Bond Case Briefs

Municipal Finance Law Since 1971

Kentucky Supreme Court Limits Charitable Tax Exemption to Property Taxes Only.

Delving deeply into the history of the charitable exemption from taxes under Section 170 of the Kentucky Constitution as well as the use tax, the Kentucky Supreme Court recently held that the exemption applies only to property taxes. Dep't of Revenue v. Interstate Gas Supply, Inc., 2016-SC000281-DG (March 22, 2018). Section 170 exempts from taxation all institutions of "purely public charity."

Interstate Gas Supply, Inc. ("IGS") applied for a refund of certain use taxes it collected and remitted on behalf of Tri-State Healthcare Laundry, Inc. ("Tri-State"), an entity which serves the laundry needs of three charitable hospitals. Tri-State is not a 501(c)(3) tax exempt organization, so it does not qualify for the charitable exemption from sales and use taxes afforded to those entities under KRS 139.495. Tri-State is, however, recognized by the Kentucky Department of Revenue ("Department") as an institution of purely public charity, entitled to the Section 170 exemption.

Tri-State purchased natural gas from IGS during the relevant periods. IGS requested a refund of Kentucky use tax, arguing that Tri-State's status as a purely public charity exempted it from all revenue-raising taxes pursuant to Section 170 and that as stated in Commonwealth ex. rel. Luckett v. City of Elizabethtown, 435 S.W.2d 78 (Ky. 1968) the use tax was in effect a property tax, thus bringing it within the scope of Section 170, even if that section was deemed to apply only to property tax. The Kentucky Board of Tax Appeals and the Franklin Circuit Court both found that Section 170 applied only to property taxes, but the Court of Appeals agreed with IGS and the City of Elizabethtown decision and held that the use tax operated like a property tax so that Section 170 applied to its imposition as well. The Department appealed to the Kentucky Supreme Court, which granted discretionary review.

The Kentucky Supreme Court first analyzed the scope of Section 170 and held that the exemption was intended only to apply to Kentucky property tax. Undertaking a review of both the plain language of Section 170 and its many references to property as well as a number of cases that had taken up the issue, the Court held that the Section 170 exemption for institutions of purely public charity applied only to ad valorem taxation.

As to IGS's argument that the use tax operated so similarly to a property tax that it should fall within the scope of Section 170, the Court analyzed City of Elizabethtown as well as a number of other cases, and also undertook a review of the sales and use tax regime in Kentucky. While noting some similarities between the use tax's imposition of tax on the storage and use of items within Kentucky, the Court ultimately held that the use tax was intended as a complement to the sales tax and arose out of a transaction, not the ownership or valuation of such property. The Court also noted the criticism City of Elizabethtown had drawn over the years. The Court stated that nowhere else in the country had a use tax been treated as akin to a property tax, and in the Court's words, such a conclusion "is simply wrong." Accordingly, the Court overturned City of Elizabethtown and declined to extend the scope of Section 170 beyond property taxes.

This decision, combined with House Bill 487, which implanted a number of new tax policies in

Kentucky, has resulted in a perfect storm of uncertainty in the nonprofit world as to whether these organizations must register for and/or collect and remit certain taxes. Without the assurances in City of Elizabethtown and the new policies found in H.B. 487, many nonprofits may be responsible for collecting and remitting sales tax on items such as admissions to special fundraising events, silent auction items, and certain types of memberships or programs (for example, summer camps or little league memberships). The Department has promised to issue more guidance and is working with organizations such as the Kentucky Nonprofit Network to disseminate information in an efficient and effective manner given the number of nonprofits that may not be aware of the changes. So, it's often best to consult with a tax professional who can provide your organization with advice tailored to your specific circumstances.

Bingham Greenebaum Doll LLP

USA June 25 2018

IRS Consolidates Guidance on Deductibility, Reliance Issues for Grantors and Contributors.

The US Internal Revenue Service recently consolidated its guidance on deductibility and reliance issues for grantors and contributors. Rev. Proc. 2018-32 combines the safe harbors previously provided in Rev. Procs. 81-6, 81-7, and 89-23 with the reliance guidance of Rev. Proc. 2011-33, updates the guidance to reflect the new IRS Tax Exempt Organization Search, and replaces the prior Rev. Procs. with one revenue procedure setting forth the extent to which grantors and contributors can rely on an IRS database that lists an organization as eligible to receive tax-deductible contributions under Section 170 of the Internal Revenue Code or as a public charity under Section 509.

Pursuant to Treasury Regulations promulgated under Section 170, a grantor or contributor may rely on the continued validity of an Internal Revenue Service (IRS) determination letter concluding that an organization can receive tax deductible donations under Section 170—even if the organization has lost its status—until the IRS makes a public announcement that the organization's status has changed unless the grantor or contributor was responsible for, or aware of, the act or failure to act that resulted in the organization's loss of status. Similarly, pursuant to Treasury Regulations promulgated under Section 509, once an organization has received a determination letter classifying it as a public charity, the treatment of contributions and grants, and the status of grantors and contributors to such organization, will not be affected by a subsequent revocation of the organization's public charity status until the IRS publicly announces that the organization has lost its status as a public charity, unless the grantor or contributor knew that the organization's public charity status was revoked or was in part responsible for, or aware of, the act or failure to act which gave rise to the revocation of the organization's status as a public charity.

Prior to Rev. Proc. 2018-32, Rev. Proc. 2011-33 provided guidance for the extent to which grantors and contributors could rely on IRS publications for deducting contributions under Section 170 and making grants under Sections 4942, 4945, and 4966. Rev. Procs. 81-6, 81-7, and 89-23 provided safe harbors for determining when a grantor or contributor would be deemed not to have knowledge of, or be responsible for, an organization's loss of status as a public charity, including when a grant or contribution would be considered an "unusual grant." An "unusual grant" is excluded entirely from an organization's public support calculation and will therefore not cause an organization to lose its public charity status.

Rev. Proc. 2018-32

In order to simplify compliance for grantors and contributors, Rev. Proc. 2018-32 combines the prior revenue procedures and replaces them with one revenue procedure on deductibility and reliance issues for grantors and contributors. Rev. Proc. 2018-32 also incorporates the recent modifications the IRS made to its searchable online database, Select Check, which has been renamed "Tax Exempt Organization Search."

Rev. Proc. 2018-32 provides that, for purposes of deducting contributions under Section 170 or making grants under Sections 4942, 4945, and 4966, grantors and contributors can rely on the status of an organization reflected in two IRS databases searchable by the public on the IRS website—the Tax Exempt Organization Search and the EO BMF Extract—after the date the IRS has revoked the organization's status until the IRS makes a public announcement that the organization's status has changed. The public announcement may be made via the Internal Revenue Bulletin, on the portion of the IRS website (at www.irs.gov) that relates to exempt organizations, or by any means designed to put the public on notice of the change in the organization's status.

This guidance applies to individual donors as well as to private foundations and sponsoring organizations of donor advised funds. Grantors and contributors may rely on the information provided in the Tax Exempt Organization Search and the EO BMF Extract for an organization's qualification to receive tax deductible contributions, its classification as a public charity, and its qualification as a Type I, Type II, or Type III functionally or non-functionally integrated supporting organization.

If an organization's tax-exempt status is automatically revoked for failing to file three consecutive annual returns or required notices, grants and contributions to the organization generally will be considered deductible under Section 170 if made on or before the date the organization's name is posted on the Auto-Revocation List maintained by the IRS. The Auto-Revocation List is also searchable on the IRS website through the Tax Exempt Organization Search.

Under certain circumstances, the IRS may allow a donor to deduct a contribution to an organization that lost its ability to receive tax deductible contributions after the IRS's public announcement. For example, the IRS may allow a deduction if the donor made a legally enforceable pledge before the public announcement but does not satisfy the pledge until after.

Rev. Proc. 2018-32 reiterates the exceptions to the general reliance rules for deductibility and for public charity status, consistent with the prior guidance, as well as the safe harbors. It also provides limitations on the extent to which the reliance provisions in the revenue procedure apply and requirements for relying on information from the EO BMF Extract from third parties. Finally, Rev. Proc. 2018-32 provides guidance on the validity of contributions to an organization during a proceeding under Section 7428 for a declaratory judgement involving the revocation of a determination that the organization is described in Section 170, which is also consistent with the prior guidance.

Although it doesn't provide any substantive changes to the guidance on donor reliance, Rev. Proc. 2018-32 reminds grantors and contributors to check an organization's status before making a grant or a donation.

Morgan Lewis & Bockius LLP

by Shira M. Helstrom

USA June 21 2018

CEQ Requests Comments on Changes to NEPA Review Process Governing Infrastructure Projects.

The Council on Environmental Quality (CEQ)—the US federal agency responsible for coordinating and overseeing federal agency implementation of the National Environmental Policy Act (NEPA)—moved one step closer on June 20 towards revising its longstanding NEPA-implementing regulations. Those regulations, which last underwent a major revision in 1986, govern the environmental review process for all "major federal actions," including Federal Energy Regulatory Commission (FERC) license reviews for hydroelectric projects and certificates for natural gas facilities.

Now, in an Advance Notice of Proposed Rulemaking (ANPR), the CEQ signaled that it is ready to receive public comments on potential revisions that it hopes will "ensure a more efficient, timely, and effective NEPA process consistent with the national environmental policy stated in NEPA." Comments are due July 20, 2018.

The ANPR seeks comments on specific issues and further invites commenters to provide "specific recommendations on additions, deletions, and modifications to the text of CEQ's NEPA regulations," including their justifications, to update and clarify the regulations. Among other things, CEQ seeks public feedback on whether:

- the regulations should be revised to ensure optimal interagency coordination of environmental reviews and authorization decisions, including more "concurrent, synchronized, timely, and efficient" decisions when multiple agencies are involved;
- any rule changes could better facilitate agency use of environmental studies, analysis, and decision conducted in earlier reviews;
- provisions relating to agency responsibility and preparation of NEPA documents by contractors and/or project applicants should be modified;
- the regulations relating to programmatic NEPA documents and tiering should be revised;
- the scope of agency NEPA reviews, including whether rules for formats and page lengths of NEPA documents, should be revised;
- the CEQ should include time limits for completion of agency NEPA reviews;
- the rules for public involvement should be revised to be more inclusive and efficient;
- the definitions of key terms, such as "major federal actions," "effects," "cumulative impacts," "significantly," "scope" and others, should be revised;
- new definitions, such as for the terms "alternatives," "purpose and need," "reasonably foreseeable," and "trivial violation," should be added to the regulations;
- provisions relating to certain types of NEPA documents (e.g., categorical exclusions documentation, environmental assessments, environmental impact statements, records of decision, supplements) should be altered;
- any of the regulations' current provisions are "obsolete" and can be updated to reduce "unnecessary burdens and delays;"
- the rules can be changed to better reflect or incorporate new, efficiency-boosting technologies; and
  mitigation requirements should be revised.

The questions posed by CEQ follow efforts by other federal agencies to streamline or reevaluate the

NEPA process for major infrastructure projects. Earlier this year FERC initiated a Notice of Inquiry seeking information and stakeholder input on FERC's policies regarding its review and authorization of interstate natural gas transportation facilities under Section 7 of the Natural Gas Act. Among other things, the Notice of Inquiry seeks comment on the scope of FERC's environmental analysis of proposed natural gas projects (e.g., whether downstream GHG emission impacts should be considered), as well as the efficiency of the certificate application review process. Efforts by other agencies have similarly focused on streamlining the environmental review process: the [One Federal Decision Memorandum of Understanding] signed by 12 federal agencies committed to a coordinated NEPA process that allows all permitting decisions to be completed within two years. Those efforts, as well as the CEQ's ANPR and FERC's Notice of Inquiry, have been driven largely by [Executive Order 13807], which President Donald Trump issued August 15, 2017, to "enhance and modernize" the environmental review and permitting process for infrastructure.

Given the highly visible and pervasive nature of the NEPA-implementing regulations, it will be important for FERC-regulated entities that depend on federal agency action when advancing projects and securing permits to participate in the rulemaking. Such comments will be critical to CEQ having a sufficient agency record to defend against any later litigation challenges to new regulations.

Morgan Lewis & Bockius LLP

Kirstin E. Gibbs, Camarin E.B. Madigan, J. Daniel Skees, Ronald J. Tenpas and Arjun Prasad Ramadevanahalli

USA June 20 2018

Oakland Raiders Las Vegas NFL Stadium Hotel Tax Revenue Still Less Than Needed For Bond.

In the past months, and going back to April 2017, this blogger has asserted that the Clark County Stadium Tax Rate of .088 of 1 or 88 percent of one percent is not adequate to finance the bond issue of $645 million for the Oakland Raiders Las Vegas NFL / UNLV Stadium.

The general consensus of Clark County's financial management team has been that because of reserves, there was no real problem. But that masks the real truth, which has been communicated to me by many municipal finance professionals: as long as the Raiders bond issue is a general obligation bond issue, where Clark County's entire General Fund monies can be used to help pay for the bond debt service, there's no financing problem. In other words, the Clark County taxpayers will help.

Others have told me I was just plain wrong, without any explanation. But now, we have the actual bond debt service that will be due, and for the first year 2019, that number, compared to what's already being collected on a monthly basis, adds up to a shortfall.

To see the problem, lets' start with the June 30th 2019 debt service requirement of $36,003,763. That's from the actual bond issue that was sold this April 2018. It's the first year of debt service requirement, but it's without something called the "debt coverage ratio" and that's the level above the debt service requirement, that you as Clark County have to have money in your stadium tax revenue stream to pay the debt service requirement and have money left over that then goes into a reserve.

Ok, so since it's per month, $36,003,763 divided by 12 months is $3,000,313.58. Now, we're not done, because we have to take that and multiply it by 1.5, or $3,000,313.58 x 1.5 – that gets us to $4,500,470.37. That's the actual average monthly revenue the stadium tax should have.

So let's compare that with what revenue actually has come in. Over the first 12 months of the stadium tax, from March 2017 to March 2018, is 52,721,713.00 or a monthly average of $4,393,476.08. That first year monthly average is less than the actual average – or $4,500,470.37 – $4,393,476.08 which equals a negative $106,994.29 per month.

So you say the next year's going to be better for the stadium tax revenue flow? Ok, let's check that. The revenue from April 2018 and May 2018 was $4,300,000 and $4,015,362 respectively. Take the average of those two figures, and we get $4,157,681 average monthly revenue for the next year of collection of the tax. Given our required average monthly revenue need of $4,500,470.37, and we have a monthly average shortfall of $342,789.37.

As a note, this is not referring to the budget for the Stadium Authority itself, which takes in revenue from several sources, not just the stadium hotel tax. Many get confused when the discussion of the bond issue comes up. What this refers to is strictly the bond issue itself versus what's supposed to be its dedicated revenue stream, the stadium hotel tax.

The bigger problem is three fold:

1) The bond debt service requirement is only going to get bigger. For example, the 2019 total of $36,003,763 will first give way to a smaller bond debt (without the debt coverage ratio included) of $33,978,750. But hat just reduces the monthly revenue need to $4,247,343.75. Note that the months of April and May of 2018 were less than that amount. Then, the bond debt service requirement increases again to where it is greater than the 2019 total in 2023 – 36,059,500.
2) During that time, there's no sign the stadium tax revenue will go up, and all signs that it has gone down. Las Vegas has experienced 10 of 11 months of visitor declines, month to month. And while 2017 was a record year, the reason these small changes are important overall with respect to the Raiders Stadium, is because is stadium hotel tax rate is too small.
3) The stadium tax revenue collected for April 2018 was less than that for April of 2017 by -$192,689. Moreover, the projection for the second year of stadium tax collection (with March 2017 marking year one because that was the first month the tax was collected) is less than that of the first year by $2,829,541 or $52,721,713 from year one minus $49,892,172 estimated for year two.
4) So, we have a situation where the bond debt does decrease from 2019 to 2022, but guess what? The revenue collected it projected to go down by -.0567 percent. Between year one of the stadium hotel tax revenue and year two.

This shows there is a problem with the stadium tax hotel rate for the Oakland Raiders / UNLV Stadium. Moreover, that problem, given the Las Vegas and Clark County picture where there are signs of downturns in visitors as the stadium hotel tax monthly revenue demand increases, will only get worse. The queston is at what point will Clark County have to start digging into its General Fund? Depending on the budget of the Stadium Authority (and we should get a review of that at the next meeting) that time could be as close as December of 2019.

Stay tuned.

OAKLAND NEWS NOW

BY: ZENNIE ABRAHAM JUNE 20, 2018

The Wealthy Atlanta Suburb Fighting to Secede From Its City.

The metro area has been divided into ever smaller pieces segregated by race and class. If Stockbridge splits up, the poorer parts will be left with $15.5 million of debt.

As Vikki Consiglio tells it, a new Georgia law that has alarmed Wall Street had its genesis two years ago, with a birthday dinner for her husband in Atlanta's Buckhead neighborhood, at a steakhouse in a graceful, brick-paved complex of high-end furniture stores and designer boutiques. "A light just went off," she says.

Her own neighborhood in the suburbs—a cluster of gated communities surrounding a country club—lacked the same exclusive feel along its main drag. "I want those things, those amenities," Consiglio says. "I wanted to be part of a gated community in a high-end area. Instead, when I come out of the gate, I see a Waffle House and dollar stores."

Consiglio's home is part of Stockbridge, a predominantly black city in Henry County, some 20 miles south of Atlanta. She says her section can't attract businesses like Buckhead's because of the lower income of the rest of Stockbridge. Her idea: The whole neighborhood could break away. Consiglio is the spokeswoman for the movement that pushed for and won a state law to allow a "de-annexation."

Continue reading.

Bloomberg Businessweek

By Margaret Newkirk

June 21, 2018

Researcher: Harvey's Pension Problems the First, But 'Certainly Won't Be Last,' to run afoul of state law

The city of Harvey remained locked in a court fight with state officials and its own public worker pension funds over its ability to use sales tax dollars to pay its bills. But it likely is just one of dozens of cities and other governments across Illinois poised to land on the wrong side of a state law mandating pension fund payments.

"Harvey may be somewhat of an extreme case given all the factors, among which is its history of corruption," Kass, assistant director for the Center for Municipal Finance at the University of Chicago Harris School of Public Policy, told the Cook County Record. "But I wouldn't be surprised to see more pension funds across the state file similar paperwork with the comptroller's office the same way Harvey has. There might not be a ton of Harveys, but many other places have the same issue of pension system underfunding."

After the Harvey pension fund for retired police officers moved to intercept and lay claim to millions earmarked for the city, ultimately setting off a legal quagmire, Illinois Comptroller Susana Mendoza justified diverting the funds as requested by pointing to a 2011 enacted state law that requires her office to do just that when municipalities are accused of failing to make their obligated pension payments.

The case in Harvey is being closely monitored across the state and other parts of the country given the gravity and widespread nature of the problem. In addition, bondholders have also taken note of the proceedings, as such claims by pension funds could also leave them cut out of the municipal revenue they would otherwise be owed, as the Cook County Record previously reported.

However, in a related opinion letter, Mendoza allowed the city to pay a group of investors holding city bonds, as those particular bonds were funded from a special Harvey city sales tax, and that tax should not be considered state funds. Thus, those funds cannot be withheld and diverted to pensions.

Harvey city officials say the legal entanglement has deepened the city’s problems, recently forcing city officials to lay off dozens of government workers, among them as many as 40 police and fire department officials.

“A big part of this is so many of these pension funds have been so grossly underfunded for so long and that’s why you’re seeing so many of them experiencing the same troubles,” Kass added. “Look at North Chicago; they’re one of the other places pretty much in the same predicament. While the initial law may have required pension contributions, it lacked an enforcement mechanism.”

In all, Kass estimates that there are at least 53 other municipalities that have seen police and fire pension funds underfunded on par with the figures that have caused much of the destruction in Harvey. Across the state, police and fire pensions are reported to have only been funded on an average of just 60-67 percent over the last decade.

“Harvey may be the first, but it certainly won’t be the last where you see something like this happen,” Kass said. “And as far as the law goes, it’s clearly written about what can be intercepted by the comptroller’s office whenever the situation occurs.”

Kass said it remains to be seen what the controversy could truly come to mean for Harvey’s already frustrated taxpayers.

“In theory, you can raise taxes as high as you want, but that doesn’t mean the people can afford to pay them,” she said. “Harvey already has a high tax rate that’s only matched by its high delinquency rate. There’s a real need to evaluate the dynamics and demographics of these places and the question of whether or not they can handle much more of the same thing. Some places may already have a cap of their own, while for places like Harvey the solution may have to come from a higher level of government involvement.”

Kass said she’s heard some potentially good ideas offered concerning possible long-term solutions, but she she thinks what’s happening in Harvey is the wrong way to go in terms of handling things.

“Right now, Harvey is laying off police and firemen and I know that can never be a good idea,” she said. “Just firing people, especially essential people to making a society work, is not the answer anyone needs.”

Cook County Record

By Glenn Minnis | Jun 21, 2018

- MSRB Compliance Corner – Summer, 2018
- Wells Fargo Struggles to Get Off the Municipal-Bond Blacklist.
- Rise in Single-Rated Municipal Bonds Spurs Investor Concerns.
- Fitch U.S. Public Power Criteria Revision. ***and*** Fitch: U.S. Public Power Peer Review Highlights Capex, Coverage Trends.
- Understanding the De Minimis Tax Rule.
- A Richer Understanding of What's Already Understood – Treasury Issues Proposed Regulations to Clarify the Meaning of "Investment-Type Property" in an Already Obvious Way.
- Webinar: Emerging Metrics for Physical Climate Risks Disclosures.
- BLX/Orrick 6th Annual Post-Issuance Compliance Workshop.
- Webinar: Emerging Metrics for Physical Climate Risks Disclosures.
- *Assured Guaranty Corporation v. Madison County, Mississippi* – Court of Appeals holds that contribution agreement between county and special purpose government entity, which required county to advance payments on bonds issued in order to fund entity if entity was unable to make payments on its own through special assessments, required entity to reimburse county within two years as a condition precedent to county's obligation to advance payments.
- And finally, Thanks So Much for the Clarification is brought to us this week by *Acevedo v. Musterfield Place, LLC*, in which the Supreme *Judicial* Court of Massachusetts yada, yada, yada. As far as we can tell, Mass is the only state supreme court that insists on pointing out that the ruling in question has not been handed down by The Supreme Courtyard by Marriott. The Supreme Tennis Court of Massachusetts. We'll let you run with it from here.

MARKETING DISTRICT ASSESSMENT - CALIFORNIA

Reid v. City of San Diego

Court of Appeal, Fourth District, Division 1, California - May 25, 2018 - 2018 WL 2381980 - 18 Cal. Daily Op. Serv. 5064 - 2018 Daily Journal D.A.R. 4961

Hotel guests brought putative class action against city, seeking declaratory judgment and writ of mandate and alleging that tourism marketing district assessment imposed on hotel stays was a disguised tax that violated Proposition 26 because it was never submitted to electorate for vote.

The Superior Court sustained city's demurrer. Guests appealed.

The Court of Appeal held that:

- Ordinance's 30-day limitations period for commencing an action to challenge validity of a levied assessment did not violate due process;
- Limitations period was not equitably tolled by previous action challenging assessment;
- Continuous accrual doctrine did not apply to extend limitations period;
- Equal protection claim was not subject to strict scrutiny; and
- Reasonable argument could be made that action was not subject to 30-day limitations period, supporting finding that appellate arguments were not frivolous and thus not subject to sanctions.

ZONING & PLANNING - DELAWARE

[Town of Cheswold v. Central Delaware Business Park]

Supreme Court of Delaware - June 8, 2018 - A.3d - 2018 WL 2748372

Town brought declaratory judgment action, seeking clarification of whether prior stipulated orders in litigation between landowner and town prohibited town from rezoning property.

The Superior Court entered judgment in favor of landowner. Town appealed.

The Supreme Court of Delaware held that:

- Action was ripe for review;
- Stipulated orders did not incorporate by reference the substance of proposed zoning amendment; and
- Stipulated orders were not ambiguous and thus extrinsic evidence could not be used to interpret them.

