially representing more of an economic challenge in the near term," Morgan said in an interview.

About 80 people a day are moving to the Portland area, according to a Metro analysis of last year's

Census data. The median sale price of a home has risen by 56 percent over the last five years, faster than the 31 percent growth nationally, figures from real estate brokerage Redfin show.

The Metro bond measure aims to create homes for 7,500 people. It can serve up to 12,000 if voters also approve a state constitutional amendment that would allow the proceeds to go to affordable housing developers that work with local governments. Currently, funds from general-obligation bonds can't flow to private entities. Homeowners would pay an average of $5 a month, or 24 cents per $1,000 of assessed property value, to cover the cost of the added debt.

Metro would distribute the funds to its three counties — Multnomah, Washington and Clackamas — based on assessed value. The local governments would decide on projects that best fit their needs, such as easing homelessness in Portland or building senior facilities in Lake Oswego, an affluent suburb, Fish said.

Support is so broad for the initiative that the historically tax-skeptical Portland Business Alliance endorsed it, Fish said.

"The time is right for this," he said.

Bloomberg Markets

By Romy Varghese

July 20, 2018, 9:30 AM PDT

Green-Bond Sales Surge Toward Record as Borrowers Burnish Brands.

- **New issues by U.S. companies reach $6.7 billion through July**
- **American businesses still lagging the rest of the world**

If the bond market is any guide, Corporate America is hugging a lot more trees than last year.

Sales of green bonds by U.S. companies in 2018 have already topped last year and are on pace for a record, according to data from the Climate Bonds Initiative. The pickup hasn't been fueled so much by a desire to fatten the bottom line — there's no clear and consistent evidence of a pricing benefit — rather many companies want to burnish their brands and satisfy investor demand.

"The main thing that we find that makes corporates want to issue is they already have a fairly robust sustainability program with a focus on the environment," said Suzanne Buchta, global head of environmental, social and governance debt capital markets at Bank of America Merrill Lynch. "Green bonds give them an opportunity to share that same story with another audience, which is the fixed-income investors who have green bond money."

Governments, companies and institutions issue green bonds to fund projects that are supposed to help the environment or climate, though the exact definition is open to interpretation — leading some to criticize the nascent asset class. The first time a U.S. corporation sold a green bond was in 2013. Since then, issuers have included Tesla Inc., Apple Inc., Toyota Motor Corp. and BofA.

The European Investment Bank and World Bank started issuing green bonds in 2007. The global market has grown exponentially, of which the U.S. market remains a small fraction. Last year, global issuance soared to an all-time high of $173 billion and estimates for 2018 are around $200 billion, data compiled by Bloomberg New Energy Finance show.

In the U.S. green bonds usually need third-party verification and ongoing reporting, which adds extra costs. Typically, they are priced in line with similar assets and there is no evidence borrowers get a discount. This may be keeping some would-be players on the sidelines.

“I think what we’re seeing is corporates are very sensitive about the pricing benefit that they may or may not get from the green bond market,” said Matthew Kuchtyak, an analyst at Moody’s Investors Service. “And the general evidence research to date has shown that there is not necessarily a pricing benefit in the primary market for green-bond issuers.”

But advocates for green bonds argue benefits like investor diversification and a positive marketing story are worth it.

“It’s so easy for U.S. corporates to raise money lately, it might take a correction before people realize the benefits of an investor marketing edge,” said Sean Kidney, chief executive officer of the Climate Bonds Initiative, an organization that promotes green bonds.

Bloomberg Business

By Shelly Hagan

July 18, 2018, 7:25 AM PDT

— With assistance by Daniel Shurey, and Aiman Mallah

Municipalities Could Benefit from Issuing More Green Bonds.

Editor’s Note: *This paper will be presented at the 2018 Municipal Finance Conference on July 16 & 17, 2018. The conference is a collaboration of the Brookings Institution’s Hutchins Center on Fiscal and Monetary Policy, the Brandeis International Business School’s Rosenberg Institute of Public Finance, Washington University in St. Louis’s Olin Business School, and the University of Chicago’s Harris Institute of Public Policy. It aims to bring together academics, practitioners, issuers, and regulators to discuss recent research on municipal capital markets and state and local fiscal issues.*

A green bond is one whose issuer commits to using 100 percent of bond proceeds for environmentally friendly purposes. For instance, municipalities can use green bonds to fund projects focused on renewable energy, clean transportation, sustainable water management, or climate change adaptations, among others. In a paper to be presented at the 2018 Municipal Finance Conference at Brookings, Malcolm Baker and George Serafeim of Harvard Business School, Daniel Bergstresser of Brandeis International Business School, and Jeffrey Wurgler of the NYU Stern School of Business find that yields at issue for green municipal bonds are on average 0.06 percentage points below yields paid on otherwise equivalent bonds.

The paper, “Financing the Response to Climate Change: The Pricing and Ownership of U.S. Green Bonds,” provides an overview of the U.S. municipal bond market covering 2,083 municipal bonds labeled green by Bloomberg, and another 643,299 ordinary municipal bonds, issued between 2010 and 2016. The annual issuance of bonds identified as green rose from less than $500 million a year (or less than 0.18 percent of total annual municipal issuance) in 2010 to 2013 to over $2 billion in 2014, and totaled $6.5 billion (or 1.9 percent of total municipal issuance) in 2016. Most environmentally sensitive projects, such as pollution control and mass transit, are still funded by ordinary bonds, as the table below shows. Therefore, municipalities could, and perhaps should, already be issuing green bonds in far greater numbers, the authors say.

Continue reading.

The Brookings Institute

by Finn Schuele and David Wessel

Monday, July 16, 2018

BDA RECAP: Members Participate in Capitol Hill Fly-in on FINRA Rule 4210 & Host Congressional Fundraiser.

On Thursday, July 12, BDA members participated in a Capitol Hill fly-in, and hosted a fundraiser for Representative Bill Huizenga (R-MI), Chairman of the House Financial Services Committee's Subcommittee on Capital Markets, Securities and Investment. The primary focus of the meetings was amendments to FINRA Rule 4210.

BDA members in attendance:

- Brian Brennan, KeyBanc Capital Markets
- Lana Calton, Hilltop Securities
- David Medanich, Hilltop Securities
- Demetri Patikas, Vining Sparks
- Guy Yandel, George K. Baum & Co.
- Don Winton, Crews & Associates
- Ron Bernardi, Bernardi Securities

BDA members met with the following congressional offices:

- Rep. French Hill – Arkansas
- Rep. Steve Stivers – Ohio
- Rep. David Kustoff – Tennessee
- Rep. Jeb Hensarling – Texas (Chairman, House Committee on Financial Services)
- Sen. Tom Cotton – Arkansas
- Sen. Rob Portman – Ohio
- Sen. John Cornyn – Texas
- **Policy discussion:**

In April, FINRA asked the SEC to delay Rule 4210 amendments to March 2019, indicating that many market participants have requested that FINRA reconsider the potential impact of amended Rule 4210 on smaller and medium-sized broker-dealers. BDA and its members are supportive of this delay and would like FINRA and the SEC to reconsider these amendments.

BDA believes that the 4210 amendments represent a regulatory overreach by FINRA:

FINRA is using a broad statutory authority of the Securities and Exchange Act in an attempt to adopt a systemic risk rule, potentially violating congressional intent.

BDA believes that the 4210 amendments are anti-competitive to BDA members:

The margin requirements will push small- to medium-sized dealers out of the trading of these securities with larger buy-side institutions. BDA expects large buy-side institutions to halt trading these securities with BDA members due to practical demands.

The amendments could actually create systemic risk as they may consolidate the trading of these securities into a fewer number of counterparties instead of the broad number and kind of counterparties who currently trade these securities.

BDA expects large buy-side institutions to manage their exposure with smaller dealers by reducing trading and outstanding volumes to below the Rule's gross open position limit of $10 million, making the required movement of margin unlikely.

BDA has also asked FINRA to consider allowing dealers to take a capital charge instead of requiring them to enter into margining agreements with customers:

A capital charge would allow dealers to remain competitive with money manager accounts and still manage any systemic risk.

Next steps:

BDA staff will continue to engage Capitol Hill on Rule 4210, and are working to gather further congressional support for a letter to regulators expressing the concerns of small and mid-sized broker-dealers with Rule 4210.

Specifically, BDA is working towards a rescission of the 4210 amendments, but is also engaging regulators on a capital charge, which would make the rule and amendments more tenable for BDA members.

Bond Dealers of America
July 17, 2018

Fitch: Nacogdoches Hospital (TX) Bondholders Not Insulated from Weak Operations.

Fitch Ratings-New York-19 July 2018: Recent news that Nacogdoches County Hospital District, Texas (NCHD) has retained attorneys to consider debt restructuring has sparked commentary that this is an example of uncertain bondholder protections in bankruptcy. Fitch Ratings believes this case demonstrates the importance of making a cautious and accurate assessment of the legal protections afforded to bondholders.

BONDS DO NOT MEET HIGH FITCH BAR FOR RATING DISTINCT FROM IDR
The sales tax bonds benefit from an ordinary pledge and security structure for municipal debt and are in our view at risk of automatic stay under Chapter 9 of the U.S. bankruptcy code (the code) and an interruption of payment during the proceedings. There is a plausible argument for special revenue treatment, but we set a high bar for considering debt as supported by special revenues under section 902(2)(E) of the code. (For more information, see "Fitch Rates Marin Healthcare District, CA's Series 2017 GO Bonds 'AAA', dated Aug. 23, 2017.) Even in the event of a stay, an issuer can choose to continue to pay debt obligations while in bankruptcy, and NCHD has that option

with respect to the sales tax bonds. Nevertheless, Fitch has rated the debt below investment grade since April 2017, with a current rating of ‘CC’, indicating that default of some kind appears probable.

RATING MIGRATION REFLECTS WEAK FUNDAMENTALS
In April 2017 we concluded a review that resulted in a downgrade of NCHD’s sales tax revenues bonds to ‘B’/Rating Watch Negative due to weakness in its revenues and operations, as well as its unwillingness to tap unused property tax capacity to support its operating solvency. We also concluded that the bonds did not meet our high bar for special revenue analysis and had not been issued under a specific state securitization law. In September 2017 we downgraded the rating to ‘CC’ based on continued deterioration of operations and severely weak liquidity.

In April 2016 Fitch revised its criteria for rating tax supported debt. In that revision we introduced the Issuer Default Rating (IDR) as a measure of an issuer’s operating solvency, and we clarified and provided strict limitations on when we felt there was a reasonable basis to rate a dedicated tax supported security distinct from and higher than an issuer’s IDR. Ratings could be distinct from an IDR under three legal structures that have clear protection in a Chapter 9 bankruptcy proceeding: “special revenue” obligations under section 902(2) of the bankruptcy code, securities issued through a securitization structure and intercept structures under state law. We also considered in the review whether the untapped taxing capacity of a hospital district or hospital authority should be incorporated into an IDR. In August 2016, we placed ratings related to NCHD and 24 other hospital districts and authorities on Rating Watch Evolving as we evaluated the underlying legal structures.

FITCH REVIEW OF PRIOR LEGAL OPINION
At the time of the initial downgrade and assignment of a ‘B’ IDR in April 2017, Fitch reviewed a legal opinion provided by outside counsel that concluded that the transaction is essentially a sale of the tax revenues to the bond trustee acting for the benefit of bondholders and not a borrowing by NCHD. Counsel further concluded on that basis that the tax revenues are not property of NCHD and would not be within its bankruptcy estate.

Fitch had two concerns with the analysis that leads to this legal conclusion. One, Fitch does not believe that there is sufficient legal precedent for us to adopt the true sale analysis in our rating based on the Texas statute cited. Further, as the opinion itself indicated, there is no common law precedent that addresses the proper characterization of the transfer of assets by a municipality in this type of situation. Two, as a factual matter, the transaction is described in all offering materials as a borrowing and is reported in the accounting statements of the municipality as a borrowing. There is no indication that the parties intended to treat the transaction as a true sale.

As a result, it is Fitch’s assessment that there is not a reasonable basis to support a rating above the issuer’s IDR. Fitch will only rate a transaction as a true sale in the context of a specific state statutory scheme authorizing the sale as a part of a comprehensive securitization law such as those adopted in New York and Illinois for tax revenues and other revenue sources in various states. For more information see “What Investors Want to Know: Chicago Sales Tax Securitization” dated Nov. 28, 2017.

ELEMENTS OF SPECIAL REVENUE ANALYSIS
Legal opinions serve as the basis for Fitch’s consideration of whether bonds are secured by pledged special revenues. In addition, the following elements must be present that make clear the pledged revenues are not general operating revenues for general purposes of the debtor, sufficiently reducing the incentive to challenge special revenue status in a bankruptcy:

–A statutory scheme limiting the authority to levy a specific tax to the financing of capital projects.

–An express statutory prohibition on use of any revenues from the taxes for operations of the municipality, unless Fitch has a reasonable legal basis by which to determine that the pledged revenues would not be subordinated to operating expenses in a bankruptcy. If any residual revenues can be used for the entity's operations and are at risk of being subject to netting, Fitch will consider them to be general revenues and rate the issue as unsecured debt.

–An identification of specific capital projects in a ballot initiative or in a resolution limiting the use of proceeds of the debt to those capital projects; for refunding bonds, it should be clear that the bonds being refunded meet this criterion.

–A structure in which bondholders do not have a claim on general revenues of the municipality, where the bonds are solely secured by a dedicated tax (general obligation bonds supported by the entity's full faith and credit will typically not meet this criterion).

–A statutory requirement that a governmental official outside the municipality (e.g. the county) collects and remits the tax revenues to the paying agent, placing the funds outside the control and direction of the municipality. A statutory lien on the pledged revenues reduces the incentive to challenge special revenue status sufficiently to substitute for this requirement.
Clarity that the pledged taxes are property of the municipality and would not be considered at any point the property of the entity collecting and remitting the tax revenues; absent this, the rating would be capped at the collector's rating.

Since NCHD's pledged revenues are a general sales tax available for operations as well as debt service, Fitch had no basis to consider the bonds to be secured by pledged special revenues.

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[Fitch: U.S. Colleges and Universities Show Stable Liquidity for FY2017 Despite Pressures.]

Fitch Ratings-Chicago-20 July 2018: Both public and private U.S. colleges and universities demonstrated stable debt burdens and liquidity in fiscal 2017 in the face of growing operating pressures, according to a Fitch Ratings' median report. Trends highlighted in the median report and the Fitch Analytical Comparative Tool (FACT) show level debt burdens and steady to improving liquidity against expenses in fiscal 2017.

Median operating results for both public and private universities were generally stable in fiscal year-end 2017 after declining in fiscal 2016 despite clear pressures on non-tuition revenue sources. These pressures include flatter state funding, continuous federal spending and budgetary pressure, and evidence of a constrained cash flow environment in healthcare. However, the credit fundamentals of the sector remain evident, as debt burden and coverage levels remained steady in fiscal 2017.

Fitch's U.S. College and University FACT is an interactive, point-in-time comparative assessment of Fitch-rated U.S. colleges and universities. It allows market participants to compare key financial metrics for public and private higher education institution against the rated portfolio, rating category, regional peers, and over time.

Fitch's published median report for U.S. private and public colleges and universities and FACT are available at www.fitchratings.com.

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Wells Fargo Sees 'Historically Tight' High-Yield Muni Spreads.

Lyle Fitterer, head of municipal fixed income at Wells Fargo Asset Management, examines muni spreads and the outperformance of high-yield municipal bonds. He speaks with Bloomberg's Taylor Riggs in this week's "Muni Moment" on "Bloomberg Markets."

Watch video.

TV Shows – Bloomberg Markets

July 19th, 2018, 9:02 AM PDT

Public Pensions Adopt Cost Sharing Mechanisms to Stem Volatility.

- **Maine and South Dakota pensions tweak cost of living increases**
- **About a third of states have funds sharing risk with workers**

In spring 2016, Sandy Matheson, the executive director of the Maine Public Employees Retirement System, was panicking.

After earning 2 percent the previous fiscal year, record low bond yields and global stock market turmoil were dragging the pension's returns even lower — and further away from its 6.9 percent assumed annual return.

She modeled government pension payments under a scenario where investments returned 4 percent a year for four years and then 6.9 percent thereafter. The result: government contributions would increase every year until 2032, reaching 21 percent of payroll from 10 percent.

"My hair was on fire," Matheson said. "[I was] near hysterical at the thought of what's going to happen if we continue on earning less than our discount rate. We'd just be cutting benefits."

Risk Sharing

Matheson, with the help of the fund's actuarial firm, Cheiron, put together a plan in which the risks of investment gains and losses weren't just assumed by taxpayers, but shared between local governments, their employees and retirees. Maine adopted the risk-sharing plan for municipal employees that participate in the system starting the fiscal year than began July 1. Matheson plans to brief lawmakers on extending it to state employees and teachers.

"The goal of the model is to prevent any kind of damage or harm to the plan, due to the volatility in the markets," Matheson said. "Employer rates have always gone up and down with the market but both employee and employer rates will now go up and down. They'll share in market risk."

Most U.S. public pensions were fully funded as recently as 2000, but the collapse of the internet bubble and the Great Recession caused by the financial crisis of 2008 — combined in some cases with years of contribution shortfalls and unfunded benefit increases — resulted in pension debt exceeding $1 trillion. Between 2003 and 2013 the cost of making required pension payments almost doubled, according to a 2017 report from the Pew Charitable Trusts.

In response, some pensions have adopted formal cost-sharing mechanisms, adjusting contributions or benefits, instead of making unplanned benefit cuts or contribution increases. Almost 30 defined benefit pension plans in 17 states use cost-sharing mechanisms to manage risk, according to the Pew report.

Some states, such as Illinois and New York, have constitutional or statutory prohibitions on changing retiree benefits.

Capped Rates

Maine capped contribution rates by municipalities at 12.5 percent and 9 percent for employees, giving both parties certainty about how high costs would go to make up for investment losses. If pension losses exceed the capped contribution rates, retiree cost of living adjustments are reduced. Maine's local governments and employees share in investment gains and losses at a 55 percent to 45 percent split.

Had Maine’s plan been in effect after the financial crisis, contribution rates would have increased to 12.5 percent and 9 percent and held there for five years. Retirees would have had a 30 percent annual reduction in cost of living adjustment for seven years, according to Gene Kalwarski, chief executive officer at Cheiron, a McLean, Virginia-based actuarial and financial consultancy.

“Under a traditional plan, you have one lever that deals with something like a recession, that’s the employer contribution,” Kalwarski said. “Here we’ve got the COLAs as well as the member contributions that reduce what otherwise would have been an employer contribution spike.”

When the markets rebound and investment gains exceed the assumed investment return, the COLA would increase until reaching a cap of 2.5 percent. Further gains would allow employers and employees to reduce contributions for services performed by current members when the plan is fully-funded, to a minimum of about 14 percent, 7.7 percent for employers and 6.2 percent for employees.

That would have served the pension well in the 1990s when roaring stock market gains allowed governments to stop making annual contributions, Kalwarski said.

Cost Adjustment

In South Dakota, where employer and employee pension contributions are each fixed in law at six percent of pay, the state adopted a plan that changes cost of living adjustments depending on the funding status of the pension, said Rob Wylie, executive director of the South Dakota Retirement System.

“We were looking for ways to have the plan move with the marketplace, reward the plan when times were good, but also contract the plan when times were not so good,” Wylie said. In most other public pensions “the benefits aren’t the flex point, the contributions are.”

South Dakota’s pension is 100 percent funded. If the funding level falls below 100 percent, the cost of living adjustments can be moved between 0.5 percent and 3.5 percent depending on the plan’s funded status and inflation. If the ratio of the pension’s assets to liabilities falls below 80 percent, certain ancillary benefits must be cut, in addition to the cost of living adjustments.

While beneficiaries know their cost of living adjustments may vary depending on the market, their defined benefit payment is secure, Wylie said. Before the pension adopted its new structure in 2016, South Dakota’s actuary estimated that cost of living adjustments represented 25 percent of its total liability.

“A defined benefit puts all the risk on the employer and defined contribution puts all the risk on the member,” said Kalwarski. “Why put it on one side completely? Those shouldn’t be your only choices.”

Bloomberg Markets

By Martin Z Braun

July 17, 2018, 6:18 AM PDT

Wall Street's Muni-Bond Traders Feel Pinch as Fees Keep Tumbling.

- **Mark-ups decline for ninth straight year, regulator finds**
- **Transparency, electronic trading cutting costs for customers**

Wall Street's muni-bond traders keep getting pay cuts.

The fees they reap from buying and selling customers' securities have fallen steadily for the past nine years as electronic trading expanded and regulators moved to inject more transparency into the $3.8 trillion market, according to a study released Wednesday by the Municipal Securities Rulemaking Board.

The average fee — measured by the difference between what a dealer and a customer pay or receive for a security — dropped to 73 basis points by early this year, less than half what it was in 2005, Simon Wu, chief economist for the MSRB, found.

Municipal Bond Effective Spread for Customer-Buy and -Sell Trades (2005–2018) Source: MSRB
"Our analysis shows that effective spreads have fallen substantially since 2005 for customer trades of less than $1 million," Wu said in a statement.

Regulators have been steadily seeking to improve the information available on the state and local-government bond market, which is dominated by individual investors. In 2005, the MSRB began requiring same-day disclosure of trading prices, allowing bondholders to gauge where the market is trading before buying and selling securities. In May, new rules took effect that will require dealers to disclose the fees on many trades, a step that some analysts said may continue to push costs down.

Bloomberg Markets

By Danielle Moran

July 18, 2018, 11:17 AM PDT

S&P Credit FAQ: An Update To Our U.S. And Canadian Not-For-Profit Transportation Infrastructure Enterprises Criteria Implementation.

With S&P Global Ratings' updated criteria, "U.S. And Canadian Not-For-Profit Transportation Infrastructure Enterprises," taking effect March 12, 2018, a review of the sector has followed. Market participants have inquired about the issuers reviewed and any rating impact to date. This article answers frequently asked questions on the topic.

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Jul. 18, 2018

S&P U.S. Municipal Toll Road Ratings And Outlooks: Current List

U.S. Toll Road Operator Ratings As Of July 16, 2018

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Jul. 18, 2018

S&P U.S. Public Port Facilities Ratings And Outlooks: Current List

U.S. Port Facilities Ratings As Of July 13, 2018

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Jul. 18, 2018

S&P U.S. Public Parking Facilities Ratings And Outlooks: Current List

U.S. Public Parking Facility Ratings As Of July 16, 2018

Continue Reading

Jul. 18, 2018

Four Reasons Taxpayers Should Never Subsidize Stadiums.

Elected officials have been played by team owners and sports leagues.

Your tax dollars are being wasted, on an enormous scale, by uncompetitive socialist enterprises that ignore the basic rules of economics.

I refer, of course, to the practice of politicians who give taxpayer dollars to subsidize the business of sports by paying for the construction and/or renovation of stadiums and arenas. These exercises in crony capitalism make no sense whatsoever. There has never been a decent reason to subsidize these successful businesses, which rarely produce a real return on the public's investment. Nor is civic pride a justification.

The bottom line here is very simple: The cost of building and maintaining these facilities should be borne by the people who attend these events via their ticket purchases, and not the people of an entire state and/or metropolitan region, the vast majority of whom will never set foot inside these enormously costly structures.

Continue reading.

Bloomberg Opinion

By Barry Ritholtz

July 16, 2018, 9:00 AM PDT

[4 States Just Sued Over the Federal Tax Law. Here's Why They Might Lose.]

Connecticut, Maryland, New York and New Jersey argue that new GOP tax policies violate states' rights and unduly punish their populations.

Four blue states sued the federal government on Tuesday over tax changes that the GOP-controlled Congress adopted in December.

Connecticut, Maryland, New Jersey and New York filed a joint lawsuit alleging that the federal government's new $10,000 cap on deductions for state and local taxes is unjust because it violates the U.S. Constitution's Equal Protection Clause and the 10th Amendment, which protects states' rights.

Calling the deduction cap an "unconstitutional assault" on state governance, the lawsuit accuses the federal government of meddling in state taxation and fiscal policies by making it more difficult for them, politically, to raise revenue if needed.

Continue reading.

GOVERNING.COM

BY LIZ FARMER | JULY 17, 2018

S&P: Will Wildfires Scorch California's Utilities?

Electric utilities in California are facing operational and financial risks from natural disasters that could potentially weaken their credit quality. In particular, the recent heightened risk associated with potential wildfire-related liabilities is a growing concern and presents an immediate threat to California's regulated electric utilities.

Continue Reading

Jun. 18, 2018

P3 Digest for July 19, 2018

Would Trump's Proposed Federal Capital Revolving Fund Boost Large Federal Infrastructure Projects & Would P3s Have a Role?

Earlier this year, President Trump called for the establishment of a $10 billion revolving fund, which would be used to finance large federal civilian real property projects. Such a fund could help to blunt the impact of the Office of Management and Budget (OMB) scoring rules on these projects. (The OMB scoring rules generally require agencies to have sufficient discretionary budget authority to fund the entire amount of a capital project in year one, although exceptions exist for projects funded through the General Services Administration's Federal Buildings Fund that qualify as "operating leases."). In a recent article posted in Covington & Burling's Inside Government Contracts blog, attorneys Peter Terenzio, Justin Ganderson and Sandy Hoe discuss the significance of the fund and raise a number of important questions.

This proposed funding mechanism, which is known as the Federal Capital Revolving Fund or the Federal Capital Financing Fund, would permit agencies for budgeting purposes to separate certain real property capital investments from their operating expenses, which is similar to what state and local governments do. Agencies would essentially borrow from the revolving fund to pay for the entire cost of acquiring a capital asset and then repay the fund in interest-free, annual installments from their discretionary budgets. This structure would allow agencies to avoid seeing the entire amount of the project scored against their discretionary budgets in the first year.

Although the proposed revolving fund would provide a way for agencies to pay for certain civilian real property projects, Terenzio, Ganderson and Hoe raise a few questions and offer several observations about the fund.

For example, the Covington attorneys note that under the proposed framework, OMB "appears to have positioned itself as a gatekeeper" to the fund, but has "not identified the criteria that would be used to 'review' an agency's potential project" to determine whether it should be able to tap into the fund. And "if the criteria are too restrictive then otherwise meritorious projects could go unfunded."

The White House's proposal also stipulates that, although the fund will be capitalized at the outset through $10 billion in mandatory appropriations, only $2 billion in outlays can be made in any one year. Terenzio, Ganderson and Hoe observe that many federal projects are likely to be far more costly, and this spending cap could cause agencies to develop projects that do not fully meet near- or long-term needs.

Given the apparent annual cap on the fund, Terenzio, Ganderson and Hoe ask whether the revolving fund could be supplemented through an agency's discretionary funding in year one. They argue that such a "hybrid" funding approach "could provide agencies with more flexibility to meet long-term real estate needs and could help facilitate larger projects."

The authors also ask whether private financing could be used to supplement the revolving fund, possibly through the establishment of public-private partnerships, and comment that P3s are "increasingly being considered by state and local governments, and even the federal government, to expand the fiscal base on which these governmental entities provide services to their constituents."

Although there is no guarantee that Congress will implement the revolving fund, Terenzio, Ganderson and Hoe conclude in their article that if Congress fails to do so, "agencies will be forced to continue to address their real property infrastructure needs under the constraints that flow from the current OMB scoring rules."

Finally, when we asked the authors whether there had been any notable developments since they published their article, they commented that OMB Director Mick Mulvaney sent a letter on July 9 to Senator Richard Shelby (R-AL), the chairman of the Senate Committee on Appropriations, to reiterate the importance of the fund and to indicate that the Trump Administration previously "transmitted legislative language on June 12, 2018 and looks forward to working with the Congress to enact the [Federal Capital Revolving Fund] proposal." Mulvaney had sent a letter that included an expression of support for the revolving fund to Representative Rodney Frelinghuysen (R-NJ), the chairman of the U.S. House of Representatives Committee on Appropriations in June 2018.

Municipal Bonds Weekly Market Report: Consumer Confidence Remains High, Despite Tariff Trouble

MunicipalBonds.com provides information regarding the performance of muni bonds for the past week in comparison with Treasury yields and net fund flows, as well as the impact of monetary policies and relevant economic news.

- Treasury yields were mixed, while municipal yields dropped this week.
- Muni bond funds turned back to inflows this week.
- Be sure to review our previous week's report to track the changing market conditions.

Continue reading.

municipalbonds.com

Brian Mathews

Jul 17, 2018

Credit Ratings Agency Offers Dim Outlook for Rural America.

Population declines, an aging workforce and sluggish job growth pose challenges.

Demographic and economic trends will pressure the finances of local governments in rural America in the coming years, a credit ratings agency said in a report issued Thursday.

Moody's Investors Service notes that employment in rural areas is lagging, as the population contracts and the workforce grows older. Last year, total employment in rural counties was down 4.3 percent from 2007 levels, whereas in urban counties it was up 7.5 percent.

Of the country's roughly 2,000 rural counties, according to Moody's, 69 percent had fewer people working in 2017 than in 2007.

"The fact that rural counties have fewer jobs today than 10 years ago indicates a diminished economic base from which local governments derive revenue, a credit trend that will continue to challenge much of rural America," the report from the ratings agency says.

The uphill battle is steeper for rural areas that lack sizable oil and gas industries or tourism. And while agriculture jobs have expanded they remain a relatively small share of total employment.

People moving to cities and declining birth rates, the report notes, have contributed to an erosion of the country's rural population by 0.5 percent between 2010 and 2017. During that same time period, the urban population in the U.S. grew by more than 6 percent.

Federal policies could further complicate the situation.

Tariffs imposed by the Trump administration will likely hurt manufacturing and agriculture in rural regions, according to Moody's.

And last year's federal tax cuts are unlikely to spur widespread, rural growth, "because rural areas are still at a disadvantage in competing for new investment, given their shrinking working-age population and an unreliable pipeline of future employees," the report says.

With economic headwinds threatening tax revenues, some rural local governments are also dealing with higher costs, Moody's notes.

The report points to Caldwell County, Kentucky as an example.

Between 2007 and 2017, the population there dropped every year. But the county estimates that jail and ambulance costs increased to $1.7 million from $824,000.

Moody's says some rural local governments are keeping their finances sturdy, in part, by taking steps to raise revenues and slash spending. But there's a caveat: localities could risk driving away people and businesses if taxes become too high or services deteriorate too far.

Route Fifty

By Bill Lucia,
Senior Reporter

JULY 19, 2018

Bill Lucia is a Senior Reporter for Government Executive's Route Fifty and is based in Washington, D.C.

TAX - COLORADO

Wal-Mart Stores, Inc. v. Pikes Peak Rural Transportation Authority

Colorado Court of Appeals, Div. VII - May 17, 2018 - P.3d - 2018 WL 2253038 - 2018 COA 73

Retail store operators brought action against rural transportation authority for a declaratory judgment that transportation authority could not collect sales and use taxes from operators' stores located on land that was annexed by a home-rule city before the stores were built.

The District Court entered summary judgment for transportation authority. Store operators appealed.

The Court of Appeals held that:

Annexation did not remove the land from the transportation authority's boundaries, and City's plenary authority over municipal taxation, as provided for in the state constitution, did not preempt transportation authority from collecting sales tax from the stores.

Home-rule city's annexation of previously unincorporated land did not remove the land from the rural transportation authority's boundaries, and thus the annexation did not preclude transportation authority from being able to collect sales and use taxes from retail stores that were built on the land; a municipality's annexation power did not permit it automatically to remove territory from other political subdivisions of the state, such as regional transportation authorities, particularly where removal of territory from such political subdivisions was governed by other statutory provisions, and the statutory procedure for removing land from transportation authority's boundaries was not followed.

TAX - NEW HAMPSHIRE

Polonsky v. Town of Bedford

Supreme Court of New Hampshire - June 28, 2018 - A.3d - 2018 WL 3203439

Taxpayer brought action against town, challenging a tax deed issued after he failed to pay real estate taxes. Parties filed cross-motions for summary judgment.

The Superior Court concluded that the tax deed was valid, that the town could recover a penalty, but that taxpayer's inability to recover excess proceeds from the sale of the property would constitute a taking. Taxpayer appealed, and town cross-appealed.

The Supreme Court of New Hampshire held that:

- Town's alleged failure to notify taxpayer at least 90 days before its decision to offer property for sale did not require invalidation of tax deed, and
- Under statute governing a municipality's sale of property acquired via tax deed, a former owner cannot recover excess proceeds from a municipality after the three-year period has elapsed.

Wells Fargo Takes $8.7 million Arbitration Hit Over Puerto Rican Bonds.

Finra panel says firm and broker are liable for damages, interest, fees and costs

A Financial Industry Regulatory Authority Inc. arbitration panel has awarded clients of Wells Fargo almost $8.7 million over the firm's handling of sales of Puerto Rican municipal bonds.

The panel found that Wells Fargo and Marc Rogers, one of its brokers, are jointly liable for paying Sylvia and Sammy Kaye Duncan and the couple's revocable trust approximately $4.18 million in compensatory damages, $832,000 in interest, $2.7 million in attorney's fees, $500,000 in punitive damages, $206,000 in costs and $102,000 in monetary sanctions.

Finra said that Wells Fargo and Mr. Rogers would be responsible for paying interest on the total of $8,575,767.43 owed to the claimants at the rate of 9% per year from July 19, 2018 until paid in full.

The Duncans claimed that in their sales of the Puerto Rican bonds, Wells Fargo and Mr. Rogers breached their fiduciary duties, recommended unsuitable securities and investment strategies, were negligent, engaged in unauthorized trading and made negligent misrepresentations and omissions, as well as engaged in manipulative and deceptive practices.

InvestmentNews

Jul 20, 2018

New York Dominates Next Week's Municipal Bond Deals.

NEW YORK (Reuters) – New York will bring the biggest U.S. municipal bond deal to market amid an overall weak supply load next week, issuing nearly $1.2 billion of future sales and income tax-backed debt to help finance capital projects in the Big Apple.

The New York City Transitional Finance Authority is set to issue $850 million of negotiated future tax-secured subordinate bonds and another $301 million of competitive taxable future tax-secured subordinate bonds in a three-part series. J.P. Morgan will act as the deal's underwriter.

The bonds earned a AAA rating from S&P Global Ratings and an A-one rating from Moody's Investors Service.

The strong ratings are due in part to New York City's diverse and resilient economy, favorable bond provisions and a large population that supports the future sales and income taxes the bonds are secured by, S&P said.

In another major New York-focused deal next week, the Dormitory Authority of the State of New York is set to issue $559.04 million in taxable Montefiore Obligated Group Revenue Bonds Series 2018A and 2018B. The bonds, from the Montefiore Medical Center, will be used for refinancing of certain existing debt and reimbursement purposes.

Outside of a handful of large deals, which also includes the Idaho Health Facilities Authority's sale of $314.9 million of revenue bonds, the municipal market is poised to suffer through a sleepy week ahead.

Next week will bring $5.31 billion in bond debt issuance, with $4.23 billion in tax exempt and $1.08 billion in taxables, and a sharp drop-off from the current week's $9.22 billion of scheduled deals.

Meanwhile, U.S. municipal bond funds have reported an inflow surge compared to last week. Those funds saw $1.3 billion of net inflows in the week ended July 18, the most in more than a year, and a surge from the $651 million recorded the previous week, according to data released by mutual fund tracker Lipper on Thursday.

The four-week moving average remained positive at $535.4 million, said Lipper, a unit of Thomson Reuters. High-yield muni bond funds reported inflows of $313.8 million, down from $313.9 million in the previous week.

by Laila Kearney

Additional reporting by Hilary Russ; Editing by Daniel Bases and Phil Berlowitz

JULY 20, 2018

USDA Partners to Improve Rural Water Infrastructure for Nearly 250,000 People in 103 Communities.

Projects in 35 States Will Improve Quality of Life and Build a Foundation for Rural Prosperity

WASHINGTON, July 16, 2018 – Assistant to the Secretary for Rural Development Anne Hazlett today announced that the U.S. Department of Agriculture (USDA) is investing $267 million in 103 infrastructure projects to upgrade water and wastewater systems in rural communities.

"Robust, modern infrastructure is foundational for quality of life and economic opportunity – no matter what zip code you live in," Hazlett said. "Under Secretary Perdue's leadership, USDA is committed to being a strong partner in addressing rural infrastructure needs to support a more prosperous future in rural communities."

USDA is making investments in 35 states through the Water and Waste Disposal Loan and Grant program. The funds can be used to finance drinking water, storm water drainage and waste disposal systems for rural communities with 10,000 or fewer residents.

Below are some examples of USDA's partnerships in water infrastructure:

- The Sisseton Wahpeton Oyate Tribe in South Dakota will receive a $116,000 loan to help finance storm sewer infrastructure improvements for a new housing development for the tribal members on the Lake Traverse Indian Reservation. The project will create proper drainage for a 37.5-acre site that will consist of 67 lots for new homes.
- The city of Erin, Tenn., will use a $2.1 million loan and a $1.4 million grant to improve its wastewater treatment plant, nearly doubling its capacity. This will help the city recruit more industry. The plant serves the residents of Erin and Tennessee Ridge as well as businesses in the Houston County Industrial Park. However, it is obsolete and very expensive to operate. USDA's investment will benefit 625 commercial and residential customers.
- The town of Alexander, N.Y., in Genesee County, will receive a $2.7 million loan and a $2.2 million grant to create Water District #5. Water quality testing indicates that a significant portion of residents' wells have coliform and E. coli contamination, which poses serious public health threats. This project will alleviate the health problems and extend public water service to 124 residential and three non-residential users in the town who currently do not have safe, potable water.

In FY 2018, Congress provided a historic level of funding for water and wastewater infrastructure. The 2018 Omnibus spending bill includes $5.2 billion for USDA loans and grants, up from $1.2 billion in FY 2017. It also directs Agriculture Secretary Perdue to make investments in rural communities with the greatest infrastructure needs.

Rural community leaders can apply for these funds electronically by using the interactive RD Apply tool. They can also apply through one of USDA Rural Development's state or field offices.

In April 2017, President Donald J. Trump established the Interagency Task Force on Agriculture and Rural Prosperity to identify legislative, regulatory and policy changes that could promote agriculture and prosperity in rural communities. In January 2018, Secretary Perdue presented the Task Force's findings to President Trump. These findings included 31 recommendations to align the federal government with state, local and tribal governments to take advantage of opportunities that exist in rural America. Increasing investments in rural infrastructure is a key recommendation of the task force.

To view the report in its entirety, please view the Report to the President of the United States from the Task Force on Agriculture and Rural Prosperity. In addition, to view the categories of the recommendations, please view the Rural Prosperity infographic.

USDA Rural Development provides loans and grants to help expand economic opportunities and create jobs in rural areas. This assistance supports infrastructure improvements; business development; housing; community services such as schools, public safety and health care; and high-speed internet access in rural areas. For more information, visit www.rd.usda.gov.

Release & Contact Info
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FTA "Dear Colleague" Letter Raises Concerns Regarding Federal Share Treatment of TIFIA and RRIF Loans.

The Federal Transit Administration ("FTA") recently penned a "Dear Colleague" letter regarding the Agency's implementation of the Capital Investment Grants Program, stating that FTA will consider federal loans or financing tools in the context of all federal funding sources for a project, implying that such financing assistance will be calculated as part of a transit project's federal share. Other modal agencies consider federal loan programs, such as TIFIA or RRIF, to be part of a project's non-federal share.[1]

The letter has caused a significant amount of discussion in the industry and on Capitol Hill. Treating federal loans as part of a transit project's federal share would make it more difficult for project sponsors to meet federal-share requirements or to present a favorable benefit-cost ratio.

In response to FTA's letter, Representative Peter DeFazio (D-OR) and Delegate Eleanor Holmes Norton (D-DC), the Ranking Members of the House Transportation and Infrastructure Committee and Highways and Transit Subcommittee, respectively, sent a letter to Secretary Chao saying the policy "directly conflicts with section 603(b)(8) of title 23, United States Code, which clearly establishes TIFIA as a non-Federal share of project costs if the loan is to be repaid with non-Federal funds." House Appropriations Committee Chairman Rodney Frelinghuysen also sent a letter to Secretary Chao requesting clarification on the issue.

As we have noted often, the U.S. Department of Transportation has prioritized innovative project delivery approaches and leverage of federal funds in its administration of discretionary transportation funding programs. If FTA treats TIFIA and RRIF assistance as part of a project's federal share, this would work at cross purposes to the Department's broader efforts to promote innovative project delivery solutions, many of which rely on these low-interest federal financing tools.

[1] The Federal Highway Administration guidance on non-federal share states: "The proceeds of a secured TIFIA loan may be used for any non-Federal share of project costs required under Title 23 or Chapter 53 of Title 49, if the loan is repayable from non-Federal funds. See 23 U.S.C. 603(b)(8) on the terms and limitations of a TIFIA loan."
(https://www.fhwa.dot.gov/ipd/finance/tools_programs/federal_aid/matching_strategies/)

By Shant Boyajian on July 19, 2018

Nossaman LLP

San Francisco Issues Wastewater Infrastructure Green Bonds.

Green bond issuer San Francisco Public Utilities Commission (SFPUC) is seeking both domestic and international interest for its new tranches of Climate Bonds Certified green municipal bonds, of approximately $402 million USD. Proceeds will be used to fund selected projects as part of the SFPUC Sewer System Improvement Project (SSIP), including stormwater, flood resilience, sewage treatment, wastewater, and associated control system infrastructure upgrades and is intended to address aging infrastructure, seismic reliability, combined sewer discharges, rising sea levels and localized flooding. Both the Series A and Series C bonds have been certified by Climate Bonds Initiative (CBI) under the Water Infrastructure Criteria.

18 Jul 2018

IHS Markit Brings Bond Pricing Data to Municipal Securities Rulemaking Board's Market Transparency Platform.

NEW YORK–(BUSINESS WIRE)–IHS Markit (Nasdaq: INFO), a world leader in critical information, analytics and solutions, today announced that its benchmark yield curve for AAA-rated municipal bonds is now available to investors through the Municipal Securities Rulemaking Board's (MSRB) Electronic Municipal Market Access (EMMA®) platform.

The free EMMA website is designated by the Securities and Exchange Commission as the official repository for data and disclosures on more than one million municipal securities.

"MSRB's EMMA website is now in its 10th year of providing free public access to municipal market data, documents and tools that support a fair and efficient market," said Lynnette Kelly, MSRB president and CEO. "We are excited to further enhance investor access to benchmarking and analytical tools with the addition of the IHS Markit yield curve to the EMMA website."

"Investors rely upon yield curves to measure market performance, and we are proud to join forces with MSRB to make IHS Markit data available to the public," said Frank Dos Santos, executive director and Americas head of business strategy for fixed income pricing at IHS Markit. "As a leading provider of municipal bond pricing data, IHS Markit strongly supports the MSRB mission in promoting market transparency and providing investors with a wealth of historical data."

The IHS Markit municipal bond yield curve consists of tax-exempt general obligation bonds with a 5 percent coupon and 10-year call date from AAA-rated state governments. IHS Markit has broad expertise across U.S. municipal markets and prices more than 1.1 million municipal bonds daily.

In addition, IHS Markit provides independent fixed income pricing and liquidity data for risk management, price verification, compliance and trading workflows. The firm's 100-plus fixed income evaluators and best-in-class pricing solution cover more than 2.5 million corporate and sovereign bonds, municipal bonds, securitized products, bank loans and CDS.

About IHS Markit (www.ihsmarkit.com)

IHS Markit (Nasdaq: INFO) is a world leader in critical information, analytics and solutions for the major industries and markets that drive economies worldwide. The company delivers next-generation information, analytics and solutions to customers in business, finance and government, improving their operational efficiency and providing deep insights that lead to well-informed, confident decisions. IHS Markit has more than 50,000 business and government customers, including 80 percent of the Fortune Global 500 and the world's leading financial institutions. Headquartered in London, IHS Markit is committed to sustainable, profitable growth.

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July 19, 2018 12:40 PM Eastern Daylight Time

How Do We Finance Low-Carbon Infrastructure?

Editor's Note: *This blog draws from the new working paper, "Blending climate funds to finance low-carbon, climate-resilient infrastructure," which can be downloaded here.*

INFRASTRUCTURE AND CLIMATE CHANGE

The world's core infrastructure—including our transport and energy systems, buildings, industry, and land-related activities—produce more than 60 percent of all greenhouse gas (GHG) emissions globally. At the same time, the world has significant infrastructure needs. From 2015-2030, approximately $90 trillion of infrastructure investment is needed, a doubling of the global capital stock.

Yet, unless the new infrastructure is low-carbon and climate resilient (LCR), the world will be locked into a high-carbon pathway and will miss the Paris Agreement's goal of keeping the global average temperature increase well below 2 degrees Celsius by 2050. LCR infrastructure includes renewable energy, mass transit, and energy efficiency.

Continue reading.

The Brookings Institute

Joshua P. Meltzer and Christina Constantine

Thursday, July 19, 2018

Sterling in N.Y. Bucks Trend with Expanded Muni Reach.

Sterling Bancorp in Montebello, N.Y., is branching deeper into its home state with a new municipal group focused on an array of nonpublic financing services during a time when loans to bond issuers are on the decline.

The $30.5 billion-asset company, which provides financing to local government banking clients through lease-purchase agreements, direct loans and the purchase of privately placed bonds, has tapped Tammy Leisen from Capital One Financial to lead its new Long Island municipal banking team. The group also includes Karen Bauer and Caryl Caponi, who also worked in municipal finance at Capital One.

Sterling, which acquired Astoria Financial last year, has worked with local governments in New York's Hudson Valley region for more than a decade and has a separate team that provides credit to municipalities on a national level for infrastructure projects such as community lighting, solar energy and public parking. The company is also looking at expanding its municipal banking business in New Jersey.

"The attraction to the Long Island market with its strong business, consumer and municipal demographics is a continuation of our overall corporate strategy to increase market share after the merger with Astoria Bank," said Leisen, who managed a portfolio of more than 80 government clients as a senior vice president at Capital One's Melville, N.Y., office.

"Sterling considers the government banking sector in the greater New York metro market strong and viable, and an excellent place to invest the company's time and resources," Leisen added.

Sterling is expanding its municipal banking business as some banks step back from loans and privately placed bonds for issuers. Kevin Dunphy, managing director and head of public finance for Mitsubishi UFJ Financial Group, said before last year's sweeping federal tax changes, banks conducted a majority of their municipal bond business as direct placements or direct loans.

Private placement bond deals through June 30 are down 57% from a year earlier, according to the Securities Industry and Financial Markets Association.

"Given the reduction of corporate tax rates, banks are uncompetitive with the capital markets and retail investors," Dunphy said. "In addition, some clients feel burned by banks increasing interest rates under margin rate factor clauses. Therefore, they said they would be reluctant to use the product in the future."

Leisen, who was a senior vice president at Wells Fargo for seven years before joining Capital One, said Sterling will work with Long Island localities of all sizes with credit, deposit and treasury management support.

"These bankers have a strong business acumen and broad expertise managing municipal relationships and providing superior client service," Tom Geisel, president of corporate banking, said in a press release. "The expansion of our community banking team is aligned with our growth aspirations, as we continue to increase our Long Island market share."

This article originally appeared in The Bond Buyer.

American Banker

By Andrew Coen

July 20 2018

- Proposed Bonds Arbitrage Regs Clarify Definition of "Investment-Type Property"
- U.S. Chamber of Commerce Comment Letter to IRS on Proposed Bond Arbitrage Regs.
- GFOA: 23rd Annual Governmental GAAP Update
- Seven Things Everyone Asks About Continuing Disclosure: Gilmore Bell
- Municipal Bonds Are Scarce. That's Good News for Borrowers.
- Green Bonds Are in High Demand, But Are They a Better Deal?
- Fitch: Statutory Lien Treatment Lifts AZ, RI Local GO Ratings.
- S&P Live Webcast and Q&A: US Public Finance: Transportation Sector Update – **This Thursday [7/18]**
- And finally, We Just Needed a Little Time to Think it Over is brought to us this week by *Ucci v. Town of Coventry*, in which two brothers sought a declaratory judgment that they were the owners of a disputed strip of land. Town objected, arguing that said strip of land had been dedicated as a public way. Court agreed that an offer of dedication had indeed been made. Court also noted that the Town was required to respond to the offer of dedication within a reasonable amount of time and that – just perhaps – such period had elapsed due to the fact that the offer had been made 67 YEARS AGO. Shout-out to the Town of Coventry, Rhode Island for putting our collective procrastination problems in perspective.

Proposed Bonds Arbitrage Regs Clarify Definition of "Investment-Type Property"

The U.S. Treasury Department and IRS today released for publication in the Federal Register a notice of proposed rulemaking (REG-106977-18) concerning the arbitrage investment restrictions under section 148 that apply to tax-exempt bonds and other tax-advantaged bonds issued by state and local governments.

According to the preamble, the proposed regulations aim to clarify existing regulations regarding the definition of "investment-type property" covered by arbitrage restrictions by expressly providing an exception for investments in capital projects that are used in furtherance of the public purposes of the bonds.

The proposed regulations would affect state and local governmental issuers of these bonds and potential investors in capital projects financed with these bonds.

Comments and requests for a public hearing must be received by a date that is 90 days after the date of publication in the Federal Register (scheduled for June 12, 2018).

Summary
Existing regulations define a catch-all category of "investment-type property" to include any property (other than securities, obligations, annuity contracts, and covered residential real property for family units) held "principally as a passive vehicle for the production of income" including any benefit based on the time value of money.

To clarify the scope of the definition of investment-type property to be consistent with congressional intent, the proposed regulations would provide an express exception to the definition of investment-type property for capital projects that further the public purposes for which the tax-exempt bonds were issued. The preamble offers as an example, investment-type property does not include a courthouse financed with governmental bonds or an eligible exempt facility under section 142 such as a public road financed with private activity bonds.

The regulations are proposed to apply to bonds sold on or after the date that is 90 days after the date that final regulations adopting these rules are published in the Federal Register. The proposed regulations, nevertheless, may be applied by bond issuers for bonds sold before the effective date of such final regulations.

KPMG

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U.S. Chamber of Commerce Comment Letter to IRS on Proposed Bond Arbitrage Regs.

Friday, June 15, 2018 – 2:00pm

Mr. Spence Hanemann
Attorney
CC:PA:LPD:PR (REG-106977-18)
Room 5203
Internal Revenue Service
P.O. Box 7604
Ben Franklin Station
Washington, DC 20044

Via Federal eRulemaking Portal

RE: Arbitrage Investment Restrictions on Tax-Exempt Bonds

Dear Mr. Hanemann:

The U.S. Chamber of Commerce strongly applauds REG-106977-18, which proposes amendments to the tax regulations on the arbitrage investment restrictions under §1481 to allow for greater capital investment in public infrastructure.

The Chamber has long championed the need for an infrastructure package that modernizes our outdated and crumbling infrastructure system. The Chamber has proposed a variety of options that can help increase investment tools in financing and funding infrastructure, including building upon existing federal credit instruments such as Private Activity Bonds (PABs) and expanding eligibility and raising caps on PABs. Accordingly, the Chamber appreciates this proposed clarification of the regulatory definition of investment type property under Regs. §1.148-1(e)(1). It will help ensure investment in public infrastructure is not unnecessarily impeded.

The Chamber appreciates the work of the Treasury and Internal Revenue Service to provide increased access to capital for vital public infrastructure projects. We look forward to working with you to continue to update our tax code and encourage increased investment in our communities.

Sincerely,

Caroline L. Harris and Ed Mortimer

PUBLIC PENSIONS - CALIFORNIA

Hipsher v. Los Angeles County Employees Retirement Association

Court of Appeal, Second District, Division 4, California - June 19, 2018 - 24 Cal.App.5th 740 - 234 Cal.Rptr.3d 564 - 2018 Employee Benefits Cas. 216, 395

Retired employee from county fire department brought action seeking writ of mandate and declaratory relief, challenging retirement benefits forfeiture determination by county employees retirement association.

The Superior Court issued peremptory writ of mandate but found in favor of association with regard to cause of action for declaratory relief. Employee and county appealed.

The Court of Appeal held that:

- Employee's felony conviction for gambling was a condition subsequent that would permit a limited forfeiture of vested retirement benefits under Public Employees' Pension Reform Act (PEPRA), and thus PEPRA did not violate contracts clause as applied to employee;
- Forfeiture provision of PEPRA did not violate ex post facto clause;
- Process afforded to employee in forfeiture proceeding was deficient; and
- Such deficiency prejudiced employee, violating due process.

County retiree's felony conviction for gambling was a condition subsequent that would permit a limited forfeiture of vested retirement benefits under Public Employees' Pension Reform Act (PEPRA), providing for forfeiture of portion of public pensioner's retirement benefits following a conviction of a felony offense that occurred in performance of official duties, and thus PEPRA did not violate contracts clause as applied to county retiree, whose vested retirement benefits were reduced based on finding by county employees retirement association that gambling conduct which gave rise to conviction was committed in scope of official duties, even if no new comparable advantage was provided following modification of pension benefits.

Forfeiture provision of Public Employees' Pension Reform Act (PEPRA), providing for forfeiture of portion of public pensioner's retirement benefits following a conviction of a felony offense that occurred in performance of official duties, did not violate ex post facto clause of state constitution; PEPRA was a civil statute, reduction in retirement benefits was not historically regarded as punishment in penal sense, and preserving pension system by curbing abuses was rational, nonpunitive purpose.

Process afforded to retired county fire department employee, who was convicted of gambling offense, was deficient under due process clause, in proceedings which resulted in forfeiture of portion of retirement benefits, pursuant to provision of Public Employees' Pension Reform Act (PEPRA) providing for benefit forfeiture following conviction for felony that occurred in performance of official duties; issue of contention in proceeding was whether offense was job-related, offense was not per se job-related, employee was not provided notice and opportunity to be heard as to whether conviction was job-related, and, in determining that conviction was job-related, agency relied on Homeland Security reports prepared in federal investigation, but employee was not notified of this review.

Retired county fire department employee was prejudiced by deficiency in process afforded to him in proceedings regarding whether employee's felony gambling conviction was job-related, in which proceedings an affirmative answer to such issue resulted in retirement benefit forfeiture under Public Employees' Pension Reform Act (PEPRA), and thus employee was deprived of due process, where employee's offense was not on its face job-related, employee rejected notion that conviction arose out of performance of official duties, and employee was not given notice or opportunity to contest allegation that conviction was job-related.

LIABILITY - GEORGIA

Harrell v. City of Griffin

Court of Appeals of Georgia - June 27, 2018 - S.E.2d - 2018 WL 3135053

Automobile passenger brought action against city, alleging that, while riding in truck driven by her husband, she was injured in an automobile accident with a police car being driven by a city police officer.

City filed motion to dismiss, alleging that passenger's ante litem notice was insufficient. The trial court granted city's motion. Passenger appealed.

The Court of Appeals held that:

- Ante litem notice given by passenger failed to substantially comply with statute requiring notice to "include the specific amount of monetary damages being sought";
- The amendment to the ante litem notice statute applies prospectively; and
- Amendment to ante litem notice statute affected only procedure or remedy, and thus applying amendment to passenger's ante litem notice filed after effective date of amendment but arising out of tort that occurred prior to effective date did not constitute improper retrospective application of amendment.

LIABILITY - MISSISSIPPI

Estate of Hudson

Supreme Court of Mississippi - June 28, 2018 - So.3d - 2018 WL 3152724

Estate of child who drowned in drainage ditch brought action against city for wrongful death. The Circuit Court granted summary judgment to city. Estate appealed.

The Supreme Court of Mississippi held that:

- City's alleged failure to comply with its ordinances and federal regulations did not give rise to cause of action, but
- Remand was warranted to permit estate to fully present its negligence claim.

Ordinances adopted by city in furtherance of its participation in National Flood Insurance Program

(NFIP) did not establish private right of action against city, either in personal-injury tort or wrongful death.

The statute authorizing municipalities to construct and maintain drainage ditches does not create a right of action or establish a duty of care owed by a municipality to its inhabitants.

Remand was warranted to permit estate of child who drowned in drainage ditch to fully present its negligence claim against city; it was not possible to determine from record whether estate disregarded its claim of dangerous condition based upon its investigation into facts of case or based upon its reliance on prior decision of Supreme Court that was overruled while appeal of estate's case was pending.

OPEN MEETINGS - NEW JERSEY

Kean Federation of Teachers v. Morell

Supreme Court of New Jersey - June 21, 2018 - A.3d - 2018 WL 3062207

Teachers' federation, federation's president, and university faculty member brought action in lieu of prerogative writs against university's board of trustees, alleging violations of the Open Public Meetings Act (OPMA) based on board's alleged failure to make meeting minutes "promptly available" and board's failure to provide proper notice regarding its decision to terminate faculty member's position.

The Superior Court granted summary judgment for plaintiffs as to meeting minutes, issued permanent injunction requiring board to make minutes available within 45 days, and granted summary judgment for board as to notice. Board appealed, and plaintiffs cross-appealed. The Superior Court, Appellate Division affirmed as to meeting minutes and reversed in part. Board petitioned for certification.

After grant of petition for certification, the Supreme Court of New Jersey held that:

- OPMA, including personnel matters in topics which a governing body may consider privately but authorizing exception to that allowance when all individual employees whose rights could be adversely affected request in writing that matter be discussed at public meeting, does not require notice to all potentially affected employees, regardless of whether the employee is adversely affected, whenever a personnel matter appears on a governing body's public meeting agenda, and
- Board's delay of approximately five months in releasing meeting minutes violated OPMA requirement that minutes be made promptly available.

REFERENDA - OKLAHOMA

Oklahoma's Children, Our Future, Inc. v. Coburn

Supreme Court of Oklahoma - June 22, 2018 - P.3d - 2018 WL 3079368 - 2018 OK 55

Objectors brought action challenging legal sufficiency of referendum petition regarding tax revenues.

The Supreme Court of Oklahoma held that:

- Gist of petition was legally insufficient, and

- Petition’s failure to include exact copy of text of measure rendered petition legally insufficient.

Gist of referendum petition, stating that proposition was to repeal bill which had raised listed taxes, including cigarette tax rate, was legally insufficient, where gist failed to inform signatories of measure’s effect on tax framework for little cigars, which was one of only five tax increases that were primary purpose of measure, gist omitted any mention of a hotel and motel tax that would raise roughly $50 million annually, and gist incorrectly characterized a “yes” vote as constituting a rejection of changes to tax law.

Referendum petition’s failure to include exact copy of text of measure, as required by statute, rendered petition legally insufficient, even though text was only missing section numbers and not substantive provisions; strict rather than substantial compliance was required, and section numbers were part of a bill’s text.

FEDERAL COURTS - PUERTO RICO

In re Financial Oversight and Management Board for Puerto Rico

United States District Court, D. Puerto Rico - May 24, 2018 - B.R. - 2018 WL 2425977

In adversary proceeding arising within Commonwealth of Puerto Rico’s debt adjustment case under Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA), trustee appointed pursuant to Restated Sales Tax Revenue Bond Resolution of Puerto Rico Sales Tax Financing Corporation (COFINA), as Commonwealth’s statutory instrumentality, moved to certify questions to the Supreme Court of Puerto Rico.

The District Court held that certification of questions to the Supreme Court of Puerto Rico was not warranted.

Certification to the Supreme Court of Puerto Rico was not warranted of questions related to dispute between Puerto Rico and trustee appointed pursuant to Restated Sales Tax Revenue Bond Resolution of Puerto Rico Sales Tax Financing Corporation (COFINA); while issues were novel and of great importance to the people of Puerto Rico, dispute involved ownership of pledged sales taxes, but ownership would be determined by Puerto Rican law as well as federal bankruptcy law, and certification would also delay resolution of dispute.

DEDICATION - RHODE ISLAND

Ucci v. Town of Coventry

Supreme Court of Rhode Island - June 21, 2018 - A.3d - 2018 WL 3059827

Purported property owners filed a complaint against town seeking a declaratory judgment that they were fee simple owners of disputed strip of land.

Town filed a motion for summary judgment and purported property owners filed a cross-motion for summary judgment. The Superior Court granted purported property owners summary judgment. Town appealed.

The Supreme Court of Rhode Island held that:

- Town conceded that it had never accepted original property owners' offer of dedication, and
- Town forfeited its right to accept the offer of dedication of property.

Town failed to preserve for appellate review its claim that purported property owners' failure to join abutting landowners to their declaratory judgment action, which sought a declaration as to ownership of strip of property, was fatal to their claims, where town, in its affirmative defenses, included a single sentence addressing purported property owners' failure to join an indispensably party but failed to flush out the issue or identify who should have been joined as a party.

Town conceded that it had never accepted original property owners' offer of dedication of strip of property, either by public use or by official action, and thus town was not the fee simple owner of property, in purported property owners' action seeking a declaration they were fee simple owners of property.

Town forfeited its right to accept the offer of dedication of property, where the offer of dedication was made 67 years ago, and town was required to accept an offer of dedication within a reasonable period of time or it would be deemed to have forfeited its right to accept the purported offer.

LIABILITY - UTAH

Colosimo v. Gateway Community Church

Supreme Court of Utah - June 26, 2018 - P.3d - 2018 WL 3132721 - 2018 UT 26

Parents brought wrongful death and survival action against church for negligence, after an improperly wired sign electrocuted their 16-year-old son while he trespassed on the roof.