Stipulated orders entered by court, in litigation between town and landowner in which landowner sought to compel town to adopt proposed zoning amendment which recognized certain vested property development rights, did not incorporate by reference the substance of such amendment, supporting finding that town could adopt new ordinance affecting landowner’s vested development rights; stipulated orders referred to amendment only as part of town’s obligation to republish ordinance with amendment.

ZONING & LAND USE - GEORGIA

[Hoechstetter v. Pickens County]

Supreme Court of Georgia - June 4, 2018 - S.E.2d - 2018 WL 2465513

Neighbors filed petition for judicial review of decision of county board of commissioners granting conditional use permit.

The Superior Court denied neighbors’ motion for summary judgment. Neighbors appealed. The Court of Appeals affirmed. Writ of certiorari was issued.

The Supreme Court of Georgia held that hearing before county planning commission did not afford interested citizens meaningful opportunity to be heard by the county board of commissioners on application for conditional use permit, and thus, the hearing did not satisfy the notice-and-hearing requirements of the Zoning Procedures Law (ZPL).

Hearing before county planning commission did not afford interested citizens meaningful opportunity to be heard by the county board of commissioners on application for conditional use permit, and thus, the hearing did not satisfy the notice-and-hearing requirements of the Zoning Procedures Law (ZPL), where planning commission could only make recommendations to the board, only record of the hearing was one-page memorandum to the board, and memorandum failed to disclose the general nature of neighbors’ objections to the application.

IMMUNITY - MASSACHUSETTS

[Acevedo v. Musterfield Place, LLC]

Supreme Judicial Court of Massachusetts, Middlesex - June 8, 2018 - N.E.3d - 2018 WL 2749724

Resident who allegedly slipped and fell in public housing development, suffering serious injuries, brought action against city housing authority, a controlled affiliate of the authority which owned the property, and the managing agent.

The Superior Court Department denied affiliate and manager’s motion for summary judgment, and they appealed.

The Supreme Judicial Court of Massachusetts held that controlled affiliate of housing authority, and the sole member of the controlled affiliate’s manager, were not “public employers” for purposes of the Tort Claims Act, but rather, were private limited liability companies (LLC) that were not entitled to sovereign immunity from personal injury claims brought by resident of public housing development who allegedly suffered serious injuries in a slip and fall.

BOND INSURANCE - MISSISSIPPI

[Assured Guaranty Corporation v. Madison County, Mississippi]

United States Court of Appeals, Fifth Circuit - May 31, 2017 - 693 Fed.Appx. 287

Insurer of bonds issued by special purpose government entity brought action against county, which had entered into a contribution agreement with entity, seeking declaratory judgment that contribution agreement was valid and required county to continue advancing funds to entity for bond payments, even though entity failed to reimburse county within two years.

The United States District Court for the Southern District of Mississippi granted insurer’s motion for partial summary judgment, concluding county was obligated to advance payments as long as bonds were outstanding. County appealed.

The Court of Appeals held that:

- Entity’s obligation to reimburse county within two years was a condition precedent to county’s obligation to advance bond payments;
- Amortization approval certificate, when read together with contribution agreement, conditioned county’s obligation to make advance payments on entity’s performance of covenants; and
- County was not estopped from arguing that entity’s performance was unsatisfactory.

Under Mississippi law, contribution agreement between county and special purpose government entity, which required county to advance payments on bonds issued in order to fund entity if entity was unable to make payments on its own through special assessments, required entity to reimburse county within two years as a condition precedent to county’s obligation to advance payments; agreement explicitly required entity to reimburse county within two years, and there was no tension between a requirement that county advance bond payments when entity was unable to make them if entity satisfied its obligations under agreement, and that entity was required to reimburse county for advances within two years of when they were made.

Under Mississippi law, amortization approval certificate, signed by county at closing on issuance of bonds to fund special purpose government entity, when read together with contribution agreement requiring county to advance bond payments to entity if entity was unable to make payments, conditioned county's obligation on entity's performance of covenants under contribution agreement, including its promise to reimburse county; while certificate referred to conditions that had to be performed to county's satisfaction prior to closing, contribution agreement also referred to conditions that were to be completed after closing, including condition precedent requiring entity to pay reimbursement within two years.

County was not estopped under Mississippi law from arguing that special purpose government entity's performance under amortization approval certificate, which was signed upon issuance of bonds to fund entity, was unsatisfactory, in bond insurer's declaratory judgment action against county; while quasi-estoppel theory precluded a litigant from asserting rights inconsistent with a position it had previously taken, this theory would only have applied if county signed certificate intending to agree that it was satisfied with entity's performance of all of its obligations under agreement, including those that could not possibly have been performed before closing at which certificate was signed.

TOWNS - PENNSYLVANIA

[Varner v. Swatara Township Board of Commissioners]

Supreme Court of Pennsylvania - June 1, 2018 - A.3d - 2018 WL 2449178

Township residents and commissioner filed declaratory petition challenging validity of ordinance by which township board of commissioners purported to alter the one-ward five-commissioner at-large system back to a nine-commissioner by-ward system without judicial approval.

The Court of Common Pleas granted petition. Board appealed. The Commonwealth Court affirmed. Board petitioned for discretionary review.

The Supreme Court of Pennsylvania held that:

- Judicial approval was needed pursuant to First Class Township Code section governing wards, and
- Constitutional and statutory provisions providing authority to reapportion into districts a governing body that was not entirely elected at large did not apply.

Township board of commissioners' passage of ordinance purporting to alter its one-ward five-commissioner at-large system back to a nine-commissioner by-ward system was not a reapportionment governed by State Constitution and the Municipal Reapportionment Act, but rather was governed by the First Class Township Code governing wards, and thus judicial approval was needed pursuant to Code; board did not act to rebalance the population within the districts but instead restructured the form of government by completely eliminating the wards.

CONTRACTS - RHODE ISLAND

[Coccoli v. Town of Scituate Town Council]

Supreme Court of Rhode Island - June 8, 2018 - A.3d - 2018 WL 2760303

Purchaser of property brought pro se action against town council for promissory estoppel and breach of oral contract, breach of confidentiality pertaining to proprietary information, tortious interference with a contract, and fraudulent misrepresentation.

The Superior Court granted council's motion for summary judgment, and subsequently denied purchaser's motion to vacate entry of summary judgment. Purchaser appealed.

The Supreme Court of Rhode Island held that:

- Memorandum of understanding between town council and purchaser regarding sewer connection was binding contract; but
- Town council did not tortiously interfere with purchaser's alleged contract to purchase property from bankruptcy receiver; and
- Purchaser failed to present scintilla of evidence of any representation from town that induced him to engage in environmental cleanup on property, or of his detrimental reliance upon such representation, as required for purchaser to state claim for fraudulent misrepresentation.

Memorandum of understanding between town council and property owner regarding sewer connection was binding contract, where council voted to approve sewer connection by consent agreement, contingent upon receiving memorandum, town and property owner's legal counsel thereafter prepared detailed memorandum that was drafted on letterhead of town's solicitor, signed by town council's president and property owner, notarized, adorned with official town seal, and recorded in land evidence records, and after memorandum was executed, property owner spent approximately $2 million to begin infrastructure and engineering on redevelopment project, in furtherance of memorandum.

PUBLIC PENSIONS - TEXAS

[City of Houston v. Houston Municipal Employees Pension System]

Supreme Court of Texas - June 8, 2018 - S.W.3d - 2018 WL 2749728

Municipal employees pension system brought action against city, seeking writ of mandamus to compel city to provide information regarding employees of city-controlled nonprofit corporations, which employees were city employees until they were transferred to corporations, and to compel city to allocate funding in city budgets for retirement contributions and pick up payments owed for employees of corporations.

City filed, inter alia, plea to the jurisdiction, arguing that governmental immunity barred pension system's claims. The District Court denied city's plea to the jurisdiction. City appealed. The Houston Court of Appeals affirmed in part, reversed in part, rendered judgment in part, and remanded.

On petition for review, the Supreme Court of Texas held that:

- Pension system had standing under pension-system statute to bring mandamus action against city;
- Employees of nonprofit corporations were "employees" under pension-system statute, and thus were "members" of pension system;
- A statute authorizing a governmental entity to enter into contracts and providing that such a contract will be binding does not require the contract to be performed in a particular way such

that an ultra vires claim can be brought to enforce it;
- Pension system did not have adequate remedy by law, as would bar pension system's claim for mandamus relief;
- Pension-system statute created ministerial duty and defined it with sufficient clarity to support pension system's ultra vires and mandamus claims against city;
- Pension system sought to have pension-system statute enforced going forward and thus was seeking prospective relief, as required for pension system to bring claim for mandamus relief against city; and
- Pension system's action was not rendered moot by amendment to pension-system statute.

ANNEXATION - WISCONSIN

Town of Lincoln v. City of Whitehall

Court of Appeals of Wisconsin - April 17, 2018 - N.W.2d - 2018 WL 1842075 - 2018 WI App 33

Town, which had received favorable findings from Department of Administration, brought action against city seeking declaratory judgment that city's annexation ordinances, which had been adopted pursuant to grassroots process of direct annexation by unanimous approval, that detached territory from town were invalid.

The Circuit Court granted city's motion to dismiss all but contiguousness claim, and thereafter granted summary judgment for city on contiguousness claim. Town appealed.

The Court of Appeals held that:

- Town, when commencing a court action to protest a direct annexation by unanimous approval following review by the Department of Administration, is limited to challenging contiguity and county parallelism;
- Annexed territory was sufficiently contiguous to city;
- City was not the real controlling influence behind design and configuration of annexation; and
- Annexed territory was not of an exceptional shape and thus was not invalid as arbitrary.

SIFMA: Select Enhancements to Protect Retail Investors in Municipal and Corporate Bonds.

SIFMA provided comments to the SEC on recommendations of the Market Structure Subcommittee of the SEC Investor Advisory Committee on Municipal and Corporate Bonds.

Read Comments.

A Richer Understanding of What's Already Understood – Treasury Issues Proposed Regulations to Clarify the Meaning of "Investment-Type Property" in an Already Obvious Way.

The Minutemen's seminal album *Double Nickels on the Dime* includes the song "The Big Foist," which opens with the lyrics, "A richer understanding of what's already understood." These lyrics are called to mind (my mind, at least) on occasions such as the Treasury Department's publication today of proposed regulations ("Proposed Regulations") that clarify the definition of "investment-type property" for purposes of complying with the arbitrage yield restriction and rebate requirements set forth in Section 148 of the Internal Revenue Code.

As a general matter, if proceeds of a bond issue are reasonably expected to be used (or are intentionally used) to acquire "investment property" that has a materially higher yield than the yield of the bond issue, then the bond issue is comprised of taxable arbitrage bonds, rather than tax-exempt bonds. Investment property includes, among other things, "investment-type property." The current regulations define investment-type property as any property "that is held principally as a passive vehicle for the production of income" and that is not a specifically defined type of investment property (i.e., securities, obligations, annuity contracts, and certain residential rental property for family units). The Proposed Regulations make clear that investment-type property:

> does not include real property or tangible personal property (for example, land, buildings, and equipment) that is used in furtherance of the public purposes for which the tax-exempt bonds are issued. For example, investment-type property does not include a courthouse financed with governmental bonds or an eligible exempt facility under [Internal Revenue Code] section 142, such as a public road, financed with private activity bonds.

This conclusion is obvious from the legislative history of Section 148, which Treasury cites in the preamble to the Proposed Regulations. It's also obvious from the canon of statutory and regulatory construction that a general item in a list must be read in light of the specific items that precede it. Although an obvious conclusion, Treasury is to be commended both for allowing issuers of tax-exempt bonds to rely on the Proposed Regulations before they become final and for using an Oxford comma in the above-quoted parenthetical.[1]

If Treasury is inclined to publish proposed regulations to clarify that which is already clear, perhaps Treasury can provide guidance on whether tax-exempt bonds can be issued to advance refund taxable (but not tax-advantaged) bonds.

[1] Not using an Oxford comma? You should. You'd join the good company of my colleagues, Rob Lowe, and Neil deGrasse Tyson. Had I not used an Oxford comma, you could be left with the impression that I work with Messrs. Lowe and deGrasse Tyson; the Oxford comma makes clear that I do not. You're welcome.

By Michael Cullers on June 12, 2018

The Public Finance Tax Blog

Squire Patton Boggs

MSRB Compliance Corner - Summer, 2018

Read about charitable donations and MSRB Rule G-37, among other tips and info in the latest

Compliance Corner.

Wells Fargo Struggles to Get Off the Municipal-Bond Blacklist.

The bank's sales scandal continues to weigh on underwriting gigs for cities, states

Some states and cities that do business with Wells Fargo & Co. continue to steer clear of the bank when selling municipal bonds to the public, the latest sign larger customers haven't forgiven its sales-practices scandal.

New York City's leaders have a prohibition on bond deals with Wells Fargo. California and Ohio both recently extended their own limitations on doing business with the bank. Chicago shunned Wells Fargo for a year and hasn't done a deal even after its ban expired.

Wells Fargo's ranking among underwriters by volume fell to eighth in this year's first quarter from third two years earlier, before the scandal, according to Thomson Reuters data.

"There's no question that the business bans that came up two years ago had an impact on our growth," said Phil Smith, head of Wells Fargo's government and institutional banking group, which includes municipal banking. But Mr. Smith said many clients are giving the bank the "go ahead to compete for business."

Underwriting municipal bonds is a small part of Wells Fargo's business, sitting within the bank's wholesale banking group. Wholesale banking makes up around half of Wells Fargo's profits. But the municipal-banking issues show the widespread impact of the sales-practices scandal, which centered on its business with retail customers.

Relationships with treasurers' offices around the country may be hard to repair.

"The court of public opinion still weighs heavily on elected officials," said Richard Ciccarone, president and chief executive of Merritt Research Services LLC, a municipal-bond research firm. When an underwriter's image is tarnished, he said "they can go into the penalty box for a period of time."

The governments steering clear of Wells Fargo once produced a stream of fees for the bank, documents show. New York City and California issue billions of dollars in bonds annually, and fees can run to as much as $2 million per deal, documents show. The lead underwriter typically receives between 35% and 65% of the fee amount, according to industry practices.

States first pulled their business soon after the bank's sales-practices scandal erupted in September 2016. The bank later said it opened as many as 3.5 million customer accounts without their knowledge or authorization. That fall, Chicago and at least four states approved temporary bans on certain business with the bank, such as underwriting and investing, according to officials and public records.

Mr. Smith said Wells Fargo has been meeting with officials in Chicago and that he hopes to win business there soon.

In March 2017, Wells Fargo received a downgrade on its Community Reinvestment Act rating. Several governments limit business with banks deemed less than "satisfactory." New York City put its ban in place in May 2017. This past February, Wells Fargo was hit with a Federal Reserve asset cap for "widespread consumer abuses."

The state and local government bans typically prohibited Wells Fargo from serving as lead underwriter and sometimes applied only to negotiated deals. Some extended to schools like the University of California and to airports including Midway and O'Hare in Chicago, public officials said.

"We still have some pockets where bans are being renewed or the worst part is, it's just hard to hire us," Mr. Smith said. "We keep competing where we can and continue to provide them with ideas." He added that the new tax law has reduced overall bond issuance.

Saving money has at times trumped public officials' qualms about Wells Fargo. The bank underwrote three bond deals in California, where laws require the use of the lowest bidder on competitive sales. Seattle continued to bank with Wells Fargo after no other firm showed interest in providing the city with depository services. Florida welcomed Wells Fargo, which repeatedly underbid competitors.

"My position on that has always been you ought to be making business decisions on economics not politics," said Florida's state bond director, Ben Watkins.

But Las Cruces, N.M., recently terminated Wells Fargo as the bank handling the city's day-to-day banking needs, ending a roughly 15-year relationship. Ken Miyagishima, the mayor of Las Cruces, said the decision to switch to U.S. Bank came after residents at two council meetings expressed concerns about the bank's practices.

"Never have I seen residents so inclined to come to a council meeting to discuss who we bank with," Mr. Miyagishima said. "This obviously was something they felt very passionate about."

The Wall Street Journal

By Heather Gillers and Emily Glazer

June 17, 2018 8:00 a.m. ET

— Gretchen Morgenson contributed to this article.

Rise in Single-Rated Municipal Bonds Spurs Investor Concerns.

A trend toward single-rated municipal bonds has accelerated this year, raising concern among investors who were accustomed to two or three rating agency opinions to support their purchasing decisions.

Single-rating transactions represent about a quarter of new sales by par value so far this year, a 17.5% increase from the rate in all of 2017, according to a report this month from independent research firm Municipal Market Analytics.

The trend, driven by the need for cost savings as underwriting spreads narrow, has been underway since the financial crisis. That in turn has heightened the competition to provide ratings, as a fourth agency — Kroll Bond Rating Agency — made inroads in serving muni issuers along with Moody's Investors Service (MCO), S&P Global Ratings, and Fitch Ratings.

“If rating agencies lower their standards to appeal to issuer ‘rating shoppers,’ they essentially risk diluting their reputation and relevance,” Richard Ciccarone, chief executive officer and president of Merritt Research Services, said this week.

Perhaps the most concerning aspect of the trend, buyside experts said, is that issuers have an incentive to opt for the highest single rating, which cuts down on transaction costs, but can deny investors comprehensive credit research, disclosure, transparency, and surveillance that was the norm for decades. The trend toward single opinions also reduces issuers’ accountability, the experts said.

“Since rating criteria are more transparent that ever, it is easier to pick a rating that might favor a borrower based on how it stacks up with agency criteria, pre-screening and existing ratings,” Ciccarone said. “Having one rather than two or more ratings becomes a risk especially to less sophisticated investors if issuers are shopping for only the ratings that cast them in the best light.”

According to MMA analysts Matt Fabian and Lisa Washburn, the single-rated market has increased to 25% — up from only 13.4% of the par issued that carried one rating back in 2007.

Dual and triple-rated transactions — those rated by Moody’s, S&P, and Fitch — dropped by 4% year to date to 36.1% and 32.3%, respectively, the report showed.

Triple-rated, dual-rated, and non-rated transactions also shrank during the first five months of 2018 from 2017 levels, the report showed.

“We see little evidence that this trend will abate — at least in the near to medium term,” the analysts wrote.

In aggregate, there were 1.94 ratings per dollar of par issued year to date in 2018, compared with 1.97 in 2017 and 2.29 in 2007, according to the MMA data.

Due to a changing market, issuers have to worry about keeping their fiscal houses in order, and controlling costs is part of that equation, Ciccarone said. “Lower margins on underwriting and a greater urgency to hold down issuance costs puts more pressure on issuers considering whether two or more same grade ratings is worth the price.”

The trend toward single-rated deals raises the possibility of rating shopping, said David Litvack, head of tax-exempt research of U.S. Trust.

“Whenever I see a bond rated by only one agency, I have to ask myself, ‘Did the issuer do this to save on rating fees, or would the other agencies have rated this bond lower?’ ”

Other analysts said the impact will vary for different investors.

Mark Tenenhaus, director of research at RSW Investments, said while most buyers prefer two ratings, most retail investors do not distinguish about the number of ratings on a transaction, and don’t look askance at issues just because they are single-rated.

“It is no longer a stigma for quality credits,” he said.

In addition, seasoned issuers with one rating do not present an issue, as buy side firms rely on their own analytics, according to Tenenhaus.

“Buy side analysts can typically tell if an agency was dropped because of a lower historic rating or threat of one," he said, adding that the larger investors are the best prepared for a continuation of the trend.

"While the rating agencies provide value with their reports, institutional buyers rely on their own assessments," he said.

Ciccarone said there are probably fewer institutional investors that require two or more major agency ratings than there were years ago.

The need is diminished, he said, since "they exercise and tout the strength of their own research teams.

"Over the past 10 years, institutional investors have been building stronger research efforts on their own, including quantitative screen and credit scoring capabilities that reinforce and enhance their own ability to distinguish credit quality and defend those positions with clients — and even regulators," Ciccarone said.

While institutional investors do have their own credit teams, that doesn't alleviate all concerns, especially in the secondary market.

"If an issuer is an infrequent borrower and only rated by one agency, we are concerned that no one has looked at the credit in detail for several years," said John Donaldson of Haverford Trust.

He said the firm passed on a recent offering for a municipality that had not issued bonds since 2012.

"The lack of transparency was compounded as the sole rating agency has a policy that the issuer was too small for them to assign an outlook," Donaldson said. "That is when only one rating is a real issue for us."

Some experts said the competition among rating agencies has intensified as Kroll made inroads.

"While some time ago Fitch was the new kid on the block, now there is a fourth agency at a time when one-rating-only gains traction," Donaldson said.

Ciccarone agreed that not only Fitch, but KBRA has made more "inroads" in the rating sector lately and that has helped the trend of shopping for ratings "gain traction."

Other factors that can drive the market share of single-rated deals are sector and state issuance trends, MMA said.

S&P remained the lead rating agency in terms of market share, rating 74.1% of the year to date par issued, compared with 71.1% and 48.8% for Moody's and Fitch, respectively, based on Bloomberg data included in the firm's report.

While S&P also dominated single ratings with 55% of the par year-to-date, it was the only one of the three agencies that saw a decline in overall market share, from 77.1% in 2017.

The analysts said that was thanks to a surge in issuance of gas prepayment bonds, a sector primarily rated by Moody's and Fitch.

At the same time, however, S&P was the sole rater on New Jersey's $3.1 billion refunding of its tobacco securitization bonds earlier this year.

In addition, the other agencies got exposure to large deals where Moody's didn't provide a rating.

For instance, Chicago-related issuers and the state of Connecticut didn't seek a Moody's rating on several large 2018 sales, the MMA report noted.

"Moody's loss was Kroll's gain as the newest agency rated the majority of par associated with these transactions," the MMA analysts said.

Overall the analysts revealed both an upside and downside in the trend of single-rated transactions.

"Curtailing costs related to borrowing is even more important in the current environment in which expense growth is generally outpacing revenue growth for state and local governments," they wrote.

Institutions may see less impact, the analyst predicted.

"Fewer ratings means a reduced risk that rating methodology and opinion changes will crop up and undermine pricing," according to Fabian and Washburn. When this does occur, they said the changes "could be more impactful since there are fewer alternate public opinions."

"In theory, this reduced rating agency penetration could mean greater investor influence on pricing, although we suspect that this will not be the case in the current market where demand outstrips supply," they added.

On the downside, the analysts believe there are pitfalls as well.

"Fewer constraints on borrowing reduces fiscal discipline and may encourage ill-advised borrowings for deficits, pensions, OPEBs, and riskier economic development projects versus budget balancing by raising revenues or reducing expenditures."

For the buyside, MMA said the non-professional investor is the most disadvantaged by the trend toward fewer, higher ratings.

"This group is generally more inclined to place greater weight on ratings and are less likely to handicap the positive effect of issuer-selected opinions," the analysts wrote.

Rating agencies' participation in new transactions, whether through single or multiple ratings, is still seen as a vital part of the municipal market, Ciccarone said.

"Independent and credible rating agencies still remain critical players in an active, efficient, and transparent municipal trading market, as well as essential to proper bond pricing." Ciccarone said. "It's a challenging environment for rating agencies."

By Christine Albano

BY SOURCEMEDIA | MUNICIPAL | 06/12/18 07:05 PM EDT

[These States Spend the Most Public Funds Per Person.]

If there's one thing every taxpayer wants to know, it's how their money is being spent. In the case of the Trump Cabinet, the answer is fairly simple: luxury travel, golf, and (in Scott Pruitt's case) a soundproof privacy booth with pretty fountain pens.

However, not every state official can live quite so lavishly on the taxpayer's dime. In high-tax states like Maine and Ohio, residents have a right to see how much is going to education, health care, and other essentials.

The U.S. Census Bureau can help here. With the most recent data (published May 2018) at our disposal, we can see which states spend the most on their residents — and how. Here are the 15 state governments that spend the most per capita.

Continue reading.

Culture Cheat Sheet

Eric Schaal

June 14, 2018

Know This Fact Before You Buy A Muni Bond.

When looking for municipal bonds to buy, there are numerous details to study before pointing and clicking to buy or telling one of the few live brokers still around to pull the trigger. Let's go through the steps with a recent example.