The District Court granted summary judgment to church. Parents appealed. The Court of Appeals affirmed. Parents' petition for certiorari was granted.

The Supreme Court of Utah held that:

- Church did not owe duty of care to son based on dangerous activity or condition;
- Church did not owe duty of care to son based on attractive nuisance doctrine;
- Parents had burden of providing affirmative evidence to support claim; and
- City's sign ordinance did not create separate duty in tort to protect trespassers.

City ordinance regulating design, construction, and installation of signs did not create separate duty in tort to protect trespassers, and therefore church did not owe duty to trespassing teenaged son, which would have supported parents' negligence-based wrongful death action against church after son was electrocuted on roof by defectively wired sign; ordinance did not explicitly create tort duty, trespassers were not member of class city council intended to protect, as ordinance's purpose was to protect public safety of city residents generally, and ordinance contained no reference to trespassers or anything about roofs.

GFOA: 23rd Annual Governmental GAAP Update

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Seven Things Everyone Asks About Continuing Disclosure: Gilmore Bell

In a vain attempt to be like the trendy media outlets that use odd-numbered lists and slightly misleading headlines as clickbait, we present answers to seven commonly asked questions about the continuing disclosure requirements of SEC Rule 15c2-12.

As anyone who would be interested enough to click on this post surely knows, Rule 15c2-12 generally requires underwriters of municipal securities to (1) review an official statement before an offering and (2) determine that an obligated person has promised to provide certain ongoing information to investors after the offering. In the years following the end of the SEC's Municipalities Continuing Disclosure Cooperation initiative in 2014, many in the industry have been revisiting the continuing disclosure component of the rule. The members of the Gilmore & Bell securities group frequently receive some version of the following questions.

Continue reading.

By: Bill Burns

Posted: July 5, 2018

Gilmore Bell

Headwinds Seen on Horizon for Municipal Bonds.

Municipal bonds turned in a mostly solid performance on Monday as traders prepared for the start of the week's supply.

In a midyear report, Charles Schwab & Co. said that while munis outperformed both Treasuries and corporate bonds in the first half of 2018, it's a trend that may be reversed in the second half.

"We see some headwinds on the horizon for the muni market," Cooper Howard, Schwab's senior research analyst, wrote. "However, we think focusing on higher-rated munis, and keeping average duration within five and eight years, can help investors mitigate the effect of those headwinds on their portfolios."

The firm said munis are less likely to outperform Treasuries in the second half of the year due to technical factors related to tax reform.

"When the 2017 tax reform was being debated, Congress proposed eliminating issuance of certain types of tax-exempt munis," Schwab said. "Due to the potential restrictions, bankers rushed to get deals done that would have otherwise likely been done in the first half of this year. As a result, issuance of munis spiked in the latter part of 2017 and largely dried up at the beginning of 2018. The limited supply of new munis this year helped the municipal bond market outperform both the corporate and Treasury markets. However, due to the rise in yields for long-term Treasuries, investment-grade muni returns are still negative year to date.

"Total returns for munis are down 0.3% this year, largely due to rising long-term Treasury rates," Schwab said in a municipal bond market update released on Monday. "Rising rates likely won't pose a headwind to muni returns going forward because longer-term Treasury rates are closer to their peak in our view."

Schwab argued that low valuations could limit future relative performance. Historically, munis are less likely to outperform Treasuries when relative valuations are low. The 10-year municipals-ove--bonds spread has improved since early May, but is still below its longer-term average, the firm said.

Secondary market

Municipal bonds were stronger on Monday, according to a late read of the MBIS benchmark scale. Benchmark muni yields fell as much as one basis point in the one- to eight-year and 13- to 30-year maturities, rose less than a basis point in the 10- and 11-year maturities and were unchanged in the nine- and 12-year maturities.

High-grade munis were mostly stronger as well, with yields calculated on MBIS' AAA scale falling as much as one basis point in the one- to seven-year and 13- to 30-year maturities, rising less than a basis point in the nine- to 12-year maturities and remaining unchanged in the eight-year maturity.

Municipals were unchanged on Municipal Market Data's AAA benchmark scale, which showed both the 10-year muni general obligation yield and the 30-year muni maturity yield steady.

Treasury bonds were stronger as stocks traded higher.

On Monday, the 10-year muni-to-Treasury ratio was calculated at 85.1% while the 30-year muni-t--Treasury ratio stood at 97.9%, according to MMD. The muni-to-Treasury ratio compares the yield of tax-exempt municipal bonds with the yield of taxable U.S. Treasury with comparable maturities. If the muni/Treasury ratio is above 100%, munis are yielding more than Treasury; if it is below 100%, munis are yielding less.

"The secondary market is not retail friendly," a New Jersey trader said on Monday. "Because of the lack of supply, to part with bonds the buyside accounts are putting out high offerings and people tend to hold onto what they own because it's so hard to replace."

Due to the July redemptions, demand continues to be significantly higher than the volume of bonds coming into the market, he observed. "The Street activity is very quiet and it continues to be all about the new issues," he said. "It's a great time to bring a deal right now."

He predicted that the upcoming weeks and months will be similarly scarce, unless volume dramatically increases.

"I don't see any end in sight to this. It would take an awful lot of negative news to have any effect on the municipal market right now," he said, pointing to the possibility of a substantial calendar or some kind of forced selling. "I've been doing this for 30 years and right now I don't see anything out there right now indicates any forced selling."

Previous session's activity

The Municipal Securities Rulemaking Board reported 27,112 trades on Friday on volume of $4.997 billion.

California, New York and Texas were the states with the most trades, with the Golden State taking 14.031% of the market, the Empire State taking 13.038% and the Lone Star State taking 11.446%.

Prior week's actively traded issues

Revenue bonds comprised 54.42% of new issuance in the week ended July 6, down from 54.68% in the previous week, according to Markit. General obligation bonds made up 39.98% of total issuance, down from 40.01%, while taxable bonds accounted for 5.60%, up from 5.31% a week earlier.

Some of the most actively traded munis by type were from Puerto Rico and West Virginia issuers.

In the GO bond sector, the Puerto Rico Commonwealth 8s of 2035 traded 17 times. In the revenue bond sector, the West Virginia Hospital Finance Authority 4s of 2051 traded 115 times. And in the taxable bond sector, the Puerto Rico Sales Tax Financing Corp. 6.05s of 2036 traded 21 times.

Primary market

Weekly supply is estimated at $6.6 billion, consisting of $5.5 billion of negotiated deals and $1.2 billion of competitive sales.

In the competitive arena, the Massachusetts School Building Authority is selling $200 million of Series 2018B subordinated dedicated sales tax revenue bonds on Tuesday. The financial advisor is Acacia Financial Group; the bound counsel is Mintz Levin.

In the short-term competitive sector, Colorado is selling over $900 million of notes in two separate offerings. The state will also sell $310 million of Series 2018A education loan program TRANS on Tuesday; the financial advisor is Kutak Rock and the bond counsel is RBC Capital Markets. The state will sell $600 million of Series 2018 general fund tax and revenue anticipation notes on Thursday; the financial advisor is North Slope Capital Advisors and bond counsel is Greenberg Traurig.

On Wednesday, the Dormitory Authority of New York is selling $1.81 billion of state sales tax bonds in five deals.

The offerings consist of $497.04 million of Series 2018C Bidding Group 4 bonds; $450.44 million of Series 2018C Bidding Group 3 bonds; $408.63 million of Series 2018C Bidding Group 2 bonds; $377.02 million of Series 2018C Bidding Group 1 bonds; and $73.195 million of Series 2018D taxable bonds. The financial advisor is Public Resources.

Also on Wednesday, the Metropolitan Atlanta Rapid Transit Authority is selling $168.25 million of Series 2018A sales tax revenue bonds. Financial advisors are Hilltop Securities, First Tryon Advisors and TKG & Associates; the bond counsel is Holland & Knight.

In the negotiated sector, Citigroup (C) is set to price Atlanta's $279 million of Series 2018B water and wastewater revenue and refunding bonds on Tuesday.

Citi is also set to price the Mesquite Independent School District, Texas' $125 million of Series 2018 unlimited tax school building bonds, backed by the Permanent School Fund guarantee program.

On Wednesday, Morgan Stanley (MS) is set to price the Maine Health and Higher Educational Facilities Authority's $183.87 million of revenue bonds. The issue consists of Series 2018A tax-exempts and Series 2018B taxables.

N.Y. set for sales

New York City and state issuers will bring a full calendar of offerings in July, it was announced on Monday.

The New York City Comptroller's Office said the NYC Transitional Finance Authority will sell about $1.03 billion of tax-exempt and taxable Building Aid Revenue Bonds. Proceeds from the bond sale will be used to fund education capital projects and refund outstanding bonds. The pricing of around $919 million of tax-exempt fixed rate bonds will take place on Tuesday, July 17, via negotiated sale through TFA's underwriting syndicate for building aid revenue bonds, led by book-running senior manager Ramirez & Co. with Bank of America Merrill Lynch and Jefferies serving as co-senior managers. There will be a retail order period on Friday, July 13 and Monday, July 16. Concurrent with the sale of tax-exempt bonds, the TFA intends to sell $111 million of taxable fixed rate bonds on Tuesday, July 17 via competitive bid.

The NYC Municipal Water Finance Authority also expects to offer $355 million of fixed rate tax-exempt bonds through the Environmental Facilities Corp. via negotiated sale the week of July 16.

And in the week of July 23, the NYC Transitional Finance Authority plans to offer $1.1 billion of fixed rate tax-exempt and taxable future tax secured bonds via negotiated and competitive sales.

The New York State Comptroller's Office released the schedule for planned bond sales for the state, city and their major public authorities in the third quarter.

The sales of $9.05 billion include $5.45 billion of new money and $3.6 billion of refundings as follows: $5.76 billion scheduled for July, of which $3.45 billion is new money and $2.31 billion are refundings; $1.99 billion scheduled for August, of which $700 million is new money and $1.29 billion are refundings; and $1.30 billion scheduled for September, all of which is new money.

The anticipated sales in the third quarter compare to past expected sales of $4.29 billion in the second quarter of 2018, and $8.58 billion during the third quarter of 2017.

The prospective calendar includes anticipated bond sales by the following issuers: the City of New York, the Dormitory Authority of the State of New York, New York City Housing Development Corp., New York City Transitional Finance Authority, the New York State Environmental Facilities Corporation, the Port Authority of New York & New Jersey, the State of New York Mortgage Agency and the Triborough Bridge & Tunnel Authority.

Bond Buyer 30-day visible supply at $11.08B

The Bond Buyer's 30-day visible supply calendar increased $325.9 million to $11.08 billion on Tuesday. The total is comprised of $5.01 billion of competitive sales and $6.07 billion of negotiated deals.

Treasury to sell $35B 4-week bills

The Treasury department said on Monday that it will sell $35 billion of four-week bills on Tuesday.

The bills are due Aug. 2 and are a reopening of an auction in February.

Treasury auctions discount bills

The Treasury on Monday sold $48 billion of 91-day bills at a 1.945% high rate and $42 billion of 182-day bills at a 2.10% high rate.

For the 91s, the coupon equivalent was 1.982% while the bid-to-cover ratio was 2.85%. The media rate was 1.92% and the low rate was 1.90%. The bills are due on Oct. 11.

For the 181s, the coupon equivalent was 2.152% while the bid-to-cover ratio was 2.78%. The media rate was 2.07% and the low rate was 2.03%. The bills are due on Jan. 10, 2019.

Data appearing in this article from Municipal Bond Information Services, including the MBIS municipal bond index, is available on The Bond Buyer Data Workstation. Click here for a brief tour of the Workstation, or contact Vanessa Kim at 212-803-8474 for more information.

The Bond Buyer

by Chip Barnett & Christine Albano

July 09 2018

Green Bonds Are in High Demand, But Are They a Better Deal?

Green bonds help governments finance environmental projects. It's unclear whether they help governments' finances.

States and localities spend billions on infrastructure every year. Going forward, Christiana Figueres, the former United Nations climate chief, wants them to pay for it "whenever applicable" with green bonds — an emerging way of financing projects with clear and measurable environmental benefits.

The push by Figueres is part of a new initiative called the "green bonds pledge" to ensure that all infrastructure built from now on is climate-resilient and low carbon. In her address at a Climate Bonds Initiative event in London earlier this year, Figueres promised the governments and corporations taking the pledge that "a wealth of opportunity will be unlocked."

But opportunity for who?

While the benefits for the environment are clear, it's much less clear that governments issuing green bonds get any better treatment than those issuing other types of debt. Even the Climate Bonds Initiative has found no conclusive evidence that green bonds are cheaper for governments to issue. So far, it seems that any evidence of a rate advantage for green bond issuers can be accredited to unrelated factors.

One of those factors is supply and demand.

Green bonds are still a tiny part of the bond market, but more and more investors are being compelled to buy them to meet environmental mandates. Green bonds are often oversubscribed, meaning there are more orders placed to buy bonds than are available to sell. The average green bond sale in the U.S. is three times oversubscribed, according to research by the Climate Bonds Initiative.

Demand certainly helped DC Water when it issued the first-ever green bond by a water utility in 2014. The utility actually upsized its issue by $50 million on the day of the sale thanks to the high demand from investors, says DC Water's former chief financial officer, Mark Kim.

Another factor driving better rates for some green bonds is the reputation and transparency of the government issuer.

DC Water, for instance, has a good reputation in the municipal market in part because it releases annual green bond reports that detail where all that money is being spent and gives updates on environmental outcomes. But that's not the case with every green bond issuance and, therefore, may affect what rate issuers get.

Overall, there is evidence that good transparency and reporting standards — not just for green bonds — can help government issuers get a better rate. The state of Massachusetts was one of the first major governments to embrace this idea when it began allowing investors to buy bonds directly from the state, rather than going through a broker, and launched an investor relations page where bond buyers could find all the state's financial and interim disclosures.

Colin MacNaught, who helped spearhead that effort and now runs a startup called BondLink that helps governments create investor relations sites, says any pricing bumps in the green bond market work the same way. "That granular detail is super important," he says. "Managers want to report back to their investors on the environmental impact their fund is having."

MacNaught adds that governments already do a lot of analysis on a project's expected impact before it sells the bonds. So committing to consistent impact reporting, he says, shouldn't be too much more of a stretch. "If an issuer can do that, you'll see an impact on pricing."

For these reasons, Dan Kaplan, who manages the $3.9 billion portfolio for the wastewater treatment division in King County, Wash., says green bonds are "much ado about nothing." Municipal bond sales in general are often oversubscribed, he says, so the notion that green bonds generate "extra" demand is misleading.

Kaplan agrees with MacNaught that better reporting, as well as a good credit rating, are what bring down the cost of issuance — not some "external label" applied to projects that governments would be doing anyway. "What you're seeing is not even necessarily a bump from transparency," he says, "but the benefits of being a large, well-run and well-established organization."

GOVERNING.COM

BY LIZ FARMER | JULY 11, 2018

U.S. Municipal Market Supply to Hit $9.6 bln Next Week.

CHICAGO, July 13 (Reuters) – Bond and note issuance in the U.S. municipal market will total$9.6 billion next week as supply ratchets higher after a slump earlier this month due to the mid-week Fourth of July holiday, according to Thomson Reuters estimates on Friday. Supply of new issues has dropped in the $3.8 trillion market. Issuance of $160 billion worth of municipal debt at 2018's midpoint was down almost 17 percent compared to the same period in the prior year. In a research report on Friday, Barclays projected weaker second half issuance of $135 billion to $150 billion.

The inability of states, cities, schools, hospitals and other issuers to advance refund their debt on a tax-exempt basis due to federal tax law changes has put a damper on issuance.

In the coming week, the New York City Transitional Finance Authority will sell $1.03 billion of building aid revenue bonds. About $919 million of tax-exempt debt will be offered to retail investors on Friday and Monday ahead of formal pricing through lead underwriter Ramirez & Co on Tuesday. Another $111 million of taxable bonds will be sold competitively on Tuesday.

The New Jersey Transportation Trust Fund Authority has $1.2 billion of federal highway reimbursement revenue refunding notes pricing on Wednesday through Morgan Stanley following a Tuesday retail order period.

Fresh off a trio of credit rating upgrades, Washington, D.C. will sell $517 million of new and refunding general obligation bonds that are scheduled to price through Ramirez on Wednesday. A stronger economy and revenue growth led to higher ratings of Aaa from Moody's Investors Service and AA-plus from S&P Global Ratings and Fitch Ratings.

Topping the week's slate of competitively bid deals is a $400 million North Carolina GO public improvement bond issue selling on Wednesday. The AAA-rated bonds carry maturities in 2019 through 2038, according to the preliminary official statement. Following a week of net outflows, municipal bond funds reported nearly $651 million of net inflows in the week ended July 11, according to Lipper.

Reporting by Karen Pierog; Editing by Daniel Bases and Tom Brown

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Municipal Bond Dearth Reducing Borrower Cost.

Municipal bond prices have rebounded from their worst first-quarter slump of the past 15 years.

The uptick comes as U.S. states and cities continue to curb borrowing, the Wall Street Journal reports.

Municipalities borrowed $156 billion in the first two quarters of this year, a 17% drop from the year earlier. Citigroup estimates that the year-over-year decline will reach 25% by the end of the 2018.

Supply is on the low end for several reasons, including a decision last year by Congress to end tax exemption for early refinancings of outstanding municipal bonds. Low supply, meanwhile, has lifted the value of existing bonds and reduced borrowing costs for some governments, particularly on riskier bond deals, the Journal notes. As an example, 12-year bonds backed by settlement payments from tobacco companies to the state of California sold with yields of 3.07% in June, compared with yields of 3.25% in March of last year.

"It's a seller's market," Howard Cure, director of municipal-bond research at Evercore Wealth Management, tells the publication. "We're trying to be careful about that aspect of it and not go down that path of sacrificing for a little extra yield and having a big decline in credit quality."

The Bloomberg Barclays Municipal Bond Total Return Index ticked up 0.87% in the second quarter. This is after falling by 1.11% in the first quarter.

–Cheryl Winokur Munk

July 11, 2018 4:31 p.m. ET

Barron's

When Muni Bonds Outside Your State Make Sense.

Higher yields, diversification may help influence those decisions.

Most people buy municipal bonds issued by an entity in their home state because the interest paid is generally exempt from federal and states income taxes.

With the changes in the tax code, getting that state income tax exemption is important for people who live in high-tax states like New York and California. The new tax law capped state and local tax deductions to $10,000, so for these residents, buying municipal bonds from entities in their state can help lower their taxable income.

But sometimes it makes sense to buy municipal bonds that aren't issued in the state where you reside, even if you live in a high-tax state. Fixed-income experts say there are several reasons to think about adding municipal bonds from other states.

Diversification. Duane A. McAllister, managing director and senior portfolio manager at Baird Advisors in Milwaukee, says having a mix of muni bond exposure helps protect investors from regional economic swings. If an investor lives in the New England area and there's a recession there, Texas may be doing well.

"We talk about U.S. economic growth, but it's not uniform," McAllister says. "There are times when a particular state may be over or underperforming whatever is occurring on a national basis."

Mark Paris, chief investment officer and head of municipal strategies for Invesco Fixed Income in New York, says there are a lot of projects in different states that can offer fixed-income investors attractive yields. Invesco likes infrastructure projects such as toll roads in Texas, bridges in New York state and hospital bonds in Florida.

"You're investing in the essential services end in the revenue section," he says. "You don't have to worry about the pension issues" that can bog down other types of municipal bonds.

Certain states also issue more bonds than others. A big state like California or New York have a lot of credit offerings to choose from, versus a state like Connecticut or Virginia, Paris says. Residents of smaller states may have limited choices.

Every investor is different, but McAllister says having a portfolio made up of half in-state municipal bonds and half national bonds is a good place to start.

"You're lowering your overall risk because not everything is in one particular state," he says.

States with economic turmoil. Some states, like Illinois, New Jersey or Connecticut with high debt levels may make it undesirable for residents to buy municipal bonds. Although defaults are rare, they do happen, McAllister says.

Paris concurs. "Those are places where we make a very strong argument for you to start to look at the national marketplace," he says. "We certainly don't think that they're going to go into the default, but there could be downgrades of their credit."

Shocks can happen to seemingly healthy regions, too. Orange County, California's bankruptcy filing in 1994 is one example. It was a Triple-A rated bond, but as interest rates rose, some of the county's shakier holdings lost value, affecting the entire portfolio. "It eventually worked out," McAllister says. "But oooh, I can tell you there were lots of sleepless nights for investors there. And that's not what you sign up for."

That said, investors with more risk appetite might be willing to look at a state like Illinois because some triple-A rated municipalities or universities may be penalized because of the overall economic strife and have to offer higher yields, says Jason Ware, co-founder and head of institutional trading at 280 CapMarkets in San Francisco.

Higher yield. Yields on munis vary, and some may yield higher than what is currently available in-state. If the yield is high enough, giving up the tax-free status may be worth it, the sources say. To figure it out, McAllister says take the bond's yield, subtract the number one, then divide by your state tax rate.

For example, if the yield was 2 percent and the state tax rate was 5 percent, it would get you 2.10.

"So I need to find a bond that yields 10 basis points more," he says.

Ware says some states that don't have an income tax offer higher yields because there's less demand from residents for tax-free income. Municipal bonds from Washington, Nevada and Texas can sometimes fall in this category.

Demand can also make home-state bonds less attractive. Paris says there's a lot of demand for California muni bonds because of the tax-code changes, so yields are lower. To get a sense of prevailing yields, look at the daily Municipal Market Data scale. California general obligation bonds are trading around 3 percent, just above the top of the Municipal Market Data scale, which is at 2.97 percent. But Texas bonds generally are trading at 3.25 to 3.30 percent.

"You get about 10 percent more interest going into a national bond right now outside of California," he says.

When considering buying out-of-state municipal bonds, work with a financial advisor to understand your effective state income-tax rate.

"They'll have understanding of what's available in the market which help lead to them making the best decision in terms of deciding how they fit in a portfolio," Paris says.

By Debbie Carlson, Contributor | July 12, 2018, at 11:38 a.m.

U.S. News & World Report

States Should Re-Evaluate Their Assumed Rates Of Return.

The assumed rate of return is one of the major actuarial assumptions underlying pension fund valuations. It influences the calculation of a plan's total liabilities and drives the required annual contributions to the plan. A high assumed rate will result in lower levels of estimated liabilities and allow politicians to appropriate lower annual contribution to the pension systems. This portends disaster when the assumed rates of return are higher than actual returns. Even small differences in these two numbers can cause a plan's unfunded liability to balloon.

An example of this type of problem occurred over the last decade with the Pennsylvania Public School Employees' Retirement System (PA-SERS). In the early 2000s, PA-SERS had a published funding ratio of over 100%, meaning its assets fully covered its liabilities. But over the course of the last fifteen years, the funding ratio fell to just above 60%. Amanda Kass and Jared Reynolds from the Center for Municipal Finance at the University of Chicago, link much of this precipitous decline to an assumed rate of return higher than what the plan actually earned. In other words, by using an unrealistic assumed rate of return two decades ago, but receiving a "fully funded" atta-boy, the politicians did not have to put in tons more money . Essentially, they cheated.

Kass and Reynolds found that while the average assumed rate of return in this period was over 8%, the average realized rate was 6%. Further, between 2001 and 2015, PA-SERS only managed to exceed its assumed rate of return on three occasions.

The situation with PA-SERS is illustrative of the larger issue surrounding the assumed rate of return and actuarial assumptions across the nation. Using politically advantageous assumed rates of return was deemed to be "the most important assumption" when it comes to valuing pension plans, by a study conducted by the Center for Retirement Research at Boston College. This same study concluded that even if the median rate of return over a 30 year period managed to equal the assumed rate, many plans would still be unable to meet full funding requirements, due to the sheer variability in investment returns.

State and local governments need to examine all of their assumptions, including the assumed rate of return, to ensure that they are market-driven, and reflective of reality and not politically motivated or wishful thinking. This is the first step to ensuring that taxpayer and beneficiary alike, will have the transparency necessary to fully understand their plan's liabilities, and offer the best chance for a full and accurate assessment of unfunded liabilities.

by Christopher Burnham

Jul 12, 2018

Forbes

Is The Used Car Market More Transparent Than The Bond Market?

Summary

- The bond market lacks price transparency.
- A new rule requires disclosure of mark-ups and mark-downs.
- Investors need to do due diligence on bond pricing.

When a customer shops at a used car lot to purchase a previously owned vehicle, she can usually check the dealer markup by comparing the offering price to the book value in the Kelley Blue Book, a well-respected pricing guide.

That way, the consumer can tell if she is about to get ripped off and walk away from a bad deal.

Unbelievably, an investor could not do the same with the bonds bought or sold by her Wall Street broker until two months ago.

Bond pricing is confusing for investors, as a recent Reuters article noted. That's why new, additional disclosure rules should benefit investors.

However, even though the new industry rules require brokerage firms to disclose the bond-pricing information to clients, it may come too late or never be seen.

Let's back up a moment. In the past, brokers were not required to disclose to customers the "markup" or "markdown" on corporate and municipal bonds bought in the secondary market.

"Unlike with stocks, investors don't pay a commission when they buy a bond," according to Reuters. "Instead, they pay a markup, or the difference between the broker's cost and the price charged to the investor. Many brokers don't disclose their markups, meaning investors can't easily compare transaction costs."

"In a 2012 report, the SEC said the lack of price transparency undermined the fairness of the $3.8 trillion municipal-bond market," according to the article. "In addition to markups, brokers will also have to disclose markdowns, the haircuts investors have to take when selling bonds prior to their maturity."

In the past, many brokers fraudulently told investors that they did not receive commissions on the purchase or sale of bonds. In fact, the brokers in Puerto Rico never disclosed the exorbitant markups or markdowns they charged their customers. This evidence has come to light in numerous investment fraud cases brought against Puerto Rico brokerage firms, including UBS and Santander.

Under the new industry rule that took effect in May, Mom and Pop investors will now learn how much their brokers made selling them bonds. While an improvement for the brokerage industry, some problems remain.

"The disclosures are aimed at addressing long-standing concerns that individual investors who buy bonds don't know how much they are paying in fees, known as markups, that can eat into returns," according to the Reuters article. "Retail investors pay a variety of different prices for the same securities."

The article notes that investors may suffer "sticker shock" when they see the exorbitant charges firms take for purchasing corporate and municipal bonds right off the shelf. For example, if an investor purchased a $500,000 Puerto Rico municipal bond during the Puerto Rico bond market heyday of 2010 to 2013, an investor would be charged a markup in the tens of thousands of dollars, without any disclosure by the firm.

Nevertheless, most investors will likely still not realize how much they are paying for bonds even with the new rule. The new rule only requires dealers to include the markup on confirmation slips that are sent to investors by the post and do not require a discussion between the broker and customer when the transaction is made.

"The rule only requires dealers to include the markup on slips of paper they already send to investors confirming the details of the transaction," as Reuters noted. "Though dealers are allowed to electronically confirm customer trades, the vast majority of these confirmations are still snail mailed to customers—meaning they might end up in a pile of junk mail and never be read."

That means Mom and Pop investors will need to do their due diligence in reviewing confirmation slips when they buy bonds. The new rule is an improvement for bond investors, but unfortunately falls short. There is still no Kelley Blue Book for bonds.

Seeking Alpha

by Jake Zamansky
Zamansky LLC

Jul. 10, 2018

Toll Roads: 10 Years in Infrastructure - Fitch Teleconference

Please join senior Fitch analysts in a teleconference discussion on US Toll Roads **Thursday, July 19th at 11am EDT**.

This follows the publication of our recent report: Toll Roads – 10 Years in Infrastructure

Click here to register.

Fitch: Ongoing NAFTA Uncertainty Lifts Trade Risks for US States

Fitch Ratings-New York-11 July 2018: Protracted uncertainty around the North American Free Trade Agreement (NAFTA) renegotiations could elevate risks for some US states with the most to lose from a NAFTA termination, Fitch Ratings says. These states export heavily to Canada and Mexico, most have small populations, and export industries account for a sizable portion of their gross state products (GSPs).

Fitch's base case continues to be a favorable conclusion to the NAFTA talks that does not materially disrupt trade in the bloc. Talks are likely to resume, although full ratification of a revised agreement is unlikely before 2019. In the interim, risks of a termination or substantial rewriting of the NAFTA agreement that would affect trade and investment remain.

If NAFTA is terminated and World Trade Organization rules take their place, US states with greater trade exposure to Mexico will be more at risk of higher or new tariffs on exports. Some of the highest tariff rates could be imposed on farm, livestock, energy and automotive products.

Continue reading.

Agreement at Start of New Budget Year in Fitch's '5 U.S. States to Watch'

Fitch Ratings-New York-10 July 2018: The new fiscal year began smoothly last week with most states passing budgets on time and with limited contention, according to Fitch Ratings in a new report that provides brief budgetary overviews for all Fitch-rated states.

July 1 came and went with enacted budgets in place in all but two states, and lingering issues for the two outliers (Massachusetts and South Carolina) either have been or are likely soon to be resolved. Among the states with agreements in place were the five "U.S. states to watch," a designation Fitch came up with at the start of 2018 for states that were grappling with heightened budgetary issues.

"Connecticut benefited from substantial windfall revenues related to federal tax changes and now has a budget reserve funded at a post-recession high despite ongoing budget challenges," said Managing Director Laura Porter. Elsewhere, "Illinois passed an on-time budget for the first time in four years, although significant structural problems persist."

Illinois' lingering structural issues include a lack of progress in addressing its sizable accounts payable backlog and questions around $400 million in unpaid step-pay increases. Nonetheless, "enacting an on-time budget with bipartisan support allows Illinois to enter the new year with a clear fiscal plan and clarity for the state's key fiscal partners," said Porter.

Other timely starts to the budget year include Louisiana, which addressed a budget gap resulting from temporary tax expiration with help from revenues related to federal tax changes. For the first time in over a decade, Kentucky's budget includes full actuarial pension contributions for all of the state's pension plans, but long-term budgetary challenges are not fully resolved.

Budget sessions were not without some fireworks. Passing its budget at the 11th hour and averting a government shutdown was New Jersey, which is now under one-party control for the first time in eight years. The governor and legislators compromised on a series of tax increases to support projected revenue growth of almost 6%. "New Jersey's budget will grow by about 4% as the state addresses a wide swath of critical needs while gradually ramping up its pension contribution," said Porter.

Fitch's "U.S. State Budget Update" is available at 'www.fitchratings.com'.

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Municipal Bonds Are in Firing Line When Economic Growth Run Ends.

- JPMorgan Asset Management sees U.S. recession as soon as 2019
- 'You'll start seeing warts show up,' portfolio manager says

States and municipalities are basking in accelerating tax revenue as the U.S. economy extends its second-longest expansion on record. But muni bonds from the weakest links look vulnerable when the cycle turns, according to David Sivinski, executive director and portfolio manager at JPMorgan Asset Management Inc.