Pulaski Community School District in Wisconsin came to market with a new issue. The bonds offered were 3% due March 1, 2022, CUSIP: 745763KU5, rated Aa3 by Moody's with an extended settlement date of July 2, 2018.

That Pulaski is in Wisconsin is a good thing. Also the district is just 18 miles from Green Bay—also good. Its tax base is growing, there's low unemployment, the area's economy is stable, there's a surplus in the general fund, more reserves will be added in 2018 and 2019, there's modest debt, the main source of revenues is property taxes and state aid. All are good signs.

What isn't so good is that there are just 3,740 students in the Village of Pulaski and the issue size is just a meager $2.3 million with a maturity size of just $100,000. That's the killer.

You can have all the fundamentals, all the statistics and ratings align with the municipal universe. But if you don't have the liquidity, then nothing else matters.

Just think if you had purchased $25,000 of this $100,000 maturity—and if you ever needed to sell it, who would buy it? Probably another unsuspecting retail investor who was unaware that this was a tiny issue with a microscopic maturity size.

I'm not saying that there wouldn't be any bids for this bond. I am saying that if the bid is from someone knowledgeable, then they will want to get paid significantly more yield for the lack of liquidity.

Here's another example: Dallas-Fort Worth Texas International Airport Revenue, 4% due November 11, 2027, CUSIP: 235036XG0, rated A1, A+, A+. The issue size is $274.9 million, maturity size is $4.51 million.

The fundamentals are all good as follows: This is the primary airport for the Dallas-Fort Worth area, it is the fourth busiest airport in the world by aircraft movements and twelfth busiest by passenger traffic. Debt service coverage in 2017 was 1.46 times with 714 days of cash on hand.

The size of your bond maturity is important. It potentially provides liquidity. But so does demand for quality bonds such as this. If we—as money managers—or you ever decide to sell these bonds, they'd be snapped up in a minute. Dealers can easily attach a bid, confident that this is a large issuer. The Dallas-Fort Worth Airport is a matcher for most institutional portfolios. Matchers are matching names portfolio managers already own. They don't necessarily need the same coupon or maturity but they want the same issuer.

Institutional holders in the various series (maturities) include Teachers Insurance, Sun life, T. Rowe Price, Hartford Financial, Horace Mann…you get the idea. In the case of muni issuance—bigger is better.

Forbes

by Marilyn Cohen

June 12, 2018

Marilyn Cohen is founder and CEO of Envision Capital Management, a Los Angeles fixed-income money manager.

A Prescription for P3s: Cities Can Drive an Infrastructure Reboot.

Local leadership and P3s will transform crumbling infrastructure and build the cities of the future, according to mayors and capital investors.

"We need an infrastructure reboot," said Steven Demetriou, chairman and chief executive officer of Jacobs Engineering Group, as he opened an afternoon plenary about infrastructure and public private partnerships (P3s) at the U.S. Conference of Mayors (USCM) 86th annual meeting.

Los Angeles Eric Garcetti and chair of the USCM Infrastructure Task Force, who was joined by Dallas Mayor Mike Rawlings, Emmitt Smith, chairman of E Smith Advisors and E Smith Legcy Holdings, and Joe Aiello, chair of the board of the Massachusetts Bay Transportation Authority (MBTA), said Washington, D.C. has stalled on infrastructure since January 2017. But cities have passed $230 billion since that time.

Garcetti addressed how the city's Office of Extraordinary Innovation at Metro has pushed the private sector to develop solutions instead of the city putting out an RFP for a dictated solution. Being entrepreneurial, and not prescriptive, about solving problems creates P3s that propel projects forward, he said.

Continue reading.

efficientgov.com

by Andrea Fox

June 15, 2018

Webinar: Emerging Metrics for Physical Climate Risks Disclosures.

This Four Twenty Seven webinar on emerging metrics and best practices for physical climate risks and opportunities disclosures covers recent developments in TCFD and Article 173 reporting, challenges to assessing climate risk exposure, strategies for investors to incorporate this information into decision-making and approaches to build corporate resilience.

Speakers

1. Emilie Mazzacurati, Founder and CEO, presents key findings from the EBRD-GCECA report: *Advancing TCFD guidance on physical climate risks* and opportunities and emerging best practices in physical risk reporting.
2. Nik Steinberg, Director of Analytics, shares challenges and approaches for using climate data for business decisions.
3. Frank Freitas, Chief Development Officer, discusses corporate engagement opportunities for investors and approaches to integrating climate change into investment strategies.
4. Yoon Kim, Director of Advisory Services, shares examples of innovation in corporate resilience-building.

Click here to watch the webinar.

Seattle Officials Repeal Tax That Upset Amazon.

Seattle officials scuttled a corporate tax on Tuesday that they had wholeheartedly endorsed just a month ago, delivering a win for the measure's biggest opponent — Amazon — and offering a warning to cities bidding for the retailer's second headquarters that the company would go to the limit to get its way.

The tax would have raised about $50 million a year to help the homeless and fund affordable housing projects. As Seattle has boomed over the last decade, in large part because of Amazon, which is based there, rents have soared and some residents have suffered. The city's homeless population is the third largest in the country, after New York and Los Angeles.

Taxing successful companies to help alleviate some of the problems that their success caused was such a compelling idea that it was quickly taken up in Silicon Valley itself. California cities like Cupertino, East Palo Alto, Mountain View and San Francisco have recently explored various forms of a head tax, under which large employers in each town would be charged a fee per employee.

But in Seattle, the notion has proved extraordinarily contentious, culminating in the abrupt reversal on Tuesday.

The Seattle City Council repealed the tax in a 7-to-2 vote that was accompanied by large doses of acrimony and despair. The crowd was standing room only, with some carrying posters that said "Tax Amazon Not Working People" while others supported repeal. The comment period was extended by the council members in a fruitless attempt to try to accommodate everyone. At least one Amazon employee spoke in favor of the tax, saying, "I want all kinds of people in this city, not just rich people."

Less than a month ago, the tax had passed unanimously. It was signed into law on May 16 by Jenny A. Durkan, Seattle’s mayor, who said the money would “move people off the street and into safer places” and “clean up the garbage and needles that are in our parks and in our communities,” as well as provide resources including job training and health services.

“I know we can be a city that continues to invent the future and come together to build a more affordable, inclusive and just future,” she said.

Within days, that vision was in tatters. Amazon, which had already succeeded in watering down the original tax after halting expansion plans in protest, joined other Seattle-based corporate interests such as Starbucks, the Microsoft co-founder Paul Allen’s investment firm Vulcan and local food and grocery firms. All showed they would fight the law, and at least some residents took their side.

The opponents funded No Tax on Jobs, an effort aimed at getting enough signatures to put a repeal on the November ballot. It became obvious over the weekend that the measure would succeed in coming before voters, leading Ms. Durkan and seven council members to issue a statement saying, “We heard you.”

The politicians had no stomach for a protracted battle over jobs, even at a moment when the area’s unemployment rate is only 3.1 percent. “It is clear that the ordinance will lead to a prolonged, expensive political fight over the next five months that will do nothing to tackle our urgent housing and homelessness crisis,” they said.

An Amazon spokesman called the vote “the right decision.” A Starbucks spokesman said, “We welcome this move.”

Mike O’Brien, a council member, said in an interview before the vote, “I have a couple of bad choices and I’m picking the less bad,” meaning a vote to repeal.

He was puzzled by the intensity and the virulence of the opposition. “This tax is not a perfect tool, but I think it’s a good one,” he said. “When I’m out there talking to the community, I hear they’ve been convinced by Amazon and other business leaders that this would be bad.”

Teresa Mosqueda, one of the two council members opposing the repeal, said there was no backup plan for dealing with the homeless situation.

“We don’t have a path forward,” she said. “I share the frustration with all the City Council that we have been out-messaged.”

Kshama Sawant, the other opponent of repeal on the council, called the vote “both capitulation and betrayal.”

“They are choosing to base themselves on making Amazon executives happy,” she said. That “is the biggest lesson that should reverberate to other cities as well.”

The city’s initial plan was for the tax to collect about $500 per employee a year. Amazon responded in early May by stopping its expansion in the city “pending the outcome of the head tax vote.” That was sufficient to get the tax knocked down to about $275 per employee and scaled back in other ways. The tax was limited to companies with at least $20 million in revenue a year.

As the largest private employer in the city, with more than 45,000 local workers, Amazon would have had to pay initially about $12 million a year — a relative pittance for a company with revenue last year of $178 billion and whose chief executive, Jeff Bezos, the richest man in the world, said recently that the only thing he could think of to spend his fortune on was space travel.

Amazon officials have said the company is not against helping the homeless. But it thinks Seattle would just waste the money it raised. The city, the company believes, “has a spending efficiency problem.”

The retailer selected 20 finalists in January as possible sites for its new second headquarters, a process that has generated an enormous amount of attention and interest, even by Amazon’s standards. It has indicated that the community that won the right to as many as 50,000 new jobs would have to be an accommodating partner. Some of the finalists have offered extraordinary tax breaks.

In recent months, however, there has been the beginning of a resistance to the notion that what is good for Amazon is inevitably good for its host.

“From coast to coast, people lose their homes and get displaced from their communities even as the biggest corporations earn record profits and development booms,” said Sarah Johnson, director of Local Progress, a national association of progressive elected municipal officials. “Elected officials across the country are paying close attention to how Amazon and other corporations have responded to Seattle’s efforts to confront their affordable housing and homelessness crisis.”

Especially, it seems, in Silicon Valley itself, where both problems run deep.

Last week, the Mountain View City Council voted unanimously to proceed with plans to put a head-count tax on the ballot in November. Mountain View is home to Google, among other tech companies. The tax would raise about $6 million, half of it from Google, and be used for transit projects.

“We have needs we need to meet,” said Lenny Siegel, the city’s mayor. “And we look to see where there’s the most money. Most of our companies have money. We’re trying to find a way for them to invest it that helps them and the community.”

The New York Times

By David Streitfeld and Claire Ballentine

June 12, 2018

[Connecticut Wants to Borrow $500 Million. In Return, It Promises Thrift.]

In rare move in municipal debt world, state pledges to curb spending, cap future borrowing and funnel excess revenues into reserve fund

Connecticut is making a new promise to bondholders in exchange for $500 million: self-discipline.

The cash-strapped U.S. state is preparing to issue new debt that requires Connecticut to limit its spending, cap future borrowing and funnel excess revenues into a reserve fund. The $500 million bond issue priced Tuesday and will be delivered to investors June 20.

It is a rare step in the world of municipal debt. No other state has attached such fiscal austerity measures to an outstanding bond issue, according to analysts at S&P Global Ratings. The restrictions will stay in place for the next five years.

The unusual offer has the potential to lower borrowing costs for Connecticut in the near term and enforce fiscal discipline following a bitter state budget battle in 2017. The covenants helped win enough support to end the stalemate.

But the restrictions could also hamstring the state in the event of a future crisis. The only way to suspend certain covenants is with a three-fifths vote of the legislature and a declaration of fiscal emergency from the governor. The current governor, Dannel Malloy, is scheduled to leave office in January.

“If it goes badly the cost might be really high,” said Kim Rueben, senior fellow at the Urban Institute

Connecticut’s idea reinforces the predicament facing many U.S. states as they struggle to pay for core services like education and infrastructure at a time of soaring costs for debt, retirements and health care.

Pensions, retiree health insurance and Medicaid together consume about one out of every five tax dollars collected by state and local governments. Estimates of how much money they still need to pay for all future pension obligations vary from $1.6 trillion to $4 trillion. In Connecticut that shortfall is $34.8 billion, according to S&P.

A legislative standoff over how to balance pensions, debt and other liabilities with day-to-day operating costs delayed Connecticut’s budget last summer and froze aid to municipalities. The mayor of Hartford, the state’s capital, warned that he would seek bankruptcy protection if the city didn’t receive additional aid from the state.

Lawmakers and Mr. Malloy reached a deal in October that helped Hartford avoid bankruptcy. It included the new series of commitments attached to any bond offering over the next two years.

Spending has to be limited to 98% to 100% of revenues depending on the year and it can’t grow faster than inflation. The state also has to limit new borrowing to no more than $2 billion a year and put excess revenues into a reserve fund. More reserves could improve the state’s bond rating, ratings firm S&P Global said in a statement.

Connecticut has repeatedly overshot revenue predictions, leading to several contentious budget fights. But in April, state budget officials projected a $1.34 billion income-tax revenue surge above what was originally expected. About half of the windfall came from one-time payments from hedge-fund managers racing to beat a federal tax deadline on some past offshore earnings, according to the state budget office. The numbers also could have been boosted by residents cashing in stock in late 2017 to pay taxes on capital gains to take full advantage of the state and local tax deduction, which the new federal tax law capped.

The state used that excess revenue to fill a $717.5 million budget hole and add $556.4 million to its reserve fund.

The limits on borrowing and spending helped win support for the budget compromise at the final hour, said Connecticut House Speaker Joe Aresimowicz.

“We have faced now six or some could argue eight consecutive years of a very difficult budget,” Mr. Aresimowicz said. “We want to take bold steps forward to ensure that if it’s all of us back in the same room next year or whoever it may be, they’re not facing the same situation that has allowed legislators to punt year after year on the difficult decisions.”

Enshrining the rule in bond documents was quicker and easier than a constitutional amendment that requires a popular vote, said Democratic Sen. John Fonfara. Mr. Fonfara championed a provision of the covenant limiting the budget's reliance on certain income-tax collections.

"How do you bind future legislatures? The covenant was the means by which we intend to do this," Mr. Fonfara said.

But violating any of these covenants would amount to a default on the bonds and could prompt investor lawsuits. The new restrictions could also make it more difficult to act quickly if a new emergency arises. Lawmakers later reduced the length of the fiscal austerity covenants to five years from 10 years as a way of adding more flexibility.

Other states are watching Connecticut to see how its experiment fares and whether borrowing costs drop, analysts and government finance officers said. Price data late Tuesday showed the state paying less to borrow, relative to market rates, than it had in March, according to the Connecticut State Treasurer's Office.

"It's sort of putting your money where your mouth is by embedding it in the bond documents," said Florida bond director Ben Watkins. "It's a firmer commitment than just talk."

The Wall Street Journal

By Heather Gillers

Updated June 5, 2018 6:32 p.m. ET

—Joseph De Avila contributed to this article.

Fitch: U.S. Public Power Peer Review Highlights Capex, Coverage Trends.

Fitch Ratings-New York-15 June 2018: U.S. public power utilities are generally seeing a continuation of strong financial trends, with the exception of weaker debt service coverage, according to Fitch Ratings' 2018 U.S. Public Power Peer Review.

"While the latest peer review shows that lower ratios of capital investment to depreciation, as well as the retention and redeployment of excess cash flow, are improving utility balance sheets, coverage medians broadly weakened in 2017," says Dennis Pidherny, Managing Director, U.S. Public Finance. The weaker coverage metrics were reported against a backdrop of rising fuel costs and interest rates.

Trends highlighted in the 2018 peer review include:

–Debt service coverage weakened for wholesale and retail systems across nearly all rating categories, reversing an earlier trend.

–The capex-to-depreciation trend continued downward for wholesale systems, with the median for 'A' rated systems falling below 100% for the second year in a row. Median's for retail systems were mixed, but remained at levels lower than observed earlier this decade.

–Cash on hand medians for 'A' rated retail and wholesale systems continued to improve and are at the highest levels observed this decade. Although medians for 'AA' rated retail systems declined again, the level is well above historical medians. This trend and the lower capital investment rates likely reflect slower demand growth and the continued deferral of certain capex.

–Leverage metrics remained remarkably stable for both retail and wholesale systems across rating categories.

Fitch's U.S. Public Power Peer Review is a point-in-time assessment of Fitch-rated public power utilities. It assists market participants in making their own comparisons among the recent financial performance of wholesale and retail public power systems, and rural electric cooperatives. It is accompanied by the 2018 Fitch Analytical Comparative Tool (FACT) for Public Power, an interactive tool that provides enhanced trend analysis and peer comparison tables.

The full report, "2018 U.S. Public Power Peer Review," is available at www.fitchratings.com.

Contact:

Dennis Pidherny
Managing Director
+1-212-908-0738
Fitch Ratings, Inc.
33 Whitehall Street
New York, NY 10004

Media Relations: Sandro Scenga, New York, Tel: +1 212-908-0278, Email: sandro.scenga@fitchratings.com

Additional information is available on www.fitchratings.com

Fitch U.S. Public Power Criteria Revision.

Fitch Ratings finalized its new criteria for U.S. public power systems, the changes of which are detailed in a new report and companion piece. These revisions will facilitate a more forward-looking, predictable approach to ratings and better highlight differences among credits in the same category.

Anticipated Rating Impact Limited
Fitch expects criteria-driven rating changes to affect less than 10% of the portfolio, with a roughly equal mix of upgrades and downgrades. Rating changes will most likely reflect the criteria's heightened emphasis on leverage through the cycle, with upgrades reflecting relatively low leverage, and downgrades resulting from the recognition of higher leverage and elevated operating risk

Rating Changes More Predictable
In a sector characterized by low default risk, insight into an issuer's vulnerability to adverse conditions and credit deterioration is of paramount importance. The revised criteria more clearly define and communicate Fitch's expectations of the range of performance within which a rating is expected to be stable, versus conditions which could prompt a rating change.

New Through-the-Cycle Tools
Fitch is incorporating forward-looking tools into the rating process. Revenue sensitivity and scenario analysis tools work together to consider both the expected 'base case' financial performance within

a typical business cycle and the ‘rating case’ potential financial performance given a moderate downturn. Known as FAST, this tool highlights how cycles affect issuers differently, and will be publicly available during the criteria comment period.

Experienced Analytical Judgment
Fitch’s ratings will continue to be based on the judgment of a team of experienced analysts rather than model-based outcomes. Given the diverse characteristics and wide range of U.S. public power credits, Fitch believes there are clear limits to the degree to which data points and formulas can define them.

Clearer Communication of Credit Opinions
The goal of the revised criteria is to communicate Fitch’s credit analysis more clearly, presenting well-defined opinions about both rating conclusions and the underlying fundamentals. This will provide greater differentiation among credits, increased insight into what could trigger a rating change, and facilitate comparison of Fitch’s credit opinions with others in the marketplace.

Focused Key Rating Factors
Three focused key rating factors replace the traditional inventory of credit considerations to highlight the role that each plays in determining credit quality. The information that Fitch reviews is largely unchanged; however, the way this information is incorporated into integrated and transparent analysis is much improved.

Tailored Versus Generic Expectations
As part of an integrated analytical approach, expectations are linked to issuer-specific risk factors. For example, rather than having a blanket level of liquidity or leverage judged to be consistent with a given rating category, Fitch considers the issuer’s fundamental financial flexibility and sensitivity to downturns against an issuer-specific assessment of revenue defensibility and operating cost flexibility.

Fitch: U.S. State Spending Pressure Will Rise on Higher Healthcare.

Fitch Ratings-New York-13 June 2018: Rising healthcare costs and retirement rates will increase budgetary pressure on US state and local governments, Fitch Ratings says. Our scenario analysis would see the share of state and local budgets that are allocated to healthcare and pensions rise by 800bps by 2025. Lower-rated states and local governments have lower financial flexibilities, making their budgets more sensitive to these pressures.

Fitch developed a simplified, 10-year scenario analysis of aggregate state and local budget allocations. This scenario analysis assumes healthcare and pension expenses grow rapidly and no offsetting policy is implemented. By 2025 the increased share of state and local budgets spent on healthcare and pensions would be met with a decline in pro-rate spending on education, transportation, public safety, housing and environmental programs.

These trends could affect the credits of lower-rated states and local issuers over the long term, as they begin the 10-year scenario time frame with lower fiscal flexibility and above average spending pressures. A few state and local issuers also have high tax rates. These factors mean state and local governments may cut education and transportation spending, as healthcare and pension expenses rise. Higher tax rates may also make raising revenue more politically challenging.

Over the long run these trends could amplify state and local exposure to demographic and market shifts. Marginal declines in population, personal income and investment returns could have a more substantial effect amid lower budgetary flexibility. Local governments are most vulnerable to declines in property values.

Contact:

Katherine Falconi
Regional Credit Officer, Americas
+1 212 612-7881
Fitch Ratings, Inc.
33 Whitehall Street
New York, NY 10004

Gabriel Foguel
Associate Director, Credit Policy
+1 212 908-0506

Robert Rowan
Senior Analyst, Fitch Wire
+1 212 908-9159

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.

Media Relations: Sandro Scenga, New York, Tel: +1 212-908-0278, Email: sandro.scenga@fitchratings.com

Additional information is available on www.fitchratings.com

Fitch: China Slowdown Would Pressure Some U.S. States.

Fitch Ratings-New York-15 June 2018: If a slowdown in China's economy led to a decline in US exports, several states with substantial agriculture exports and one with aircraft exports would likely see localized declines in economic activity and, thus, tax revenues, says Fitch Ratings. However, we would expect states with a high volume of imports from China would not be affected.

Fitch's economics team recently conducted an analysis, China: Deleveraging Would Mean Slower Growth, assessing the macroeconomic effects on China from a corporate develeraging scenario. While not our base case, the scenario suggests business investment growth would need to fall by 5% per year, relative to the baseline, to stabilize the corporate debt/GDP ratio by 2022. This would reduce GDP growth by just over 1% per year, taking China's real GDP growth rate to around 4.5%.

Such a slowdown would have a limited effect on overall US GDP but would likely affect US export growth to China, with certain parts of the agricultural sector particularly exposed. Iowa's agricultural industry is a case in point. Approximately two thirds of the state's soybean exports, worth $3.1 billion in 2016, were sold to China. The soybean total is approximately 1% of gross state product (GSP) and approximately 11.9% of the state's agriculture GSP.

Several other US states are also major exporters of soybeans. Illinois' soybean exports accounted for approximately $2 billion of Illinois' $5.2 billion in 2016 exports to China, while Minnesota's soybean exports are about half this dollar amount. However, Illinois' and Minnesota's state economies are large and diverse and agricultural exports account for a smaller portion of their GSP than is true for Iowa.

A wide range of exported vehicles and vehicle parts could also be reduced by a slowdown in China and Washington state would be the most exposed. The state's exports to China were 2.2% of state GDP in 2016, or $11.7 billion, and heavily concentrated with aerospace products and parts accounting for $8.8 billion of this amount.

Conversely, imports from China to the US might not be as severely affected by a Chinese slowdown as purchases of US export goods by Chinese businesses and consumers. As such, states with large Chinese imports should not be directly affected by a Chinese deleveraging scenario.

If a decline in exports was to persist into the medium term, we believe such a decline could also lower business activity and sales and income taxes derived from both business activity and employment in some US states.

Contact:

Michael D'Arcy
Director, U.S. Public Finance
+1 212 908-0662
Fitch Ratings, Inc.
33 Whitehall Street
New York, NY 10004

Robert Rowan
Senior Analyst, Fitch Wire
+1 212 908-9159

Media Relations: Sandro Scenga, New York, Tel: +1 212-908-0278, Email: sandro.scenga@fitchratings.com

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.

We Forgot to Mail the Check and Other Municipal-Bond Excuses.

- **Bond issuers forgot to pay 119 times since January 2017**
- **In most cases, payment was made to holders within a week**

It's a promise almost as old as debt itself: The check's in the mail.

People forget to pay a bill now and then. But it happens with surprising regularity by states and cities that owe money to investors in the municipal-bond market, one of the world's safest havens.

A small Wisconsin school district was late because it didn't know where to send a check. New York's capital city cited an accounting error when it shortchanged its monthly debt payment. Even

Pennsylvania was delinquent. They had plenty of company. Municipalities inadvertently missed or were late to make payments to investors at least 119 times since the beginning of last year, according to public records.

These aren't monetary defaults – where an issuer is unable to pay — they're mistakes, quickly rectified and often accompanied by intense embarrassment. It's usually because of a clerical error, staffing changes or a typo in an email or trustee address. In most cases payments were made within a week without penalty, but the steady rate of lapses raises false alarms and creates headaches for analysts on Wall Street paid to gauge real — not phantom — risks in bondholder portfolios.