Sivinski expects a U.S. recession as soon as next year, dragging the muni bond market into turmoil shortly after. When that happens, states already under fiscal pressure — such as New Jersey, Illinois, and Connecticut — may be in trouble, said Sivinski.

"Right now you're in sort of a sweet spot where taxes are coming in, and most municipalities are not having too much of a financial problem," Sivinski, who manages $1.2 billion in municipal bonds, said in a telephone interview on July 10.

"It'll only be once that downturn hits, six to nine months later you'll start seeing some of the warts show up as some may say," added Sivinski, whose firm had $1.68 trillion of assets under management at the end of the first quarter.

The Bloomberg Barclays Municipal Bond Index has returned 0.03 percent year to date. Since the start of the Great Recession, it's climbed about 55 percent.

"When [the recession] hits, what ends up happening is revenues start to come down," said Sivinski. "If some states or localities have financial problems that's when they start cropping up."

Every state would be hit hard by a recession, but some could fare better than others, Sivinski said.

"You obviously have states like New Jersey, Illinois, and Connecticut that are having issues now. This would not help them," said Sivinski. "There are some states that are AAA rated that will probably be able to withstand it better, and you're talking about the Virginias and the North Carolinas and those kinds of states. But they're still going to feel the pinch."

Sivinski also expects bonds with longer maturities to potentially benefit from recession because of the possibility of lower rates.

Bloomberg Markets

By Sophie Alexander

July 12, 2018, 10:30 AM PDT

S&P Live Webcast and Q&A: US Public Finance: Transportation Sector Update

Jul. 19, 2018 | New York

Please join S&P Global Ratings analysts from the US Public Finance Transportation Infrastructure team for a live interactive webcast on Thursday, July 19th at 1:30 p.m. Eastern Daylight Time. Topics of discussion include an update of the Sector Outlook, and an overview of how transportation ratings have fared under updated criteria released in March 2018.

View The Event Materials

New York Auctions $1.8 Billion Sales Tax Debt.

- **Second-biggest competitive sale of municipal debt in history**
- **Banks won't have problem clearing the deal, says Fiera's Laing**

New York State met eager demand for its debt as it auctioned $1.8 billion of sales-tax bonds Wednesday, the second-biggest competitive sale in municipal market history, according to data compiled by Bloomberg.

Despite its size, the deal was easily digested because of a healthy demand for New York state sales tax bonds in a market starved for paper. Almost $5 billion in debt issued by New York state and local governments is set to be called or mature over the next 30 days, $1.4 billion more than the fixed-rated debt they plan to sell in that period, according to data compiled by Bloomberg.

"New York is picking a good time to bring this deal," said Guy Davidson, director of municipal investments at AllianceBernstein. "It's a sellers market."

Wednesday's sale was second in size only to a $1.84 billion offering by the New York State Urban Development Corporation last year.

League Tables

JPMorgan won $372.4 million of bonds maturing 2019 through 2023 issued through the Dormitory Authority of the State of New York. Bank of America won $854 million of debt maturing 2024 through 2036. Morgan Stanley won $492.4 million of debt maturing 2037 through 2048. New York also sold a $74 million tranche of taxable debt.

Bonds maturing in March 2028 were priced to yield 0.08 percentage points, or 8 basis points more than top-rated debt of the same maturity, according to data compiled by Bloomberg. A New York sales-tax bond with the same maturity traded at 11 basis points over AAA rated debt on June 14.

Banks, looking to get a strong start in the second-half of the year in rankings for competitive underwriting, bid aggressively, said Bryan Laing, vice president of credit research at Fiera Capital Inc.

Banks "are looking forward to those league tables, particularly in a year when the supply outlook is less certain than other years," Laing said. "They're not going to have a problem clearing the deal with investors either, because the demand is there."

Proceeds of the sales tax bond sale, rated Aa1 by Moody's Investors Service, the second-highest investment grade, will finance capital projects for highways, bridges, rail and educational facilities.

Bond Backing

The bonds are backed by a dedication of 1 percent of New York's 4 percent state sales tax, which is expected to yield $14.1 billion in fiscal 2019, according to Moody's. The state budget office projects the tax dedication will provide coverage of 3.6 times debt service in fiscal 2018 based on $3.42 billion of dedicated receipts and maximum annual debt service, including parity debt, of about $942 million, Moody's said.

Sales tax receipts have grown at a 4.0 percent compound annual growth rate since 2010 and the state budget office projects growth of 3.9 percent from fiscal 2019 to 2022. The projections will "likely prove optimistic," because the estimate doesn't provide for an economic downturn during the period, according to Moody's.

Last month's U.S. Supreme Court decision which expanded the ability of state and local governments to collect billions of dollars in sales taxes from online retailers, will boost revenue, Laing said.

Bloomberg Markets

By Martin Z Braun

July 11, 2018, 10:40 AM PDT

One Way to Make Money on Dorms: Wait for Investors to Fail

- **Harrison Street CEO says inexperienced buyers taking on risk**
- **Merrill anticipates wave of distressed properties up for grabs**

While investors increasingly look for a home in student housing, Harrison Street's Chris Merrill has been around the block.

He anticipates newcomers to the unfamiliar market will take a lot of risk — and create a landslide of distressed properties that he can scoop up cheaply over the next 12 to 24 months.

"Investors need to dive deep into the micro market, understanding enrollment trends, demand/supply fundamentals, location and unit mix, for instance," said Merrill, co-founder and chief executive officer of Chicago-based Harrison Street Real Estate Capital LLC, which has been buying student housing since its inception in 2005.

The investors streaming into student housing are taking advantage of an asset class that's known to weather economic downturns because people tend to go back to school during tough times. Among recent deals was an agreement by Greystar Real Estate Partners to buy EdR, one of the largest developers, owners and managers of U.S. student housing, for about $3.2 billion. Separately, an affiliate of Blackstone Group LP formed a joint venture with Greystar to acquire a portion of EdR's properties.

While the Blackstones and Greystars of the investing world may have the clout to manage large dorm portfolios, smaller entrants have trouble accessing the the highly fragmented market, Merrill said. Since its inception, Harrison Street, with roughly $15 billion of assets under management, has amassed properties at more than 130 universities in the U.S. and Europe.

Cracks are already forming: The number of delinquent student-housing loans financed by municipal bonds has climbed 3.4 percent since the beginning of the year, according to data provider Trepp LLC.

For long-term investors in student housing, “opportunities will emerge as a result of those that are taking excess risk as a result of inexperience,” Merrill said.

Bloomberg Markets

By Kristy Westgard

July 13, 2018, 7:19 AM PDT

Hands-Off Approach May Be Changing in Hub of Muni Bankruptcies.

- **California treasurer hopeful wants to help cities on the brink**
- **State has laissez-faire attitude to municipal bankruptcies**

California is notorious for its hands-off approach to distressed cities. Fiona Ma wants to fundamentally change that if she becomes state treasurer.

Ma, a Democrat who’s running against Republican Greg Conlon in November, said she would establish a website that would list credit ratings and key financial metrics for local governments. As part of that effort, municipal officials seeing fiscal straits ahead could ask for assistance from the treasurer’s office, she said in an interview in San Francisco.

“Local governments have to balance every year. They are very limited in what they can do,” said Ma, a certified public accountant who currently serves on the state’s board of equalization, which administers some taxes. “We should be looking out for them.”

That would mark a shift for California, home to four of the six biggest bankruptcies filed by municipalities in the past quarter century. While the state, through legislation or voter initiatives, has foisted limits on local governments such as on their taxing power and mandated spending, it has no system for monitoring cities that fall in distress.

Providing a central portal for local financial information could spur more investment in lesser-known cities by making it easier for bond buyers to assess conditions and risk, said Ma, who has also served in the state Assembly and on the San Francisco board of supervisors.

Bondholders “don’t want to invest in some of the smaller cities because they’re not sure whether in the next recession, they’re actually going to be paid back,” she said.

Ma would also ensure that she knows the impact on municipal governments before making decisions at the California Public Employees’ Retirement System and California State Teachers’ Retirement System, she said. As treasurer, she would have seats on the boards of both systems, the two largest U.S. pensions.

If Calpers, for instance, is considering a cut to the assumed investment target, which would spur higher contributions from localities to make up the difference, she wants to know if that could leave some scrambling to pay their bills, she said.

“We need to be sensitive that whatever the state does that affects local governments, that you do not surprise them,” Ma said. “Because that’s where they’re going to get in trouble.”

Ma is vying to replace Democrat John Chiang, who is leaving his post after an unsuccessful primary run for governor. She’s favored to win, as Democrats outnumber Republicans in California by almost 2 to 1.

Bloomberg Markets

By Romy Varghese

July 12, 2018, 7:27 AM PDT

[Local Government Jobs Near Pre-Recession Level But States Lag.]()

- **Public school growth boosts employment: Wells Fargo’s Cohen**
- **Conservative tax not spend policy seen limiting state jobs**

Local government employment has almost returned to pre-recession levels, while jobs at the state level have lagged, U.S. Bureau of Labor Statistics data show.

Since the start of the recession, local government employment is down 0.01 percent and state government employment has declined by 0.72 percent.

The slowdown in state government employment is a result of more conservative policy, said Natalie Cohen, head of municipal research at Wells Fargo.

“States have tightened their belt consistently and they continue to do that. We have a lot more conservative ’no tax, don’t spend’ governors,” Cohen said in a telephone interview.

Cohen attributes the uptick in local government employment to the increase in hiring at public schools.

“As the economy improves districts hire back teachers and school administrators,” she said.

There are a total of 5.1 million state employees and 14.5 million local employees in the public sector, according to BLS data. That is down 114,000 and 158,000 employees respectively since the peak in summer 2008. Private sector employment has risen 9.1 percent, from 116 million at the start of the recession to 127 million today, the data show.

Looking forward, Cohen expects state hiring to increase because of potential new sources of revenue for states, including sports betting, marijuana, and online sales taxes.

The recent divergence in local and state government employment is not statistically significant, said Angie Clinton, a BLS economist.

“State is down slightly and local is up a bit, but we’d say this is little change,” she said in a telephone interview.

Month over month, local government employment is up 0.1 percent and state government employment is unchanged, BLS data show.

Bloomberg Markets

By Sophie Alexander

July 9, 2018, 8:53 AM PDT

[The Week in Public Finance: It's Natural Disaster Season. Can Your Government Afford It?]

Most states don't know how much they spend on extreme weather events.

The Atlantic Coast caught a break this week when Hurricane Chris was downgraded to an offshore tropical storm.

California, meanwhile, hasn't been as lucky. The National Guard has already activated troops to begin wildland fire training after several major fires this month in the northern part of the state and near the Oregon border consumed tens of thousands of acres. It's the earliest activation in five years in what's expected to be a treacherous fire season.

But after last year, which was the most expensive year on record for natural disasters, how much more can states really afford?

The answer: Most don't know.

[Continue reading.]

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BY LIZ FARMER | JULY 13, 2018

[Kresge and Rockefeller Webinar on Opportunity Zones-Related Request for LOIs.]

[Watch the webinar.]

The Kresge Foundation | Jul. 11

[New Hampshire BFA Issues RFP for National Bond Administration Services.]

[Read the RFP.]

New Hampshire Business Finance Authority | Jul. 9

Municipal Bonds Are Scarce. That's Good News for Borrowers.

U.S. states and cities are issuing fewer bonds, partly in response to changes to tax exemptions on refinancings.

The prices for municipal bonds have recovered from their worst first-quarter slump of the last 15 years. The reason: U.S. states and cities continue to cut back on their borrowing.

Municipalities borrowed $156 billion in the first two quarters of this year, down 17% from last year. Citigroup researchers are projecting that year-over-year decline will reach 25% by the end of the year.

The low supply is pushing up the value of existing bonds and reducing borrowing costs for some governments, particularly on riskier bond deals. Twelve-year bonds backed by settlement payments from tobacco companies to the state of California sold with yields of 3.07% in June, compared with yields of 3.25% in March of last year.

"It's a seller's market," said Howard Cure, director of municipal-bond research at Evercore Wealth Management, which invests in public debt. "We're trying to be careful about that aspect of it and not go down that path of sacrificing for a little extra yield and having a big decline in credit quality."

The Bloomberg Barclays Municipal Bond Total Return Index edged up 0.87% in the second quarter, after falling by 1.11% in the first quarter. The first-quarter drop was the biggest decline of any first quarter in the past 15 years.

About half of the drop in supply resulted from Congress's decision last year to end tax exemption for early refinancings of outstanding municipal bonds, according to an estimate by Vikram Rai, head of municipal strategy at Citigroup. Borrowers also rushed to sell municipal bonds amid talk of other legislative proposals—such as a ban on tax-exempt issuance by hospitals and universities—that weren't ultimately enacted.

"The rush to market toward the end of 2017 emptied out a lot of the forward pipeline," Mr. Rai said.

Aftershocks from the 2008 recession are also contributing to the drop-off. Municipal bonds typically become eligible for refinancing a decade after they are issued. Issuance of new money bonds fell 24% in 2008 as the recession destabilized city and state finances, leading to a smaller-than-usual crop of bonds eligible for refinancing in 2018.

Those factors combined to push the total amount of refinancing deals in the first half of this year down to $44 billion, the lowest since 2000.

All that scarcity has driven up prices despite rising interest rates, which typically erode the value of outstanding bonds. Central-bank officials last month raised the benchmark federal-funds rate by a quarter-percentage point, their second rate rise this year. They projected a total of four increases for 2018, up from three at their March meeting.

Exchange-traded funds are one relatively new beneficiary of the stronger demand for municipal bonds. Their municipal-debt holdings have grown from zero in 2007 to about $30 billion this year, according to federal data. The iShares National Muni Bond ETF received inflows of $630 million last month, the highest since December 2016, according to FactSet. The inflows followed a decision on June 1 to cut fees for that ETF by more than 70%.

Demand is expected to remain high in July and August, as outstanding bonds mature and investors look for new municipal debt investments, analysts said.

Some government borrowers could get an additional market boost from a recent Supreme Court decision banning public-employee contracts that require workers to pay union dues. The decision is expected to empower governments seeking to curtail pension benefits.

“You’re talking about the states retaining some negotiating leverage and being able to improve their fixed cost structure long-term,” said John Miller, co-head of Global Fixed Income at Nuveen Asset Management.

The Wall Street Journal

By Heather Gillers

July 8, 2018 2:59 p.m. ET

Write to Heather Gillers at heather.gillers@wsj.com

Alaska's Tax-Credit Bond Plan Raises 'Subject-to-Appropriation' Questions.

As Alaska seeks to improve its financial standing it is turning to bonds to pay off $1 billion of tax credits it owes to oil and gas producers.

But the state – which faced controversy for using the subject-to-appropriation clause to walk away from a lease obligation for a state office building – faces a constitutional challenge before it can go to the market.

State officials are seeking dismissal of a lawsuit claiming that the plan violates the Alaska constitution’s limits on new debt.

Gov. Bill Walker, who signed a bill approving the program last month, says it will reduce the state’s deficit while encouraging oil producers to invest in the state.

“The policy change will save state government money in the long run, immediately provides small, independent oil and gas companies cash to invest, and keeps good on the state’s past promise to incentivize industry investment in Alaska and exploration for new oil,” according to a press release from his office.

Under the plan, producers who hold state tax credits for oil and gas exploration will get paid early in exchange for a 10% discount that the Walker administration says will pay for the bonding costs.

The bonds will be sold through a newly created Alaska Tax Credit Certificate Bond Corp. The bonds are subject to appropriation – relying on the legislature budgeting money every year to pay the debt service.

This isn’t Alaska’s first use of subject-to-appropriation bonds.

The state currently has $237 million in outstanding subject-to-appropriation bonds that are paying off a state prison in Goose Creek and a residential housing facility for Alaskan native tribes, according to an April memo to the legislature.

Alaska has used such bonds for almost 70 years for projects such as acquiring public buildings for lease to the state government, Deven Mitchell, the state's debt manager, stated in the memo.

He said such bonds are typically rated a notch below the state's bond rating but said any concern about their marketability is "misplaced."

"In short, Subject to Appropriation bonds carry specific ratings in the Municipal bond market, are a well understood and commonly used financing tool, and will be highly rated based on the state of Alaska's credit," Mitchell said.

The state would face the same negative impacts for failing to appropriate funds to pay off the bonds as it would for not paying off general budget obligations for public safety, pensions and other programs, he said.

Two years ago, the Alaska legislature cited the subject-to-appropriation clause when it broke its lease for a Legislative Information Office in downtown Anchorage.

The six-story building was renovated to meet the specifications of the state agency, which occupied it in 2014. Amid finger-pointing over the cost of the 10-year, $33 million lease, state officials walked away from the lease and the building two years later, leaving the developers empty-handed after remodeling the building.

The building developers sued the state but a court found that the legislature acted within its rights not to appropriate funds for the rent.

The state's decision to break its contract worried the Alaska Bankers Association at the time; it wrote to the legislature that doing so could impact the state's creditworthiness and cost of borrowing.

"Using the subject-to-appropriation clause, given the circumstances the state was in at the time, for us it had negative implications," said Mike Martin, secretary-treasurer of the association and chief operating officer of Northrim Bank.

The association's view was that "once the state makes a promise it has an obligation it should honor," Martin said.

Martin sees the issue of the legislative building, which he described as a "political football," as a unique situation and doesn't believe the state would do the same with bonds issued for the oil and gas tax credit program.

The group supports the oil and gas tax credit program as one of two major steps taken by the legislature this year to create a sustainable budget going forward. The other was a bill in which the state will annually draw 5.25% from the Permanent Fund – a pool of oil and gas tax revenues invested over the years – to reduce its deficit.

"I think it just creates a whole lot more stable environment," Martin said.

Opponents of the plan question whether it will result in savings and say it violates the Alaska constitution, which only allows for state debt to be incurred for capital improvement project or housing loans for veterans programs following voter approval.

Eric Forrer, a former University of Alaska regent and a retired contractor, filed the lawsuit on those grounds.

“We’re now converting a very soft obligation into a hard-edged debt,” said his attorney, Joe Geldhof.

An April legal opinion by the legislature’s attorneys found a “substantial risk” that the plan to bond could be unconstitutional.

“They’re converting it from something that’s purely discretionary to something if we don’t pay it impacts our credit rating,” said Alaska state Sen. Bill Wielechowski, D-Anchorage, who asked for the legal review. “I would argue it puts the state into a much more detrimental position and could limit our ability to bond for future things.”

Attorney General Jahna Lindemuth wrote a May 2 legal opinion stating that “financing tools like those proposed in this bill are not prohibited by the Alaska Constitution.”

The proposed bonds would not be considered debt because they would be “subject entirely to the legislature’s discretion to appropriate funds for that purpose, and the bonds give bondholders no recourse against the state,” the opinion states.

Wielechowski said there’s no question – even among those who oppose the plan like himself – that if the state issues bonds the legislature will appropriate money to pay them off.

“We have to pay our debt,” he said.

According to the state Department of Revenue, a bond issue of between $683 million to $738 million would be sold in August followed by an deal from $130 million to $180 million sometime between August 2019 and August 2021.

Under that plan, the state will only pay interest on the debt for the first two years followed by increased debt service that would eventually decline to flat payments in the final five years of the 10-year schedule.

That plan reduces the cost of oil and gas tax credits from 8.1% of the general fund budget to 1.1% and results in more predictable and level annual payments, the agency stated.

Timothy Little, an analyst with S&P Global Ratings, said the rating agency doesn’t see the oil and tax credit bond as a significant credit factor although “it does provide certainty going forward of how those liabilities would be funded.”

In June, the rating agency moved Alaska’s outlook to stable from negative and raised its ratings for general obligation bonds from the Alaska Energy Authority from A to A-plus following the passage of the state budget. S&P rates Alaska GOs AA.

Most appropriation bonds are ranked a notch below the agency’s general obligation ratings, Little said.

“In general, when there is a requirement for the legislative body to make an appropriation we do factor into our assessment the willingness” to fund it, Little said.

But that willingness is “not always easy to quantify up front,” he said.

The Bond Buyer

By Imran Ghori

July 05 2018, 3:16pm EDT

How WIFIA is Surviving the EPA Firestorm.

A federal loan program for water projects appears to be flowing freely despite an ethics scandal at the Environmental Protection Agency, which administers it, and the Trump Administration's efforts to scale back EPA regulations.

Two of the applicants for the Water Infrastructure and Finance Act's low interest loan program in Kings County, Washington, and Omaha, Nebraska, have closed on loans and the Orange County, California, Water District expects to close on its loan by the end of the month.

EPA director Scott Pruitt resigned last week amid an ethics scandal at the agency, which has come under fire from environmental groups for perceived attempts to weaken air and water pollution regulations.

WIFIA – which Joseph Kane, a senior research associate at the Brookings Institute, said is in its nascent stage – appears to have bipartisan support.

Though the loan program was created in 2014 under the Obama Administration, it fits the current administration's model of setting up infrastructure programs that encourage private investment, Kane said.

"It transcends the partisanship – or left vs. right perspectives on how each would pay for infrastructure," Kane said. "I think there is bipartisanship interest in trying to explore all potential avenues. Particularly on a pilot process."

The WIFIA program provides low-cost loans and loan guarantees to eligible borrowers for water and wastewater projects. It is designed to work in conjunction with tax exempt debt and other financial resources. WIFIA can provide up to 45% of funding for a project.

The inaugural WIFIA round will provide about $1 billion in credit assistance to finance $2.3 billion in water infrastructure investment from $20 million of budget authority, according to the EPA.

The WIFIA program received $25 million in funding, including an additional $8 million in the Consolidated Appropriations Act of 2017 that President Donald Trump signed into law on May 5, 2017. That funding enabled EPA to structure the program and move ahead in April 2017 with requests that state and local water agencies send letters of interest.

In a July 2017 statement announcing the federal funding, Pruitt said that "rebuilding America's infrastructure is a critical pillar of the President's agenda."

Acting EPA Administrator Andrew Wheeler also told the Washington Post in a July 6 article that he "doesn't think the agency is going to change that much, because we are implementing what the president has laid out for the agency. He made several campaign promises that we are working to fulfill here."

EPA announced in April that it was seeking letters of interest for state and local water projects on an additional $5.5 billion in funding. And in May, it extended the deadline for those letters of interest on this second round of funding from July 18 to July 31.

EPA received 43 letters of interest across 19 different states for projects in April 2017 for the initial $2.3 billion allocated for the program created in 2014. Once the finalists were selected by EPA they had to undergo financial and engineering reviews to make sure the project was viable and the agencies had the financial ability to repay the loans.

The agency selected 12 entities across nine different states to apply for funding in the program's first round.

The projects selected represented large and small communities across the country seeking funding for wastewater, drinking water, stormwater and water recycling projects.

King County, Washington and City of Omaha, Nebraska water agencies closed on their WIFIA loans. King County received $134.5 million for its $275 million rain and wastewater treatment project on the loan that closed April 20. Omaha received on June 21 a $69.7 million WIFIA loan to build a $142.2 million partially underground structure to store and treat sewage.

King County will save up to $32 million from financing with a WIFIA loan compared to a bond issuance, according to EPA's online description of the financing.

Though the Omaha description doesn't specifically mention bonds, it says the city will save $20 million in interest costs.

"Omaha has worked closely with the EPA at all levels to execute the Clean Solutions for Omaha Program in a way that will be sustainable for the future and save our ratepayers about $20 million dollars in interest on this project," Omaha Jean Stothert said in a statement.

Orange County, Calif. Water District expects to close on its $124 million TIFIA loan that will help fund a $253 million expansion of its groundwater replenishment project by July 26.

Three states – California, Maryland and Indiana – are receiving the most funding.

California submitted 19 of the 43 applications in the initial round. The Golden State's efforts were rewarded as it received $1.3 billion, more than half of the WIFIA loan total, Kane wrote in a blog post on the Brooking's website. Indiana received $436 million and Maryland received $200 million, he wrote.

Kane partly attributed the size of California's programs – Pure San Diego's project costs $1.2 billion and it requested $492 million – for the state's share of WIFIA loans.

"It is not random or a mistake that some of the biggest water needs are in California given the drought concerns," he said. "Some of the more progressive utilities are in California, so they have the capacity to understand what WIFIA is about and to apply in time."

It is a new program and other places might not understand its parameters or have California's technical capacity, he said.

Fitch Ratings gave OCWD's $135 million WIFIA loan a AAA rating and affirmed a top rating for the water district's outstanding debt.

"The WIFIA loan is a very low cost loan," Fitch analyst Shannon Groff said. "They had already planned on doing the final expansion, so we had already baked that into our rating."

The program makes the water district less dependent on more expensive water from wholesaler Metropolitan Water District of Southern California, Groff said. If needed, OCWD could stop the purchase of Met water for year, she said.

"They get a great interest rate through the WIFIA loan, just as they would with bonds," Groff said, "but they are able to delay payment for five years past project completion."

The water district expects to begin construction in November 2019 and finish by second or third quarter 2002, but doesn't have to begin loan repayment until 2028, Groff said.

"We are estimating a 3% interest rate for our WIFIA loan – and even though we are AAA-rated, that is still better than we could get in the open market based on our projections," said Randy Fick, the water district's chief financial officer.

Orange County's project probably made the cut for WIFIA's first round, "because it's a proven project that has been in place for quite a while," Groff said.

When the initial ground replenishment project was completed in 2008, it added 70,000 acre feet of water to the water district's system. The second expansion added another 30,000 acre feet and the latest iteration will bring output to 133,000 acre feet, Fick said.

The WIFIA funding helps pay for the second expansion, said Fick said.

The project takes highly-treated sewage designed for the Pacific Ocean through several more steps of treatment involving reverse osmosis and microfiltration before injecting it into the county's groundwater storage system.

Water districts around California are now trying to imitate Orange County's ground water replenishment system, which was controversial when it was first proposed in the early 2000s and residents were referring to it as a toilet-to-tap plan.

To date, an EPA spokeswoman said the agency has received applications from seven of the 10 remaining entities that were selected. EPA expects to close two of those loans in the next month and the remaining five by the end of the year. Two agencies are in the process of submitting their applications. The Maine Water Company has decided not to submit an application for its Saco River Water Treatment Facility project.

The latest surveys from EPA suggest that states and localities nationally will need $700 billion over the next two decades to meet their water needs, Kane said.

"Given the scale of the demand we are seeing from the entities applying, it reveals there is a need for an alternative channel for low cost financing," Kane said. "Traditional finance channels of borrowing through municipal bonds and state revolving funds is clearly not adequate to drive or accelerate the investment needed."

By Keeley Webster

BY SOURCEMEDIA | MUNICIPAL | 07/12/18 07:04 PM EDT

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September 18, 2018 | Los Angeles, CA

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September 25, 2018 | Columbus, OH

Join the CDFA Ohio Financing Roundtable for a special one-day conference that will cover bonds, TIF, tax credits and energy, redevelopment and small business finance. This event will feature a number of economic development finance experts from around the state discussing development finance tools, authorities, resources and approaches, and how these can affect the Ohio economy going forward.

Click here to learn more and to register.

Climate Change AG Investigations and Municipal Litigation.

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

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

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King & Spalding

July 11, 2018

SEC Revokes Firm Registration and Bars Municipal Advisor Following Court Sanctions.

On June 29, 2018 Judge Halil Suleyman Ozerden of the Southern District of Mississippi entered judgments against Malachi Financial Products, Inc., and its president and sole shareholder, Porter B. Bingham, for alleged violations of the Securities Exchange Act of 1934 ("Exchange Act") and Municipal Securities Rulemaking Board ("MSRB") Rule G-17. The judgments were entered in accordance with a consent agreement signed by the Securities and Exchange Commission ("SEC"), Bingham, and Malachi. Without confirming or denying the allegations, Bingham and Malachi agreed to: (1) being permanently enjoined from further violations of Sections 15B(a)(5) and 15B(c)(1) of the Exchange Act and MSRB Rule G-17, (2) pay a joint and several disgorgement of $33,000 plus $2,858 of prejudgment interest, and (3) pay civil penalties of $50,000 for Malachi and $25,000 for Bingham.

Subsequently, and citing to these final judgments, the SEC acted on July 9, 2018 to revoke Malachi's registration as a municipal advisor and to bar Bingham from association with any "broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization." This agency action effectively prohibits Malachi from engaging in municipal advisory activities and bars Bingham from engaging in activities that are regulated by the SEC. The combination of penalties sought and ultimately enforced by the SEC highlights its continuing focus on enforcing federal securities laws as they relate to municipal advisors.

According to the complaint filed by the SEC on January 2, 2018, these violations arise out of actions relating to Rolling Fork, Mississippi's (the "City") municipal bond offering in 2015 to fund certain improvement projects, such as paving streets and constructing a municipal swimming pool. In January 2015, the City hired Malachi as the municipal advisor for the proposed bond offering under an "Agreement for Professional Financial Advisory Services" ("MA Agreement"). Bingham, as Malachi's president and sole principal, signed the MA Agreement on behalf of Malachi.

The complaint alleges that in May 2015, Bingham accepted two payments totaling $2,500 from a registered representative who was associated with a broker-dealer and municipal securities dealer. Approximately two weeks after receiving those payments, a Malachi employee recommended that the City hire the registered representative and his firm to underwrite the bond offering. Neither Bingham nor the registered representative disclosed the payments or the resulting conflicts of interest to the City. Under the terms of the MA Agreement, Malachi was to be paid an amount not to exceed 2% of the debt issuance. While the City's Offering was originally contemplated to be for $2 million, statutory offering limits required reduction of the offering to $1.1 million and, pursuant to the 2% cap, Malachi's compensation was reduced from $40,000 to $22,000.

As alleged, Malachi and Bingham attempted to recoup this lost revenue by fraudulently charging the City for purported "additional services" that they did not actually provide. The day after the Offering closed, Bingham directed Malachi's employee to prepare and send two invoices totaling $55,000 to the bond trustee for payment. One invoice was for $22,000, which was Malachi's contractual fee for the municipal advisory services provided to Rolling Fork (2% of the $1.1 million issuance). The other invoice was for $33,000 and, according to the invoice, was purportedly for services related to the "investment of bond proceeds." This invoice, the complaint states, was false and fraudulent and was not authorized or agreed to by the City. Although addressed to the City's Mayor, Malachi only transmitted them to the bond trustee and never sent them to the Mayor or the City. As a result, the bond trustee paid the full $55,000 to Malachi before the City became aware of the invoices.

Malachi allegedly provided no services relating to the investment of bond proceeds to the City and the bond proceeds had not, in fact, been invested by the time of the second invoice. Neither Bingham nor Malachi had any documentation reflecting any investment services they purportedly provided the City in connection with the proceeds from the Offering. Although Malachi and Bingham may have also created some post-bond issuance compliance policies for the City and examined the City tax rolls to determine the City's legal lending limit, the complaint asserts neither of those services, even if provided, justified the $33,000 invoice. Rather, the post-issuance compliance policies purportedly created for the City contained nothing but standard boilerplate language, much of which can be found by doing a cursory internet search. As such, it would have been unreasonable to bill the City $33,000 for preparing these policies. More importantly, as the complaint notes, Malachi and Bingham never provided those written policies to the City.

The SEC orders barring Bingham and revoking Malachi's registration as a municipal advisor can be found here and here.

July 12, 2018

Bracewell LLP

Municipal Bonds Weekly Market Report: Unemployment Remains Low at 4.0%

MunicipalBonds.com provides information regarding the performance of muni bonds for the past week in comparison with Treasury yields and net fund flows, as well as the impact of monetary policies and relevant economic news.

- Treasury and municipal yields mostly dropped this week.
- Muni bond funds reversed inflow trend with outflows this week.
- Be sure to review our previous week's report to track the changing market conditions.

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municipalbonds.com

by Brian Mathews

Jul 10, 2018

Understanding the Benefits/Risks of High-Yield Municipal Bonds.

One of the main principles of investing that every investor should understand is the idea of risk versus reward.

Every investment has some degree of risk and, in exchange, the owner of the investment should be rewarded with a higher potential for gain. A Certificate of Deposit, for example, has a very low level of risk but offers very minimal gain in the form of a fixed interest rate. A technology stock, on the other hand, has much more risk but considerably more upside.

Typically, investors see municipal bonds as a relatively conservative investment with the purpose of distributing tax-free income until the bond matures. However, not all municipal bonds are created equal and there are various risks versus rewards for each bond.

Continue reading.

municipalbonds.com

by Brian Mathews

Jul 12, 2018

State Tax Law Updates.

A number of states have recently proposed or passed new laws related to state-level taxation, some of which are taxpayer-friendly and some of which are expected to impose additional tax burdens on taxpayers. They vary in subject from efforts by states to mitigate the new federal limitation on the deductibility of state and local taxes to proposed changes to state income taxation of "carried interest." This update reflects some of those recent proposals and laws.

Mitigation of Federal Limitation on Deductibility of State and Local Taxes

Recently, some states have reacted to the 2017 Tax Cuts and Jobs Act's (TCJAs) limitation on the deduction of state and local tax (SALT) for US federal income tax purposes. Some of the proposed legislation, and new laws passed in Connecticut and New York, may benefit taxpayers by helping to mitigate the impact of $10,000 limit placed on the federal deductibility of SALT.

In response to some of these proposals, the federal government has already announced, via Notice 2018-54, that it intends to propose regulations to disallow the use of such state-level workarounds for the SALT deduction limitation. The Notice specifically addresses proposals that allow taxpayers to receive SALT credits for certain transfers to funds controlled by state or local governments; however, it is likely that, with time, the federal government will work to disallow additional workarounds for the SALT deduction limitation.

Connecticut

On May 31, 2018 Connecticut Governor Dannel Malloy signed into law Connecticut Public Act No. 18-49 which imposes an income tax on pass-through entities (PTEs) effective retroactively as of January 1, 2018. The tax is imposed at a rate of 6.99% on the PTEs taxable income but is able to be offset by a personal income tax credit of 93.01% on the pro rata share of taxes paid by PTEs shareholders, partners, or members. Entity level taxes imposed on PTEs are generally not subject to the new SALT deductibility rules such that the PTE tax provides a PTE's owners with an effective deduction against federal income tax without resulting in additional state level income taxes. The law applies to S corporations, partnerships, and limited liability companies (LLCs) treated as partnerships for federal income tax purposes. Furthermore, the law permits Connecticut municipalities to provide property tax credits to residents for amounts contributed to "community supporting organizations."

New York

New York recently enacted an optional employer level payroll tax. If employers elect into this new payroll tax, based on wages in excess of $40,000 paid to employees, then employees can take a credit for such payroll tax against their New York personal income tax liability. The election applies annually on a calendar basis and is limited solely to "employees" (rather than independent contractors, consultants, etc.). However, the administrative costs to implement the new tax, concerns regarding possible adjustments to employee compensation, and complex issues with non-resident employees might negatively impact how many employers actually make this election. If elected the payroll tax has a three-year phase-in starting in 2019 with the following rate structure:

- 2019 rate – 1.5% of payroll expense
- 2020 rate – 3% of payroll expense
- 2021 (and subsequent years) rate – 5% of payroll expense

California

California has proposed three bills in order to help relieve state tax burdens of taxpayers:

- S.B. 227 would allow taxpayers to make charitable contributions to county-level education offices. These offices would issue certifications to taxpayers, distribute funds, and notify the California Franchise Tax Board (CFTB) of the contributions. For donations made under this bill, taxpayers receive a dollar-for-dollar state tax credit equal to 85% of the donated amount. On June 25, 2018 the bill passed the Assembly Revenue and Taxation Committee and is awaiting consideration at the Assembly Education Committee.
- S.B. 539 would expand an existing College Access Tax Credit to allow taxpayers to contribute to the California Educational Facilities Authority. Taxpayers can currently credit 50% of amounts contributed against state taxes owed. The proposed bill would increase that credit to 75% of amounts contributed. As of July 6, 2018, the Assembly Revenue and Taxation Committee has yet to hold a hearing on this bill.
- A.B. 2217 proposes that California nonprofits, public school districts, community colleges, and colleges and universities that participate in the Cal Grant program (qualified entities) can buy Golden State Credits from the California treasury for $0.90. Taxpayers would then be able to purchase Golden State Credits from the qualified entities for $1. In turn, taxpayers would receive a state tax credit equal to 80% of their purchase amount, which would be treated as a charitable donation. As of the end of June, this bill is awaiting a hearing in the Senate Governance and Finance Committee.

Treatment of Carried Interest

Under current federal law, a portion of income earned by investment managers called carried interest receives favorable tax treatment by being taxed at capital gains rates as opposed to the higher rates imposed on ordinary income. Certain states have enacted or proposed legislation to close this perceived loophole.

- New York: New York state bill A03554 intends to close the carried interest “loophole” through a “Fairness Fix” by imposing an additional 17% tax on such income, which is meant to bridge the gap between the highest federal individual rate of 37% and a capital gains rate of 20%. The proposal would also tax carried interest income of managers of hedge funds and other private investment funds as ordinary income at the state level rather than retaining capital gains treatment. However, even if the proposal becomes law, this re-characterization of capital gains income to ordinary income and carried interest fee will not take effect in New York unless Connecticut, New Jersey, Massachusetts, and Pennsylvania enact similar legislation.
- New Jersey: New Jersey Senate Bill 64 (S64) imposes a 19% additional tax on income from “investment management services.” Similar to the bill in New York, the New Jersey bill only becomes effective if New York, Connecticut, and Massachusetts enact similar legislation. S64 also contains a provision terminating the tax if Congress amends the Internal Revenue Code to repeal the present loophole at a federal level. On June 21, 2018 S64 was substituted by A3088, which passed on July 1, 2018, largely in the same form as S64, but substituting the 19% additional tax with a 17% additional tax. (P.L. 2018, ch. 45).
- Connecticut and Massachusetts: Each state, in 2017, proposed a 19% surcharge on carried interest (referred to in the Connecticut bill as an “investment management fee surcharge.” Neither bill progressed to a vote, although similar legislation may be considered in the future.
- Pennsylvania: Pennsylvania has yet to propose legislation to address the taxation of carried interest.
- California: California has also proposed legislation to close the carried interest loophole by applying a state level tax to carried interest. The bill, Assembly Bill 2731, proposes California

Revenue and Taxation Code section 17044 which would impose a 17% tax on income derived from an "investment management services interest" effective for taxable years beginning on or after January 1, 2018. California's law is not contingent on any neighboring states. The bill has received initial approval, and has been re-referred to Committee on Rules as of May 29, 2018 for further consideration. In order to take effect two-thirds of the legislature needs to vote in favor of the bill.

Proskauer Rose LLP – Jeremy Naylor and Kimberly Ann Condoulis

July 12, 2018

TAX - OHIO

Board of Education of Loveland City School District v. Board of Trustees of Symmes Township

Court of Appeals of Ohio, First District, Hamilton County - May 4, 2018 - N.E.3d - 2018 WL 2085097 - 2018 -Ohio- 1731

School board filed complaint against township, seeking to recover money from tax-increment financing (TIF) project.

The Court of Common Pleas granted summary judgment in favor of township. Board appealed.

The Court of Appeals held that:

- Action was untimely;
- Continuous-violation doctrine did not toll statute of limitations;
- Delayed-damage rule did not toll statute of limitations; and
- Discovery rule did not toll statute of limitations.

Essence of school board's complaint against township was equitable relief rather than money damages, and thus two-year statute of limitations for actions against political subdivisions did not apply, where school board was seeking to recover money to which it contended that it was entitled under tax-increment financing (TIF) statutes but for township's allegedly improper actions.

Six-year statute of limitations for a liability created by statute other than a forfeiture or penalty, rather than ten-year catch-all statute of limitations, applied to school board's action against township contending that it was entitled to money under tax-increment financing (TIF) statutes; without statutes authorizing townships to create TIFs, township could not have enacted resolutions amending TIF project.

TAX - NEW JERSEY

Metz Family Ltd. Partnership v. Township of Freehold

Tax Court of New Jersey - June 28, 2018 - N.J.Tax - 2018 WL 3186772

Taxpayer filed direct appeal from township's assessment on income-producing property located within county that participated in Assessment Demonstration Program (ADP). Township filed motion to dismiss.

The Tax Court of New Jersey held that:

- Township had to send taxpayer request for income and expense information at least 45 days prior to November 1 of pretax year, i.e., date that township had to submit preliminary assessment list to county board;
- Statutory requirements for assessors of taxing district in non-ADP counties was not relevant to determination of date by which assessor of taxing district in ADP counties participating to mail request for income and expense information;
- Taxpayer's filing of direct appeal from assessment three months after pretax year date that township had to file preliminary assessment list had no bearing on whether township's request for income and expense information was timely.

Fitch: Recent Healthcare Outlier Downgrades Not Reflective of Wider Trend.

Fitch Ratings-New York-09 July 2018: Fitch Ratings does not consider two recent multi-notch downgrades affecting healthcare issuers in South Carolina, driven by extraordinarily large net pension liabilities, harbingers of wide-ranging rating actions in the healthcare sector or other sectors, including higher education. Rather, these outliers highlight outsized pension liabilities under any measure compounded by constraints in the healthcare business model given its more limited revenue defensibility when compared to other sectors in U.S. public finance.

ISSUER-SPECIFIC ACTIONS CONSIDERED IN BROADER PORTFOLIO CONTEXT

On Jan. 9, 2018, Fitch released its updated "U.S. Not-For-Profit Hospitals and Health Systems Rating Criteria". The updated criteria place a heightened emphasis on maintenance of leverage ratios and liquidity consistent with an issuer's operating profile through the cycle in a forward-looking rating case stress. These leverage ratios explicitly incorporate lease and net pension liabilities as direct debt equivalents. Since the release of the criteria, Fitch completed a review of 138 separate health care providers, with reviews focused predominantly on issuers where the potential for change due to the application of new elements of the criteria might lead to changes in ratings.

As noted when Fitch released the new criteria, the agency's expectation was for affirmation to be the predominant outcome of application of the new criteria. The review group of 138 credits reflects approximately 50% of Fitch's total hospital and health system portfolio. There were a total of 35 upgrades (13% of the total portfolio) and 25 (9%) downgrades as a result of these reviews. The majority of rating changes were one notch. Of the upgrades, three credits were upgraded 3+ notches and of the downgrades, a total of five moved 3+ notches. To place these changes in a broader context, Fitch does not expect further rating changes solely based on criteria revisions for the remainder of the 270+ portfolio.

GASB PENSION LIABILITY ALLOCATED WHERE FUNDING BURDEN RESIDES

Rating actions included reviews of government-sponsored healthcare providers, a relatively small subset of Fitch's overall healthcare portfolio. These reviews incorporated the first application of Fitch's approach to evaluating public, defined benefit pension liabilities in revenue-supported entities. For many of these issuers, which participate in state-administered, cost-sharing multi-employer plans, Fitch looks to GASB 68 when considering where the proportionate share of a net pension liability should be placed among governmental units participating in such plans. GASB 68 generally assigns the liability where the primary funding obligation resides absent a clear legal and financial assumption of the liability by the state government.

Fitch applies this approach to both local government participants and to government enterprises participating in a state-administered cost-sharing plan, such as health care, utility and higher education enterprises. There is no basis to treat the government issuers and the government enterprises differently when considering where the burden rests in a common plan. Just as direct employers are responsible for the current salaries of their own employees, Fitch views them as being responsible for deferred compensation/future pension benefits, including when insufficient resources have been set aside and an unfunded liability exists.

CAPACITY TO RESPOND VARIES ACROSS SECTORS; HEALTHCARE RELATIVELY CONSTRAINED

Fitch notes however, that the capacity to respond to and absorb an increased pension burden, regardless of plan type, through either revenue tools or operating cost flexibility varies very dramatically among issuers. Fitch explicitly considers this by assessing an issuer's revenue defensibility and operating risk flexibility to set a context for review of an issuer's financial leverage. The ability of a government with general taxing capacity is at the high end of revenue flexibility, as would be a public university that has flexibility both to raise tuition and fees and to shape the cost and extent of its offerings.

Absent general taxing powers, health care providers have among the lowest revenue and operating flexibility of participants with pension obligations. Under Fitch's rating approach, issuers with stronger revenue defensibility and operating risk flexibility assessments can have higher ratings at every level of leverage compared to issuers with more limited revenue and operating flexibility. Leverage tolerance at each rating level for health care providers is significantly lower given the nature of the business model. As a result, different types of participants having a large unfunded liability will be affected very differently, including when they carry proportionate shares of the liability of a cost-sharing, multi-employer plan.

SOUTH CAROLINA DOWNGRADES – LARGE PARTICIPANTS IN UNDERFUNDED PLAN

Fitch recently downgraded Spartanburg Regional Health Services District (Spartanburg Health) and Lexington County Health Services District (Lexington Health), both participants in the state-administered South Carolina Retirement System (SCRS), a cost-sharing multi-employer plan. Each is a statutory public hospital and a political subdivision of the state. Neither has direct authority to levy a tax in support of its operations. Each issuer reported its proportionate share of the system's large net pension liability in its financial statements in accordance with GASB 68. The state, as another participating employer in SCRS and several other state-administered plans, also reports its proportionate share of the net pension liability. As of fiscal 2017, the state reported carrying 12.9% of the SCRS net pension liability, with additional amounts from four other plans. Altogether, Fitch measures the state's aggregate net pension liability, adjusted by Fitch to a 6% discount rate at 2.6% of personal income. Combined with tax-supported debt brings the total to only 4% of personal income, a level which Fitch views as being a low burden on the state's resource base despite the weakening trajectory of SCRS in recent years.

Under Fitch's healthcare criteria, Fitch assesses leverage on an adjusted basis, including leases and Fitch-adjusted net pension liabilities. Spartanburg Health reported a net pension liability of $656 million and Lexington Health reported a net pension liability of $739 million, based on the 7.25% discount rate used by SCRS to calculate the liability. Just as when assessing state and local issuers, Fitch adjusts the reported net pension liability using a standard discount rate (6%) to provide consistency among issuers and better reflect the magnitude of the commitment posed by pensions. For Spartanburg Health, the Fitch-adjusted pension liability is $904 million. For Lexington Health the Fitch-adjusted pension liability is $1.1 billion. Even without the Fitch adjustment, the size of the net pension liability as reported would have driven a rating action.

Fitch assigned a 'BBB' rating to Spartanburg Health based on its cash to adjusted debt of 57% and net adjusted EBITDA to adjusted debt of 2.7x over a five-year horizon. (Downgrade from A). Fitch assigned a 'BB+' rating to Lexington Health based on its cash to adjusted debt of 40% and net adjusted EBITDA to debt of 5.1x over a five-year horizon. (Downgrade from A+) .

SOUTH CAROLINA STATE LAW OUTLINES PARTICIPANT OBLIGATIONS

In determining the level of net pension liability to include in Spartanburg Health's and Lexington Health's leverage profile, Fitch considered state law that applies to funding the statewide multi-employer plan and past state practices to assess whether either issuer's burden was likely to be relieved or reduced through direct state funding.

State law provisions relevant to this analysis are found in the South Carolina constitution and the act governing the statewide plan. Read together it is clear from these provisions that the state is obligated to assure actions are taken to maintain long-term solvency of the plan. . Fitch believes the most likely scenario to closing the unfunded liability is that the state will increase both employer and employee contributions, with the bulk of the burden falling to employers, consistent with the state's historical practice. While recent statewide reforms should positively affect the trajectory of the plan's unfunded liability over time if plan assumptions are met, a significant gap remains, and recent changes to contribution and amortization practices will have only a gradual impact, similar to how reforms to other public defined benefit pensions generally have worked.

Further, Fitch believes it would be wrong to conclude that the pension obligation belongs at the state level. Fitch includes in the state rating the NPL attributed to it as reported in the state's audited financial statements. Although additional appropriations by the state are an available tool, Fitch believes it unlikely the state will address unfunded liabilities directly from its own resources and relieve local government and public authorities of contributions funded by their own revenues. Fitch also believes it unlikely in a common plan for a state to give relief to one plan participant and not others in the plan, whether done directly or indirectly.

SIMILAR FRAMEWORK ACROSS STATUTORY SCHEMES; ULTIMATE BURDEN ON EMPLOYERS

Statutes governing cost-sharing plans often have a broadly similar framework, as exemplified by South Carolina's plan. Public employees are required to become members and participating employers are liable for contributions. Benefits owed to individual employees are declared a liability of the plan and not a liability of any participating employer (including the state). Because the direct liability for pension benefit payments lies with the plan, it is sometimes argued that the employers therefore have no liability that should be considered in their rating. Fitch does not believe this withstands reasonable scrutiny, however, because the statutes also typically provide that the plan is obligated to meet its responsibility through mandatory assessments on participating employers and employees where needed, to complement returns from invested assets. The net pension liability is, in effect, a measure of the burden of future mandatory contributions that will need to be made by employers to meet their obligation to their own employees.

The statutory framework typically includes state oversight and state responsibility for assuring plan solvency through assessments on plan employers. Typically, once an employer opts to participate in the plan, participation is irrevocable, with a state intercept mechanism in the event a participating employer does not make the mandatory contribution; benefits cannot be forfeited. A state government generally has the power to appropriate as an alternative to assure plan solvency whether this is in the statute or not. Fitch does not factor this power into a rating where it has not generally been exercised to restore balance to a statewide common plan or provide direct funding on behalf of participating employers.

TEXAS HOSPITAL DISTRICTS IN CONTRAST

As noted above, how an issuer's unfunded pension obligation and overall leverage profile affect a rating outcome depends very much on an assessment of an issuer's capacity to respond to an increased burden with either available revenue tools or operating cost flexibility. Fitch's ratings on Texas hospital districts provide a helpful contrast. Texas hospital districts have independent taxing powers and can levy property taxes within certain bounds to enhance revenues from operating resources.

Fitch recently downgraded Dallas County Hospital District (Parkland) to 'A+' based on application of the updated criteria. Parkland has a reported net pension liability for its own single employer plan of $423 million and a Fitch-adjusted net pension liability of $588 million. Its relevant metrics include net adjusted debt to EBITDA of 4.1x and cash to adjusted debt of 37%. However, the district has substantial unused taxing power that can be tapped to maintain its financial balance and meet any increased pension liability without straining its financial profile. Fitch noted the 'A+' Issuer Default Rating (IDR) and limited tax General Obligation (GO) ratings reflect Parkland's weaker net leverage profile under a stress scenario through the cycle relative to its mid-range operating profile and exceptionally strong revenue defensibility. Fitch views Parkland's unusually strong 'aa' revenue defensibility, as demonstrated by Fitch's estimated $1 billion taxing margin available for operations, as mitigating a weaker net leverage position, allowing Fitch to place the final rating in the 'A' category despite a weak financial profile, which would typically result in a lower rating.

The importance and relevance of individual issuer characteristics particularly as it relates to pension liability is also illustrated by Fitch's 'AA+' rating of Bexar County Hospital District, in Texas. The district's cash-to-debt and cash-to-adjusted debt of 133% and 94%, respectively, as of Dec. 31, 2017 (based on unaudited data at the time), reflect unrestricted cash and investments of $895 million in relation to $670 million of long-term fixed rate GO debt and adjusted debt. Under Fitch's criteria, adjusted debt includes Fitch's capitalization of operating leases (estimated at $60 million) and the Fitch-adjusted net pension liability (estimated as of its fiscal 2016 audit at $224 million based on a 6% discount rate, instead of the $139 million level reported by the district, which uses a 7.5% discount rate). The district, which participates in a statewide agent multi-employer plan, migrated to a cash balance plan in 2012, limiting exposure to future significant pension liability changes. Net adjusted debt-to-adjusted EBITDA, which is a measure of how many years of cash flow is needed to repay long-term debt outstanding, was solid at 0.3x at Dec. 31, 2017.

CASE STUDY – SOUTH CAROLINA CONSTITUTION & RETIREMENT PLAN STATUTES

The following excerpt from South Carolina's Retirement Systems Act describes the pension obligation as one of the retirement system (not the state itself), which is not uncommon among U.S. plans. Fitch uses GASB treatment of the allocation of the liability among plan participants as its reasonable-basis methodology. The language below further states that employers participating in the plan are obligated to appropriate and that benefits to members are non-forfeitable:

Section 9 1 1690: "Credit of State is not pledged for payments; rights in case of termination of System or discontinuance of contributions.

All agreements or contracts with members of the System pursuant to any of the provisions of this chapter shall be deemed solely obligations of the Retirement System and the full faith and credit of this State and of its departments, institutions and political subdivisions and of any other employer is not, and shall not be, pledged or obligated beyond the amounts which may be hereafter annually appropriated by such employers in the annual appropriations act, county appropriation acts and other periodic appropriations for the purposes of this chapter. In case of termination of the System, or in the event of discontinuance of contributions thereunder, the rights of all members of the System to benefits accrued to the date of such termination or discontinuance of contributions, to the extent then funded, are nonforfeitable."

The state constitution (excerpted below) describes the obligation of the state to assure adequate funding of the plan by all members. In the event of an unfunded liability, Fitch believes the most likely scenario to closing it is that the state will increase both employer and employee contributions, with the bulk of the burden falling to employers, consistent with the state's historical practice. Lexington Health is the third largest, and Spartanburg Health is the eighth largest participant in SCRS by covered employee as of the system's fiscal 2017 financial statement.

Article X, Section 16: "[t]he General Assembly shall annually appropriate funds and prescribe member contributions for any state-operated retirement system which will insure the availability of funds to meet all normal and accrued liability of the system on a sound actuarial basis as determined by the governing body of the system."

Finally, the following section from the Retirement Systems Act describes state remedies in assuring employer funding of the pension obligation including withholding of state funding until the defaulted payment is cured. This mechanism is essentially an intercept provision. Fitch believes certain revenues received from the State, including Medicaid and others, could and would be withheld in the unlikely event a participating entity did not make its required pension contributions. This mechanism further supports Fitch's view that the liability ultimately is the responsibility of the employer and there is no flexibility associated with the pension contribution burden.

SECTION 9 1 1170, Collection of Employers' Contributions:
"If . . . .the full accrued amount of the contributions and interest provided for under this section due . . . from an employer other than the State has not been received by the System from the chief fiscal officer of the employer within thirty days after the last due date as provided in this item, then upon notification by the Board to the State Treasurer and Comptroller General as to the default of the employer as provided in this item, any distributions which might otherwise be made to the employer from any funds of the State must be withheld from the employer until notice from the Board to the State Treasurer that the employer is no longer in default."

In 2017, South Carolina enacted Act 13, which reformed contributions and actuarial assumptions of SCRS, positioning the system to gradually reduce the burden of liabilities in the coming decades if the lowered 7.25% investment return and other actuarial assumptions can be achieved. This rate, while below average for major systems, is above the 6% level assumed by Fitch in assessing expectations for pension liabilities and long-term investment returns. Other reforms included a gradual reduction in the amortization period for the unfunded pension from 30 years to 20 years by fiscal 2028.

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Additional information is available on www.fitchratings.com

Fitch: Statutory Lien Treatment Lifts AZ, RI Local GO Ratings.

Fitch Ratings-Austin-12 July 2018: Enhanced bondholder protection provided by statutory lien provisions in Arizona and Rhode Island local government statutes has resulted in general obligation (GO) bond ratings two notches above the local governments' Issuer Default Ratings (IDR) in those states, according to Fitch Ratings.

As discussed in Fitch's tax-supported rating criteria, a statutory lien is defined in Section 101(53) of the U.S. Code as a lien arising automatically by force of statute on specified circumstances or conditions. The statutory lien preserves bondholder rights to tax revenues securing the tax-backed bond received by the municipality after it enters bankruptcy court.

Although the automatic stay provisions of the Code would not prevent a payment default, the holder of a statutory lien is entitled to recover the value of the lien in the bankruptcy proceeding. The determination of value is not detailed in the Code, but recovery values may be substantially higher than an unsecured credit that competes with other general claimants for a claim on the municipality's revenues. As a result of the robust protection afforded bondholders benefiting from a statutory lien in a bankruptcy, Fitch rates ULTGO bonds issued by local governments in both states and backed by revenues with a statutory lien for bondholders two notches higher than the IDR.

Fitch acknowledged this credit feature in Arizona following 2016 and 2017 amendments to the state's local government statutes. Fitch reviewed the provisions and determined they provide bondholders with a substantial preferential right in a bankruptcy proceeding, warranting a GO bond rating two notches higher than an entity's IDR. The statutory lien applies only to ad valorem tax revenues and applies both to GO bonds previously issued and to be issued in the future. Rhode Island established a statutory lien for GO bondholders in 2011.

The GO bond ratings of the Arizona and Rhode Island entities (currently 18 in Arizona, six in Rhode Island) are linked to their IDR, and any change in credit quality that affects the IDR will also impact the GO bond rating.

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Puerto Rico Bankrupt Utility Is Leaderless After Pay Scandal.

- **Upheaval comes amid furor over new CEO's $750,000 base salary**
- **Public employees, residents face government austerity policies**

Most board members of Puerto Rico's power utility resigned Thursday after a chorus of outrage over pay for its new chief executive officer, who then pulled out of the job. The tumult leaves the troubled agency leaderless at a critical time in its bankruptcy and sale of its assets.

In a letter to Governor Ricardo Rossello, five members of the panel said they were dismayed by "petty political interests." Earlier, Rossello joined politicians and residents in decrying the $750,000 salary pledged to incoming chief executive Rafael Diaz-Granados, which they said was exorbitant in light of the island's financial crisis and the possibility that public employees may soon face reduced benefits.

"We no longer believe that we have the support to perform the politically unpopular tasks necessary to drive the change from within PREPA," the board members wrote in the resignation letter, which was confirmed by a person with direct knowledge of the matter. "When the petty political interests of politicians are put ahead of the needs of the people, the process of transforming the Puerto Rican electricity sector is put at risk."

Diaz-Granados, himself a board member, quit that position and won't take the chief executive job, according to the person, who asked not to be named because it wasn't yet official.

Rossello will name board replacements before he leaves for a personal trip to attend the FIFA World Cup final in Moscow between France and Croatia, according to Public Affairs Secretary Ramon Rosario.

Rich and Poor

Executive pay has turned into a sensitive topic for the U.S. commonwealth. As the entire island wades through bankruptcy proceedings, many regular Puerto Ricans, including low-level public employees, face the prospect of seeing pension payouts, Christmas bonuses and even sick and vacation days slashed. Also under scrutiny is the paycheck for the executive director of the island's fiscal control board, which the U.S. Congress installed to right the island's fiscal accounts.

Diaz-Granados was named CEO on Wednesday, just hours after the surprise resignation of Walter Higgins. Higgins quit after the legislature had sought to prevent him from receiving a bonus on top of his $450,000 salary. Diaz-Granados's higher base salary, which the utility said was in line with industry standards, appeared intended to circumvent the legislature's anti-bonus measure.

Daunting Task

The Prepa crisis comes at a critical time. It's navigating bankruptcy court and working with investment bankers to sell generation assets, potentially putting the transmission and distribution business under a private concessionaire. The new leadership also faces the daunting task of addressing decades of ingrained corruption, inefficiency and poorly maintained infrastructure.

In a press release Wednesday, the utility said Diaz-Granados's pay was in line with industry standards, citing an American Public Power Association formula based on utilities' revenue.

Diaz-Granados defended his salary in local radio interviews Thursday. He said he was "sacrificing" to take the job, and said his previous position at General Electric Co. paid more than $2 million a year.

Indeed, Constance Lau, the CEO of Hawaiian Electric Industries, a utility that had comparable annual revenue, made $893,533 in base salary in 2017. CEO Patricia Kampling of Alliant Energy Corp., which also posted similar sales, earned $980,000. But those utilities are investor-owned, and the similarities with Prepa's financial situation essentially end there.

By comparison, Gil Quiniones, CEO of the state-owned New York Power Authority, makes $235,000 in base annualized salary. And before Higgins and Diaz-Granados, top Prepa executive Ricardo Ramos had a salary of just $142,000.

Livid Residents

Diaz-Granados, a multilingual Harvard University graduate who is originally from Colombia, spent 15 years at GE, including as president and chief executive officer of GE Spain and Portugal and GE Mexico. Higgins arrived on the island from Nevada in March without much Spanish, but brought 40 years of management experience.

Coraly Ortiz, a 43-year-old bank employee in San Juan, said she was furious about Diaz-Granados's salary.

"It's completely disproportionate and ridiculous, above all with the situation in Puerto Rico," she said. "They're creating an elite of overpaid government officials taking advantage of the crisis."

Bloomberg Markets

By Michelle Kaske, Yalixa Rivera, and Jonathan Levin

July 12, 2018, 9:24 AM PDT Updated on July 12, 2018, 1:46 PM PDT

— With assistance by Mark Chediak, and Lynn Doan

[U.S. Judge Nixes Move to Toss Puerto Rico Bankruptcy Case.]

(Reuters) – A federal judge on Friday rejected an attempt by a major Puerto Rico bondholder to throw out the U.S. territory's historic municipal bankruptcy case.

U.S. District Judge Laura Taylor Swain ruled that the creation by the U.S. Congress of a financial oversight board for Puerto Rico under a law known as PROMESA and the appointment of the board's members did not violate the U.S. Constitution.

"The oversight board's statutory objectives and scope of authority thus mark its character as territorial rather than federal," Swain's ruling said.

Aurelius Capital Management, an investment firm with a specialty in distressed debt, filed a motion last year arguing that the board's creation violated the U.S. Constitution's Appointments Clause. The hedge fund sought to dismiss the board's May 2017 federal court case to restructure the territory's roughly $120 billion in debt and pension liabilities.