"There is typically one or two a week. It's extremely common," said Matt Fabian, partner at Municipal Market Analytics. "It happens constantly. When you're dealing with small, unsophisticated governments that's what happens."

No Paperwork

When a school district of Augusta, Wisconsin, missed a payment in September, red-bolded letters on the bottom of the disclosure document said that the previous financial manager retired and, according to the new manager, there "was no paperwork to show me who to make the check out to or where to send the payment."

The one-square mile Village of Oxford, Michigan, had personnel turnover last summer "and the ship was without a captain for a while," said Joseph Madore, village manager, causing the town to make its payment 10-days late. "They let the manager go in March and the clerk retired in June, and that was everyone who knew anything about it. They were scrambling."

The forgetfulness isn't limited to small one-man shops in rural America. Mississippi missed interest and principal payments on a call option due to a "clerical error" last June. Albany, New York paid $30,000 less than what the debt service required when officials accidentally sent $565,106.25 to the Depository Trust Company instead of $595,106.25.

Boston officials "inadvertently neglected" to transfer $6,940.63 to their paying agent although it was prepared in advance. Due to an "oversight" the funds were distributed six days late, according to the delinquency notice. Pennsylvania had a late payment on its Build America Bonds in 2017, a misstep Fabian said was noteworthy because mistakes by large, state-level issuers are unusual.

Such bureaucratic blunders aren't limited to simply forgetting to pay the bills. A clerk in Detroit once lost a $1 million check until it was found in a city hall desk drawer a month later. There was, of course, the worker in Hawaii who accidentally panicked the island-state by sending out a false alert of an incoming ballistic missile.

Debt Collector

When Joe Citizen fails to pay his credit card bill, he racks up steep penalties, can see his credit score plummet and may find himself in the sights of a debt collector. That's not the case with local governments.

Usually it doesn't cost the town anything, as long as the late bill gets paid quickly. There isn't any overarching rule or regulation that gives issuers a grace-period if they are late making a payment. It's a case-by-case basis described in the contract between the issuer and trustee.

One small town learned the hard way not to make the same mistake twice. Maine, New York, missed two payments in the last year. S&P Global Ratings on Thursday put the town of 5,200 on a negative outlook, saying that if it happens again it could face a multi-notch downgrade to its credit score.

These missed and late payments usually are not concerning if there was a reasonable reason, such as a technical glitch or bad weather, said John Bonnell, a portfolio manager at USAA who oversees $4.2 billion in municipals from San Antonio, Texas. “What it does raise is what kind of procedures and controls are in place?” he said.

Some towns take that notion to heart and turn the misstep into a learning experience. Jamesville Fire District in New York revised its payment procedures to include additional district trustees in the payment process as an safeguard. Back in the village of Oxford, officials sat down and drafted a schedule of all outstanding bond issues and their payment dates after it paid ten days late in July.

“It’s not going to happen here anymore, not while I’m here,” said Oxford’s Madore. “That’s for sure.”

Bloomberg

By Danielle Moran

June 15, 2018

— With assistance by Amanda Albright

[Skittish Muni-Bond Investors Are the Worst at Timing the Market.]

- **Individual returns on funds lag more than any other sector**
- **Morningstar study reinforces susceptibility to ‘headline risk’**

The municipal-bond market is dominated by individual investors, and it turns out they’re not nearly as good as the pros.

Over the past decade, individuals earned an average of about 1.26 percentage point less annually on their investments in open-end state and local government bond funds than the funds themselves, according to a study released by Morningstar Inc., which took account of what investors make after shifting their money in and out of the market. That gap was the biggest among the eight asset classes the research company examined.

Even though state and local government debt is one of the world’s safest investments, buyers are still prone to so-called headline risk, or bad news stories that undermine the market’s perception as a haven and cause investors to sell when they should stay put.

That happened in 2010, when banking analyst Meredith Whitney triggered a selloff by predicting that recession-battered governments would default on “hundreds of billions of dollars” of bonds. That forecast proved widely off the mark, and in 2011 municipals returned 11 percent. They haven’t had a better year since.

Puerto Rico’s debt crisis — which was unique to the Caribbean territory — also drove investors away from municipal securities at the wrong time, according to Russel Kinnel, Morningstar’s director of manager research.

“You had the Meredith Whitney ‘60 Minutes’ interview, predicting mass bankruptcies in Muniland or mass defaults, and that scared the hell out of people even though it was a ridiculous prediction,” said Kinnel. "Then you had Puerto Rico, which was real. It's just that in the case of Puerto Rico, from a fund perspective, it was not a big deal because most of the good funds had very little or nothing in it to begin with."

The study estimates what individuals earned after shifting money in and out of their funds and then compares it with the performance of the funds overall. It found that the asset weighted return for individuals in open-ended funds was 2.23 percent annually for the 10-year period ending March 31, compared with a 3.49 percent average return for muni bond funds.

Since municipal bonds don't trade heavily, spikes in inflows or outflows can have a larger impact on prices than in other markets and trigger a self-reinforcing cycle: A wave of selling driven by bad news can cause a second exodus when investors see their subsequent returns, Kinnel said.

"For skittish investors, it doesn't take much," he said, adding that fund companies and planners need to a do a better job reassuring investors.

Municipal bonds are heavily weighted toward longer maturities, making them more sensitive to changes in interest rates. While investors have been putting money into the funds recently despite the Federal Reserve's rate increases, they yanked $65 billion from the vehicles between June 2013 and January 2014 after then-Fed Chair Ben Bernanke jarred bond buyers with plans to scale back asset purchases, an event known as the "Taper Tantrum."

In addition, municipal-bond funds are typically sold based on their yields. Higher-yielding funds that buy riskier bonds may get hit harder in an economic downturn, Kinnel said.

Morningstar's annual study, titled "Mind the Gap," measures the performance of the average dollar invested in a fund and estimates the impact investor behavior had on investment outcomes.

To calculate fund investor returns, Morningstar adjusts official returns by using monthly flows in and out of a fund and asset-weights the returns to get an average for an asset group. In all asset classes overall, the average open-end investor lagged behind the average fund by 0.26 percent.

"The basic idea is we know people aren't necessarily there for the whole five or 10 year period," Kinnel said. "They move in and out and want to take a look at how that timing works."

To be sure, the goal for investors is to get a good return in absolute terms. They likely don't look at the gap between their own returns and those of the funds in which they invest.

"I could have a small gap on a really bad fund," Kinnel said.

Bloomberg Markets

By Martin Z Braun

June 15, 2018, 6:18 AM PDT

Breaking Up California Would Throw the Muni-Market Into Turmoil.

- **California has $74 billion of long-term debt outstanding**
- **California's debt would be distributed among the three states**

If California voters decide to split the state in three — as billionaire Tim Draper has proposed — it would roil the $3.8 trillion municipal-bond market.

The venture capitalist's initiative to break California into three states qualified for the November ballot, election officials announced late Tuesday. Such a crack-up has long been a fantasy for some wealthy coastal Democrats politically out of sync with inland Republicans.

If approved by the voters and the U.S. Congress, the arrangement would hit the municipal market hard. That's because California, which has $74 billion of long-term debt outstanding, is the largest U.S. seller of bonds financing state and local government operations.

Under Draper's measure, California's debt would be distributed among the three states based on the population. But investors won't get a say in that.

Bloomberg Markets

By Romy Varghese

June 13, 2018, 10:46 AM PDT

[Puerto Rico Asks Buyers of Rickety Power System to Rewrite Rules.]()

- **After Maria, investors get blank slate to rebuild and profit**
- **Almost 10,000 customers still lack electricity months later**

Now that Puerto Rico's massive and moribund public power utility is almost back from the dead, Wall Street is weighing what its parts might be worth.

The bankrupt U.S. commonwealth's investment bankers last week started sounding out suitors for the eight-decade-old monopoly known as Prepa, whose rickety infrastructure was almost erased by Hurricane Maria in 2017. The halting efforts to repair the damage and improve the antiquated grid have been the central obstacle in recovery. Now, the government is so eager to find a solution that it is even asking companies that might privatize the system how they would prefer it to be regulated.

But it wasn't immediately clear who would want a utility business on a broke island whose population has been increasingly fleeing to the mainland. Meanwhile, residents — some still in the dark — worried that a deal would enrich mainland profiteers at their expense.

"We are tired of people coming here to get rich and take advantage of us," said Melissa Diaz, 48, a homemaker and mother of one who lives in San Juan.

Nowhere But Up

Proponents, including Governor Ricardo Rossello, say service and pricing can only improve if a company takes the utility off its hands. The authority for decades has been a honey pot for politicians of all parties and a font of patronage. Its dated infrastructure relies on shipped-in oil, a notoriously expensive fuel. But the commonwealth, which owes creditors and pensioners around $120 billion, is in no position to shoulder upgrades on its own. Just Friday, the parties in the painful bankruptcy appeared to have a tentative deal on the central question of who can claim sales-tax revenue. But dozens of other matters remain pending, and no one knows how much Puerto Rico will owe, much less when it will be able to raise money again in the bond market.

So while the power system’s status quo appears untenable, even with hurricane aid pouring in, nobody knows what the energy future will look like in private hands — or exactly what oversight new owners would face. Indeed, the government is portraying the market as a blank slate. It has said that its base scenario would include selling generation assets and retaining transmission and distribution holdings, while transferring those operations to a private concessionaire.

Divide and Profit

AES Corp. Chief Executive Andres Gluski said in an interview last week in San Juan that he’s considering a proposal. He declined to give details, but said he’s already floated ideas to the government. He said the commonwealth should divide its system into eight microgrids that are more resistant to a whole-island collapse like the one after Maria.

“We want to continue contributing to the future of Puerto Rico,” said Gluski, whose company already runs a coal-fired plant and a solar plant on the island.

The commonwealth is also open to alternatives it hasn’t yet considered. In a June 4 letter, its bankers from Citigroup Inc. and Rothschild & Co. asked interested parties to submit in writing a description of the circumstances in which they would be most willing to bid.

Your Call

One section of the questionnaire asked about companies’ preferred regulatory environment and the role they envisioned for the power authority, the Puerto Rico Energy Commission, a four-year-old oversight body whose role is likely to evolve as private capital arrives. For instance:

“Please present your views regarding the structure and authority of the Puerto Rico Energy Commission (‘PREC’). Please be as specific as possible including naming the features you consider important.”

And later:

“What, in addition to standard items … should the regulator have authority to approve? Please provide an explanation for your answer.”

While the elected government and its partners will have the ultimate say, the documentation suggests a rare opportunity for companies to influence every aspect of their work environment — for better or for worse.

“I don’t know that asking the firms how they’d like to be regulated is the recipe for good regulation,” said Manuel Teodoro, a professor of political science at Texas A&M University who has studied water-utility privatization in the U.S. He said there’s nothing inherently wrong with seeking out different points of view, as long as the private sector isn’t the only one that gets heard.

Solid Partner
Of course, the answers to the questionnaire might vary with the assumptions about the eventual structure of the deal. Under the base scenario — in which Puerto Rico would retain ownership of the transmission and distribution business — the question would really be about how to regulate the government entity.

Under such arrangements, privately run generation companies would have contracts with the commonwealth, as would the operator of the state-owned transmission division.

“You’d want to make sure that, if I’m going to have a contract to operate this utility, that the utility can live up to its obligations,” said Paul Patterson, who covers utilities, not including Prepa, as an analyst for Glenrock Associates.

Pricey Power

Teodoro said privatization is typically associated with improvements in service, while public utilities generally have the edge on lower prices. But because Puerto Rico’s infrastructure is so inefficient and its bureaucracy so unwieldy, its electricity prices are already well above private mainland rates — a burden on the 44 percent of island residents who can’t afford basic necessities. (Puerto Rico’s residents are U.S. citizens, but their poverty rate is twice as a high as Mississippi, the poorest state.)

“The important thing is to create a strong regulatory commission to ensure the energy rates will not increase, further aggravating Puerto Ricans’ economic situation,” said Jose Caraballo Cueto, a professor at the University of Puerto Rico and president of the island’s economists’ association.

The Prepa workers’ union known as Utier opposes privatization. Angel Figueroa, its president, said the island’s consumption rates are relatively low and its needs massive, so he’s suspicious of why anyone would invest. He said the only explanation is that buyers see a benefit in the billions of federal dollars allocated to mend the grid after Maria.

Prepa employees fix power lines following Hurricane Maria.Photographer: Xavier Garcia/Bloomberg
But for all the apprehension, many Puerto Ricans wonder what other alternatives they have. A full week into the 2018 Atlantic hurricane season, close to 10,000 power customers are still without electricity.

“After living more than four months without electricity after Maria, for me they can sell everything,” said Carlos Vega, a 32-year waiter who lives in the Bayamon municipality outside San Juan. “Surely, whoever comes will do a better job than all the governments that have passed through.”

Bloomberg

By Yalixa Rivera and Jonathan Levin

June 11, 2018, 4:00 AM PDT

[The Week in Public Finance: For State Budgets, What a Difference 6 Months Make.]()

Thanks in large part to a steady economy, states are finishing 2018 better than they expected.

After two straight years of lackluster revenue growth, state finances are on the upswing thanks in large part to a stable economy and a one-time boost from December’s federal tax overhaul.

As fiscal 2018 comes to a close on June 30 in most states, total revenue growth for the year is estimated at 4.9 percent. That’s the best year since 2015, according to the latest state fiscal survey from the National Association of State Budget Officers (NASBO).

The numbers bear that out: Only nine states have been forced to make mid-year budget cuts compared with a whopping 22 last year. Cuts totaled just $830 million in fiscal 2018; a year ago, states had to cut $3.5 billion to balance budgets. And 19 states have increased spending this year to the tune of $1.6 billion, which boosted total spending growth by 3.4 percent or to $835 billion.

Continue reading.

GOVERNING.COM

BY LIZ FARMER | JUNE 15, 2018

Will New Federal Rules Slow PACE Financing?

Read the report.

Florida Realtors | Jun. 15

Kresge, Rockefeller Partner to Support New U.S. Community Development Initiatives Through Open Call.

The Kresge Foundation and The Rockefeller Foundation today announced a request for letters of inquiry (LOIs) for fund managers establishing new Opportunity Funds.

Through the federal Investing in Opportunity Act (IIOA) – part of the Tax Cuts and Jobs Act of 2017 – investors can receive capital gains relief by investing in newly designated “Opportunity Zones” in the United States. States and territories have identified up to a quarter of low-income census tracts as investible zones with the aim of attracting investment to those distressed communities.

Unlike other tax incentives designed to incentivize investment in low-income communities, the IIOA currently does not include a provision for long-term impact reporting – an element both foundations see as necessary and important. The foundations, therefore, seek partnerships with mission-aligned fund managers who intend to make investments that will benefit the lives and communities of people with low incomes, will deliver promised returns to investors and will evaluate the impact of investments over time.

“In the early days of any new market there is an opportunity to define what products will come forward and who they will benefit. Philanthropy is in a unique position to define this new market for the Opportunity Zone tax incentive as one that not only delivers returns to investors but also creates, and does not extract, value from low-income communities,” said Rip Rapson, CEO and president of The Kresge Foundation. “Philanthropy can help catalyze the kinds of investments that will truly be a benefit to communities.”

“Our work to help develop the field of impact investing started modestly, but more than a decade later, billions of dollars have been invested in opportunities that deliver returns for investors while making a significant difference in communities around the world,” said Dr. Rajiv J. Shah, president of The Rockefeller Foundation. “More than ever before, investors are looking to put their resources where their values are. Opportunity Zones makes this connection most directly. We look forward to seeing ideas that put our foundation’s history and resources to work for investors and communities focused on creating opportunity together."

This is a call for LOIs only; the foundations have made no formal financial commitment at this time. The LOI period opens today and **closes at 5 p.m. PST on July 16.**

The foundations will evaluate submissions based on the following criteria:

1. Investments designed to benefit low-income people and communities.
2. Investment proposals that align with the Foundations' respective areas of programmatic interest.
3. Fund-manager experience and readiness. Prospective partners should include experienced fund managers who propose investment strategies that align with the foundations' programmatic goals, work in or have experience with target key cities and incorporate measurement, evaluation and equity into their work.

Upon review of the submissions, some may be selected for further exploration. The foundations are prepared to commit grants and unfunded guarantees of up to $25 million to support this program. Unfunded guarantees are a form of impact investment in which the foundations take responsibility for a portion of future losses if an investment fails.

The full request for LOIs can be found [here], and a qualification questionnaire can be found [here].

June 11, 2018

Renewable Energy Tax Credit News Briefs – June 2018

The Colorado Department of Revenue issued Colorado Private Letter Ruling No. PLR-18-002 April 12. The PLR provides guidance on the state renewable energy investment tax credit (ITC). The PLR concluded that the taxpayer, an entity included in a combined report, can claim refundable enterprise zone renewable energy ITC refunds up to the refundable cap of $750,000 per year for as many years as needed to use the refundable amount. In addition, for investing in renewable energy sources in an enterprise zone, the taxpayer owns and operates all renewable energy investment assets of the project. Instead of claiming the ITC as a credit against income tax, the taxpayer may receive a cash refund equal to 80 percent of the tax credit. The balance of the refundable ITC may be carried forward each year, up to the yearly cap, until fully used.

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The U.S. Energy Information Administration (EIA) issued mid-April its report, "Direct Federal Financial Interventions and Subsidies in Energy in Fiscal Year 2016." The study showed that federal energy subsidies fell between 2013 and 2016. Wind and solar subsidies fell from $15.5 billion to $6.7 billion from 2013 to 2016, with the production tax credit (PTC) dropping from $1.7 billion to $1.4 billion, and the ITC dropping from $2 billion to $1.2 billion. The report is an update based on fiscal year 2016 data and continues a series of EIA reports on federal direct financial interventions and subsidies into energy markets. The report is available at www.energytaxcredits.com.

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Xcel Energy's $1.6 billion plan for a 1.2 gigawatt (GW) expansion was approved by Texas regulators April 27, a month after approval from New Mexico regulators. Xcel's Hale project in Texas and its Sagamore facility in New Mexico will provide a combined 1 GW and are expected online in 2019 and

2020, respectively. Xcel expects to begin construction in June on the 478 megawatt (MW) Hale wind project, and construction on the 522 MW Sagamore wind project will begin next year. Xcel anticipates the two projects will create approximately 600 construction jobs and 40 to 50 full-time positions. The two facilities will qualify for 100 percent of the PTC.

Novogradac Journal of Tax Credits Volume 9 Issue 6

Friday, June 8, 2018

[S&P Global Ratings Green Evaluation.]

Green Bond issuance skyrocketed in 2017 for a 5th year running to $155 billion, up from a mere $13 billion in 2013. 2018 is likely to continue on a similar trajectory as long-term investors are recognizing the threat from greenhouse gases and are diversifying portfolios away from carbon-based investment.

Continue Reading

Jun. 14, 2018

S&P: Pension Pressures For Illinois Municipalities Could Become An Imminent Budgetary Challenge Under The State's Revenue Intercept Law.

Invoking a statute designed to compel Illinois municipalities to fund their public safety pension plans according to statutory minimum levels, pension boards in the cities of Harvey (not rated) and North Chicago (A/Stable) recently petitioned the state comptroller to intercept state revenues due to the municipalities.

Continue Reading

May 14, 2018

How Public Finance Can Make Universal Internet Access a Reality.

From education to accessible public spaces, fire departments and mass transit networks, many of the essential public services we rely on daily are provided by our local governments. A reliable and affordable Internet connection has become another essential public “good” as individuals and cities fight to keep pace with a harsh, fast-moving economy. The Internet is the 21st century equivalent of the transcontinental railroad, interstate highway system, Panama canal and public school and library systems all rolled into one. So why have we settled for a few private companies controlling how and where we get access and how much we pay? Local governments should build publicly-owned local broadband networks and issue bonds to borrow the money they need. This is the solution we’ve been looking for to provide affordable and equitable Internet access.

Why build your own network?

The Internet is the essential conduit for commerce, information and ideas, as well as a driver of economic growth and a shaper of culture. But in a system where corporate earnings guide decisions about where to run cables and build towers, not all Americans have equal access to the Internet. Ten percent of Americans—roughly 32 million people—have no broadband access (25 Mbps/3 Mbps service). But for rural populations, it's about 39 percent.

For much of the 20th century, policies and regulations ensured broad access to the essential public services of the time. Interstate highways were intended to be toll-free, railroads were barred from using monopoly power to take advantage of the farmers who relied on them to transport their crops, and public schools and libraries were open to all who lived in the community whose tax dollars supported them.

Continue reading.

Neighborly

Posted 06/12/2018 by Eva Arevuo

Muni Market Recap: It Was All About G-7 and Central Bank Governance Meetings.

G-7 and Central Bank Governance meetings dominated the headlines this week.

Here's what the Central Banks did:

- US Federal Reserve raised rates by 25 basis points from 1.75 to 2 percent and had a Hawkish tone
- Bank of China did not raise rates and the recent economic data is pointing towards slower growth
- European Central Bank did not change rates but laid out further steps to reduce Quantitative Easing (QE) measures in December of this year
- Bank of Japan did not raise rates and given their low inflation plans to continue with their quantitative easing policy

Elsewhere, the Trump Administration tariffs aimed at Chinese high tech industries — such as robotics, aerospace, industrial machinery, and automobiles — are driving continuing fears of a trade war between the United States and China.

Municipal bonds were just along for the ride and activity was light as the potential shifts for global interest rates continues to be digested.

Neighborly was focused and stayed the course towards giving communities the ability to borrow money they need, when they need it. Neighborly Securities brought to market $19.8MM of tax-exempt Municipal bonds for the City of Salinas, CA for the new El Gabilan Library Project. The Library complex will be a center of a community based in Agriculture and Government services. The bonds are supported by the Measure E Sales Tax initiative.

The new library is designed with a community focus that features an outdoor children's zone, a teen area, a homework help area and an outdoor patio and amphitheater.

The project was unanimously approved by the Salinas City Council in May of 2018. Construction on the project is expected to take 16 months and will begin in July 2018.

Posted 06/15/2018 by Homero Radway

Neighborly Insights

[Public Service Over Debt Service: The Implicit Lien Senior To Municipal Bondholder Rights.]

The primary role of municipalities is to provide essential public services; this responsibility does not change, even in the advent of a bankruptcy. Recent bankruptcy court rulings in Detroit, Stockton and now Puerto Rico have made municipality priorities clear: when governments are in distress, bondholders can hope for post-default recoveries pennies and cents on the dollar that was originally promised. Bondholders must be reminded that the core of successful municipal bond investing is thorough, deep and objective credit research. Covenants and legal provisions only offer credit protection if the borrower is economically and financially solvent; in the advent of a bankruptcy, public services will always come before debt service obligations.

Investors in Detroit, Stockton, and now Puerto Rico looking to the legal covenants as their ultimate safety net are missing two critical points: First, fundamental economics and good governance are primary credit drivers; covenants and security provisions are not. Second, municipalities will always need to provide essential public services over anything else.

These three bankruptcies are prime examples of where economics and governance failed, ultimately diminishing bondholders' secured rights. In each place, weakness in these credit drivers foreshadowed problems years in advance.

Take Detroit. Poor governance practices (just one example: envelopes with tax payments were found in a closet—in a fire station), the realignment in the auto industry resulted in manufacturing job losses and a massive population exodus. Evidence of the city's demise were visible well before the situation became dire, but we continued to lend.

Stockton's reliance on overly optimistic projections of tax revenues based on ever-rising home values—leading to overspending and over-borrowing—also foreshadowed the final result. And we continued to lend.

Puerto Rico's loss of manufacturing jobs, rising deficits papered over by borrowing and opaque financial reporting all started a full decade before the 2008 Recession finally stripped away all pretense of a functioning economy or government. And we lent a total of $75 billion to the island's government and its public corporations.

In each case—Stockton, Detroit and Puerto Rico—there were perceived-and-assumed-strong legal provisions to preserve and protect bondholders. In each case, the bondholders fought vociferously but to no avail. They received significantly lower recoveries than the strongly worded documents suggested.

Covenants and legal provisions only offer credit protection if the borrower is economically and financially solvent. This is why the core of municipal bond investing has been and remains thorough, deep, and objective credit research with a laser focus on the key drivers of financial performance. Despite investor optimism, none of these borrowers passed key credit screens.

Not that the bondholders didn't try mightily to persuade the Court to enforce those covenants and legal provisions. After all, bankruptcy is about contract impairment and lien prioritization. The Court is legally bound to draw conclusions from the facts and apply appropriate legal criterion in its judgment. But there is another, higher criterion that it also weighs.

When a municipality files for bankruptcy, it doesn't just roll up the streets and shut down town hall. Before, during, and after bankruptcy, a municipality has to keep providing public services. The trash is picked up, police and firemen still respond to emergencies, street lights stay on, commuters travel to work and children go to school.

Paying bondholders doesn't do any of those things. In a municipal bankruptcy, the final feasibility test for the Court's approval is: Can the municipality provide these critical public services once the plan is approved? Therein lies the implicit lien senior to all other liens and claims.

When it comes down to public service versus debt service, public service will prevail.

Barnet Sherman is the Director of Municipal Impact Credit Research at [Neighborly Investments], a first-of-its-kind Impact Asset Manager.

Posted 06/13/2018 by Barnet Sherman

Neighborly Insights

[Understanding the De Minimis Tax Rule.]

Municipal debt securities have always been attractive investment vehicles for those looking to benefit from tax-exemption while still generating good returns. In addition to their federal and, often, state tax-free statuses, these securities are typically backed by strong revenue streams and reserves, creating higher credit qualities and making them even more desirable than their taxable counterparts.

Even though corporate debt may produce higher yields, the overall tax benefit with municipal debt is often enough to outweigh the higher yields offered on taxable debt, and this tax benefit increases as an investor's tax bracket increases. However, there are certain situations with tax-free securities that can create a tax liability and cut into the overall return of the security. While coupon income from municipal debt can be tax-free, price appreciation on a bond purchased at a discount in the secondary market can still be taxable.

In this article, we will take a closer look at the De Minimis Tax Rule to try to understand its implication on municipal debt transactions for investors.

Continue reading.

municipalbonds.com

Jayden Sangha

Jun 14, 2018

BLX/Orrick 6th Annual Post-Issuance Compliance Workshop.

BLX AND ORRICK will be hosting our **6th Annual Post-Issuance Compliance Workshop** on October 25 & 26 at the Vdara Hotel & Spa in Las Vegas!

Click here to register and for more information.

Seven Thoughts When Considering Troubled Hospital Deals.

Those who follow hospital and health system M&A activity know that the market has been "frothy." We all see the high profile, "sexy" deals that appear in the news headlines but, for every large deal, there are myriad smaller deals that involve rural hospitals, county hospitals and, sole community hospitals, many of which are struggling, often both operationally and financially. These deals, despite their size, often are strategically important for the involved parties and, due to the financial issues many are facing, extremely complex.

Below are seven thoughts relevant to the acquisition of, or affiliation with, troubled hospitals:

Cash is Often King: Often, one of the biggest hurdles to acquiring a troubled facility is the drain on cash it is experiencing. Generally, credit lines are maxed out and the hospital's bond rating is poor, making it difficult to borrow, especially if cash flow is anemic. This often puts deals in jeopardy because there is always the risk that the target will run out of money prior to closing. This situation may require the acquirer to agree to provide financing to the target hospital; doing so often requires negotiation with bond trustees or with senior lenders who will likely insist on strict subordination agreements, with no guarantee that the loans will ever be recouped or repaid. Care should be taken to carefully prescribe the use of the financing proceeds so that they are applied in the most effective fashion (as noted below, however, the antitrust laws still apply during the period between signing and closing, which limits the control the acquirer can exercise over the target's operations). The acquirer should be prepared to walk away from its loans should the transaction, ultimately, fail either because the target will not have the wherewithal to repay the loans and/or the loans will be deeply subordinated to senior indebtedness.

Diligence is Incredibly Important: It goes without saying that diligence in hospital deals is important, but it is even more so in the context of the acquisition of a troubled hospital. In our experience, struggling hospitals lack the resources to carefully monitor compliance or hire appropriate legal counsel; worse yet, some take aggressive approaches to their relationships with referral sources and reimbursement. The acquirer will generally inherit many of the liabilities of the target (including its Medicare and Medicaid reimbursement liabilities), and because (as described below) indemnification is financially impracticable or unlikely, most of these deals are, what we like to call "diligence deals;" the decision to acquire a troubled hospital is, and should be, premised upon the strength of, and results of, the acquirer's diligence efforts.

The Law Still Applies: Despite the fact that a hospital is troubled and its survival depends upon some sort of successful acquisition or affiliation, the parties must bear in mind that the various laws surrounding their existence, operations, and acquisition still apply. For example, the acquisition could be subject to state certificate of need laws, and will most certainly be subject to state licensure and registration laws, all of which are subject to statutory timing and waiting periods and can slow down the acquisition process. Depending upon the state involved, and how critical the hospital is to care in its community, it may be possible to seek local or state government intervention to accelerate these time periods, or expedite review. Moreover, and more importantly, the parties should keep in mind that federal and state antitrust laws apply, especially during the executory period (e., the period between signing of a definitive purchase agreement and closing). Often, in light of the precarious financial position in which a target hospital might find itself, there is a desire for the two parties to work together to start fixing problems even before the deal closes. While laudable, and something that would seem to make perfect sense from a business perspective, the parties are well advised to seek legal counsel to ensure that they don't engage in so-called "gun jumping," which can lead to per se violations of federal and state antitrust laws.

Peculiarities Relative to Government Health Care Entities: We've seen a number of transactions involving government health care entities, such as county hospitals or health care district facilities. The acquisition of, or affiliation with, these entities will carry its own set of issues. First, and foremost, many of these entities are subject to state open records, or "sunshine," laws such that certain meetings, or documents, relative to the proposed transaction may be subject to public disclosure and scrutiny. Moreover, approval of many of these transactions may require public notice and a public meeting. In addition, acquirers need to be sensitive to the fact that decision makers may include community members who sit on country or district boards, many of whom, while civic minded, may not possess strong health care business acumen and may be motivated by the "politics" or optics of the transaction. Finally, care must be taken to review state law to ensure that there are not specific statutes or rules relative to acquisition of governmental health care entities; for example, some states require that all employees of the target be granted the opportunity to stay or, or that the acquirer agree to satisfy all outstanding liabilities of the acquired entity, etc.In addition to the above, county/district hospitals often have loyal constituencies. The fate of these hospitals is often of great importance to the communities they serve. Thus, and this probably goes without saying, it is often vital that the acquiring entity have a good story to tell as to why the combination makes sense, and this story should revolve around maintaining or increasing the quality and continuity of care to the patients, along with helping the employees retain their jobs. It is important to remember that these facilities often hold a prominent place in the communities they serve and, often, are one of the largest employers. Thus, the story to be told should be compelling, Even more important is the story that will be, or should be, told in the event the transaction fails. Consistent, realistic communication is appropriate in these circumstances.

Deal Planning: Almost as important as the economic and regulatory aspects of trouble hospital transactions is the deal planning. We say this because, often, time is of the essence for some the reasons described above. Thus, we believe that in conjunction with diligence efforts, smart acquirers plan ahead to deal, on a timely basis, with issues such as union contracts, physician compensation that may need to be adjusted, leases and the like. Failure to adequately plan for the issues that may arise related to the above sorts of matters can significantly slow down a transaction, thus putting further strain on the target.

Bankruptcy as an Option: Depending, of course, on the circumstances, there may be some wisdom in considering the use of a bankruptcy proceeding as a means of facilitating a transaction. Depending upon the nature of the target hospital—non-governmental versus a a governmental entity—the bankruptcy proceeding may be subject to either Chapter 11 or Chapter 9 of the Federal Bankruptcy Code. The determination about which type of bankruptcy proceeding (Chapter 9 or 11) a particular hospital entity qualifies for can be fact intensive and complicated, so it should be conducted by experienced counsel at the earliest opportunity. The distinction can be significant because, as a general rule, Chapter 11 proceedings (non-governmental entity proceedings) are somewhat more predictable and provide more established mechanisms to protect a potential buyer of assets. For example, the common method of selling assets through the bankruptcy process involves the use Section 363 of Chapter 11 of the Code to sell assets free and clear of liens and encumbrances. Chapter 9 does not have an analogous provision, though the few courts to have considered the matter have allowed sales to proceed in Chapter 9 under applicable state law. Under Section 363, the proposed buyer can become a "stalking horse" bidder, whose proposed purchase must be made subject to higher or better bids at a court sponsored auction, though subject to certain types of court approved bid protections. Thus, the stalking horse bidder risks losing the bid despite its work and efforts. Moreover, while a Section 363 sale can allow certain liens, executory contracts and other liabilities to be avoided and/or renegotiated, the Centers for Medicare and Medicaid Services take the position that if the acquirer assumes the Medicare provider agreement of the target (which is a common approach in many of these transactions) the bankruptcy proceedings will not extinguish pre-closing Medicare liabilities or obligations, such as overpayment obligations. Another significant difference between Chapter 11 and Chapter 9 proceedings is the ability of a debtor under Section 363 to sell assets free and clear of most pension liabilities. Again, no analogous power is found in Chapter 9, though in the Detroit Chapter 9 case, the court did allow some modification of pension benefits, as part of a final plan of reorganization, not as part of an asset sale.

Alternative Strategies: Sophisticated acquirers are well counseled to consider strategies that may be alternatives to acquisitions. For example, depending upon the market, it may be smarter simply to compete against the struggling entity rather than trying to acquire it. The idiom "be careful what you wish for" might be apt in certain situations. There is often a mission-driven desire, on the part of the acquirer, to save a struggling system, which is understandable. However, if an acquisition puts the acquirer at risk, it is necessary to re-examine the thesis of the deal and whether or not it is simply smarter to help the population of patients and employees of the target by them with an alternative.

Although sometimes smaller and involving fewer dollars than hospital deals that make headlines, troubled deals are a fact of life in health care and carry with them their own sets of complexities. The above list of considerations is but a few that will arise.

Foley & Lardner

by William McKenna & Roger Strode

[Wholesale Water Contract: Arkansas Court of Appeals Addresses Municipality/Water Authority Rate Calculation Dispute.]()

The Arkansas Court of Appeals addressed in a May 23rd opinion a dispute between an Arkansas municipality and public water authority in regards to the sale and purchase of water. See Northeast Public Water Authority of the State of Arkansas v. City of Mountain Home, Arkansas, 2018 Ark. App. 323.

Mountain Home, Arkansas ("Mountain Home") and Northeast Public Water Authority of the State of Arkansas ("Northeast") disagreed as to the meaning of certain terms in a wholesale water purchase contract ("Contract").

Mountain Home and Northeast entered into the Contract in 2012. The Contract replaced one that had been in place since 1982.

Continue reading.

Mitchell, Williams, Selig, Gates & Woodyard, P.L.L.C.

June 14, 2018

[Short Term Rental, Long Term Impact: Municipal Regulation of AirBnb and Homesharing.]

Travelers across the world have embraced short term rentals from platforms such as AirBnb, VRBO, and HomeAway as a unique option for accommodations. These homesharing websites offer travelers an opportunity to stay in a place with all the comforts of home, often for a much cheaper price than a few nights at a chain hotel. Hundreds of short term rental listings are currently posted online for stays in neighborhoods around Pittsburgh and Allegheny County.

While homesharing provides a valuable benefit to short-stay travelers, it poses numerous concerns for local municipalities. For example, parking and noise complaints from the neighbors of short term rental properties have poured into municipal meetings. Borough councils and township boards of commissioners, with assistance from their municipal solicitor, are challenged to come up with a system to regulate short term rentals within their communities.

Attempts to regulate short term rentals most often begin through enforcement of a local zoning ordinance. A typical municipal zoning ordinance might establish where a hotel or bed and breakfast may be operated as a principal permitted use or by special exception within certain zoning districts. The Pennsylvania Commonwealth Court, however, has held that a short term rental use for a residence is distinguishable from a hotel or bed and breakfast. The Court has recently reversed four trial court decisions and held in favor of property owners' operation of short term rentals, where the local zoning ordinance did not specifically address a short term rental use.

In one of these cases, *Slice of Life, LLC v. Hamilton Twp. Zoning Hearing Board*, an appeal was granted in February 2018 by the Pennsylvania Supreme Court. 180 A.3d 687. In *Slice of Life*, the property owner did not live at the property and used it solely as an income-producing short term rental. The township zoning officer issued an enforcement notice, citing the owner for violating the zoning ordinance by operating the single family dwelling as "transient lodging."

The trial court upheld the zoning hearing board's denial of appeal of the enforcement notice. The Commonwealth Court reversed, and held that the owner's use of the property was consistent with its existence as a single family dwelling. 164 A.3d 633 (Pa. Cmwth. Jun. 21, 2017). Because the township zoning ordinance did not define the terms "single family," "transient tenancy," or "transient lodging," the Court held that the ordinance was ambiguous and should be interpreted in favor of the owner and against any restriction on his use of the property.

The Pennsylvania Supreme Court's forthcoming opinion in this case will be instructive to municipalities in confirming whether zoning ordinances should be amended to address short term rental uses. In the meantime, many municipalities are heeding the advice of the Commonwealth Court, which stated in *Slice of Life* that "[e]nterprises such as AirBnB have expanded the possible uses of single-family dwellings and a township can address such uses in the zoning ordinance." Id. at 642. In other words, if a municipality is concerned about the existence of short term rentals within its borders, it should proactively regulate their existence through amendments to the zoning ordinance.

Outside of its zoning ordinance, a municipality can regulate problem short term rental properties through enforcement of its parking or noise control ordinances. Standalone ordinances can also be enacted to regulate permitting and inspection of homes that are marketed as short term rentals.

Before listing a property for rent on homesharing websites, homeowners should check with their local municipality to ensure compliance with any recently enacted requirements for short term rentals. Furthermore, the Allegheny County Treasurer requires that all owners operating a short term rental register for the collection of the County's Hotel Room Rental Tax. In 2016, Allegheny County amended its Hotel Room Rental Tax ordinance to allow for booking agents such as AirBnb to collect and remit the required Hotel Room Rental Tax directly on behalf of the homeowner.

As homesharing grows in popularity, municipalities and their solicitors will continue to work on finding the best means to regulate the long term community impact of short term rentals.

Tucker Arensberg, P.C.

Municipal Bonds Weekly Market Report: Fed Expected to Raise Rates Again

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 saw increases this week.
- Muni bond funds are 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

Jun 12, 2018

TAX - WYOMING

Brock v. State ex rel. Wyoming Workforce Services, Unemployment Insurance Division

Supreme Court of Wyoming - May 3, 2017 - 394 P.3d 460 - 2017 WY 47

Lien holders, who had a lien on property created by a certificate of purchase for delinquent taxes, filed an action against the Department of Workforce Services and the Internal Revenue Service (IRS) that sought to foreclose on their lien and a declaration that their lien was superior to all other encumbrances against the property.

The IRS removed the case to federal district court.

The United States District Court certified a question to the state Supreme Court.

The Supreme Court of Wyoming held that lien held by lien holders, who had a lien on property created by a certificate of purchase for delinquent taxes, was superior to lien held by the Department of Workforce Services for unpaid contributions to the unemployment compensation fund.

Lien held by lien holders, who had a lien on property created by a certificate of purchase for delinquent taxes, was superior to lien held by the Department of Workforce Services for unpaid contributions to the unemployment compensation fund; lien holders obtained a certificate of purchase on the property by purchasing the property for the delinquent taxes assessed against the property, after passage of the required time, "Holders of certificates of purchase of real property sold for delinquent taxes" may apply for a tax deed, and thus lien holders' lien was a claim for taxes, which would give it priority over a claim for contributions to the unemployment compensation fund pursuant to statute.

A Quick, Bipartisan Fix for America's Slow Infrastructure Permitting.

Fixing America's aging infrastructure is one of the most reliably popular policy ideas out there, so why do we seem to make so little progress on it? In short, we've made the process of planning and carrying out infrastructure projects extremely difficult. Building new roads, levees, and rail lines requires conformity to layers of permitting requirements and regulations. While much of the burden comes from local and state approvals, the federal permits needed for large projects can take years to procure and often lead to further delay. To give a sense of the magnitude of the problem, a set of reform proposals released by the group Common Good in 2017 was titled "Two Years, Not Ten Years." Beyond permitting, other factors, lack of financing, high construction costs, and failed coordination between states and municipalities can all mean concrete never gets poured.

Fortunately, federal permitting reform is among the few issues that Congress has been able to address in a bipartisan manner in recent years. Most importantly, in December 2015 Congress passed (and President Obama signed into law) the Fixing America's Surface Transportation Act (FAST Act), which reauthorized and funded federal highway programs for five years. Title 41 of the Act, which incorporated a Senate bill sponsored by Senators Rob Portman (R-OH) and Claire McCaskill (D-MO), established a Federal Permitting Improvement Steering Council (FPISC). FPISC is meant to provide a "one-stop-shop" capable of coordinating permits across different federal agencies, thereby streamlining and shortening the overall process for some large projects.

Continue reading.

The Brookings Institute

Philip A. Wallach and Nick Zaiac

Friday, June 8, 2018

State Strategies for Maintaining a Balanced Budget.

Case studies offer lessons on identifying and managing nonrecurring revenue

Many states ended 2017 flush with unexpected cash. Federal legislation that caps some tax deductions beginning in 2018 prompted many Americans to prepay their state and local taxes. While this surprise revenue was positive news for state budgets, several policymakers struck a cautious tone.

"This is not a windfall, "Robert Mujica, director of the New York State Division of the Budget, said in January 2018. He predicted that the bump in tax collections would be offset by a corresponding drop in receipts in the year ahead.

In fact, states have seen one-time revenue spikes like this before. In 2013, several of them recorded unexpected revenue boosts when many investors—anticipating an increase in federal capital gains taxes—took stock market profits before the change went into effect. Many states grappled with how to treat this influx of cash. While most of the spike in revenue came from annually collected sources like personal and corporate taxes, the nature of the increase meant some of the gains might be temporary.

Utah, for example, initially projected that individual income tax revenue in 2013 would grow by 7.8 percent. (The final numbers showed that growth was actually 16 percent.) State economists believed the higher tax revenue was temporary and suggested that policymakers treat 90 percent of it as a nonrecurring, or onetime, event. Taking the cue, lawmakers spent the unexpected revenue on short-term priorities such as the construction of a courthouse for juvenile hearings. And the next fiscal year, the state planned conservatively, accurately anticipating a substantial decline in tax collections.

Not all states planned—or fared—as well. Despite cautious forecasts, seven states missed their April 2014 individual income tax revenue estimates by more than 10 percent. In Kansas, revenue from this source had beaten projections in 2013 after the state cut its taxes, causing lawmakers to be optimistic about future revenue. However, revenue came in 28 percent under the forecast, leading the state to draw down reserves that it has yet to rebuild.

Common Sources of Nonrecurring State Revenue

<u>Examples of revenue that may be one-time in nature</u>

- Extraordinary growth in tax collections (especially from volatile sources)
- General fund ending balance
- Cash shift from other state accountants (such as rainy day funds)
- Large legal settlements
- Temporary state tax increases
- One-time transfers from the federal government

These events underscore the importance of identifying and managing nonrecurring revenue. Failure to do so does not affect only one year's budget; it can often create or perpetuate a fiscal imbalance that lasts several years. Conversely, when states regularly allocate nonrecurring revenue to one-time priorities, they can mitigate potential budget problems before they form.

While budget challenges from nonrecurring revenue exist in every state, there is no universal practice for how to manage or define this revenue. Economists, budget officers, and policymakers in some states formally distinguish it from revenue that is expected to be collected in future years, while others rely on informal and ad hoc ways to track the revenue.

To identify and evaluate state approaches to detecting and managing nonrecurring revenue, The

Pew Charitable Trusts examined practices in all 50 states—focusing on policies codified in state statutes and constitutions.

This report includes case studies that highlight the range of strategies that states use, with the goal of informing policymakers of promising practices. The featured strategies include:

Techniques states use to identify nonrecurring revenue:

- Case study 1. Alabama: Defining certain revenue sources as recurring or nonrecurring.
- Case study 2. Tennessee: Separating a volatile tax source into recurring and nonrecurring parts.
- Case study 3. Utah: Separating all major tax sources into recurring and nonrecurring parts.

Techniques states use to manage nonrecurring revenue:

- Case study 4. Louisiana: Limiting nonrecurring revenue to specific appropriations.
- Case study 5. Florida: Limiting the amount of nonrecurring revenue that pays for ongoing costs.
- Case study 6. Washington: Analyzing whether expected future spending is balanced by recurring revenue.

Based on this research, Pew recommends that states consider the following when deciding how to identify and manage nonrecurring revenue:

- Develop definitions for this revenue and regularly report on its ability to cover ongoing costs.
- Treat abnormal growth in annually collected taxes as nonrecurring revenue.
- Create guidance to ensure that nonrecurring revenue is used on one-time spending commitments.

Download State Strategies for Maintaining a Balanced Budget.

The Pew Charitable Trusts

June 14, 2018

How a Florida Utility Became the Global King of Green Power.

NextEra became a renewable-energy Goliath using tax subsidies to help finance projects around the country and avoiding debt—staying quiet about it all

Who is the world's largest operator of wind and solar farms? It's also America's most valuable power company. Still stumped? It's by design.

"That is a marketing problem…that we foster intentionally," Michael O'Sullivan, NextEra Energy Inc.'s head of renewable development, told University of Notre Dame students in 2015.

The Florida company has grown into a green Goliath, almost entirely under the radar, not through taking on heavy debt to expand or by touting its greenness, but by relentlessly capitalizing on government support for renewable energy, in particular the tax subsidies that help finance wind and solar projects around the country. It then sells the output to utilities, many of which must procure power from green sources to meet state mandates.

Continue reading.

The Wall Street Journal

By Russell Gold

June 18, 2018

Is The Muni Bond Market Positioned For Its Moment In The Sun?

As we kick off the historically positive summer months for the muni market, investors could see higher returns – but may have a hard time finding bonds.

The passage of Memorial Day has officially ushered in summer: the season of backyard barbecues, pool parties and municipal bond redemptions. The three months beginning in June are often characterized as a heavy reinvestment period – the municipal market finds itself awash with cash as bonds mature, pay coupons or get called (meaning, the bond is redeemed by the issuer prior to its maturity). This year seems to be no exception, and a dearth of new bond issuance could drive negative net supply lower than what we saw in recent years. While this technical backdrop should support municipal bond prices, it could also introduce new challenges for investors trying to put money to work.

After its worst start in over two decades, the municipal bond market could be poised for a turnaround. The historically favorable summer months are upon us, along with the expectation for higher volumes of coupons and principal payments that investors will want to reinvest. Such heavy seasonal redemptions are certainly not a new trend, and they provide the market with a strong and reliable source of demand. However, that money may be chasing a shrinking pool of bonds if recent supply trends persist. Municipal bond issuance dropped 23% year-over-year and was at a four-year low through April 30. Market observers expect supply to remain light through the summer as Wall Street bankers head out on vacation and few issuers bring new financings to market. JPMorgan (NYSE:JPM) suggests that the combination of robust reinvestment capital and anemic new issuance could result in a negative net supply of -$76 billion between June and August: a change of 44% over last year and 91% over the trailing five-year average.

Such favorable technical conditions – more money potentially coming into the market than new bonds being sold – should also set the stage for stronger investment returns. The Bloomberg Barclays Municipal Bond Index returned a disappointing -0.33%1 this year, but prices have historically bounced back as June's cash flows get reinvested amid scarce supply in July and August.

If negative net supply estimates materialize and exceed that of past years, returns could be even better. But the supply shortage could also make sourcing bonds far more difficult. Lack of issuance in the primary market should drive buyers to the secondary market where dealer inventories have shrunk considerably since before the financial crisis. As a result, individual bond buyers will likely find themselves paying more for a dwindling pool of available bonds.

Bottom line

We believe the recent underperformance of the municipal market offers an attractive entry point for investors ahead of what could be a strong performance period, and more dollars chasing fewer bonds should drive prices up and support total returns. However, this same dynamic will likely cause frustration among individual bond buyers who struggle to put their investment dollars to work. Professional management can provide broader access to investment opportunities with more efficient execution.