An Aurelius spokesman said the hedge fund declined to comment on the ruling.

Under the 2016 federal PROMESA law, Congress appointed six members to a board tasked with managing the territory's finances, with then-President Barack Obama adding a seventh. PROMESA gave the board authority to push fiscally struggling Puerto Rico into a court-supervised restructuring akin to U.S. bankruptcy.

"As stated in Judge Swain's opinion, PROMESA empowers the Oversight Board to 'approve the fiscal plans and budgets of the Commonwealth and its instrumentalities' and 'override Commonwealth executive and legislative actions that are inconsistent with approved fiscal plans and budgets,'" the oversight board said in a statement on Friday.

Swain, who is overseeing Puerto Rico's case, previously dismissed a lawsuit by Aurelius and other investors over the territory's default on its general obligation bonds.

(Reporting by Karen Pierog in Chicago; Editing by Daniel Bases and Leslie Adler)

July 13, 2018

[Puerto Rico Utility Directors Resign, Alleging Political Interference.]

Most of the Puerto Rican power monopoly's board resigns after the governor demands a CEO salary cut

The independent directors of Puerto Rico's bankrupt public power monopoly resigned Thursday, alleging political interference after top lawmakers and the U.S. territory's governor demanded cuts to a chief executive compensation package.

Five board members at the public power monopoly known as Prepa said in a resignation letter that "political forces in Puerto Rico" had been meddling in their decisions and "want to continue to control Prepa." The incoming CEO was among the board resignations, leaving Prepa leaderless a day after the current CEO, Walter Higgins, said he was departing.

The seven-member board came under fire after offering Mr. Higgins's successor a $750,000 salary, which top Puerto Rican politicians criticized as excessive for a bankrupt utility. Gov. Ricardo Rosselló said the compensation was "not proportional" to Prepa's financial condition and called on the utility's board members to cut the CEO salary or resign.

“When the petty political interests of politicians are put ahead of the needs of the people, the process of transforming the Puerto Rican electricity sector is put at risk,” the resignation letter said.

The departures threw Prepa’s leadership into disarray as the utility vies with bondholders in court to drive down a $9 billion debt load and solicits new investments for a dilapidated power system.

The resignations also marked an unusual rebuke to political meddling for a public authority often accused of being politicized. Prepa has long been plagued by frequent turnover at the top, with politically connected officials cycling in and out depending on the party in power. Board Chairman Ernesto Sgroi, one of the directors who resigned Thursday, was Mr. Rosselló’s 2016 campaign treasurer.

“I strongly reject the allegations of political interference by outgoing members of the governing board,” the governor said in a statement.

Wall Street creditors supported the installation of independent board members under a 2016 governance overhaul. The turmoil in Prepa’s leadership further clouds the strategy for repairing the damage from last year’s hurricane season and improving service for consumers.

“There is a total meltdown of the Puerto Rico Electric Power Authority right now,” said Puerto Rico Senate Minority Leader Eduardo Bhatia. He said the resignations could prompt a takeover by the U.S. territory’s federal financial supervisors or by Congress.

A spokesman for the House Natural Resources Committee, which has jurisdiction over U.S. territories, said the political influence on Prepa proved it wasn’t truly independent.

Since last year’s devastating hurricane season, U.S. lawmakers and the Energy Department have discussed a temporary federal takeover of Prepa, but the idea didn’t gain broad traction, according to people familiar with the matter. Puerto Rico’s federal oversight board tried to take over Prepa last year but was blocked in the courts.

Prepa tapped board member Rafael Díaz-Granados as its new CEO on Wednesday after Mr. Higgins abruptly resigned from the position, saying he believed he wouldn’t be paid what he was owed by Prepa. Mr. Higgins, a high-profile hire with decades of industry experience, was on the job less than four months.

Lawmakers maneuvered in recent weeks to cut nearly half a million dollars in bonuses from his compensation and likewise criticized the pay package offered to Mr. Díaz-Granados, a former General Electric Co. executive who led that company’s operations in Spain, Portugal and Mexico. Prepa said the compensation was comparable to CEO pay at other utilities of Prepa’s size and complexity.

Prepa, one of the largest U.S. utilities, entered a court-supervised bankruptcy last year after a long financial decline. Mr. Rosselló and the oversight board want an end to the utility’s monopoly structure with its various assets privatized.

Union employees worry the strategy will cost them their jobs, while bondholders argue they must be compensated as assets are spun off. The oversight board wants electrical rates slashed to effectively boost family incomes and spur economic growth.

The power grid was destroyed when Hurricane Irma and Hurricane Maria hit Puerto Rico back-t--back last September, and hundreds of customers in central mountainous regions still haven’t had service restored with another hurricane season under way. With Prepa’s system severely damaged, bonds backed by electricity revenue have tumbled in value. A frequently traded bond due in 2040 sold for less than 45 cents on the dollar Thursday, according to Electronic Municipal Market Access.

Prepa has spent hundreds of millions of dollars repairing transmission and distribution lines, unnerving creditors who worried the money wasn't being well spent. Prepa also has been dogged by allegations of corruption and mismanagement that remain under investigation in Congress.

Costly and unreliable power service is a drain on family incomes and the quality of life in Puerto Rico, which owes roughly $70 billion in debt and another $50 billion in unfunded pension liabilities.

Prepa's problems have been decades in the making. It earned praise for powering Puerto Rico's industrialization efforts in the 1940s and 1950s but became more inefficient over time as generating plants, which largely rely on fossil fuels, required major upgrades that were never made or left uncompleted.

When the island sank into recession, Prepa's finances worsened as business and residential demand for power declined. The exodus of Puerto Ricans to the continental U.S. in the wake of Hurricane Maria is shrinking the island's population, depleting Prepa's customer base and leaving creditors fewer avenues to get repaid.

The Wall Street Journal

By Andrew Scurria

July 12, 2018

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

- **Ed. Note:** As this is possibly the least newsworthy week in BCB history, please feel free to request a 1/50th refund of your annual subscription fee at: Ha!_Yeah,right.@bondcasebriefs.com.
- How High Court Rulings Affect Muni Issuers.
- What It Means When the Biggest Banks Reduce Their Muni Debt Holdings.
- The New Gold Rush for Green Bonds.
- Municipal Bonds Are Scarce. That's Good News for Borrowers.
- And finally, Easterbrook in the House! is brought to us this week by *Jones v. Markiewicz-Qualkinbush*, a case about referenda or some such nonsense. The opinion would have been of no particular interest had it been penned by anyone other than the federal court's (ok, arguably) foremost stylist. I speak, of course, of the Honorable Frank H. Easterbrook, Circuit Judge. You know you're in good hands when the opinion begins with, "Thaddeus Jones, an alderman in Calumet City, Illinois, wants to be mayor." and ends with, "The price of political dirty tricks must be collected at the ballot box rather than the courthouse." Go forth and preach the gospel.

SCOTUS - 2 Major Rulings With Positive Implications For Municipal Bond Credit Quality.

The Supreme Court of the United States (SCOTUS), on June 27th, ruled in a 5-4 vote that government workers who choose not to join unions may not be required to help pay for collective bargaining and other union endeavors. Bloomberg estimates that this ruling will affect 5 million workers. Many feel that governments have been at a disadvantage, noting the conflict of interest that may arise when politicians must negotiate with the constituents that elect them. Fewer dollars flowing into the political operations of organized labor may give governments a better negotiating position regarding municipal employee salaries and the pension and other post-employment benefits that are becoming outsized burdens on governments and taxpayers. Later in this commentary, we compare right-to-work states (where employees cannot be required to pay agency fees to a union) and their pension funding status with the 22 non-right-to-work states. The upshot: 76.1% funded compared with 59.3% funded, respectively.

On June 21, 2018, the SCOTUS also ruled 5-4 to allow taxation of internet-based sales by ruling against the physical presence rule in the case of South Dakota vs. Wayfair (NYSE:W). This ruling overturned past rulings that were predicated on an economy that did not depend on internet commerce; the historic Quill case was based on catalog sales. We think this ruling will benefit states and localities that have sales tax as a major revenue component and increase debt service coverage on bonds that are secured by sales taxes. The change in sales tax collection may encourage more businesses to have a local presence because they would no longer be at such a competitive disadvantage with online retailers. Such a trend would further local employment and grow the local tax base.

We think these SCOTUS rulings are favorable for municipal credit, as discussed in further detail in our comments below and as mentioned in John Mousseau's recent commentary, "Tax Free Munis Continue to Perform".

Continue reading.

Seeking Alpha

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

By Patricia Healy, CFA

Taxable Municipal Bonds: An Overlooked Fixed-Income Allocation For Portfolio Diversity

Summary

- This article concludes my analysis of taxable municipal bond CEFs.
- In this installment, I look to validate the inferences I made previously that taxable muni bonds can be a powerful diversifying asset class, especially in a tax-advantaged portfolio.
- The results show that two taxable municipal-bond funds have performed better than more widely recommended fixed-income asset classes at improving risk-adjusted and absolute returns.

Continue reading.

Seeking Alpha

July 6, 2018

IMMUNITY - ALABAMA

Ex parte Utilities Board of City of Foley

Supreme Court of Alabama - June 28, 2018 - So.3d - 2018 WL 3153581

Employee of bridge-repair contractor brought action for negligence and wantonness against municipal utility and certain employees to recover for injuries suffered from being electrocuted from overhead power lines while employee was working on the bridge-repair project.

Employee's wife asserted a claim for loss of consortium. The Circuit Court denied utility's and employees' motions for summary judgment. Utility and employees petitioned for a writ of mandamus.

The Supreme Court of Alabama held that:

- Municipal utility's risk manager had state-agent immunity as to the negligence claim, but
- Municipal utility did not have substantive immunity.

Risk manager for municipal utility had state-agent immunity from negligence claim by bridge-repair contractor's employee who was electrocuted from overhead power lines while working on the bridge-repair project, which were lines that were not specifically mentioned in a line-locate ticket that utility received regarding the project; technician who worked on the line-locate ticket perceived no hazard from the ticket's wording or from his visit to the construction site, technician did not bring the ticket to a supervisor's attention, and manager's alleged failure to manage the department in a manner that would have enabled him to prevent the incident fell squarely within state-agent immunity as to administration of a department or agency.

Municipal utility did not have substantive immunity from personal-injury claim by bridge-repair contractor's employee who was electrocuted from overhead power lines while working on the bridge-repair project, which were lines that were not specifically mentioned in a line-locate ticket that utility received regarding the project; the claims against utility did not involve actions that took place within the municipality.

PUBLIC PENSIONS - GEORGIA

Gold v. Dekalb County School District

Court of Appeals of Georgia - June 1, 2018 - S.E.2d - 2018 WL 2454932

County school district employees brought action against district and board of education for breaching an agreement to provide two years' advance notice prior to suspending contributions to their tax shelter annuity plan accounts.

After the denial of district's motion to dismiss was affirmed in part and reversed in part on appeal and after the denial of employees' class certification motion was affirmed on appeal, the trial court granted summary judgment to district and board. Employees appealed.

The Court of Appeals held that employees were contractually entitled to two years' notice before district suspended contributions.

School district employees were contractually entitled to two years' notice before district suspended contributions to tax shelter annuity plan accounts, and thus district breached contract by not providing required notice; even though plan documents did not give employees right to notice, board of education added two-year notice provision as legislative enactment, which became part of employees' contract of employment, and provision was substantive.

REFERENDA - ILLINOIS

Jones v. Markiewicz-Qualkinbush

United States Court of Appeals, Seventh Circuit - June 14, 2018 - 892 F.3d 935

Prospective city mayoral candidate, voters, and citizens' group brought action against city officials and county clerk, challenging the constitutionality of an Illinois statute that limited the number of referenda on any election ballot to three and city's refusal to place on a ballot a referendum proposition for term limits on city mayor's office.

The United States District Court for the Northern District of Illinois entered judgment in favor of defendants. Plaintiffs appealed.

The Court of Appeals held that:

- Illinois statute did not violate First Amendment right of political expression, and
- City referendum which prevented candidate from running for mayor did not violate equal protection.

Illinois statute that limited the number of referenda that could be placed on any election ballot to three, and which, as a practical matter, effectively excluded private referenda from ballot, in favor of referenda proposed by municipality or state, did not violate First Amendment right of political expression; statute was viewpoint and content-neutral, ballot was non-public forum, and the limit on referenda was rationally related to state's strong interest in simplifying the ballot to promote a well-considered election outcome.

City referendum providing for a term limit for the office of mayor and which prevented candidate from running for mayor based on his prior five consecutive four-year terms as alderman did not violate candidate's equal protection rights; even if aimed at particular candidate, referendum was rationally related to city's legitimate governmental interest in imposing term limits.

BALLOT INITIATIVES - MASSACHUSETTS

Anderson v. Attorney General

Supreme Judicial Court of Massachusetts, Suffolk. - June 18, 2018 - 99 N.E.3d 309

Voters brought action to have quashed the Attorney General's certification for the statewide ballot an initiative petition that would impose a graduated income tax on residents with income above a particular level and earmark revenues from the proposed tax for public education and transportation.

A single justice of the Supreme Judicial Court reserved and reported the case for consideration by the full court.

The Supreme Judicial Court of Massachusetts held that provisions of initiative petition were not mutually dependent, which precluded certification.

Provisions in initiative petition to amend the Commonwealth's constitution to impose a graduated income tax on certain high-income taxpayers and to earmark the new revenues for public education and transportation were not mutually dependent, and thus the certification of the initiative for the statewide ballots was not warranted; previous petitions seeking to impose a graduated income tax had been presented to the voters as stand-alone initiatives, funds for education could be raised separately from those for transportation, and funds for transportation could be raised separately from those for education.

PUBLIC UTILITIES - MINNESOTA

Jennissen v. City of Bloomington

Supreme Court of Minnesota - June 20, 2018 - N.W.2d - 2018 WL 3040547

Group of city residents opposed to city's efforts to implement organized collection of solid waste brought action against the city, seeking to compel the city to place proposed charter amendment, requiring city to seek voter approval before establishing system of organized collection of solid waste, on next general-election ballot.

The District Court granted summary judgment in favor of city. Residents appealed, and the Court of Appeals affirmed. The Supreme Court granted review.

The Supreme Court of Minnesota held that:

- For purposes of determining whether state law occupied the field, subject matter legislature intended to regulate was the process a city must follow before it can organize waste collection, and
- Subject matter was not fully covered by state law.

In determining whether a state law has pre-empted a field so as to invalidate local legislation on the same subject, one must consider whether the subject matter has been fully covered by state law, whether legislature indicated that subject is a matter solely of state concern, and whether the subject matter itself is of such nature that local regulation would have unreasonably adverse effects.

For purposes of determining whether state law "occupied the field" in proposal by city to change from a system of open collection of mixed solid waste to a system of organized collection, subject matter legislature intended to regulate was the process a city must follow before it can organize waste collection; plain language of statute outlined procedures related to the process of implementing organized collection of solid waste.

For purposes of determining whether state law "occupied the field" in proposal by city to change from a system of open collection of mixed solid waste to a system of organized collection, subject matter was not fully covered by state law so as to have become solely a matter of state concern; state statute's process for organized collection did not include a municipality's actual decision to organize collection, statute described only the minimum steps that a municipality must take to organize collection, and Legislature intended, not to preempt, but to provide municipalities with considerable flexibility.

BALLOT INITIATIVES - MONTANA

[Montana Mining Association v. State by and through Fox]

Supreme Court of Montana - June 19, 2018 - P.3d - 2018 WL 3031078 - 2018 MT 151

Mining association brought original jurisdiction action requesting to overrule Attorney General's determination that initiative, which would change mine permitting process, was legally sufficient.

The Supreme Court of Montana held that issue of whether initiative delegated rulemaking authority was outside scope of Attorney General's legal-sufficiency review of initiative and thus also outside scope of Supreme Court's pre-election initiative review.

Issue of whether initiative, which would change mine permitting process, delegated rulemaking authority, as would determine required effective date of initiative, was outside statutory scope of Attorney General's legal-sufficiency review of initiative and thus also outside scope of Supreme Court's pre-election initiative review; answering question of whether initiative delegated rulemaking authority would have required Attorney General to analyze text or substance of initiative in context of relevant caselaw and statutes, which was broader inquiry than whether initiative complied with requirements governing submission of a ballot initiative to electors.

FIRE PROTECTION DISTRICTS - NEW YORK

[Waite v. Town of Champion]

Court of Appeals of New York - June 27, 2018 - N.E.3d - 2018 WL 3129334 - 2018 N.Y. Slip Op. 04688

Town residents brought article 78 proceeding against town, alleging that town failed to accomplish and complete the dissolution of the town fire protection district as required by the General Municipal Law.

The Supreme Court, Jefferson County, dismissed the petition, and residents appealed. The Supreme Court, Appellate Division, affirmed. Residents appealed.

The Court of Appeals held that town complied with General Municipal Law when it created two legally distinct fire protection districts (FPD) to deliver fire protection services formerly provided by town FPD.

Town complied with its obligations under General Municipal Law when it created two legally distinct fire protection districts (FPD) to deliver fire protection services formerly provided by town FPD in response to passage of referendum to dissolve town FPD; although town residents claimed that town undermined will of voters by retaining control over provision of fire protection services in new districts, upon receipt of petition calling for dissolution proceeding, town held referendum, and upon passage of referendum, town proposed dissolution plan that was voted on and approved, town fire protection district was dissolved, town created two new separate districts that were coterminous with town district but functionally distinguishable, and town contracted with fire departments of separate villages to provide fire protection services within geographic boundaries of each new district.

INJUNCTIONS - OHIO

City of Toledo v. State

Supreme Court of Ohio - June 20, 2018 - N.E.3d - 2018 WL 3062477 - 2018 -Ohio- 2358

After finding statutes regulating local governments' use of traffic cameras unconstitutional, the Court of Common Pleas held state in contempt for passing provisions of budget bill withholding state funds from municipalities unless they complied with statutes and granted a city's motion for permanent injunction precluding enforcement of the provisions.

The Court of Appeals affirmed. State sought further review.

The Supreme Court of Ohio held that:

- Trial court's equitable powers did not authorize it to enter injunction against enforcement of spending provisions, and
- As matter of first impression, court's contempt power did not authorize it to enjoin enforcement of spending provisions.

Trial court's equitable powers did not authorize it to enter an injunction against enforcement of provisions of budget bill withholding state funds from municipalities unless they complied with statutes regulating the use of traffic cameras by local governments, enforcement of which statutes the trial court had previously enjoined after declaring them unconstitutional in city's action challenging the statutes, where city did not file a complaint challenging the constitutionality of the spending provisions and did not prove that the provisions were unconstitutional, as required for trial court to enjoin enforcement of the provisions.

Trial court's contempt power did not authorize it to enter an injunction against enforcement of provisions of budget bill on ground that the provisions, which withheld state funds from municipalities unless they complied with statutes regulating the use of traffic cameras by local governments, resulted in a violation of court's prior injunction against enforcement of the statutes, in city's action challenging the statutes' constitutionality; injunction against enforcement of the spending provisions did not clearly, definitely, and unambiguously prohibit the legislature from passing future legislation, and, moreover, separation-of-powers doctrine precluded a court from enjoining the legislature from exercising its legislative power to enact laws.

PUBLIC UTILITIES - SOUTH DAKOTA

Matter of PUC Docket HP 14-0001

Supreme Court of South Dakota - June 13, 2018 - N.W.2d - 2018 WL 2976322 - 2018 S.D. 44

Contestants sought review of decision of the Public Utilities Commission certifying that proposed oil pipeline continued to meet permit conditions.

The Circuit Court affirmed. Contestants appealed.

The Supreme Court of South Dakota held that circuit court lacked jurisdiction to consider appeals.

Contestants had no right under due process clause to judicial review of Public Utilities Commission's certification that proposed oil pipeline continued to meet permit conditions; proceeding involved utility's filing of certification rather than Commission's adjudication of a party's legal rights or privileges after opportunity for hearing.

MUNICIPAL ORDINANCE - TEXAS

City of Laredo v. Laredo Merchants Association

Supreme Court of Texas - June 22, 2018 - S.W.3d - 2018 WL 3078112

Merchants association brought action against home-rule city, seeking a declaratory judgment that an ordinance making it unlawful for commercial establishments to provide single-use plastic or paper checkout bags to customers was unenforceable.

The District Court entered summary judgment in favor of city. Association appealed. The San Antonio Court of Appeals reversed. City petitioned for review.

The Supreme Court of Texas held that:

- The Court had jurisdiction over challenge to the ordinance, and
- The Solid Waste Disposal Act preempted the ordinance.

The Supreme Court had jurisdiction over challenge to home-rule city's ordinance that banned single-use plastic or paper checkout bags and that allegedly conflicted with state law, despite argument that, since the ordinance was penal in nature, it could only be challenged in defense to a criminal prosecution for violating it; civil courts had jurisdiction to enjoin or declare void an unconstitutional penal ordinance when there was the threat of irreparable injury to vested property rights, the ordinance prohibited the complaining vendors from using noncompliant bags, and ordinance imposed a substantial per-violation fine that effectively precluded small local businesses from testing the ban's constitutionality in defense to a criminal prosecution.

Solid Waste Disposal Act, which barred a local government from prohibiting or restricting, for solid waste management purposes, the sale or use of a container or package in a manner not authorized by state law, preempted home-rule city's ordinance that banned single-use plastic or paper checkout bags, despite argument that the ordinance was not adopted for solid waste management purposes and that the Act did not clearly apply to new bags for point-of-sale purchases; ordinance's stated purposes were to reduce litter and eliminate trash, which, in sum, equated to managing solid waste, and a single-use paper or plastic bag used to hold retail goods and commodities for transportation clearly fell within the ordinary meaning of "container."

S&P Withdraws Various Puerto Rico Gov't Agency Ratings.

SAN JUAN – Credit rating company S&P Global Ratings has withdrawn its "long-term and unenhanced ratings" on the Puerto Rico Municipal Finance Agency's $413,115,000 2005 series A bonds, $59,075,000 2005 series B refunding bonds, and $258,645,000 2005 series C refunding bonds.

"The ratings were withdrawn due to lack of timely information sufficient to maintain the ratings," S&P said in a report Thursday to the markets.

It also withdrew its ratings for Puerto Rico Municipal Finance Agency's $510,615,000 2002 series A bonds; Puerto Rico Industrial, Tourist, Educational, Medical and Environmental Control Facilities Financing Authority's $13,215,000 1998 series A industrial revenue bonds; and Puerto Rico Public Building Authority's $128,895,000 1993 series L, revenue refunding bonds.

A rating suspension does not imply that the entity is not servicing its debt obligations or that its financial position has deteriorated, but rather that it failed to provide certain information such as its finances, liquidity or operations.

Caribbean Business

By Eva Lloréns Vélez on July 6, 2018

How a Public Bank Could Help You.

A campaign is underway in New York to take money out of Wall Street and put it into the hands of the city.

New Yorkers are known for speaking their minds, but can they put their money where their mouth is? A new campaign is underway to make one of the richest cities into the world reclaim local wealth and make the banking system work for people who actually live here, by putting people over profits.

Community banks and neighborhood credit unions have been around for decades as a way for communities to build assets, launch mom-and-pop businesses, and help keep money in the hands of working people, rather than lining the pockets of international financial institutions. But what if a city as a whole decided to create its own bank? The Public Bank NYC campaign calls for a full-fledged bank, owned and operated by and for the city, which could serve as a public trust invested in social justice, accountable to the public.

Right now, billions of the City of New York's dollars are being held in commercial banks. That's a problem, because it's those same banks that make decisions about whom to lend to, and at what rates—not just on Wall Street but in everyday Main Street businesses and neighborhoods as well. Those banks are also the same big financial institutions that were deemed "too big to fail" during the last financial collapse, and were only kept afloat during the Great Recession with a huge bail-out, ultimately funded by public money.

Continue reading.

The Nation

By Michelle Chen

New Jersey Is Back From the 'Abyss,' Murphy Says. Credit Raters Need More.

- **Record $3.2 billion pension payment first step, governor says**
- **Budget in place, he looks to oversee progressive initiatives**

Governor Phil Murphy's record $3.2 billion pension payment was an easy sell to New Jersey lawmakers who had fought him on other budget initiatives. Still, he said, it was bittersweet to sign a spending plan that won't impress Wall Street enough for an upgrade.

Credit-rating analysts want to see other elements of what the state was lacking under his predecessor, Republican Chris Christie, including recurring revenue, fulfilled obligations and a sizable surplus. Until then, Murphy said Monday in an interview, New Jersey's once top grade will remain second-worst among U.S. states, behind Illinois.

Christie, who insisted that smaller government and lower taxes would boost New Jersey's economy, oversaw a record 11 downgrades by the three major rating firms during his two terms. In many ways, Murphy is his antithesis — a union-backed progressive who believes the solution to New Jersey's recovery is raising taxes to support increased spending on schools, education and infrastructure.

The 2019 budget brings New Jersey "one step back from the abyss," said Murphy, a retired Goldman Sachs Group Inc. senior director and former ambassador to Germany, who took office in January.

Soccer Fan

"This is a major step, but it's one step," the Democrat said as he sipped iced tea at a Red Bank restaurant near his riverfront mansion, in his first media interview since signing a $37.4 billion spending plan for the fiscal year that began July 1.

Dressed in jeans, his trademark Allbirds woolen sneakers and a taco-patterned shirt in recognition of Mexico's World Cup match with Brazil, the 60-year-old governor gave a glimpse of weeklong negotiations with Democratic legislative leaders who had objected to his plan to raise more than $1.5 billion in revenue with a millionaire's tax and a higher sales tax. Without an agreement by July 1, he risked a government shutdown.

On Sunday night, Murphy signed a budget that contained most of what he wanted, though in slightly different form, he said. After negotiations, he agreed on a higher income tax for those who make at least $5 million, no sales-tax increase and a surcharge on the corporate business tax that he had initially resisted.

Budget Deal

Murphy went along despite initial reservations that companies would head for lower-cost states.

"Having a sensible solution on some of these tax policies was, I think, all that they were asking for," Murphy said of unnamed corporate chief executives with whom he said he had spoken during budget talks. A state will lose businesses no matter what, he said, but the goal was "to keep more than your fair share."

Republicans fear the state will lose more of its residents and businesses. Democrats are "taxing with impunity," Doug Steinhardt, chairman of the New Jersey Republican Party, wrote Tuesday in a northjersey.com column.

"Democratic leaders brand their budget compromise a stronger and fairer New Jersey," Steinhardt wrote in his column. "It isn't. We are weaker and poorer because of it."

On Monday, Murphy said he was a few moments late to the interview because he was having a phone conversation with a chief executive of a publicly traded company, which he declined to identify, that already was planning to add 800 employees to its New Jersey workforce of 100.

Companies consider more than taxes when deciding where to locate, he said.

"If all you care about, literally all you care about, is the tax rate, and you don't care about infrastructure, location, public education, higher ed, what are you doing with incubators, what are you doing to develop talent, keep talent — New Jersey will have a hard time in that fight, right?" he said. "It's like a single-issue voter."

Demand for New Jersey bonds has increased this year. Debt sold in the state has gained 0.17 percent, beating the overall municipal-bond market's 0.25 percent loss, according to Bloomberg Barclays Municipal Bond Index.

In the weeks heading to the spending deadline, Murphy had public appearances and news conferences alongside members of groups backing a $15 minimum wage and environmental causes as well as unions representing public employees. Christie had alienated the government workforce by failing to make promised pension payments after they agreed to pay more toward retirement and health benefits — and then calling for more concessions.

Murphy said he intended to keep employees in his corner, even as he examines how to reduce their costs to taxpayers.

"I'm committed to earning that trust back," he said. "It isn't just to have a nice relationship. It's the right thing to do, to again be a state that people say, 'You know, I trust this place.' Rating agencies, God willing, will trust us again."

Bloomberg Politics

By Elise Young

July 3, 2018

— With assistance by Michelle Kaske

Bad Things Can Happen When U.S. Towns Rely on One Taxpayer.

- **DTE Energy filed tax appeal on aging power plant in Michigan**
- **City of Monroe could see a quarter of its budget wiped out**

American cities routinely dole out tax breaks and other subsidies to lure big companies to set up shop. But one small town in Michigan is discovering the risk that comes with relying too heavily on corporate taxpayers.

Monroe, a 20,000-resident city 40 miles (64 kilometers) south of Detroit, could see a quarter of its revenue wiped out if DTE Energy Co. wins a challenge to its property-tax bill for a coal-fired power plant. That could jeopardize funding for crucial services from public safety to special education, Monroe County's chief financial officer, Michael Bosanac, wrote in an email.

An overdependence on one industry has proven a pitfall for other U.S. municipalities. Detroit collapsed into bankruptcy after decades of seeing its population dwindle as auto-industry jobs disappeared. Atlantic City had to be rescued by New Jersey as some casinos shuttered and others appealed their tax bills. Wayne, New Jersey, could be in trouble now that its third-largest taxpayer, Toys 'R' Us, is out of business.

“A concentrated tax base is a principal credit risk in a small government,” said Matt Fabian, managing director and senior analyst at Municipal Market Analytics Inc. “Their reliance on a single industry or company creates potential volatility and that could be hard for a small government to manage.”

That’s been true for cities that draw a lot of tax money from aging power plants. Energy producers across the U.S. have pushed to wrest concessions from local, state, regional and federal policymakers to keep nuclear and coal power plants afloat in the era of cheap natural gas and the rise of wind and solar power. DTE also filed a tax appeal on its nuclear power plant Fermi 2, located in Monroe County.

First Priority

The company says the appeals are “merely protective,” and it intends to negotiate with city and county officials.

“DTE Energy’s appeals with the Michigan Tax Tribunal regarding the taxable value of the Monroe and Fermi plants were merely protective appeals that needed to be logged by a set deadline because agreements with the local taxing jurisdictions were not completed,” the company said in an emailed statement. “DTE’s goal is to reach a reasonable agreement regarding the amount and timing of any reductions before the tribunal makes its decision.”

Still, Monroe is set to see the amount of money it gets to fund government services slashed, even as it must continue to make payments on $45.4 million in outstanding general-obligation bonds. The city recently warned investors about the tax appeal in a filing with the Municipal Securities Rulemaking Board. Repaying investors is the city’s first priority, said City Manager Vincent Pastue. The bonds are rated AA- by S&P Global Ratings.

“Your first obligation is to make your debt payments, Pastue said in a telephone interview. “You don’t really have a choice.”

Even in cases where tax revenue disappears, bond defaults by cities remain extremely rare. While Toys “R” Us disclosed that it plans to lay off 1,159 employees in Wayne in March, the city still has an Aaa rating from Moody’s Investors Service. Atlantic City, which once had a monopoly on gambling in the East Coast, continued paying investors even as its property-tax base has shrunk, though the price of the bonds slipped as its credit rating dropped to junk.