Municipal securities will be affected by tax, legislative, regulatory, demographic or political changes, as well as changes impacting a state's financial, economic or other conditions. A relatively small number of tax-exempt issuers may necessitate investing more heavily in a single issuer and, therefore, be more exposed to the risk of loss than investing more broadly. Income from tax-exempt municipal bonds or municipal bond funds may be subject to state and local taxes, and a portion of income may be subject to the federal and/or state alternative minimum tax for certain investors. Federal income tax rules will apply to any capital gains.

Seeking Alpha

By Catherine Stienstra

June 12, 2018

The Governors' Encouraging Embrace of Sensible Tax Policies.

More of them are calling for the lower rates and prudent spending that fuel economic vitality.

As is usually the case, the State of the State addresses delivered this year by 47 governors responded to a number of trends and outlined a range of policy priorities. And as always, fiscal policies were mostly front and center. Refreshingly, more governors called for broad-based tax relief than tax increases, recognizing the reality that economic policy directly impacts quality of life and opportunity.

Proposals aren't policy, of course. But they signal the directions in which governors want to take their states. Some of the governors' proposals have been enacted in one form or another, some haven't, and others are still being debated. But for many states the most pressing tax issue is one stemming from last year's federal tax reforms.

As a result of the first federal tax reform in more than 30 years, many states are looking forward to higher tax revenues and surpluses. The net federal income tax cut centered on applying lowered tax rates to a broader tax base. Because many states in some way link their definition of taxable income to the federal definition, failure to lower state income tax rates would result in an increase in the state burden.

Republicans predominated among governors outlining plans to give this unexpected tax revenue back to taxpayers. Leading the way was South Carolina's Henry McMaster, who proposed nearly $2.2 billion in cumulative tax relief over the next five years by lowering each of the state's five income-tax brackets by 1 percentage point per year. Iowa Gov. Kim Reynolds called for "a tax reform package that significantly reduces rates" and "provides real tax relief for middle-class families, farmers, and small businesses." And West Virginia Gov. Jim Justice boldly departed from his past tax-hike proposals, proposing to lowering taxes on manufacturing machinery, inventory and equipment.

Georgia, Idaho and Missouri have already approved substantive tax-relief packages this year, but perhaps the most important pro-taxpayer proposal was Florida Gov. Rick Scott's plea for a constitutional amendment to require a two-thirds legislative supermajority to raise taxes. He said he hopes to "force leaders to contemplate living within their means rather than taking the easy way out and just sticking it to the public by raising taxes on families and job creators." Such an amendment would safeguard Florida's pro-growth reforms of the past seven years.

Not all governors expressed a desire to lower taxes or protect taxpayers. Alaska Gov. Bill Walker, an independent, earned the dubious distinction of being the only governor to propose a tax hike on personal income of any variety. The state repealed its personal income tax in 1980. To circumvent this, Walker called for "broad-based direct participation by individuals" in the form of an economically damaging payroll tax. Oklahoma Gov. Mary Fallin, a Republican, continued her push for a variety of tax hikes on cigarettes, fuel and energy production, and the legislature ultimately enacted approximately $450 million in tax hikes. Meanwhile, Louisiana's Democratic governor, John Bel Edwards, demanded that lawmakers renew a slew of expiring tax hikes worth nearly $700 million.

Two other Democratic governors championed significant tax-hike proposals. Pennsylvania's Tom Wolf once again embraced a severance tax on oil and natural gas, to be imposed on top of both an existing impact fee and the state's high corporate income tax. Meanwhile, Washington Gov. Jay Inslee once again called for enactment of a carbon tax that would generate an estimated $1.5 billion in revenue in just the first two years — an additional tax burden of more than $800 for a family of four.

Unfortunately, many governors continued to advocate for tax favoritism and subsidies in the name of economic development. These special deals for a select few companies result in higher tax rates overall along with economic distortions. New Mexico Gov. Susana Martinez, a Republican, applauded local-government deal closing funds, paid for with gross receipts taxes, that she claimed have "helped create thousands of jobs." Georgia's Republican governor, Nathan Deal, touted hundreds of special favors doled out by the state's Department of Economic Development to the tune of more than $6.3 billion. But the reality is that lowering business taxes across the board sparks far more sustainable growth than funding a few politically favored enterprises with taxpayer capital.

A stronger appetite for prudent fiscal policy evidenced itself in the arena of public pensions. A combination of underfunding and overpromising threatens to bust state budgets and is already pushing tax rates up. Several governors were eager to follow the recent reforms enacted in Arizona, Michigan and Pennsylvania.

In South Carolina, for example, Gov. McMaster called on lawmakers to close the state's defined-benefit pension system to new hires and move to a sustainable defined-contribution plan. Reform is certainly needed: According to the latest edition of the American Legislative Exchange Council's annual "Unaccountable and Unaffordable" public pension plan report, South Carolina's pensions are the nation's ninth worst funded. In Kentucky, Republican Gov. Matt Bevin acknowledged that the state has historically failed to pay the full annual required contribution for its public pension plans, leaving it the second worst funded. He promised, "This year they will be funded in their entirety for the first time in the history of the Commonwealth of Kentucky." Months later, the governor signed a pension-reform package into law.

That kind of fiscal discipline is as important than ever. Generally, states with responsible spending habits, lower tax rates and fewer regulations outperform others in economic growth. It's encouraging to see so many governors endorsing market-oriented tax and fiscal policies. With the midterm elections fast approaching, a window still exists to translate bold ideas into law.

GOVERNING.COM

By Joel Griffith | Contributor
Director of the American Legislative Exchange Council's Center for State and Local Fiscal Reform

By Jonathan Williams | Contributor
Vice president of the American Legislative Exchange Council's Center for State Fiscal Reform

JUNE 14, 2018

Think Your State Is Ready for the Next Recession? Better Check This Fund First.

State unemployment insurance trust funds were decimated during the last recession. A decade later, many still don't have the funds to weather the next downturn.

States have done a lot over the past decade to be better financially prepared for the next recession. But one area many have ignored is — ironically — their unemployment insurance programs for laid-off workers.

More than half of states' unemployment insurance trust funds don't have enough money in them to weather the next economic downturn, according to the most recent federal report on the funds. Of the 28 that don't meet the minimum solvency level recommended by the U.S. Department of Labor, a whopping 11 have less than half of the funds needed to meet a downturn.

The lack of recovery in many funds more than a decade after the last recession began is alarming given that many think time is running out on the current economic expansion. "If there's another bad recession like the last one," says Christopher O'Leary, a senior economist at the W.E. Upjohn Institute, "states, on average, are not prepared."

Continue reading.

GOVERNING.COM

BY LIZ FARMER | JUNE 14, 2018

Treasury, IRS Announce Final Round of Opportunity Zone Designations.

Washington – The U.S. Department of the Treasury and the Internal Revenue Service (IRS) today announced the final round of Opportunity Zone designations for four additional states. In total, the program designated areas in all 50 states, the District of Columbia and five U.S. possessions.

The Tax Cuts and Jobs Act created Opportunity Zones to spur investment in distressed communities throughout the country. New investments in Opportunity Zones can receive preferential tax treatment.

Under the Tax Cuts and Jobs Act, States, D.C., and U.S. possessions nominate low-income communities to be designated as Qualified Opportunity Zones, which are eligible for the tax benefit.

Nearly 35 million Americans live in the communities designated as Opportunity Zones. Based on data from the 2011-2015 American Community Survey, the designated census tracts had an average poverty rate of over 32 percent, compared with a rate of 17 percent for the average U.S. census tract.

Additionally, the median family income of the designated tracts were on average 37 percent below the area or state median, and had an unemployment rate of nearly 1.6 times higher than the average U.S. census tract. Qualified Opportunity Zones were also twice as likely as other U.S. communities to be located within a persistent poverty county, meaning the county had experienced a poverty rate of at least 20 percent for 30 years.

"The creation of Opportunity Zones is one of the most significant provisions of the Tax Cut and Jobs Act. Incentivizing private investment into these low-income communities can be transformational, stimulating economic growth and job creation across the country," said Secretary Steven T. Mnuchin. "This Administration will work diligently with states and the private sector to encourage investment and development in Opportunity Zones and other distressed communities so that they may enjoy the benefits of robust economic growth."

The final round of submissions were approved for: Florida; Nevada; Pennsylvania; and Utah.

Qualified Opportunity Zones retain this designation for 10 years. Investors can defer tax on any prior gains until no later than December 31, 2026, so long as the gain is reinvested in a Qualified Opportunity Fund, an investment vehicle organized to make investments in Qualified Opportunity Zones. In addition, if the investor holds the investment in the Opportunity Fund for at least ten years, the investor would be eligible for an increase in its basis equal to the fair market value of the investment on the date that it is sold.

Treasury and the IRS recently released Opportunity Zones Frequently Asked Questions to provide additional information on this new tax incentive.

View designated Opportunity Zones.

June 14, 2018

New Opportunities with Opportunity Zone Tax Incentives.

The 2017 tax reform legislation includes a new tax incentive to spur investments in distressed areas throughout the United States and its possessions. The Opportunity Zone Tax Incentive, set forth in Internal Revenue Code Sections 1400Z-1 and 1400Z-2, allows taxpayers to defer gain from the sale of property, in some cases permanently where certain requirements are met. Even if a taxpayer does not have gain on which it seeks to defer tax, the Opportunity Zone Tax Incentive provides a permanent deferral opportunity for any appreciation in a relevant investment, provided that investment is held for at least ten years. To qualify for these incentives, taxpayers must invest in a "qualified opportunity fund," which means an investment vehicle organized as a corporation or a partnership that invests in a business in a low-income area that has been specifically designated as a "qualified opportunity zone." A list of currently designated areas is available here.

Under the Opportunity Zone Tax Incentive program, taxpayers with gain from the sale or exchange of property (any type of property) can elect to exclude that gain from gross income to the extent of the amount of cash invested by such taxpayer in a qualified opportunity fund within 180 days of the sale or exchange. This deferral opportunity applies to sales or exchanges occurring before December

31, 2026, and unlike Internal Revenue Code Section 1031 exchanges, is not limited to gain from specific types of property. In addition, the IRS has clarified that gain arising in 2017 may be eligible for the Opportunity Zone Tax Incentive, even if the taxpayer has already filed its tax returns for the 2017 taxable year, so long as the 180 day requirement (among the other relevant requirements) is met and the taxpayer amends its 2017 tax returns to reflect this election.

The incentive permits gain deferral until December 31, 2026, or, if earlier, the date the qualified opportunity fund investment is sold or exchanged. The taxpayer’s basis in the qualified opportunity fund investment is initially zero, but is increased over time depending on the taxpayer’s holding period for such investment. If the qualified opportunity fund investment is held for at least five years, the taxpayer will be entitled to permanent deferral on 10 percent of its deferred gain and can increase its basis by such amount. If the investment is held for at least 7 years, the taxpayer is entitled to permanent deferral on an additional 5 percent of its deferred gain and can increase its basis by this amount.

Permanent deferral potential is available for post-investment appreciation if the taxpayer holds its qualified opportunity fund investment for at least 10 years and makes an election under Section 1400Z-2 to step up its basis to fair market value on the date it is sold or exchanged.

Qualified opportunity funds must hold at least 90 percent of their assets in qualified opportunity zone property, which includes qualified opportunity zone business property, stock or partnership interests. “Qualified opportunity zone business property” means tangible property used in a trade or business of the qualified opportunity fund and located in a qualified opportunity zone if: (i) the original use of such property in the qualified opportunity zone commences with the qualified opportunity fund or, (ii) if the property is used, the qualified opportunity fund, during any 30 month period beginning after the date of the acquisition of such property, incurs costs with respect to such property that exceed the fund’s basis at the start of the 30 month period. As an example, if used property is acquired by the qualified opportunity fund for $1 million and such fund incurs, within the 30 month period, $1.1 million in costs to improve this property, the fund should be deemed to have met the above requirement for used property. Qualified opportunity zone stock or partnerships interest include interests in corporations or partnerships with respect to which substantially all of the tangible property owned or leased by such entity is qualified opportunity zone business property.

The Internal Revenue Service has indicated that, to become a qualified opportunity fund, a fund can self-certify its status as such. Certification will be performed by attaching a form to the fund’s tax return. The form is expected to be available this summer.

While there are still many unanswered questions as taxpayers await further guidance, the Opportunity Zone Tax Incentive presents an attractive opportunity for deferral of gain, including potential permanent deferral on portions of the gain. In addition, it appears that there could be opportunities to pair this deferral with tax credits, such as the new market tax credit, low-income housing credit, rehabilitation credit and investment tax credit. The Opportunity Zone Tax Incentive seems to be an interesting tax incentive for a wide array of investors, and we will provide updates as guidance on this program is issued.

McDermott Will & Emery

June 15, 2018

Zones for New Federal Tax Breaks Approved in All 50 States.

Guidance for the "Opportunity Zones" program, which will provide tax breaks for investments in low-income areas, is still forthcoming.

The selection process is now complete for the newly created Opportunity Zones program, which will offer federal tax incentives for investments in low-income communities.

On Thursday, the U.S. Treasury Department and the Internal Revenue Service announced that they'd approved a final round of zone designations, and that areas have been tapped for the program in all 50 states and the District of Columbia.

The IRS is still working on guidance for the certification of investment funds that will be qualified to participate in the program and for the investments that will be eligible, according to the Treasury Department. In late April, the IRS released a frequently asked questions document that provided some new specifics.

Governors were responsible for nominating zones in their states and Treasury and the IRS signed off on the designations.

This week's zone approvals were in Florida, Nevada, Pennsylvania and Utah.

Treasury says that nearly 35 million people live in the designated zones and that census tracts in the zones have an average poverty rate of about 32 percent based on figures from 2011 to 2015, compared to a rate of 17 percent for the average U.S. census tract.

Proponents say Opportunity Zones hold great promise for drawing new money into communities that have previously failed to attract investment. But there are skeptics, as well, including some who point to the limited effectiveness of similar programs in the past.

There have also been worries that governors would skew their zone selections toward gentrifying areas.

Research the Urban Institute released last month found that only 3.2 percent of the census tracts selected had experienced high degrees of "socioeconomic change," a proxy for gentrification, from 2000 to 2016. But this metric varied from state to state. For instance, it was zero in West Virginia, but 13 percent in New York.

It's possible that investments through the program could go toward a lot of different ventures, including real estate, infrastructure and start-up businesses.

The Opportunity Zones program was created as part of the sweeping federal tax overhaul that Republicans pushed through late last year. A list and map of the zone designations can be found here.

Route Fifty

By Bill Lucia,
Senior Reporter

June 15, 2018

Twenty Years of STAR Bond Investment in Kansas Reaps Big Rewards, a Few Flops.

More than half a billion dollars has been wagered by local and state government officials in Kansas on taxpayer-financed economic development projects under a program that relies upon adherence to the state's motto — to the stars through difficulties.

The sale of State Tax Revenue bonds — also known as STAR bonds — grant municipal governments an opportunity to finance major commercial, entertainment and tourism areas and repay the debt with state and local sales tax revenue generated by the developments. There have been failures and successes since implemented two decades ago.

For scope of achievement on the STAR bond landscape, look no further than the Kansas Speedway and the Village West shopping complex outside Kansas City, Kan. It's a flashy show-me example of the inducement as a platform for business growth and job development.

Bonds used to finance Village West were paid off in 2016 — five years early. The retail and entertainment hub created 5,700 jobs at more than 100 businesses.

"It was a very successful tool," said Pat Pettey, who has watched evolution of the state's No. 1 tourist attraction as a member of state and municipal government. "For us, at the beginning, given where we were at that time, it was great for attracting businesses."

Just as easily, the promise of a STAR bond development can burn out prematurely. In Overland Park, the Museum at Prairiefire, part of a retail development, gobbled up one-third of $65 million in STAR bond investment capital. The museum, which has a dinosaur as the star attraction, operated at a $2 million loss in 2015 and 2016 — and floundered in red ink during 2017.

Another bump on the STAR bond highway was the Heartland Park Topeka motorsports complex that was foreclosed in 2015, unsuccessfully sought new STAR bond financing and has reopened under new management.

The tragic death in 2016 of a 10-year-old boy on a giant water slide at the Schlitterbahn park in Kansas City, Kan., cast doubt about future of that STAR bond investment. Closure of the slide generated uncertainty as to whether Schlitterbahn could survive. STAR bond tax revenue was expected to repay bond debt.

Mike Taylor, spokesman for the Unified Government of Wyandotte County, said it was possible STAR bonds could be issued to support new attractions at the Schlitterbahn.

Undeterred, communities across the state are optimistically plowing ahead with plans for developments crafted to revitalize downtown areas and create destination-scale projects that attract one-third of visitors from more than 100 miles away.

"STAR bonds are proven to be an effective economic development tool beneficial to the state of Kansas," said state Rep. J.R. Claeys, a Salina Republican.

Salina officials are digging into the STAR bond portfolio to bring about a hotel, car museum and rehabilitation of an historic theater in the downtown.

Knocking on the door is the $165 million complex in Wyandotte County for the American Royal agricultural events center. It will be transferred from Kansas City, Mo., with about $80 million from STAR bonds.

“This is about creating a bright future for the American Royal … and hanging a sign in the state of Kansas that Kansas is open to agriculture,” said Korb Maxwell, an attorney with the American Royal.

In Derby, state and local officials applied STAR bond financing to an $18 million dinosaur park. Garden City is developing the Sports of the World Complex for soccer, skating, rugby and hockey on the east side of the city. It will pull down $24 million in STAR bonds.

“This is a great project for our region and will go a long way toward meeting some of our community enhancement goals,” said Lona DuVall, president of the Finney County economic development corporation.

A STAR bond development in Dodge City will invest $13 million in Boot Hill Museum and Heritage Center and the Long Branch Lagoon Water Park.

Atchison set out to work with STAR bonds for an aviation museum and to update the city’s farmers market.

“These aren’t projects that the private market is going to do,” said Trey Cocking, deputy director of the Kansas League of Municipalities.

Looking back, the Kansas Department of Commerce authorized $165 million in STAR bonds for the Kansas City Wizards stadium, $150 million for a Cerner Corp. office campus and $65 million for a U.S. soccer training facility.

In 2006 to 2009, the city of Manhattan received $50 million in STAR bonds to develop the Flint Hills Discovery Center, which brings to life the culture, heritage and natural surroundings of the tall grass prairie in Kansas. Other projects tied to the incentive were the Salt Mine Museum in Hutchinson and the Waterwalk in Wichita.

In 2017, the Legislature and Gov. Sam Brownback agreed to extend availability of the bond mechanism through 2022.

The Topeka Capital-Journal

By Tim Carpenter

Jun 17, 2018

[Judge OKs Steel Valley Bond Issue to Finance Pay Inequities for Teachers.]

An Allegheny County Common Pleas Court judge approved the Steel Valley School District’s request to use a bond issue debt to finance gender-related pay gaps related to a recent court settlement.

During a brief court hearing Wednesday morning, the school district’s attorney, Jerri Ryan, told Common Pleas Judge Michael Della Vecchia that the money from the bond issue would fund salary adjustments across the district to avoid more litigation in the future.

Steel Valley asked the court to allow it to issue $1.75 million in bonds, rather than raise property taxes in the short term, according to a May 21 petition.

Municipal finance experts contacted recently by the Pittsburgh Post-Gazette said that debt issuances are typically used for big capital projects, not costs related to legal settlements.

Naomi Richman, senior vice president at Moody's Public Finance Group, said last week the ratings agency is "not aware at this time of any cases involving Pennsylvania municipalities, including school districts."

Steel Valley in April reached a settlement with five female teachers who claimed in a lawsuit in U.S. District Court that they had been unfairly hired at lower salaries than male coworkers.

The teachers, who were hired between 1997 and 2008, began at the lowest step on the pay scale despite prior work experience. The district cited "policy" while paying some male teachers with similar experience more, according to the lawsuit.

As a result of the federal court settlement — for an undisclosed amount — Steel Valley reviewed three years of records to address pay gaps throughout the district and it will make a lump sum payment to the affected teachers, according to the petition. It is unclear how many employees are affected.

Steel Valley, a 1,400-student district that serves Munhall, Homestead and West Homestead, employs about 200 people, including nearly 130 teachers.

In his ruling, Judge Della Vecchia said he was not taking a stance on the substance of the case, only that the district followed proper procedure in requesting the bond issue.

Pittsburgh Post-Gazette

by Matt McKinney

June 13, 2018

Matt McKinney: mmckinney@post-gazette.com, 412-263-1944, or on Twitter @mmckinne17

Atlanta Locks in Savings on Sewer Debt Even as Market Shrinks for Municipal Bonds.

Atlanta expects to save about $500,000 by refinancing a loan taken out in 2008 to help pay for upgrading the city's water and wastewater system, a city finance official said Wednesday. The transaction is of note because the city secured a beneficial rate as municipal bonds face a swirl of headwinds.

Atlanta awarded $51.2 million in bonds in transactions dated Wednesday. The closing is set for June 21.

The Atlanta City Council approved the issuance Wednesday in a special call meeting. The council immediately sent the paper to Mayor Keisha Lance Bottoms for her signature, which enables the transaction to move forward quickly.

Atlanta did not extend the pay-off date of the debt in order to receive a lower interest rate. The

$51.2 million is structured as three separate entities, each with a different retirement date and still set to terminate in 2041, according to terms outlined by EMMA/MSRB. The dates for final payoff of the amount of bonds issued include:

Nov. 1, 2039 – $8.5 million;
Nov. 1, 2040 – $16.9 million;
Nov. 1, 2041 – $25.8 million.

There's nothing new or novel about governments issuing new debt to pay off older debt that carried a higher interest rate.

The 2008 bonds carried a variable rate that was changing every week, according to Jerraé Williams, Atlanta's treasurer/chief of debt and investment. The all-in, true fixed rate of the $51.2 million bond issue is 4.15, according to John Gaffney, Atlanta's deputy chief financial officer.

"In lieu of interest rates that are going to continue to increase, we need to fix out the cost," Williams said. "We converted the variable rate to fixed rate. We are saving money, about $500,000."

However, these sorts of transactions that once were routine are entering a new era. The tax overhaul bill President Trump signed into law in December 2017 made debt issued by state and local governments less attractive to one of their major buyers – banks.

During the first quarter of 2018, more than six of the nation's largest banks reduced by $7.8 billion their holding of debt issued by state and local governments, according to a May 31 report by bloomberg.com. The report was based on a review of the banks' first-quarter filings with the U.S. Securities and Exchange Commission.

The report observed:

"The figures show a significant pullback from buyers that had been steadily expanding their ownership of state and local government securities since the end of the recession, helping bolster demand. If the large banks are a guide, the quarter will mark the first time the industry has retreated from the $3.9 trillion market since 2009."

In addition, the Fed indicated Wednesday it may approve two more rate hikes this year, according to a report by businessinsider.com.

Against this backdrop, Atlanta's incoming chief financial officer, Roosevelt Council, observed that the timing of the transaction was ideal.

"Our timing couldn't have been better, because the [Federal Reserve] board chairman talked about increasing rates, basically today," Council said. "We were able to lock in a pretty good price as it pertains to that."

The mayor has nominated Council as CFO and his appointment is pending the council's approval.

Saporta Report

By David Pendered

June 13, 2018,

Hounded by Woes, Chicago Sees Musk's Train as Win for Its Economy.

- **Boring Co. lands bid to build multibillion high-speed train**
- **Musk's investment shows "faith" in city economy, analyst says**

Chicago, slammed by rating agencies for its fiscal woes, President Donald Trump for its violence and even its own governor for the school system's debts, is getting a boost from visionary Elon Musk.

Mayor Rahm Emanuel and Musk, the billionaire chief executive officer of electric carmaker Tesla Inc., Thursday officially unveiled the plans for a high-speed train service that will make the approximately 15-mile (24-kilometer) trip from downtown Chicago to O'Hare International Airport in 12 minutes, a fraction of the current commute.

That Musk's Boring Co. emerged as the winning bidder is a coup for the 18-month-old company, whose futuristic ideas have yet to be proven. But Chicago bondholders are also voicing cautious optimism that the project — which will use electric vehicles to transport passengers through new underground tunnels — is an economic win for the nation's third-largest city. Chicago said it won't require any public funds.

"It's very good news that a company like the Boring Co. would be considering a major investment in Chicago-area infrastructure," said Paul Mansour, head of municipal research at Conning, which oversees about $9 billion of state and local debt, including Chicago bonds. "It shows faith in the future of the Chicago-area economy."

Chicago's public transit has long been a talking point for Emanuel when touting the city's virtues. Musk's investment also coincides with Emanuel's courtship of Amazon.com Inc., which placed Chicago on the list of 20 cities that may be home to its second headquarters. Chicago is also embarking on the largest terminal expansion plan in O'Hare's history, a long overdue revamp of what once was the world's busiest airport.

"Bringing Chicago's economic engines closer together will keep the city on the cutting edge of progress, create thousands of good-paying jobs and strengthen our great city for future generations," Emanuel said in an emailed statement. "This transformative project will help Chicago write the next chapter in our legacy of innovation and invention."

More than 50 companies have relocated their headquarters to Chicago under Emanuel's tenure, according to World Business Chicago. Emanuel took office in 2011 and is up for re-election next year.

"Chicago's competitive edge is unbelievable,'' Emanuel said during a press conference on Thursday with Musk, touting the city's transportation system, universities, and workforce. "This will add to it and give us a cutting edge and helps us maintain and build the commanding world-class economy we have.''

The investment is also significant given the fiscal strains facing Chicago and Illinois. The city had $35.8 billion of unfunded pension liabilities by the end of 2016, and the state's retirement systems were short $137 billion, as of June 30, raising the risk of tax increases down the road. Those pension liabilities caused Moody's Investors Service to cut Chicago's rating to junk in 2015, making it the only major city outside of Detroit without an investment-grade rating.

Speaking to reporters, Emanuel praised the tremendous opportunity the investment will bring to the city, emphasizing that Boring is bearing all of the cost.

“He’s bearing the cost,” Emanuel told reporters. “We get the upside with no financial risk at all.”

Even if it wanted to, Chicago couldn’t afford to be too big of a contributor to the kind of project envisioned by Musk, according to Richard Ciccarone, president of Merritt Research Services LLC, which analyzes municipal finance. Emanuel has already hiked property, sewer and water taxes to cover rising pension payments.

“We’ve used up so much of our taxing and debt capabilities,” Ciccarone said in a telephone interview. “For us, we’ve got to do whatever we can to extract help from the private sector.”

Chicago will start one-on-one contract negotiations with Boring, according to the city. Once an agreement is reached, the city council would need to approve it.

“it’s very preliminary,” said Dennis Derby, a portfolio manager at Wells Fargo Asset Management, which holds $39 billion of municipal debt, including Chicago bonds, “but it should help the economic and transportation infrastructure of the city.”

Bloomberg

By Elizabeth Campbell

June 14, 2018, 10:24 AM PDT Updated on June 14, 2018, 2:32 PM PDT

— With assistance by Sarah McBride

- S&P: The Transition To Secured Overnight Financing Rate From LIBOR Could Add Credit Risk For U.S. Public Finance Issuers.
- MSRB Initiates Retrospective Review of Underwriter Disclosures to Issuers.
- Rule 4210 Update: BDA Submits Capital Charge Letter to FINRA.
- For an Increasing Number of Governments, One Credit Rating Is Plenty.
- S&P Credit FAQ: Not-For-Profit Health Care Organizations and the Impact From A Revenue Recognition Accounting Rule Change.
- *Indian River County v. Rogoff* – District Court holds that Department of Transportation’s (DOT) withdrawal of authorization for tax-exempt private activity bonds (PAB) to help finance railroad project rendered moot counties’ actions alleging that DOT failed to comply with NEPA and other federal environmental statutes before allocating PABs, even though project’s sponsor subsequently obtained new allocation of PABs to finance portion of project that did not affect counties.
- And finally, Do I At Least Get A Slingshot? is brought to us this week by *United States v. Jim*, a case title that we find just delightful beyond belief. What on earth could Jim have possibly done to incur the wrath of the entire federal government? That poor, poor bastard. (Alright, alright, the case was actually brought against a Sally Jim. You happy now? Are you? This is why we can’t have nice jokes!)

MUNICIPAL ORDINANCE - CALIFORNIA

Diaz v. Grill Concepts Services, Inc.

Court of Appeal, Second District, Division 2, California - May 24, 2018 - Cal.Rptr.3d - 2018 WL 2355295 - 18 Cal. Daily Op. Serv. 4992

Restaurant employees brought class action against employer, alleging failure to pay living wage as required by ordinance and unfair competition.

On cross-motions for summary judgment, the Superior Court partially granted and partially denied the motions, and, following trial, entered judgment in favor of employees as to prejudgment interest and penalties. Employer appealed.

The Court of Appeal held that:

- Ordinance mandating payment of living wage to certain employees was not unconstitutionally vague under due process clause, and
- Trial courts lack discretion to waive statutory waiting time penalties for failure to pay wages of employees who are discharged or who quit.

PABS - DISTRICT OF COLUMBIA

Indian River County v. Rogoff

United States District Court, District of Columbia - May 10, 2017 - 254 F.Supp.3d 15

Two counties brought actions alleging that Department of Transportation's (DOT) authorization of tax-exempt private activity bonds (PAB) supporting construction and operation of railway violated National Environmental Policy Act (NEPA) and other federal statutes.

Project sponsor intervened. After DOT withdrew allocation, defendants moved to dismiss.

The District Court held that DOT's withdrawal of authorization for PABs rendered counties' actions moot.

Department of Transportation's (DOT) withdrawal of authorization for tax-exempt private activity bonds (PAB) to help finance railroad project rendered moot counties' actions alleging that DOT failed to comply with NEPA and other federal environmental statutes before allocating PABs, even though project's sponsor subsequently obtained new allocation of PABs to finance portion of project that did not affect counties, and it appeared sponsor would follow up with second application for remainder of project, where new PAB allocation for remainder of project without complying with NEPA would not necessarily be unlawful, it was not clear that DOT would authorize new allocation without complying with NEPA, it was possible that new presidential administration would not fund second allocation, and there was no longer any meaningful relief that court could provide counties.

ZONING & LAND USE - NEBRASKA

Lindner v. Kindig

Supreme Court of Nebraska - May 27, 2016 - 293 Neb. 661 - 881 N.W.2d 579

Resident brought action against city and its mayor seeking declaration that ordinance creating off-street parking district adjoining store was unconstitutional.

The District Court dismissed action on limitations grounds. Resident appealed. The Supreme Court reversed and remanded. On remand, the District Court granted summary judgment for city and mayor. Resident appealed.

The Supreme Court of Nebraska held that:

- A constitutional claim can become time-barred just as any other claim, and
- Four-year catchall limitations period applied to action.

ZONING & LAND USE - PENNSYLVANIA
Gorsline v. Board of Supervisors of Fairfield Township
Supreme Court of Pennsylvania - June 1, 2018 - A.3d - 2018 WL 2448803

Objecting residents sought review of decision of township board of supervisors to grant energy company’s application for a conditional-use permit to locate gas wells on tract of land that was located in an area zoned residential–agricultural.

The Court of Common Pleas reversed. Energy company and tract’s owners appealed. The Commonwealth Court reversed. Objecting residents petitioned for allowance of appeal.

The Supreme Court of Pennsylvania held that company’s proposed use was not, in any material respect, of the same general character as, or similar to, public-service-facility or essential-services uses, which were uses that zoning ordinance allowed in residential–agricultural districts.

EMINENT DOMAIN - SOUTH CAROLINA
Jowers v. South Carolina Department of Health and Environmental Control
Supreme Court of South Carolina - May 30, 2018 - S.E.2d - 2018 WL 2449220

Owners of property along rivers and streams brought action against the Department of Health and Environmental Control (DHEC), claiming that the Surface Water Withdrawal, Permitting, Use, and Reporting Act’s registration provisions were an unconstitutional taking of private property for private use, that the Act violated their due-process rights by depriving them of their property without notice or an opportunity to be heard, and that the Act violated the public-trust doctrine by disposing of assets that the state held in trust.

The Circuit Court granted summary judgment for DHEC on standing and ripeness grounds and also denied property owners’ claims on the merits. Property owners appealed.

On rehearing, the Supreme Court of South Carolina held that:

- Act did not deprive property owners of their common-law riparian rights, and thus owners did not have standing;
- Public-importance exception to the requirement of standing did not apply;
- Claim that registration provisions of Act violated the public-trust doctrine was not justiciable; and
- Public-importance exception to the requirement for standing did not apply to claim that registration provisions of Act violated the public-trust doctrine.

Surface Water Withdrawal, Permitting, Use, and Reporting Act did not deprive owners of property along rivers and streams their common-law riparian rights, and thus owners did not suffer an injury-in-fact required to establish standing in their action against Department of Health and Environmental Control (DHEC) that challenged Act's registration provisions regarding use of surface water by registered agricultural users as an unconstitutional taking under the state constitution and as a deprivation of owners' due-process rights; Act did not prevent owners from seeking an injunction against another riparian owner, including a registered agricultural user, for unreasonable use, Act did not prevent owners from filing a declaratory judgment against registered agricultural users and requesting the court declare their use unreasonable, and Act contemplated a private cause of action for damages against registered agricultural users.

IMMUNITY - TEXAS

Wasson Interests, Ltd. v. City of Jacksonville

Supreme Court of Texas - June 1, 2018 - S.W.3d - 2018 WL 2449184 - 61 Tex. Sup. Ct. J. 1280

Tenant of property on city's water reservoir brought action against city for breach of leases after city terminated leases and evicted tenant.

The Second Judicial District Court granted city's motion for summary judgment. Tenant appealed. The Court of Appeals affirmed. On review, the Supreme Court reversed and remanded. The Court of Appeals affirmed. Tenant petitioned for review.

The Supreme Court of Texas held that:

- City's decision to lease its lakefront property to tenant was discretionary;
- City was acting primarily for the benefit of its own residents when it leased lake lots to private tenant;
- City was acting on its own behalf, and not that of the state, when it leased lake lots to private tenant;
- City's leasing of lakefront property was not essential to city's operation or maintenance of lake, and thus, was not governmental; and
- Governmental immunity did not operate to protect city from tenant's suit for breach of the lease agreements.

ZONING & LAND USE - UTAH

Potter v. South Salt Lake City

Supreme Court of Utah - June 5, 2018 - P.3d - 2018 WL 2710974 - 2018 UT 21

Objectors sought judicial review of city council's decision to close a portion of two city streets.

The District Court dismissed objectors' claim, and they appealed.

The Supreme Court of Utah held that:

- Automobile dealership's petition to vacate portions of two public streets was not defective on the basis it failed to include the names and addresses of all property owners whose land was adjacent to the public streets being vacated;

- There was no reasonable likelihood that alleged defects in petition to vacate had any effect on city's decision to vacate portions of two public streets, and thus, objectors failed to demonstrate prejudice, as required to overturn city's land use decision; and
- A party challenging a land use decision is not required to prove that the city's decision "would have been different" absent the violation of city law, but instead, it is enough for the challenging party to show that there is a reasonable likelihood that the legal defect in the city's process changed the outcome of the proceeding, modifying *Springville Citizens*, 979 P.2d 332.

SPECIAL ASSESSMENT LIENS - VIRGINIA

Cygnus Newport-Phase 1B, LLC v. City of Portsmouth

Supreme Court of Virginia - September 22, 2016 - 292 Va. 573790 S.E.2d 623

Property owner brought action against city and community development authority, alleging that a special assessment lien, recorded after a deed of trust, was extinguished by the foreclosure sale and that the special assessments were void.

The Circuit Court granted the pleas in bar and dismissed the complaint. Owner appealed.

The Supreme Court of Virginia held that:

- Special assessment liens have priority over previously recorded deeds of trust;
- Special assessment lien was enforceable against property owner; and
- Owner's belated challenge to special assessments was foreclosed.

Special assessment lien was enforceable against property owner after foreclosure sale on deed of trust, even though deed of trust was recorded before lien, where city filed in deed book of circuit court clerk's office an abstract of ordinance authorizing improvements, which made lien enforceable against any person deemed to have had notice of assessment, and owner had notice of assessment and lien when it acquired deed of trust and property at foreclosure.

State constitution and code foreclosed property owner's belated challenge to special assessments on property that owner acquired following foreclosure sale on deed of trust; owner acquired its interest long after assessment agreement with former owner had been finalized and recorded, assessments approved and recorded, and bonds issued, owner filed suit approximately nine years after special assessments were imposed and bonds issued, and state constitution and code did not contemplate endless challenges from subsequent purchasers who bought property with notice of existence of assessment, notice of agreement with former owner, and notice of what infrastructure had been constructed.

ZONING & LAND USE - WISCONSIN

Golden Sands Dairy LLC v. Town of Saratoga

Supreme Court of Wisconsin - June 5, 2018 - N.W.2d - 2018 WL 2710392 - 2018 WI 61

Following mandamus action to compel town to issue building permit for farm structures landowner filed action for declaratory judgment that it had vested right to use land specifically identified in building permit application for agricultural purposes, despite zoning change which sought to prohibit such agricultural uses.

The Circuit Court entered judgment for landowner. Town appealed, and the Court of Appeals entered judgment for landowner. Town appealed, and the Court of Appeals reversed. Landowner petitioned for review, which was granted.

The Supreme Court of Wisconsin held that:

- As a matter of first impression, building permit rule applies to all land specifically identified in the building permit application, not merely to structures, and
- Application specifically identified property landowner sought to use for farm such that landowner had vested right to use property for farm.

MSRB Initiates Retrospective Review of Underwriter Disclosures to Issuers.

Washington, DC – As part of its commitment to ongoing review of its rules and published interpretations, the Municipal Securities Rulemaking Board (MSRB) is seeking comment on existing interpretive guidance that addresses the application of the MSRB's fair-dealing rule to underwriters of municipal securities. The guidance, adopted in 2012, established obligations for underwriters, including requirements to disclose information to issuers about the nature of their relationship and risks of transactions recommended by the underwriters, among other information.

"The MSRB has received informal feedback from market participants that the disclosure requirements adopted in 2012 could more effectively and efficiently achieve their intended purpose of assisting issuers in making informed decisions when engaging the services of an underwriter," said MSRB President and CEO Lynnette Kelly.

For example, Kelly said, some market participants have indicated that underwriters' disclosures are duplicative, often boilerplate and burdensome for issuers to review. In addition, dealers have observed that in some cases the burdens on them of requiring certain disclosures may not be fully justified by the informational value to issuers.

"Soliciting formal public comment will help us consider whether and how to amend the guidance to improve its effectiveness and efficiency," Kelly said.

Read the request for comment. Comments should be submitted no later than August 6, 2018.

Date: June 5, 2018

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

Rule 4210 Update: BDA Submits Capital Charge Letter to FINRA.

On June 7, 2018, the BDA continued leading the advocacy push opposing FINRA Rule 4210 by submitting a letter in support of a "Capital Charge" provision in lieu of the proposed margin requirements. The letter, which comes on the heels of a 9 month delay of implementation of the rule by the SEC last month, showcases BDA firms and how the requested change would positively impact these firms.

Highlighted points include:

- These firms do not believe that the Capital Charge Proposal will have any anti-competitive impact on their businesses.
- These firms expect that the existing covered agency transaction rules will cause some erosion in their businesses.
- These firms strongly support the Capital Charge Proposal.

BDA Continues Advocacy on Capitol Hill

The BDA continues to work with partners on the House Financial Services Committee and Senate Banking Committee to pressure the SEC and FINRA to rethink the rule. **This includes both advocating for the "Capital Charge" proposal as well for outright termination of the amendment due to its anti-competative nature before implementation on March 25, 2019.**

In the coming weeks, it is expected that multiple Members of Congress will reach out to both FINRA and the SEC. We will provide an update once this occurs

Bond Dealers of America

June 8, 2018

For an Increasing Number of Governments, One Credit Rating Is Plenty.

A decade ago, most sought two or three ratings before selling their bonds. Not anymore.

For years, governments paid for the extra cost of getting multiple credit ratings when they sold bonds, mainly to appease the investors who bought them. But now, more and more governments are forgoing multiple ratings in favor of just one — and 2018 is shaping up to be the biggest year yet for the trend.

Through the first five months of this year, 25 percent of bond sales have involved just one credit rating, according to data analyzed by the research firm Municipal Market Analytics. That's far higher than the 13 percent rate a decade ago and the 20 percent average over the past few years.

Lisa Washburn, a managing partner at Municipal Market Analytics, says she expects the trend to continue, especially since issuances with just one rating don't appear to be penalized with higher interest rates.

Continue reading.

GOVERNING.COM

BY LIZ FARMER | JUNE 8, 2018

S&P: The Transition To Secured Overnight Financing Rate From LIBOR Could Add Credit Risk For U.S. Public Finance Issuers.

The London InterBank Offered Rate (LIBOR) has been a global index rate in many financial structures for decades. An estimated $350 trillion in derivatives, loans, mortgages collateralized loan obligations, swaps, commercial paper, and other debt types are tied to the rate.

Continue Reading

Jun. 7, 2018

Interactive Brokers Welcomes New Bond Disclosure Rules.

Company Known for Low Fees Supports Amendments Requiring Brokers to Increase Transparency

GREENWICH, Conn.–(BUSINESS WIRE)–Interactive Brokers Group, Inc. (NASDAQ GS: IBKR) an automated global electronic broker, today announced its support for a new rule implemented by the Securities and Exchange Commission (SEC) on May 14th requiring brokers to disclose the fees they make on corporate, municipal, and agency bond transactions.

The amendments to FINRA Rule 2232 and MSRB Rule G-15 regarding Customer Confirmations requires SEC member firms to disclose the amount of mark-up or mark-downs applied to trades made for retail clients if the firm executes an offsetting trade in the same security on the same trading day. The amendments also require firms to provide clients with trading data for the security traded and the exact execution time of the transaction.

“Interactive Brokers welcomes the new rule requiring brokers to be transparent about their fees. In the past, many brokers claimed they did not charge commission, but hid fees in their spreads. Unlike most other brokers, our firm offers low, transparent pricing and does not charge spread mark-ups,” said Thomas Peterffy, CEO of Interactive Brokers.

The company, which was ranked Number One in Barron’s 2018 Best Online Brokers Ranking and the “Lowest Cost Online Broker” by Barron’s five years on a row*, is known for its advanced technology, breadth of offerings, and low costs.

The company’s bond commissions are:

US Treasuries .002% on the first $1,000,000 of face value and .0001% of the face value after the initial $1,000,000.

Municipal Bonds .05% on the first $10,000 of the face value and .0125% of the face value after the initial $10,000.

Corporate Bonds 0.1% on the first $10,000 of face value and 0.025% of the face value after the initial $10,000.

More details on IBKR’s bond pricing can be viewed here.

“IBKR is committed to lowering clients’ costs to help them maximize their returns. We provide online access to a broad range of bonds and sophisticated cash management tools for everyone from corporate treasurers to individual investors. We encourage our clients to enter their own bids and offers and negotiate instead of acting on the quotes of others,” Mr. Peterffy noted.

In May, IBKR added mobile trading for both Municipal and Corporate bonds. Its Trader Workstation (TWS) trading platform provides Corporate Bond and Muni Bond Market Scanners that let clients quickly and easily scan global markets for the top performing bonds across instrument types and metrics.

About Interactive Brokers Group, Inc.:

Interactive Brokers Group affiliates provide automated trade execution and custody of securities, commodities and foreign exchange around the clock on over 120 markets in numerous countries and currencies, from a single IB Universal Account® to clients worldwide. We service individual investors, hedge funds, proprietary trading groups, financial advisors and introducing brokers. Focusing on technology and automation for over 41 years has enabled us to equip our clients with a uniquely sophisticated platform to manage their investment portfolios at the lowest cost. Due to our range of services, low costs and technology, IBKR is ranked the “Top Online Broker”, according to Barron’s Best Online Brokers review, March 24, 2018. We strive to provide our clients with advantageous execution prices and trading, risk and portfolio management tools, research facilities and investment products, all at low prices, positioning them to achieve superior returns on investments.

* Lowest Cost Rated by Barron’s 5 Years Straight – Lowest cost broker 2014 through 2018 according to Barron’s online broker review. Interactive Brokers earned a 4.6 star ranking in the March 26, 2018 Barron’s Annual Best Online Brokers – “All Together Now”. Criteria included Trade Experience and Technology, Usability, Mobile, Range of Offerings, Research Amenities, Portfolio Analysis & Reports, Customer Service, Education and Security, and Costs. Barron’s is a registered trademark of Dow Jones & Co. Inc.

Contacts

For Interactive Brokers Group, Inc.

Investors: Nancy Stuebe, 203-618-4070
or
Media: Kalen Holliday, 203-913- 1369

June 05, 2018

U.S. Muni Bond Market Slips to $3.843 trln in First Quarter - Fed

NEW YORK, June 7 (Reuters) – The U.S. municipal bond market dipped to $3.843 trillion in the first quarter of 2018 from $3.863 trillion the previous quarter, according to a report from the Federal Reserve released on Thursday.

Households, or retail investors, held $1.640 trillion of debt sold by states, cities, schools and other muni issuers in the latest quarter, falling slightly from $1.641 trillion in the fourth quarter of 2017, the Fed report said.

U.S. banks’ muni bond buying dropped. Financial institutions shed $56.7 billion in the first quarter, compared with adding $37.5 billion in the fourth quarter.

Property and casualty insurance companies took on $13.6 billion of munis in the first quarter after relinquishing $2.0 billion in the fourth quarter. Life insurance companies picked up $7.5 billion of the bonds compared to $6.4 billion the last quarter.

U.S. mutual funds bought $53.8 billion of munis in the first quarter, a sharp increase from $29.5 the previous quarter, while exchange traded funds were down $2.8 billion from $7.5 billion.

(Reporting by Laila Kearney Editing by Bill Berkrot)

SIFMA Research Quarterly, First Quarter 2018

Long-term securities issuance totaled $1.80 trillion in 1Q'18, a 4.6 percent decrease from $1.88 trillion in 4Q'17 and an 11.5 percent decrease year-over-year (y-o-y) from $2.03 trillion. Issuance decreased quarter-over-quarter (q-o-q) across all asset classes except Treasury, corporate, and equity while y-o-y, issuance decreased across all asset classes except federal agency.

Long-term public municipal issuance volume including private placements for 1Q'18 was $67.6 billion, down 53.8 percent from $146.4 billion in 4Q'17 and down 27.4 percent from $93.1 billion in 1Q'17.

The U.S. Treasury issued $580.0 billion in coupons, Floating Rate Notes and Treasury Inflation Protected Securities in 1Q'18, up 8.3 percent from $535.5 billion in the prior quarter but 11.3 percent below $654.1 billion issued in 1Q'17.

Issuance of mortgage-related securities, including agency and non-agency passthroughs and collateralized mortgage obligations, totaled $444.3 billion in the first quarter, an 8.1 percent decrease from 4Q'17 ($483.2 billion) and a 2.6 percent decrease y-o-y ($456.1 billion).

Corporate bond issuance totaled $380.7 billion in 1Q'18, up 19.3 percent from $319.2 billion issued in 4Q'17 but down 21.0 percent from 1Q'17's issuance of $481.9 billion. Of 1Q'18 corporate bond issuance, investment grade issuance was $319.1 billion (83.8 percent of total) while high yield issuance was $61.6 billion (16.2 percent of total).

Long-term federal agency debt issuance was $177.7 billion in the first quarter, slightly down from $207.9 billion in 4Q'17 but up 7.6 percent from $165.1 billion issued in 1Q'17.

Asset-backed securities issuance totaled $77.8 billion in the first quarter, a decrease of 49.6 percent q-o-q ($154.5 billion) and a 34.4 percent decrease y-o-y ($118.5 billion).