Bloomberg Markets

By Sophie Alexander

July 3, 2018, 5:41 AM PDT

— With assistance by Tim Loh

How High Court Rulings Affect Muni Issuers.

Three rulings by the U.S. Supreme Court this term will have a lasting impact on the finances of many municipal bond issuers, according to report released by Fiera Capital.

"As anticipated, the Supreme Court ruled against public sector unions in the high-profile case of *Janus v. American Federation of State, County, and Municipal Employees*. The Janus ruling will have important long-term credit implications for many state and local governments," Bryan Laing, vice president of credit research at Fiera, wrote in a market comment released late Friday. "This case, along with the recent ruling on sports wagering and online sales tax collections combine for a busy season for state and local governments at the nation's highest court."

The impact of the Janus v. AFSCME ruling is more than likely to be a weakening of union finances, Laing said, which may have a dampening effect on their power over the longer term. He said it was an important long-term development for many municipal issuers, particularly those facing elevated pension burdens.

Continue reading.

The Bond Buyer

By Chip Barnett & Christine Albano

July 02 2018

Municipal Bond Closed-End Funds Could Be Ripe for Tax-Loss Sales.

- **Almost 90 percent of closed-end funds have posted losses**
- **Investors could sell fund shares to offset stock gains**

It's July, but it's not too early to discuss selling municipal-bond closed-end funds to offset a capital gains tax liability, according to Greg Neer of Relative Value Partners.

Almost 90 percent of closed-end funds monitored by Bloomberg posted a loss this year as rising interest rates increased the cost of leverage that the funds use to buy longer-dated debt, putting pressure on dividends. In addition, yields on 30-year municipal bonds rose 0.4 percentage point in the first quarter, reducing the value of the debt held by the funds.

More than a third of muni closed-end funds posting losses this year have declined more than 5 percent and four funds have lost more than 10 percent, according to data compiled by Bloomberg. If the losses hold, investors could sell closed-end fund shares, Neer said.

"If things stay as is or as people expect, you'll likely get a significant amount of sellers come early fall and winter," Neer said. "They may not be able to accept the volatility of what they thought was a more stable asset, or they're going to say, let's swap, let me take my loss on Fund A and buy Fund B and realize that loss."

Municipal closed-end funds rebounded in the second quarter, getting a boost from a Treasury rally spurred by political unrest in Italy that had global investors fleeing to relatively safer assets.

Many closed-end funds borrow short-term and buy higher-yielding, long-dated debt. Short-term borrowing costs in the muni market have almost doubled to 1.51 percent in a year, and the Federal Reserve is expected to raise short-term interest rates two more times this year.

Rising leverage costs narrow the profit that can be made by investing in long-dated debt, eating into distributions to investors. On Monday, BlackRock Inc. said it was cutting dividends on 20 of its muni closed-end funds.

“Leverage costs seem like they’re only going one way: up. The curve keeps flattening, dividends will continue to get pressured,” Neer said.

Tax-loss selling could cause discounts on muni-closed end funds — the difference between a closed-end fund’s share price and the underlying value of its assets — to widen further, Neer said. Discounts typically widen in the fourth quarter and rebound in the first quarter, he said.

National leveraged municipal closed-end funds traded at an average discount of 6 percent as of June 13, compared to their 52-week average discount of 3 percent, according to UBS Global Wealth Management.

However, in the near-term muni closed-end funds could benefit from stronger seasonal demand for tax-exempt debt. The volume of new municipal bond sales in July will be far less than the amount of money investors will receive from interest payment on maturing securities, according to Citigroup Inc.

Bloomberg Business

By Martin Z Braun

July 5, 2018, 10:30 AM PDT

Fitch: California Better Equipped for Next Recession.

Fitch Ratings-New York-02 July 2018: There is a strong likelihood California’s next governor will encounter recession, though a new Fitch Ratings report says that the state is fundamentally better positioned to withstand the next inevitable economic downturn.

With Governor Jerry Brown’s final budget now official and his second term nearing an end, California continues to benefit from strong economic growth in the midst of the second-longest national economic expansion. Whether the state’s choice for next governor is Democrat Gavin Newsom or Republican John Cox, the state is likely to experience a “what goes up, must come down” scenario with a stiff economic test likely for California’s economy.

‘Governor Brown’s popularity among voters helped him to successfully raise taxes, establish a rainy day reserve and budget conservatively, advantages the next Governor may not have,’ said Senior Director Karen Krop. ‘However, the next governor will benefit from structural changes made over the last decade that will heavily affect how the state’s budget performs through the next inevitable recession.’

Among the post-recession changes made that underpin Fitch’s ‘AA-‘ rating for the state are lower voting requirements to approve state budgets, improved access to internal liquidity, transference of some state responsibilities to local governments, and a new funding mechanism for the rainy day fund. While the structural enhancements are in place, the next governor will face the same pressure to address issues such as healthcare, homelessness, infrastructure and access to higher education, among other quality of life challenges that will be magnified in a broader economic downturn. This makes the response when the next recession comes very integral to California’s future ratings and Outlook.

‘California after Governor Jerry Brown’ is available at ‘www.fitchratings.com’

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Fitch: Georgia Water Credits Risks Rise in Dispute with Florida.

Fitch Ratings-New York-06 July 2018: In a recent US Supreme Court (SCOTUS) decision, the justices sided with Florida in an ongoing dispute over water allocations between Florida and Georgia from the Chattahoochee and Flint River basin. The eventual outcome of this lawsuit could have credit implications for water utilities as it would raise the need for borrowing to create additional supply, Fitch Ratings says.

The special master appointed to hear the dispute between Florida and Georgia decided there was insufficient evidence to prove that limiting Georgia’s water use would benefit Florida. However, SCOTUS reviewed that decision and ruled the special master should reconsider Florida’s argument that a cap in Georgia’s water consumption could benefit Florida’s Apalachicola Bay.

As urban populations grow, competing demands for water and supply stability are making decisions like this one more important for water utilities and increasing the frequency of disputes. A court decision that leads to a reduction in, or ultimately limits, supplies could raise a water utilities’ borrowing to finance additional supply development. That would force utilities to strike a careful balance between charging higher water rates and/or assuming lower financial margins. The added costs of water replacement supply development could also divert funding from ongoing renewal and replacement of existing infrastructure, escalating future expenses.

Raising water rates is becoming more difficult as, for decades, water and sewer rate increases exceeded CPI and median household income (MHI). While CPI slightly more than doubled from 1988-2014, typical residential water bills more than tripled and wastewater rates more than quadrupled, according to The American Water Works Association. User charges have steadily climbed toward Fitch’s 2% of MHI affordability benchmark, although Fitch-rated credits by and large still have sufficient affordability cushion.

Declining water use in the US overall has meant that cross border disputes will occur within fast growing regions that share water resources. Water use in the United States in 2015 was estimated at 9% less than in 2010, making withdrawals the lowest level since before 1970, according to the U.S. Geologic Survey.

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Additional information is available on www.fitchratings.com. The above article originally appeared as a post on the Fitch Wire credit market commentary page. The original article can be accessed at www.fitchratings.com. All opinions expressed are those of Fitch Ratings.

Fitch Upgrades DC to 'AA+' and Rates $476MM GOs 'AA+'; Outlook Stable.

Fitch Ratings-New York-03 July 2018: Fitch Ratings has upgraded the District of Columbia’s (the District) Issuer Default Rating and the ratings on approximately $4.8 billion of general obligation (GO) bonds to ‘AA+’ from ‘AA’.

Fitch has also assigned an ‘AA+’ rating to the following District GO bonds:

–$172.9 million series 2018A general obligation bonds;
–$303.4 million series 2018B general obligation refunding bonds.

The series 2018A and B bonds are scheduled to be sold through negotiated sale on or about July 18.

The Rating Outlook is Stable.

SECURITY

The bonds are general obligations of the District, with its full faith and credit pledged. Also pledged is revenue from a special real property tax, unlimited as to rate or amount and levied in an amount to pay debt service on GO and parity bonds.

ANALYTICAL CONCLUSION

The upgrade of the District's IDR and GO rating to 'AA+' from 'AA' reflects ongoing strong economic and fiscal performance despite federal contraction and the District's repeatedly demonstrated ability to manage its budget to meet identified needs, most recently by increasing revenues to provide enhanced funding for the Washington Metropolitan Area Transit Authority (WMATA, the local public transit operator). Fitch has raised the assessments of the District's revenue framework and long-term liability burden key rating drivers. A more than 40-year history without Congressional intervention in revenue policy substantially mitigates concerns about the theoretical limit to the District's independent revenue control implicit in the federal relationship while the improvement in the long-term liability burden assessment incorporates the strong growth prospects for the District's resource base and recognition of the notable share of its liability burden that is exported to non-residents.

The ratings continue to reflect the District's exceptionally strong budget control by an independent chief financial officer (CFO), prudent financial management throughout the business cycle and strong growth prospects. The federal government plays a key role in the District's credit profile given its economic importance to the District and direct fiscal support for retiree liabilities as well as Medicaid. A statutory cap on debt service, strong commitment to long-term capital planning with sizable pay-go commitments and steady economic growth should keep the long-term liability burden relatively stable.

Economic Resource Base
Government employees and spending comprise a significant portion of the District's economy and provide an important source of stability. The District's economic base has proven resilient to federal volatility, including sequestration and a federal government shutdown. Continued private sector expansion, supported by robust population growth and favorable demographic trends, offsets the exposure to federal spending.

KEY RATING DRIVERS

Revenue Framework: 'aa'
The District's revenue growth will likely be in line with or above the level of U.S. economic growth, driven by overall economic expansion. The District has unique limitations in its independent legal ability to raise revenues given the level of congressional oversight; however, a long record of District revenue actions without Congressional interference substantially reduces the risk presented by this factor.

Expenditure Framework: 'aa'
The District has solid flexibility to manage primary expenditure demands, with workforce challenges common to many highly unionized localities, offset by low carrying costs. Material federal support assists the District in managing key spending needs, including Medicaid and pensions. Federally mandated reforms also established structural budget management tools that impose spending discipline and limit the natural spending growth rate.

Long-Term Liability Burden: 'aa'
While pension and OPEB funded positions are very favorable, the District bears a substantial burden commensurate with its responsibility for services that are normally provided by a combination of state and various local levels of government. Statutory policies establish clear caps, but extensive capital needs indicate long-term liability burden metrics will remain around current levels for the foreseeable future. The liabilities as a percentage of market value metric, which incorporates the benefit of the strong tourism presence in the District's economy and other non-resident economic activity, indicates a lower burden than suggested by the resident personal income-based metric alone.

Operating Performance: 'aaa'
The District is well positioned to address cyclical downturns with robust reserve balances and related statutory funding requirements, midrange inherent budgetary flexibility and relatively strong expected general fund revenue growth. The CFO's office provides extensive budget monitoring and control, supporting the District's operating profile.

RATING SENSITIVITIES

FISCAL MANAGEMENT: The District's 'AA+' IDR is sensitive to shifts in fundamental credit characteristics, including continued strength in the District's concentrated economic profile , proactive and conservative financial management including solid reserve funding and continued careful management of a sizable long-term liability burden with debt issuance matched to economic and fiscal capacity.

FEDERAL OVERSIGHT AND SUPPORT: The federal government's role is a critical factor in the District's rating. Direct fiscal contributions support the District's strong expenditure framework and temper the long-term liability burden. Material changes in the federal government's relationship with the District could trigger rating movement. Congressional intervention in the District's revenue policy would lower the revenue framework assessment.

CREDIT PROFILE

The District's income levels are very high, but an income equity gap remains. The 2017 per-capita personal income was by far the strongest in the nation (relative to U.S. states) at approximately $77 thousand, or more than 150% of the national level. However, the poverty rate is also high at 19% versus a national rate of 13%. Population growth has been triple the national rate since 2010, reaching nearly 700,000 in 2017. The District is responsible for funding its public schools, including charter schools, and overall enrollment has grown steadily at roughly 3% annually between 2014 and 2017, with additional growth anticipated in coming years, commensurate with the overall population trends.

Revenue Framework
The District has diverse tax revenues with real and personal property taxes, personal and corporate income taxes and a sales and use tax. Combined, these sources account for approximately three-fourths of its general fund revenues.

Stability in property taxes offsets volatility in the income and sales taxes, while the growth potential of the latter two taxes supports Fitch's assessment of strong revenue growth going forward. Strong revenue growth over the past decade, well above the rate of national GDP, indicates fundamental resilience despite federal government contraction. Fitch's assessment recognizes that the actual historical growth rate that is somewhat overstated given revenue policy actions the District implemented during this period.

The District's independent legal revenue-raising capability is theoretically limited by federal oversight, but not fundamentally so given a long historical record without any Congressional interventions on District revenue measures. The federal Home Rule Act established the District as essentially a federal agency for budgeting purposes, requiring explicit congressional approval as part of federal appropriations bills before local budget bills become effective. Local budget bills are the only way for the District to authorize spending of revenues, including tax or fee increases implemented under separate local legislation.

Under a local Budget Autonomy Act enacted by the District council in 2012 and a local court decision upholding it, the District believes its local funds budget is now only subject to a 30-legislative days congressional review period. Some members of Congress have challenged this assertion and, in Fitch's view, the final outcome remains somewhat unclear.

Since a 2016 decision in the District's Superior Court, the District has followed the budgeting process outlined in the Budget Autonomy Act. After council and mayoral approval, the District submits the local funds budget bills to Congress and considers them fully enacted after a 30-legislative days congressional review period. However, Congress has continued to follow Home Rule Act provisions and included the District's local funds budget in its federal appropriation bills.

Historically, the federal appropriations bills have included all provisions, including revenue changes, in the local funds budget approved at the District's level. They have also usually included additional policy riders inserted by Congress that modestly restrict the District's expenditure authority. For fiscal 2018, Congress inserted provisions prohibiting any expenditure of local funds to legalize marijuana and tightly limiting expenditures for abortions. As it traditionally has, the District intends to comply with these provisions included in the federal appropriations bills.

The Home Rule Act also subjects all non-budget enacted local legislation, including revenue raising measures, to a 30- (for civil matters) or 60-(for criminal matters) legislative days congressional review period. Congress can void the legislation during the review period with a joint resolution of both houses, signed by the president. This represents a significant political hurdle, as locally approved legislation has been voided only three times and not since 1990. None of the voided legislation related to fiscal policy or revenue changes.

Beyond the federal provisions noted above, the District has no other legal limitations on its ability to raise revenues through tax or fee increases, or base broadenings. Since the 1973 enactment of the Home Rule Act, Congress has never voided or otherwise overturned revenue-raising measures approved by the District's council and mayor.

Expenditure Framework
The District's responsibilities are very broad, as it provides city, county and education services to its population. In addition, the District also functions as a state government sharing the most significant expenditure challenge facing most state governments, Medicaid. An enhanced Federal Medical Assistance Percentage (FMAP) match provides the District with a level of federal support exceeding that provided to most states, offsetting some of the burden.

Overall spending should continue to grow in line with revenues. The District faces a wide range of expenditure pressures but benefits from a resilient revenue stream primed for continued growth.

Federal action to revise Medicaid's programmatic and financial structure, including a basic restructuring of federal Medicaid funding to a capped amount, remains a possibility. Whether a change in Medicaid funding has consequences for Fitch's assessment of the District's credit quality would depend on the District's fiscal response to those changes. Responses that create long-term structural deficits or increased liability burdens could negatively affect both the expenditure framework assessment and the IDR.

Carrying costs (debt service, pension actuarially determined contribution [ADC] and OPEB actual contribution) are low at about 8% of spending and should be fairly stable (if actuarial assumptions for the pensions are achieved as noted below) as the District consistently pays full actuarial amounts for both pensions and OPEB. Debt amortization is relatively slow, reflecting statutory caps that limit annual debt service. Federal support also plays a key role in minimizing carrying costs. District employees except police, firefighters, and teachers participate in either the federal Civil Service

Retirement System (for those hired before Oct. 1, 1987), with the District making percentage of payroll contributions as a participating employer or a District-managed defined contribution system.

Police, firefighters and teachers participate in single employer defined benefit plans managed by the District of Columbia Retirement Board (DCRB). Under the federal National Capital Revitalization and Self-Government Act of 1997, the federal government took on the liabilities and annual contribution requirements for police, firefighters and teachers accrued through June 30, 1997. District funding of actuarial liabilities accrued since then has been in line with actuarially determined amounts. Fitch anticipates annual pension spending will remain relatively stable given the DCRB’s adoption of more conservative actuarial assumptions including a closed 20-year amortization, level dollar (as opposed to the more common level percent of payroll) amortization and 6.5% investment return assumption.

The District’s workforce is highly unionized with approximately 75% of the workforce subject to collective bargaining, and Fitch views the workforce environment as a neutral to weaker factor in the District’s overall expenditure flexibility assessment. Employees are not permitted to strike but all collective bargaining units are eligible for binding arbitration to resolve contract negotiations.

The District reports it has settled contracts with essentially all bargaining units, except for the police officers’ union. While Fitch has not fully evaluated terms of other labor settlements, the District’s CFO reviewed them for fiscal sustainability the costs and are incorporated into the fiscal 2019 budget and multi-year financial plan The budget and fiscal plan also includes estimates for settlement of the police contract, on terms consistent with what the contract for fire and emergency medical services personnel. Given the anticipated strong growth in revenues, Fitch does not believe the new contracts will materially affect its expenditure framework assessment.

Recent action by the District, Maryland, Virginia (collectively the contributing jurisdictions), and the Washington Metropolitan Area Transit Authority (WMATA, the local public transit operator) addresses the authority’s key capital needs without materially affecting the District’s expenditure and long-term liability demands. In 2018 legislative sessions, the contributing jurisdictions all implemented measures to provide a combined approximately $500 million annually in new and permanent capital funding. This level of dedicated funding meets WMATA’s recent request from the jurisdictions to allow it to fully fund an ongoing capital plan to improve safety and reliability. As the District’s only public transit operator, WMATA’s sustainability and success is an important factor in the District’s economic growth prospects.

For the District, the increased contributions will be supported with a mix of recurring revenue increases and dedication of pay-go capital funding. The recurring revenue will derive first from a dedicated share of sales tax revenues. That dedication will be ultimately supported by several tax policy changes including rate increases in the sales tax to 6% from 5.75% (matching Maryland and Northern Virginia) and in the ride-sharing tax to 6% from 1%, as well as 3-cent of a 4-cent increase in the commercial property tax rate to $1.89 per $100 from $1.85.

Importantly, this newly dedicated funding is on top of other capital and operating support the contributing jurisdictions have historically provided to WMATA, and Fitch anticipates that the other support will continue. The District’s operating contributions have consumed between 4% and 5% of its general fund operating expenditures in recent years, while the District’s annual share of WMATA’s capital budget has been approximately $130 million, or 10% of the District’s capital spending.

Long-Term Liability Burden
Pensions and OPEB liabilities are very low with both obligations essentially fully funded, setting the

District apart from the vast majority of U.S. governments. Federal support described earlier plays a key role in this extremely strong funded position. However, the debt burden reflects the District's responsibilities for functions that would normally be shared between state and local governments. Pro-forma combined debt and pension liabilities are approximately $11.5 billion, or 22% of the District's 2017 personal income (debt represents 21%).

Given the District's position as one of the nation's premier tourist destinations and other significant economic activity generated by non-residents including commuters, Fitch also considers a total liabilities-to-market value metric. Relative to fiscal 2017 taxable assessed value of just over $200 billion, the ratio is approximately 6%. As the nation's capital and home to many not-for-profit groups, one-third of the District's tax base is tax-exempt, somewhat overstating this ratio.

Fitch's analysis includes outstanding debt as of March 31, 2018 and an estimated $550 million in new money issued since then or anticipated later this year. This includes recent GO bond anticipation notes, the new money portion of the bonds rated here and an additional new money issuance anticipated for later this year.

Fitch expects the District's long-term liability burden to remain relatively stable driven by a steady flow of capital needs, offset by likely steady and strong economic growth. The District's annual long-range capital financial plan report provides an extensive assessment of foreseeable capital needs over a multi-decade timeframe and its ability to fund them. This type of explicit very long-term capital planning is uncommon for state and local governments. Fitch anticipates the District will remain committed to addressing what it considers a long-term capital needs gap identified in its report by regularly issuing new debt but also by increasing other financing sources including pay-go.

Operating Performance

The District's resilient revenue base, solid spending flexibility and sizable reserves leave it very well positioned to manage through a moderate economic downturn. Available general fund balance was approximately 24% of spending at almost $2 billion at the end of fiscal year 2017 (ended Sept. 30), aided by a roughly $300 million operating surplus. The revised budget for fiscal 2018 forecasts a roughly $100 million surplus, which should allow the District to further boost its sizable reserves.

Available general fund balance includes all unrestricted fund balance (including the cash flow reserve and fiscal stabilization reserve), and two components of the restricted general fund balance (the contingency cash reserve fund and emergency reserve fund). The latter two funds were established under federal statute to provide fiscal flexibility and both are available for intra-year cash flow needs, supporting Fitch's view that they are part of the District's available financial cushion.

Fitch views the extensive powers and responsibilities of the independent CFO and other federally established mechanisms as key strengths of the District's operating environment. Fiscal discipline instilled following the District's financial crisis in the 1990s is institutionalized, largely in the form of the CFO's office. The CFO establishes the official binding revenue forecast used for budgeting and regularly updates it; monitors annual revenue and expenditure trends to ensure budget compliance and to flag any unanticipated shortfalls; scores all local legislation with potential fiscal consequences and can essentially block legislation that leads to a projected budget deficit; and develops annual multi-year revenue estimates.

Under the Federal Home Rule Act, the District's annual budget also includes a detailed multi-year outlook for operating and capital revenues and spending. Revenues in particular (presented by the CFO) tend to be based on conservative assumptions. While the federal financial control board is dormant, federal law establishes clear guidelines for its automatic reinstatement (namely, signs of significant District fiscal distress).

During the current economic expansion, the District made rapid progress in restoring fiscal flexibility with measures like steady rebuilding of its general fund balance (including establishing the cash flow reserve and fiscal stabilization reserve accounts in fiscal 2011) and rolling back temporary personal income tax increases implemented to address effects of the great recession.

CURRENT DEVELOPMENTS

In the June 2018 quarterly revenue estimate, the CFO projected modest growth in local sources, general fund revenue growth of 2.4% in fiscal 2018, and then approximately 3% growth in the outyears through 2022. The fiscal 2018 projection is particularly affected by short-term stimulus effects of the recent federal tax changes enacted in December 2017. The CFO's overall revenue outlook derives from an expectation of continued economic growth, but at a slightly reduced pace. Fitch considers the revenue estimates prudent and achievable, assuming continued national economic stability.

The District's council-approved fiscal 2019 budget includes modest increases in local funds spending of less than 2%, supported by revenue growth and use of between $100 million to $200 million of the prior year's ending balance specifically designated for fiscal 2019 spending. Given the District's historical practice of conservative revenue and expenditure budgeting, Fitch anticipates actual performance could exceed the forecast leading to another operating surplus.

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The Week in Public Finance: The Red State That's Considering a 'Millionaire's

Tax'

The revenue-raising strategy is more common in blue states. So far, four Democratic-controlled states have passed such a tax.

The latest state to consider a so-callled millionaire's tax may surprise you.

Tax hikes aimed at the rich are a revenue-raising strategy that's been embraced mostly by blue states in recent years. New Jersey became the most recent government to enact one this week, following a trend set by California, Connecticut, New York and Washington, D.C.

But this fall, voters in conservative Arizona seem set to vote on whether to tax the state's wealthiest residents in order to pay for teacher raises. This week, organizers for the Invest in Education Act said they have collected enough signatures to put the question on the ballot in November. The deadline was Thursday, but the Arizona Secretary of State still needs to verify them before the ballot measure becomes official.

Continue reading.

GOVERNING.COM

BY LIZ FARMER | JULY 6, 2018

What It Means When the Biggest Banks Reduce Their Muni Debt Holdings.

For both individual and corporate investors, your tax rate serves as one of the biggest alluring or deterring factors in buying any municipal debt instruments. Typically, the interest earnings from municipal debt is tax exempt, safeguarding your total interest income from your marginal or corporate tax rate.

However, recent Securities and Exchange Commission filings by some of the major U.S. banks showed them reducing their state and local government bond holding by billions of dollars. For instance, Bank of America, JPMorgan Chase and Wells Fargo collectively reduced their local and state government holdings by close to $8 billion dollars during the first three months of 2018 and many other small and mid-size banks are following suit.

In this article, we will take a closer look at the steady increase in municipal debt demand after the economic collapse of 2008, the factors leading to significant reduction in muni debt exposure by major banks and what the future holds for the demand of municipal debt instruments.

Continue reading.

municipalbonds.com

by Jayden Sangha

Jul 05, 2018

The New Gold Rush for Green Bonds.

Investors are lining up to buy green bonds. Can they survive the hype.

Hanging on the wall just outside Bryan Kidney's office in Lawrence, Kan., is the framed first page of a bond offering statement. Unlike most — or really, any — bond statements, this one required a color printer. It could even be described as cheeky: It's for the sale of the city's first green bond, and every reference to "green bond" or "green project" is printed in green ink.

Kidney, the city's finance director who shepherded the $11.3 million sale last year, says the green ink originally started out as a joke.

But then, he thought, why not? When the projects are fully implemented, Lawrence is projected to save 3,201 tons of carbon dioxide equivalents (CO2e) annually, which is equal to burning 3.5 million fewer pounds of coal. "I get really passionate about this stuff," Kidney says. "I was just so excited that Lawrence stepped up to be a leader in sustainability."

Green bonds are an emerging category of finance. Their purpose is to fund projects with clear, definable and measurable environmental benefits. As the Trump administration has walked back federal climate change policy — most notably, backing out of the Paris Agreement — states and localities are increasingly taking charge of their own environmental strategies. Green bonds are a natural funding tool. The vast majority of them finance water-related projects, but they also are used to finance, for instance, solar and wind power or reduced methane emissions. In Lawrence's case, they are funding a slew of energy efficiency projects identified by a state Facility Conservation Improvement Program audit. The audit determined that certain upgrades, such as energy-efficient lighting and heating and cooling systems, would reduce the carbon footprint for this city of 96,000 and save it money in the long run.

The concept of green bonds was developed a little more than a decade ago by a London-based group called the Climate Bonds Initiative. The idea was to help the world's growing cadre of environmentally conscious investors identify climate-friendly investments. These are folks who aren't only interested in a financial return on their investment. They want to know that their money has helped improve the environment. "If you're doing a bond issuance that's electric or coal generated, those investors don't want to be part of that transaction," says Tim Fisher, government affairs manager for the Council of Development Finance Agencies. "They're putting their investments into securities that have a double- or even triple-bottom line."

For the first few years, green bonds remained something that only large global institutions like the European Investment Bank and the World Bank dabbled in. It wasn't until 2013 that the first green bond issuance made its way to the U.S. municipal market when Massachusetts sold $100 million in bonds to finance energy efficiency projects. The following years saw other large issuers like California and New York take part. To date, those three states — Massachusetts, California and New York — are by far the most frequent issuers, accounting for $2 out of every $3 of green bonds issued in the past five years. More recently, a few municipalities have begun to experiment with them. But even as muni market issuance of green bonds doubled last year to $11 billion and is predicted to almost double again this year, green bonds remain largely outside of the mainstream.

So it's saying something when a place the size of Lawrence decides to jump in. The city may very well be a bellwether of the next big leap for green bonds. That would be good news for issuers since the bonds have the potential to attract a fresh set of investors at a time when tax reform has created fewer incentives for banks and insurance companies to buy municipal bonds. Some even think that green bonds will someday be cheaper for states and localities to issue than general obligation debt. But before any of that happens, there are underlying challenges with green bonds' authenticity that have to be resolved first.

Since they debuted a decade ago, green bonds have been issued under a variety of names — environmental impact bonds and climate bonds being among the most prevalent. Whatever their name, one of the biggest threats to the long-term viability of these bonds is a matter of meaning. The definition of what's "green" seems to alter slightly with each issuer.

In recent years, some groups have taken a stab at narrowing down the variables in what makes a bond green. Moody's Investors Service has come up with a green bond assessment tool, which looks at the likelihood that the bond money will go toward environmental improvements. S&P Global Ratings has also come out with commentary. But neither provides a rating or measurement of how environmentally positive a bond might be. Elsewhere, the Climate Bonds Initiative has released a set of green bond principles for issuers while state and local governments are increasingly seeking third-party certification for their green bonds.

Compounding matters is the reality that the investment community doesn't agree on what's green and what isn't. Everything is optional. Julie Egan, director of municipal research at Community Capital Management, a major green bond investor, says her standard for "green" is that it has to be an innovative project. But that doesn't always apply when she's shopping for some of her clients who might not feel the same way. When she looks at a water and sewer system's green bond sale, she often sees something that looks like "the exact same thing they've been doing for years. Is it green? Technically, for some people, it is: They're providing clean water," she says. "But there's no new technology. It just is not something that would create a great deal of excitement at our firm."

Clearly, what some might see as environmentally forward-thinking in one place is just run-of-the-mill in another. It's led to accusations of so-called greenwashing, a term originally coined in the 1980s and meant for corporations that present themselves as caring environmental stewards, even as they are engaging in environmentally unsustainable practices. Some governments are now being accused of slapping on a label to entice investors while doing nothing else to ensure the sustainability of a project. Case in point: In early 2015, the Climate Bonds Initiative's CEO called out the Massachusetts State College Building Authority for its "pathetic" green bond sale that included funding a garage for 725 cars. Until these inconsistencies are resolved, the future of green bonds will remain in doubt.

For water utilities, green bonds have seemed like a natural fit. The reasons are fairly obvious. These authorities spend a lot of money on cleaning water — a slam dunk of an environmental benefit if ever there was one. Water and sewer authorities have many ways in which they go about defining, packaging and communicating about their green bonds. That is, many green bond investors want additional reports on the environmental impact of the projects they're financing. For issuers, that's an additional process.

The way in which DC Water handled its green bond is an early model. DC Water, which serves the greater Washington, D.C., region, was the first water authority to issue green bonds, not just in the U.S. but globally. In July 2014, it sold $350 million in environmental impact bonds to finance a phase of its Clean Rivers Project. In part because the concept was so new — it was only the third green bond issuance in the U.S. — DC Water looked to Europe for best practices. Following the green bond principles outlined by the Climate Bonds Initiative, it opted to get a third-party verification and used that to both market the sale and offer a glimpse into the sort of annual impact reporting investors could expect on the bonds' proceeds. "Quite frankly, for DC Water, we wanted to set a high bar because we wanted to distinguish ourselves from other issuers," says Mark Kim, the authority's former chief financial officer and now the chief operating officer of the Municipal Securities Rulemaking Board.

The approach worked. In fact, DC Water upsized its issue by $50 million on the day of the sale thanks to the high demand from investors. Since then, the authority has issued more than a half-billion dollars in green bonds. It releases annual green bond reports that detail where all that money is being spent and gives updates on environmental outcomes. Investors who bought a DC Water green bond in 2014, for example, know that their money helped finance the first phase of the DC Clean Rivers Project, which has now helped significantly reduce nitrogen and phosphorus levels in the Anacostia and Potomac rivers.

That level of reporting isn't for everyone. And that's another challenge for the green bond movement. The additional reporting can be expensive, though it doesn't necessarily have to be. In some cases, as in Lawrence, the impact reporting is already part of the project: Lawrence has a sustainability coordinator whose job includes reporting on the city's energy savings and carbon emissions.

There are other strategies. In 2016, when the Massachusetts Water Resources Authority issued $682 million in green bonds, the first of what has been a handful of green bond sales for the authority, it took steps to avoid the extra cost of ongoing environmental impact reporting. All the bonds have been refinancings for projects completed under the federal Clean Water Act and Safe Drinking Water Act. "We thought it would be just as easy to issue refundings as green bonds because investors already know what that money was spent on," says CFO Tom Durkin. "We have limited resources and try to be frugal here. To have to produce a glossy five- or six-page report seemed like one more burden we didn't want to put on our Treasury Department."

Cleveland, on the other hand, made no claims about impact reporting in its 2016 green bond sale. It offered up $32 million in green bonds for stormwater projects and sewer upgrades and repair, telling investors in its offering statement that the city assumes no obligation to ensure the projects comply "with any legal or other standards or principles that relate to Green Projects." Instead, it committed to simply reporting on the use of proceeds until the bond money was spent. Investors bought them anyway.

Many issuers remain unconvinced of the advantage of green bonds. In part that's because there has yet to be a proven pricing benefit. The bonds don't win better rates from investors to justify the expense of the additional reporting, but Lawrence's Kidney and others make the case that selling green bonds opens up governments to new institutional investors. These are people who sit on the environmental or social investing side of a firm — nowhere near the municipal investor desk. For others, like the Eastern Municipal Water District in Southern California, that's just not enough of a selling point. "[When] we start to see a pricing bump," says Eastern's Deputy General Manager Debby Cherney, "then we'll certainly take a much more serious look at coming into the market."

Without agreed-upon standards about what a green bond is and what the reporting requirements should be, some say it's only a matter of time before an issuer falls out of favor by either using proceeds for a project that isn't green, or by not delivering on the environmental impact reporting that's expected. Until that happens — and some believe it's inevitable — governments are likely to keep pushing the margins. "Not all green bond issuers are alike and I'd say some have not adhered to best practices," says Kim, the former DC Water CFO. "Some have taken liberties with their designation." But he thinks enforcement has to come from investors. "They need to do their due diligence and hold municipal bonds accountable for what they're selling," he says. "And if they don't like what they see, don't buy it."

Maybe. Perhaps this new breed of environmentally conscious buyers will be different, but relying on investors to police the muni bond market hasn't worked before. It's more likely that until there is a real cop on the beat to instill some kind of standard, the legitimacy of the green bond market as a whole will remain in question.

GOVERNING.COM

BY LIZ FARMER | JULY 2018

New York City Turns Inward With 2019 Budget.

New York City's fiscal 2019 budget process concluded on June 14 with the adoption of an $89.15 billion budget. The budget incorporates recently settled state and federal questions while managing for future risks, addressing new spending requests, and increasing reserve set-asides.

Continue Reading

Jun. 25, 2018

The "Opportunity Zone" Program – Moving Forward

The 2017 tax reform legislation created a new federal subsidy for investment in low-income communities, known as the "Opportunity Zone" program. (We previously covered it on the blog here.) The program allows taxpayers to defer gain from the sale of assets by investing the proceeds into an "Opportunity Fund," which is a fund that invests in low-income communities that have been designated as "opportunity zones."

A few weeks after Congress enacted the program, our colleague Steve Mount wrote a complete analysis of the legislative provisions. Steve has written another piece for *Bloomberg's Tax Management Real Estate Journal*, tackling the questions about the program that linger. As Steve describes, three things need to happen to get the Opportunity Zone program going: (1) each state (and the District of Columbia and certain territories) needed to nominate O Zones within their jurisdictions and have them certified by the Treasury Department; (2) Treasury needed to promulgate rules on how to certify an O Fund; and (3) the IRS needed to issue guidance on several of the basic requirements of the Opportunity Zone statute. We've gotten (1) and (2), but we await (3). Steve's piece follows a very helpful Q&A format. Read it here.

By Johnny Hutchinson on July 3, 2018

The Public Finance Tax Blog

Squire Patton Boggs

CDFA // BNY Mellon Webcast Series: Climate Change - Financing Resilient

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Tuesday, August 21, 2018 | 1:00 PM Eastern

Click here to learn more and to register.

States Finalize Fiscal 2019 Budgets - Updated July 5

As of July 5, 49 states have enacted a new or revised budget for fiscal 2019. Massachusetts does not currently have a full-year budget for fiscal 2019; however, an interim budget has been passed to fund the state through the end of July.

46 states began fiscal 2019 on July 1 (New York began on April 1, while Texas begins on September 1 and Alabama and Michigan on October 1). Last year, 17 states enacted budgets covering both fiscal 2018 and fiscal 2019.

For the most current information on states' budgets, please visit NASBO's state-by-state listing of proposed and enacted budgets.

Additionally, for summaries of governors' budget proposals for fiscal 2019 please click here.

By Brian Sigritz posted 05-09-2018

NASBO

Connecticut Receives Federal Approval for All Qualified Opportunity Zone Nominations.

On May 18, Connecticut Governor Dannel Malloy announced that the U.S. Department of the Treasury approved all 72 "Qualified Opportunity Zones" that had been nominated by his administration, 29 of which are located in Hartford, New Haven, Stamford and Bridgeport.

Qualified Opportunity Zones are a creation of the Tax Cuts and Jobs Act (the Act), enacted on December 22, 2017, and serve as part of a new tax incentive mechanism to spur long-term investment in economically distressed communities throughout the United States. Pursuant to the Act, U.S. states and certain territories can nominate communities to be designated as Qualified Opportunity Zones, with such nominations subject to approval by the Secretary of the Treasury.

A taxpayer who invests in a designated Qualified Opportunity Zone through a Qualified Opportunity Fund (an Opportunity Fund) is eligible for preferential tax treatment. For these purposes, an Opportunity Fund is an investment vehicle that (i) is organized as a corporation or partnership formed for the purpose of investing in Qualified Opportunity Zone property and (ii) holds at least 90 percent of its assets in Qualified Opportunity Zone property. Notably, there are some significant tax benefits that Opportunity Fund investors may be eligible to receive:

1. Tax Deferral: If an investor sells an asset and reinvests the resulting capital gain in a an entity constituting an Opportunity Fund within 180 days from the date of such sale, the investor can

defer tax on the reinvested capital gain (the Deferred Gain) until the earlier of (i) the investor's disposition of its investment in the Opportunity Fund or (ii) December 31, 2026 (the Taxation Date). To defer the associated tax on the Deferred Gain, the investor must so elect when filing its U.S. federal income tax return for the year in which the Deferred Gain arose.
2. Reduction of Tax on Capital Gains: If an investor holds an Opportunity Fund investment for at least five years, such investor's basis in the Opportunity Fund (initially $0) will be increased by 10 percent of the Deferred Gain. This "step-up" in basis will be increased by an additional 5 percent of the Deferred Gain if the Opportunity Fund investment is held for at least seven years. In any event, on the Taxation Date, the taxpayer will be subject to capital gains tax on the lesser of (i) the Deferred Gain over the taxpayer's adjusted basis in the Opportunity Fund or (ii) the fair market value of the taxpayer's investment in the Opportunity Fund over the taxpayer's adjusted basis in the Opportunity Fund. In a best-case scenario (i.e., if the taxpayer holds its Opportunity Fund investment for at least seven years and the taxpayer's investment in the Opportunity Fund has appreciated), the taxpayer will generally be subject to capital gains tax on only 85 percent of its initial Deferred Gain and will have deferred the associated tax on 85 percent of the Deferred Gain for at least seven years.
3. Elimination of Tax on Realized Appreciation: If an investor holds an Opportunity Fund investment for ten or more years, the investor's basis in the Opportunity Fund will be stepped up to the fair market value of its investment on the date the investment is sold or exchanged. As a result, following 85 percent of the Deferred Gain being subject to tax at capital gains rates on the Taxation Date (item 2 above), any future appreciation of the taxpayer's interest in the Opportunity Fund subsequent to the Taxation Date will generally be tax-free to the investor if the investor holds the Opportunity Fund investment for more than ten years.

Importantly, a taxpayer must self-certify its investment in an Opportunity Fund. No approval or action is required by the Internal Revenue Service; rather, the taxpayer must complete the appropriate form and attach it to the taxpayer's federal income tax return. Such form is not yet available, but is expected to be released by the IRS this summer.

Day Pitney Advisory

June 29, 2018

Day Pitney Author(s) Von E. Sanborn Aaron T. Kriss Jeffrey M. Kole

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Is Washington, D.C. Prepared for the Amazon HQ2 'Prosperity Bomb'?

The biggest news in economic development in the past year has been the bidding war among cities and counties in response to Amazon's announcement that it is seeking a location for a second headquarters (dubbed HQ2) which would employ up to 50,000 workers with an average annual compensation over $100,000. The company received more than 200 bids, and in January announced a short list of 20 finalists, including Washington D.C. and two areas in suburban Maryland and Northern Virginia.

As the countdown to a final decision continues, it's worth thinking about the impact—both positive and negative—if Amazon were to select the District proper, which is enjoying a renaissance that nonetheless leaves some residents and neighborhoods behind. A newspaper columnist in Seattle, the home of HQ1, coined the term "prosperity bomb" when reflecting on the upsides and downsides of the company's presence.

Washington, D.C. is a city with significant assets, enough to make us a serious contender for Amazon: an educated workforce, good schools (if you can afford to buy a house in the right neighborhood or know how navigate the system), renowned colleges and universities, and extensive public transportation and walkable communities. The addition of up to 50,000 new jobs, most of them high-paying, would further strengthen and diversify the city's economy, which has long relied on federal employment and associated industries.

Continue reading.

The Brookings Institute

by Martha Ross

Friday, June 29, 2018

TAX - GEORGIA
City of Dublin School District v. MMT Holdings, LLC
Court of Appeals of Georgia - June 22, 2018 - S.E.2d - 2018 WL 3083617

Taxpayer brought putative class action against, inter alia, city school district, seeking, inter alia, refund of ad valorem taxes that taxpayer alleged had been illegally assessed and used by school district to meet obligations not approved by voters.

The trial court denied school district's motion for summary judgment and granted taxpayer's motion for summary judgment. School district appealed.

The Court of Appeals held that statute governing refunds of erroneously or illegally assessed and collected taxes did not entitle taxpayers to seek refund of ad valorem taxes from school district, and thus school district was entitled to sovereign immunity from taxpayers' claims. While statute's plain language entitled taxpayers to seek refund from governing body of county and municipality, statute said nothing about filing suit or seeking refund from school district, and statute did not contain any language that could be read as broadening waiver of immunity to encompass governmental entities other than those specifically listed.

Municipal Bonds Are Scarce. That's Good News for Borrowers.

U.S. states and cities are issuing fewer bonds, partly in response to changes to tax exemptions on refinancings.

The prices for municipal bonds have recovered from their worst first-quarter slump of the last 15 years. The reason: U.S. states and cities continue to cut back on their borrowing.

Municipalities borrowed $156 billion in the first two quarters of this year, down 17% from last year. Citigroup researchers are projecting that year-over-year decline will reach 25% by the end of the year.

The low supply is pushing up the value of existing bonds and reducing borrowing costs for some governments, particularly on riskier bond deals. Twelve-year bonds backed by settlement payments from tobacco companies to the state of California sold with yields of 3.07% in June, compared with yields of 3.25% in March of last year.

“It’s a seller’s market,” said Howard Cure, director of municipal-bond research at Evercore Wealth Management, which invests in public debt. “We’re trying to be careful about that aspect of it and not go down that path of sacrificing for a little extra yield and having a big decline in credit quality.”

The Bloomberg Barclays Municipal Bond Total Return Index edged up 0.87% in the second quarter, after falling by 1.11% in the first quarter. The first-quarter drop was the biggest decline of any first quarter in the past 15 years.

About half of the drop in supply resulted from Congress’s decision last year to end tax exemption for early refinancings of outstanding municipal bonds, according to an estimate by Vikram Rai, head of municipal strategy at Citigroup. Borrowers also rushed to sell municipal bonds amid talk of other legislative proposals—such as a ban on tax-exempt issuance by hospitals and universities—that weren’t ultimately enacted.

“The rush to market toward the end of 2017 emptied out a lot of the forward pipeline,” Mr. Rai said.

Aftershocks from the 2008 recession are also contributing to the drop-off. Municipal bonds typically become eligible for refinancing a decade after they are issued. Issuance of new money bonds fell 24% in 2008 as the recession destabilized city and state finances, leading to a smaller-than-usual crop of bonds eligible for refinancing in 2018.

Those factors combined to push the total amount of refinancing deals in the first half of this year down to $44 billion, the lowest since 2000.

All that scarcity has driven up prices despite rising interest rates, which typically erode the value of outstanding bonds. Central-bank officials last month raised the benchmark federal-funds rate by a quarter-percentage point, their second rate rise this year. They projected a total of four increases for 2018, up from three at their March meeting.

Exchange-traded funds are one relatively new beneficiary of the stronger demand for municipal bonds. Their municipal-debt holdings have grown from zero in 2007 to about $30 billion this year, according to federal data. The iShares National Muni Bond ETF received inflows of $630 million last month, the highest since December 2016, according to FactSet. The inflows followed a decision on June 1 to cut fees for that ETF by more than 70%.

Demand is expected to remain high in July and August, as outstanding bonds mature and investors look for new municipal debt investments, analysts said.

Some government borrowers could get an additional market boost from a recent Supreme Court decision banning public-employee contracts that require workers to pay union dues. The decision is expected to empower governments seeking to curtail pension benefits.

“You’re talking about the states retaining some negotiating leverage and being able to improve their fixed cost structure long-term,” said John Miller, co-head of Global Fixed Income at Nuveen Asset Management.

The Wall Street Journal

By Heather Gillers

July 8, 2018 2:59 p.m. ET

Write to Heather Gillers at heather.gillers@wsj.com

Five Steps to Prepare the Next Generation of Water Workers.

Much like investing in water infrastructure, the country often overlooks the pressing need to invest in a skilled workforce to manage these systems. Nearly 1.7 million "water workers" construct, operate, and maintain water systems found in every region, whether employed in utilities, engineering firms, or other industries. And many water workers are in short supply due to a wave of retirements and a lack of younger talent, even though they earn more competitive wages, tend to only need a high school diploma or less, and develop valuable skillsets over time.

These workforce challenges are not unique to the water sector. Multiple other infrastructure employers are also struggling to hire, train, and retain more workers, especially those in the trades. If local water employers can design new ways to develop their workforce pipeline, the solutions could be replicated across the country and the broader infrastructure sector.

Developing these solutions, though, requires new techniques. In other words, local success depends on local innovation, ideally supported by broader regional collaborations and national investments. Building off a new "water workforce playbook" we developed through conversations with water and workforce leaders across the country, below are five steps that all types of localities can follow to accelerate their recruitment, training, and retention efforts:

Continue reading.

The Brookings Institute

by Joseph Kane

Friday, June 29, 2018

Addressing our Infrastructure Woes: Is Private Equity the Answer?

The ancient Romans were among the first advanced civilizations to understand the importance of public roads and other infrastructure. Modern civilization has come a long way from these early beginnings. From colossal bridges and tunnels to super highways and major hi-speed rails, the need for replacing outdated infrastructures – or creating entirely new ones – remains a continuing financial challenge for states and local governments. Typically, the cost for these projects is substantial, ranging in the millions, and even billions, of dollars. For most local governments who simply cannot afford to pay for or finance these costs, public-private partnerships are the only option.

While the concept of public-private partnerships is not new and has been used successfully for decades in the United States, new financial pressures on federal, state and local agencies have resulted in a renewed focus toward P3s as a means to reduce operating budgets by turning operations and maintenance responsibilities over to private companies.ii However, attracting private equity to fund infrastructure projects still presents major challenges, particularly in regions where public-private partnerships have not gained acceptance due to the political climate or regulatory hurdles in these regions. Unfortunately, major public infrastructure projects such as tunnels, roads and bridges have seen only limited investment by private equity firms who are hesitant to invest due to political fears and the slower pace of completing governmental projects. "Any time you're involving a governmental agency or authority, it can be much more difficult to complete the deal…There can be political issues, and things often just move a lot slower."iii Indeed, "[m]any people thought the Trump administration's push for U.S. infrastructure upgrades would open the floodgates for private equity firms to step in and help modernize the country's infrastructure…"iv Contributing to the reluctance of these firms to get involved is the fact that some states lack any legislation governing public-private partnerships. As a result, these states are missing out on a golden opportunity to attract private equity as a means of funding sorely needed infrastructure improvements.

A majority of states, such as Florida, do have specific legislation addressing public-private partnerships.v In Florida, for instance, there is legislation covering public transportationvi, turnpikesvii, local transportation facilitiesviii and expressway and bridge authoritiesix. In fact, Florida has, in recent years, had some significant P3 projects, as have other states. These "P3 friendly" states present the perfect environment for private investors who have the necessary capital and desire to partner with state and local governments. Investors can make a return on their capital, while the public benefits from improved or new infrastructure. It's potentially a "win-win" for both sides, and should prompt more states to follow in the footsteps of Florida and other states with P3 legislation. While road and bridge projects have been the most traditional applications of P3s in the past, some investors are predicting a broadening of the types of projects that will be funded via P3s, such as in the water and wastewater industries, and potentially in the university housing markets. Thus, moving forward, there should be more opportunities for government contractors in industries that have not traditionally used the P3 model.xii

Click here for footnotes.

Saul Ewing Arnstein & Lehr LLP

July 6, 2018

New Municipal Public Right of Way Laws Fueled by Changes to Ohio Revised Code.

In response to Ohio House Bill 478, new right of way (ROW) ordinances are currently being considered by a number of Ohio municipalities. Ohio House Bill 478 amends Ohio's existing laws governing use and occupancy of the public ROW to further accommodate small cell facilities in support of 5G cell phone technology. The new legislation will go into effect on August 1, 2018. (See Ohio House Bill 478)

As a result of the forthcoming changes to [1]ORC Chapter 4939 by Ohio House Bill 478, a flurry of Public Way Notices (PWN) have recently been filed with the Public Utilities Commission of Ohio (PUCO) by municipalities considering the enactment of new or revised ROW ordinances. Since May 1, 2018, 27 PWNs have been filed with PUCO.

Although it seems likely that many of the newly proposed ROW ordinances being considered by municipalities are *intended* to apply to small cell facilities in the ROW, ambiguous language in certain sections of the new proposed ordinances could allow municipalities to impose their new requirements upon energy companies with existing facilities in the public ROW. Such application may cause permitting delays and increased costs for an energy company attempting to repair, replace, or maintain its infrastructure.

For instance, on May 4, 2018, an Ohio village filed a PWN for a proposed ordinance entitled "Small Cell Facilities for Wireless Support Structures." The title reflects that the proposed ordinance is intended to govern only wireless communication facilities in the ROW, but inexact drafting within the Village's new proposed ordinance could put energy companies at risk of falling under the new ROW rules for the Village. Examples include:

- The term *facilities* is undefined and used throughout the proposed ordinance, whereas the terms "Micro Wireless Facility" "Small Cell Facility", "Eligible Facilities" and "Wireless Facility" are all defined. One could argue that when *facilities* is used alone, it means something other than those specifically defined terms. Thus, *facilities* could be read to include underground or aboveground transmission and distribution lines.
- The term "Work Permit" is defined broadly as "A permit issued by the Village that must be obtained in order to perform any work in… any part of the public ROW…" This requirement could apply to any work by a utility on infrastructure located within the ROW, as it is not limited to ROW work involving small cell facilities and wireless support structures.

Similar problems from imprecise drafting may continue in other forthcoming ROW ordinances from municipalities that have recently filed PWNs.

Drafts of the proposed ordinances are not yet available from the majority municipalities that have recently filed. This is because of a new tactic employed by these municipalities – to file notice with PUCO of their consideration and proposed enactment of a public way ordinance, pursuant to ORC § 4939.04(E), without attaching the proposed ordinance supposedly under consideration. Many municipalities responded that the ordinance supposedly under consideration had not yet been drafted following written request of the proposed ordinances by the author. It seems these municipalities are taking the position that notice to PUCO of their consideration of an *undrafted* PWO somehow starts the 45-day notice period under ORC § 4939.04(E).

Application of new municipal ROW ordinances to energy service providers is not limited to the situation of imprecise drafting within an ordinance geared towards small cell facilities. Some of the PWNs filed with PUCO are for newly proposed municipal public way ordinances with broad and sweeping changes regarding a City's governance of the public way, intended to impact energy service providers.

For example, Akron's new proposed ordinance requires initial and annual registration with the City, and mandates registration fees, annual maintenance fees, new construction permit fees, and bonds for registration, construction, restoration, and removal, among other costly and burdensome requirements.

It is important for energy companies to be aware of the upcoming changes to municipal ROW ordinances in Ohio due to amendment of ORC 4939 from House Bill 478.

[1] Ohio Revised Code Chapter 4939 governs use of municipal public ways and generally grants authority to municipalities to manage the rights of way in their jurisdiction. House Bill 478 will amend Chapter 4939 to provide, among other things, that municipalities must permit wireless service providers, cable providers, and video service providers, to attach small cell wireless facilities

to municipally owned support structures located in the right of way, including on utility poles, traffic signals, and street lights and to construct, maintain, operate, or replace a wireless support structure in the right-of-way.

Benesch

July 9, 2018

Municipal Bonds Weekly Market Report: With Inflation Hitting Target Goal, Fed Might Raise Rates Twice in 2018

MunicipalBonds.com provides information regarding the performance of muni bonds for the past week in comparison with Treasury yields and net fund flows, as well as the impact of monetary policies and relevant economic news.

- Treasury and municipal yields all dropped this week.
- Muni bond funds saw inflows for the fourth week in a row.
- Be sure to review our previous week's report to track the changing market conditions.

Continue reading.

municipalbonds.com

by Brian Mathews

Jul 03, 2018

Supreme Court Declines Review of Tenth Circuit Case Holding Tribal Acquisition of an Interest in an Allotment Defeats Eminent Domain Authority.

The Supreme Court recently denied a petition to review the Tenth Circuit's opinion in *Public Service Company of New Mexico v. Barboan*1. The Tenth Circuit affirmed the district's court ruling that tribal ownership of a fractional interest in an "allotment," land the United States holds in trust for individual Indians, bars condemnation of any interest in the allotment, despite 25 U.S.C. § 357 that authorizes condemnation of "lands allotted in severalty to Indians" under state law. The Tenth Circuit agreed that tribal ownership of a fractional undivided interest in an allotment converts an allotment from "lands allotted in severalty" to "tribal land," and so Section 357 no longer applied. The Supreme Court denied Public Service Company of New Mexico's petition for a writ of certiorari on May 3, 2018.2

The *PNM* decision could have significant effects on right-of-way acquisitions and negotiations with individual Indian allottees for both new rights-of-way and renewals. The decision ignores the very real consequences to entities providing necessary public commodities whose infrastructure is now or will be located on allotted lands. We have seen this play out in a federal district court in Oklahoma where that court recently found a pipeline company in trespass, after concluding that the pipeline company could not invoke Section 357 because of tribal ownership of fractional interests in allotments, and ordered the pipeline to cease operations immediately and remove the pipeline within six months.3 In our opinion, the Tenth Circuit's now final decision deprives utilities and other public entities of the ability to ensure access for fair market value without regard to allotment landowner consent, which in turn may negatively impact continued, reliable transportation of necessary public commodities—and the public—across allotted lands. The impacts of the Tenth Circuit's decision are significant geographically as well because tens of thousands of fractional interests in allotments have been transferred to, and will continue to be transferred to, Tribes nationally under recent federal statutes and federal policies.

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by Deana M. Bennett and Lynn H. Slade

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Reducing Exposure to Lead in Drinking Water: Status of Revisions to Lead and Copper Rule (Parts 1 & 2)

The Administration is considering substantial changes to the current regulatory approach to reducing exposure to lead in drinking water. The US EPA (EPA) is assessing long-term revisions to the Lead and Copper Rule (LC Rule), a Safe Drinking Water Act (SDWA) regulation that seeks to protect public health by minimizing lead and copper in drinking water, primarily through corrosion control measures. Lead contamination in drinking water has been the subject of national scrutiny in the aftermath of the public health crisis in Flint, Michigan, where high levels of lead leached from aging pipes into the city's drinking water after the city switched its source of drinking water to the Flint River, the quality of which was more corrosive than the prior source. Congress eventually banned lead pipes in new construction with amendments to the SDWA in 1986, but in a 2016 survey, the American Water Works Association estimated that 6 million lead-containing service lines continue to distribute drinking water to 15-22 million people in the United States. As state and local governments nationwide confront similar challenges, EPA appears poised to address the legacy of lead infrastructure through updates to the LC Rule. In January 2018, EPA Administrator Scott Pruitt pledged to update the LC Rule as part of his "war on lead" in drinking water.

The SDWA requires EPA to determine a health-based maximum contaminant level goal (MCLG) for identified contaminants that may be found in drinking water. MCLGs reflect levels at which no adverse health effects are likely to occur, with an adequate margin of safety and are not enforceable. The MCLG for lead is zero, based on EPA's finding that there is no safe level of lead exposure, particularly for young children and pregnant women.

The SDWA also requires EPA to establish enforceable national primary drinking water regulations. For each contaminant with an MCLG, EPA must designate either a maximum contaminant level (MCL) or a "treatment technique." MCLs must be set "as close to the MCLG as feasible," whereas "treatment techniques" are allowed if it is not economically or technologically feasible to ascertain the MCL. EPA has established a "treatment technique" for lead, which is set forth in the LC Rule.

First promulgated in 1991, the LC Rule includes requirements for corrosion control treatment, source water treatment, lead service line replacement, and public education, as well as monitoring, reporting, and recordkeeping . Some of these requirements are triggered if action levels are exceeded. The action level for lead is 15 parts per billion (ppb) (or 0.015 mg/L) and is triggered if more than 10% of consumer taps sampled during a monitoring period contain lead concentrations in excess of 15 ppb. An exceedance indicates that corrosion control is not effective and the public water system must take additional steps to reduce lead in drinking water. The applicable corrective action depends upon the size of the public water system and the actions previously taken. Replacement of lead service lines is a last resort.

Critics have argued that the LC Rule is too reactive, too complex, and too lenient. EPA discussed these concerns in an October 2016 white paper, which declared that the LC Rule and its implementation "are in urgent need of an overhaul." The white paper indicates that EPA views the LC Rule as insufficiently proactive because it compels protective actions only after an action level is exceeded, thus creating a disincentive for public water systems to identify potential problems in drinking water before they become a public health concern. The LC Rule is also "one of the most complicated drinking water regulations for states and drinking water utilities to implement." Identifying the source(s) of lead contamination can be difficult, and the LC Rule is the only regulation that requires sampling in homes, often by the consumers themselves. Many lead service lines are also partially or entirely privately owned, and the responsibility for addressing the lead contamination may be up to the homeowner. Furthermore, the LC Rule confers public water systems with considerable discretion in regard to how they optimize corrosion control treatment, leaving many systems without fully optimized or maintained corrosion controls.

To address these concerns, EPA is considering technology-driven and health-based revisions to modernize and strengthen the LC Rule. Regulatory changes may include full lead service line replacement, health-based benchmarks, more prescriptive corrosion control treatment requirements, point-of-use filters, and improvements to sampling requirements, among other ideas. US EPA's Office of Ground Water and Drinking Water met with stakeholders as recently as January 2018, and solicited written comments from the public in March. EPA's current rulemaking schedule calls for the Agency to release a draft rule in August 2018 and a final rule in February 2020.

Whether the EPA ultimately follows through with a draft rule in 2018 remains to be seen. Meanwhile, communities across the United States are taking action to address lead contamination in their jurisdictions. For example, the Michigan Department of Environmental Quality will soon release an update to its own Lead and Copper rule, which may provide a template for other states. In January 2017, the State of Illinois passed a law that requires each school to conduct lead testing, and mandates remediation if elevated lead levels are found. New York, New Jersey, Oregon, Virginia, and California have also implemented similar laws (some are voluntary). While these states and other public water systems may have learned lessons from Flint, actually tackling the invisible problem of lead contamination is challenging as it can be extremely costly to implement and is fraught with economic, political and legal issues.

Addressing those issues in a fair and balanced way is important, especially because failure to comply with the LC Rule can expose public water systems to significant criminal and civil liability. For example, the Flint, Michigan disaster led to 15 criminal charges, two class action lawsuits, and a settlement that requires the State of Michigan to fund $100 million for the City of Flint's replacement of lead service lines. The SDWA includes a citizen suit provision, and the Natural Resources Defense Counsel and Newark Education Workers Caucus recently filed a Notice of Intent to Sue the City of Newark, New Jersey and the New Jersey Department of Environmental Protection for alleged violations of the SDWA—specifically, failure to comply with various provisions of the LC Rule.

Please stay tuned for Part 2 of this post, which will address in more detail issues related to liability under the SDWA and LC Rule.

By Sarah Quiter on May 17, 2018

Hunton Andrews Kurth

- Hospitals are Moving to Single Ratings: Here's Why
- BDA: MSRB Requests Comment on Draft FAQs for Rule G-40.
- Public Pension Network Responds to Introduction of the Public Employee Pension Transparency Act.
- New Riffs on TIFs: Lessons in Innovative Financing from Detroit
- *Wisniewski v. Murphy* – Appeals Court holds that issuance of $300 million in bonds to finance comprehensive renovation of state capitol complex did not violate state constitution's debt limitation clause.
- And finally, Great Moments in Municipal Competence is brought to us this week by *Archbold–Garrett v. New Orleans City*, in which The Big Easy sold a building at a tax sale, sent a notice of code enforcement lien to the individual who had owned the property *18 years* earlier, for no apparent reason cancelled the lien, demolished the building anyway, neglected to inform the new owners of the pending demolition, and then sent a bill to the new owners for the costs. As the court noted, "Unsurprisingly, they filed suit." Bam! The Honorable Edith H. Jones brings the deadpan! But surely this incident is unlikely to be repeated, as the municipality in question has not recently encountered any type of meteorologic event that would leave it with an abundance of unclaimed properties. Oh.

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