Equity underwriting increased by 8.2 percent to $59.5 billion in the first quarter from $55.0 billion in 4Q'17 but down 1.3 percent from $60.3 billion issued in 1Q'17. Of the total, "true" initial public accounted for $16.1 billion, up 36.6 percent from $11.8 billion in 4Q'17 and up 44.8 percent from $11.1 billion in 1Q'17.

Download the Report.

About the Report

A quarterly report containing brief commentary and statistics on the U.S. capital markets, including but not limited to: municipal debt, U.S. Treasury and agency debt, short-term funding and money market debt, mortgage-related, asset-backed and CDO debt; corporate bonds, equity and other, derivatives, and the primary loan market.

U.S. House Overwhelmingly Approves 2018 Water Resources Development Act; Senate On Tap Next for WRDA.

KEY TAKEAWAYS

- U.S. House overwhelmingly approves WRDA bill in a 408 to 2 vote.
- Popular WRDA bill does not include use of Harbor Maintenance Trust Fund.
- All eyes turn to Senate action on WRDA where a vote could take place in the coming weeks.

On June 6, the U.S. House of Representatives overwhelmingly passed the Water Resources Development Act (WRDA) of 2018 (H.R. 8) on a 408 to 2 vote.

The water infrastructure bill authorizes the WRDA, which controls federal navigation, flood-control, storm damage projects and feasibility studies across the United States. Once enacted into law, WRDA provisions must be funded through the federal government's annual appropriations process.

The final legislation, the bill did not include a provision on the Harbor Maintenance Trust Fund (HMTF) that was initially included in the bill. It would have allowed the full use of the HMTF for harbor maintenance purposes without further congressional appropriations by FY 2029. The HMTF provision was removed from the bill after the Congressional Budget Office reported it would increase annual deficits by more than $5 billion over 10-years following its 2029 enactment date. The HMTF is a tax levied against importers and domestic shippers using ports and harbors in coastal and Great Lakes areas. Even though the HMTF is currently operating a large surplus, only a portion is appropriated by Congress annually for operations and maintenance in the nation's harbors.

Additionally, the bill directs the National Academy of Sciences (NAS) to consult with the Army Corps and other federal agencies to study the potential impacts of moving the Army Corps' Civil Works division out of the Department of Defense and "to a new or existing agency or sub-agency of the federal government" to carry out authorized WRDA projects and studies.

Across the Capitol, the Senate has been working on its own WRDA bill titled, America's Water Infrastructure Act of 2018 (S. 2800). Similar to the House bill, the Senate version does not include HMTF. Additionally, S. 2800 contains several Clean Water Act provisions on the U.S Environmental Protection Agency's (EPA) Integrated Planning policy and Water Infrastructure Finance and Innovation Act. The Senate Environment and Public Works Committee approved the bill on May 22. Senate leaders indicated that the chamber will likely bring up the bill within the next several weeks.

WRDA is historically passed every two years. However, in the past decade, it has only been enacted three times, in 2007, 2014 and 2016.WRDA currently has a backlog of nearly $100 billion worth of projects that have been authorized but have not received appropriations. If passed by Congress, the current WRDA legislation would be added to the list of projects awaiting congressional appropriations.

NACo supports congressional efforts to move WRDA back to a two-year authorization cycle. As major owners, users and regulators of water resources and infrastructure, counties are directly impacted by the policies and funding authorized by WRDA. The legislation addresses county interests related to ports, inland waterways, levees, dams, wetlands, watersheds and coastal restoration.

NACo resources:

NACo letter in support of H.R. 8, click here.

National Association of Counties

By Zach George

Jun. 7, 2018

BDA Submits Comments to the House Ways and Means Tax Policy Subcommittee.

The BDA has submitted written comments to the House House Ways and Means Tax Policy Subcommittee in support of fully reinstating tax-exempt advance refundings and expanding the use of private activity bonds (PABs). The comments can be viewed here.

The comments were submitted in response to a recent hearing titled, "Tax Reform and Small Businesses: Growing Our Economy and Creating Jobs". Specifically, BDA's comments focused on three tax policy goals that Congress must pursue if it is to ensure capital is readily available for priority projects:

- Continue the tax-exemption for interest paid on bonds issued by state and local governmental entities.
- Restore the ability of state and local governments to save taxpayer dollars and generate additional funds for infrastructure and other key initiatives by restoring tax-exempt Advanced Refundings (ARs).
- Expand the use of tax-exempt Private Activity Bonds (PABs).

Bond Dealers of America

June 4, 2018

Banks Reduce Municipal-Bond Holdings for First Time Since 2009.

- **Lenders cut their stakes by $15.8 billion during first quarter**
- **Lower tax rates have lessened the appeal of state, local debt**

U.S. banks reduced their holdings of state and local government bonds for the first time since 2009 after the federal government slashed corporate tax rates, making the securities less valuable to one of the market's key buyers.

Figures released by the Federal Reserve Thursday show that the lenders' holdings of municipal debt dropped by $15.8 billion during the first three months of the year to $554.4 billion. The reduction marks a pullback from buyers that had been steadily expanding their ownership of state and local government securities since the end of the recession, helping bolster demand.

The data confirm the widespread view among Wall Street analysts that tax-exempt debt would be less alluring to banks after the corporate tax rate was dropped this year to 21 percent from 35 percent. Bank of America Corp., Citigroup Inc., JPMorgan Chase & Co. and Wells Fargo & Co. were among those who pared their holdings, according to quarterly filings with the U.S. Securities and Exchange Commission.

The lower tax rate appears to have had less of an impact on insurance companies. The Fed reported that property and casualty insurers' holdings held steady at $327 billion, despite cutbacks that were previously disclosed by some of the biggest companies.

Bloomberg

By William Selway

June 7, 2018

Investors May See Losses of 17% on Otherwise Safe Hospital Deal.

- **Mission Health System is in talks for sale to HCA Healthcare**
- **Provision allows at-par redemption if tax status is changed**

Mission Health System was likely viewed as a relatively safe bet for municipal-bond investors. The not-for-profit hospital system in Asheville, North Carolina, is rated investment-grade and its revenue has climbed in each of the last five years.

But if the system's proposed sale to for-profit HCA Healthcare goes through, investors could suffer losses under borrowing provisions that allow Mission to redeem certain debt at par in the event of a sale that changes the tax-exempt status of its bonds. And that's likely to raise questions about whether investors will continue to accept such provisions in bond deals.

Bonds sold in 2016 by Mission maturing in 2029, one of its most actively-traded securities, were priced at a premium of about 121 cents on the dollar. If the bonds are called at par, that would equate to a 17 percent loss for bondholders. The debt last traded at an average of 110.7 cents on the dollar on June 1.

'Deeply Unhappy'

While the call provision isn't very unusual, the Mission deal is unique because the bonds are trading above par, said Michael Johnson, a research analyst at broker-dealer firm First Ballantyne LLC in Charlotte, North Carolina. Typically, the provision is used to protect investors so they can get their money back if a deal turns taxable, he said.

"In this case, it looks as if it's going to protect the actual company," Johnson said.

Bondholders are "deeply unhappy," said Joseph Rosenblum, director of municipal credit for AllianceBernstein, which according to Bloomberg data is a top holder of Mission's debt.

Questions about the value of such provisions are sure to continue given that mergers and acquisitions are common in the health-care industry, Rosenblum added. "We will likely see more of these," he said. "How much are we willing to accept going forward?"

Numerous Inquiries

No decision has been made by Mission regarding how it will pay, redeem or defease its outstanding debt if the proposed deal goes through, Rowena Buffett Timms, a senior vice president for government and community relations at Mission, said in an emailed statement.

Mission has gotten "numerous" inquiries from investors on the call provisions, which were "clearly" disclosed in bond offering documents, the company said in an April 13 filing. "Mission assumes that (1) investors who purchased any of these bonds were aware of such call provisions and (2) the purchase price or yield at which such investors purchased these bonds (either at the initial offering or in the secondary market) reflected the redemption risks relating to such call provisions," the filing said.

Even if a sale to HCA doesn't go through, Johnson said Mission's bond prices are unlikely to improve given that the call provision will remain an issue, Johnson said.

"It's already proven it's up for sale," he said.

Bloomberg

By Amanda Albright

June 7, 2018, 6:46 AM PDT

[Luxury Dorms Are Struggling to Fill Beds.]

- **Non-profits financed the projects with municipal bonds**
- **Some projects are seeing 'a little bit of stress,' S&P says**

Park West, a 3,400-bed student housing complex near the Texas A&M University campus in College Station has a resort-style rooftop pool, three gyms and lounges with billiard tables, ping pong and flat screen televisions.

What it doesn't have are students — or rather their parents — willing or able to pay as much as $1,000 a month to live there. Just over half the beds at the complex, financed largely by tax-exempt municipal bonds, were filled during the last academic year.

About 360 miles (580 kilometers) north in Norman, Oklahoma, a 1,230-bed residence hall at the University of Oklahoma featuring a "blow dry bar and salon," a market with grass-fed local meats, and a cycling studio is just 26 percent leased, according to a securities filing. It opens in August.

"We have seen some projects go through a little bit of stress," said Jessica Matsumori, an analyst at S&P Global Ratings. S&P has rated about 60 privatized municipal student-housing deals, most of them BBB-, the lowest investment grade.

As universities tap outsiders to finance a dormitory arms race while keeping debt off the books, the Texas and Oklahoma projects underscore the risks to investors of overbuilding luxury accommodations as students and parents become more cost-conscious.

More Bonds

Municipal-bond sales for new student housing projects backed only by rents grew to about $930 million last year, a 45 percent increase from a decade before, according to data compiled by

Bloomberg.

Unable to pay operating costs and service $360 million of bonds with project revenue, the non-profit owner of the Texas A&M complex, National Campus and Community Development Corporation, agreed May 17 to give bondholders more control over the project. Texas A&M also agreed to advertise the complex on its campus housing website.

Last week, S&P downgraded $250 million municipal bonds that financed the University of Oklahoma project to BB. Baton Rouge, Louisiana-based Provident Resources Group, the non-profit that financed the dorm, attributed weak demand to a “lack of creative marketing strategies” and higher rents than other housing, the ratings company said.

Greg Eden, a former public finance-lawyer at Kutak Rock and president and sole employee of Austin, Texas-based National Campus, didn’t return calls seeking comment. Steve Hicks, also a former public-finance attorney and the chief executive officer of Provident, said his group will address the the issues related to the S&P downgrade in the coming weeks and that bondholders will get timely updates.

National Campus has financed housing at Florida International University and Drake University it Iowa. It has also issued debt for a hotel and conference center at Texas A&M. Provident owns student housing at Kean University and Montclair State University in New Jersey, Towson University in Maryland, and North Carolina State University.

The projects are developed and managed by private companies.

Few Restrictions

Few restrictions apply to tax-exempt financings by non-profit entities, said Mark Scott, a former head of the U.S. Internal Revenue Service’s Tax-Exempt Bond Office. “The real question is why an entity that builds luxury apartments is entitled to non-profit status,” he said.

Park West, which is closer to Texas A&M’s 102,733-seat football stadium than to academic buildings, opened at the flagship school in fall 2017. The 5,200 acre campus, about 90 miles northwest of Houston, has more than 55,000 students and enrollment has grown at an average annual 2.7 percent per year, between 2005 and 2015.

A market study that accompanied the 2015 bond offering for Park West said there was ample demand for the project. But Park West only rented 54 percent of beds in the fall semester and 52 percent in the spring, according to S&P.

Management told S&P the market study didn’t capture all the new housing supply coming on line in the area surrounding the campus. S&P downgraded the bonds eight levels to CCC in December.

Park West competes in a Class-A off-campus student housing market of 25,000 beds that grew an average of nine percent a year between 2014 and 2017, triple the annual enrollment growth at Texas A&M, according a market assessment commissioned by National Campus. More than 2,400 beds are slated for delivery in fall 2018.

“The top end of the market remains extremely competitive,” according to an evaluation by Meyers Research. Rents declined 3.2 percent in 2017, the firm said.

Rents Down

To fill beds, Park West cut rents on many units below $600 a month, according to Meyers. Almost 90 percent of beds are pre-leased for the fall semester, but the revenue shortfall means that the project will need to draw on reserves through 2021 to pay debt service while gradually raising rents.

The forbearance agreement gives bondholders, led by Nuveen Asset Management, the right to review and approve budgets and get weekly leasing reports. Bondholders agreed to allow revenue to pay operating costs first and then debt service.

John Miller, Nuveen's co-head of fixed income, declined to comment. Nuveen owns 43 percent of the bonds, according to data compiled by Bloomberg. The Vanguard Group is the second-biggest holder with about 17 percent.

Vanguard spokesman Freddy Martino also declined to comment.

Bloomberg Business

By Martin Z Braun

June 7, 2018, 5:58 AM PDT Updated on June 7, 2018, 7:27 AM PDT

— With assistance by Sowjana Sivaloganathan

A Template for Fixing America's Public Pensions.

One city deep in the heart of horse racing country may have some lessons for the rest of the U.S.'s underfunded retirement systems.

Kentucky, home to arguably the most famous annual horse race on the planet, has produced a lot of remarkable turnaround stories over the years. In May 2009, when the world was mired in a recession, a little-known contender called Mine That Bird had 50-1 odds to win the Kentucky Derby. In a competition that's earned its reputation as "the greatest two minutes in sports," the horse weaved past 18 other thoroughbreds to cross the finish line first.

A lesser-known dark-horse tale happened a couple of years later about 80 miles east of the derby grounds, still in Kentucky's equine country. Instead of a race, however, the odds were on whether Lexington's newly elected mayor would be able to bring the city's mismanaged pension system back from the brink of a crisis.

There was no such thing as a sure bet in this case. And yet the pension reforms that Mayor Jim Gray, a former construction company chief executive officer elected in 2010, has been able to achieve might serve as an example to other U.S. municipalities whose retirement systems are in deep debt. The Federal Reserve estimates that public pensions in the U.S. are underfunded by about $1.6 trillion. Over the past several years, pensions have been battered by a stock market crash, a recession, and a wave of workers reaching retirement age.

Continue reading.

Bloomberg Markets

By Amanda Albright

June 5, 2018, 2:00 AM PDT

[California Cities Keep Declaring Fiscal 'Emergencies,' and Investors Are in on It.]

Communities in the Golden State are using a loophole and citing financial distress so they can put new taxes on the ballot. Pasadena is exploiting it to tax pot.

The phrase may trigger images of desolate streetscapes and fiscal pain, or evoke a new risk for investors who buy municipal bond funds in search of tax-exempt income. But for many Golden State cities, the words signal opportunity. Because of rules designed to limit tax increases, cities can get proposed tax hikes on Tuesday's primary ballot only by declaring a crisis. At least two have done so this year, following at least 50 since 2008. Muni bond investors and analysts are in on the ruse—in many cases giving it the equivalent of a shrug. To get a tax question before voters this week, Santa Cruz has issued such a declaration for the third time in 13 years. Over that time, the Monterey Bay beach town's bond rating has improved.

Unlike other states, which lay out a process for a town to be deemed in distress, California leaves it to municipalities themselves to determine. There's no checklist or external agency deciding whether a situation meets the layman's understanding of the words "fiscal" and "emergency." And there are few consequences. Pasadena, the triple-A-rated home of the Rose Bowl, declared a fiscal emergency so it can ask voters on Tuesday to approve a cannabis tax. Otherwise the palmy town north of Los Angeles, where tourists stroll past Victorian estates and historic landmarks, would have to wait for the 2020 election.

"They're nowhere close to being insolvent or threatening to file for bankruptcy," says Eric Friedland, director of municipal research for Lord Abbett, which manages about $20 billion in municipal bonds, including for a mutual fund that specializes in California debt. "This is more of brinkmanship."

In California, government needs often run up against strong anti-tax rules that began with Proposition 13, a landmark decision by voters in 1978 to limit property tax hikes. Then, as cities turned to fees and other levies, voters 18 years later passed Proposition 218 to ensure those were subject to their approval as well. Now a town that wants a new general tax or a targeted increase can ask voters only during an election in which the members of the governing body are running. The exception: when there's a unanimous vote by a governing body declaring an emergency.

No agency tracks the declarations, but after the last recession there was a spate from Colusa County to Los Angeles, according to Moody's Investors Service. Eric Hoffmann, senior vice president at Moody's, calls such moves a "pinkish flag." A fiscal emergency may actually show that a city is heading off a crisis, he says.

That's partly the case for Santa Cruz officials, who anticipate a gap of as much as 11 percent of the general fund in fiscal 2022 as revenue slows and costs such as pensions rise. They're asking voters to approve a sales tax increase to 9.25 percent from 9 percent. The referendum normally would have gone before voters in November, says Marcus Pimentel, the city's finance director. But because the county may float a tax to address housing at that time, the City Council declared an emergency to get its ask considered in June. "They didn't want to put anything that risked voter fatigue on tax measures for November," says Pimentel. Even though it's the third time the city has pulled the maneuver, its bond rating remains a strong AA. "It really doesn't impact our rating like somebody defaulting on their home on a credit report," he says.

A consultant eased Pasadena's concerns that its first emergency would hurt its AAA rating from S&P, says Finance Director Matt Hawkesworth. With recreational marijuana legal in California as of January, the city has to pay to regulate the industry. "We don't have the financial resources to support the work that we're required to do," he says.

Cities are abusing the system, says Jon Coupal, president of the Howard Jarvis Taxpayers Association, which pushed for the restrictions on tax increases. "Patently inappropriate," he says of Pasadena's move in particular. "Very rarely is there a true emergency."

In other states, a municipal fiscal emergency is a grave event. Michigan can install emergency managers with sweeping power to overhaul finances and services. Their decisions can be momentous, for better or worse. The state-appointed viceroy in Detroit pushed a plan to leave a once-record bankruptcy that cut pensions and payments to bondholders. But cost-cutting decisions by an emergency manager in Flint led to the city's drinking-water crisis in 2014. New Jersey took over the finances of the seaside resort town of Atlantic City in 2016, yet it remains at risk of bankruptcy.

In California, an emergency declaration can also allow a municipality to skip an outside evaluation of its finances and file immediately for court protection. San Bernardino did just that in 2012. But cities that aren't intent on filing for bankruptcy with their declarations must contend with reputational risk and local ire. At a recent meeting in Moraga, a quiet San Francisco suburb where the typical home sells for $1.3 million according to Zillow, council members discussed fury from their residents. Last year they declared a fiscal emergency when the costs of a sinkhole and a bridge failure drew down their savings. Even as they rescinded the action, most of the members continued to insist it was the right move.

"We had everything but the locusts attacking us at that moment," said Vice Mayor Teresa Onoda during the meeting.

Bloomberg Businessweek

By Romy Varghese

June 4, 2018

— With assistance by Steven Church

[How Long Can a State Go Without Repairing Roads and Bridges?]

Mississippi's increasingly unreliable infrastructure — its crumbling roads and hundreds of deteriorating bridges that have been closed or weight-limited — is straining the state's businesses and local governments. It's no wonder, then, that they, along with transportation advocates and their allies, have pressed the legislature to do something about it. Yet year after year, lawmakers in Jackson have come up empty-handed.

This year was no different, even though lawmakers came tantalizingly close to a road improvement package. A week or so after they failed to pass a fix-up plan, Gov. Phil Bryant announced that the state Transportation Department would immediately shut down 83 locally owned bridges. Federal inspectors had found that the bridges — most of which were built with timber parts and located in rural areas — were deficient and unsafe for vehicular traffic. Since then, more bridges have been added to the list. All told, some 500 across the state are out of service.

"It is probably the No. 1 problem the citizens are talking about today," says state Sen. Willie Simmons, a Democrat who chairs the chamber's Highways and Transportation Committee. Two of the counties in Simmons' Mississippi Delta district shut down more than 30 bridges each. Those closures can reroute residents on 40- to 50-mile detours, and they can prevent firefighters and paramedics from getting to residents quickly. "Everybody agrees that we have a crisis, and it needs to be addressed," Simmons says. "The problem is, we need to find the ways and means to pay for it."

Continue reading.

GOVERNING.COM

BY DANIEL C. VOCK | JUNE 2018

S&P: Too Soon To Determine How Nuclear And Coal Subsidies Will Affect Public Power And Electric Cooperative Utility Ratings.

On June 5, 2018, S&P Global Ratings said that imposing possible subsidies for some coal and nuclear power units could affect ratings on U.S. public power and electric cooperative utilities, but without a formal proposal to analyze, we cannot determine the credit impact at this time.

Continue Reading

Jun. 5, 2018

With Initial Support from NCPPP, FTA Issues Final Rule to Encourage Development of Transit P3s.

The Federal Transit Administration (FTA) recently announced the issuance of a final rule that describes new, experimental procedures to encourage increased project management flexibility, and new project revenue streams for public transportation capital projects. The rule, titled "Private Investment Project Procedures," is also designed to spur innovation in project funding, efficiency and timely project implementation.

Notably, FTA's primary goal behind in issuing this final rule, which takes effect June 29, is to address impediments to the increased use of public-private partnerships and private investment in public transportation capital projects. Particularly, FTA said, that it anticipates using the lessons learned from these experimental procedures to develop more effective approaches to including private participation and investment in project planning, project development, finance, design, construction, maintenance, and operations.

The new rule, allows public project sponsors to petition for modifications to some federal, non-statutory requirements that pose impediments to P3 development. NCPPP Executive Board Member John Smolen, partner at Nossaman LLP wrote in Nossaman's Infra Insight Blog that "FTA wants to encourage modifications to these federal requirements that will 'accelerate the project development process, attract private investment and lead to increased project management flexibility, more innovation, improved efficiency, and/or new revenue streams.'

"FTA is not trying to change the rules themselves," Smolen explained. "Rather, it is using a flexibility strategy that lends itself to project-specific sensitivity."

When FTA issued the proposed rule in July 31, 2017, the agency noted that it had sought to encourage the development of transit P3s by co-sponsoring with NCPPP to conduct "eight public workshops on P3s in transit and a one-day workshop for FTA employees. Each workshop attracted almost 100 participants and provided technical assistance to transit agencies, local officials, and consultants on legal and regulatory issues, financing, and contract matters related to P3s," FTA reported.

These workshops are just one example of the conferences, workshops, and other educational events NCPPP conducts each year to promote P3s as an efficient, cost effective procurement approach for many public projects. For more information about NCPPP's educational offerings, visit our website.

Illinois Governor Signs 'Balanced but Imperfect' FY 2019 Budget.

CHICAGO, June 4 (Reuters) – Illinois Governor Bruce Rauner signed into law on Monday a $38.5 billion, fiscal 2019 budget that he called balanced but not perfect.

The spending plan for the fiscal year that begins July 1 breezed through the state legislature last week with strong bipartisan support in marked contrast to previous years. It was the first full-year budget approved by Rauner since he took office in 2015.

An impasse between the Republican governor and Democrats who control the legislature left Illinois without complete budgets for an unprecedented two straight fiscal years. The stalemate finally ended when lawmakers enacted a fiscal 2018 budget and hiked income tax rates over Rauner's vetoes last July.

Revenue from the tax increase is incorporated in the new budget. Rauner, who is running for reelection in November, has vowed to roll back the tax increase.

"This budget is a compromise. It's not perfect," Rauner told reporters. He complained that the spending plan does not go as far as he would like to cut unfunded pension liablities, and does little to address the state's unpaid bill backlog that stood at $7 billion on Monday.

The budget adds $350 million to a new K-12 school funding formula enacted last year, increases higher education spending by 2 percent, reduces cuts in state aid to local governments, and appropriates $1.3 billion to pay previously incurred expenses. About $270 million from the sale of the state's main office building in Chicago is once again counted on in the budget even though a transaction remains unrealized.

The spending plan relies on a voluntary, bond-financed buyout of certain pension benefits that could save the state about $423 million.

Illinois, which is struggling with a $129 billion unfunded liability, has been unable to reduce retirement benefits for workers in its five pension funds due to a constitutional prohibition enforced by state courts.

The on-time budget was welcome news for the U.S. municipal bond market, where Illinois general obligation bonds fetch higher yields than any state.

Illinois' credit spread over Municipal Market Data's benchmark triple-A yield scale for 10-year bonds dropped 24 basis points to 165 basis points late last week.

The enacted budget faces scrutiny by credit rating agencies, which rate Illinois a notch or two above the junk level.

"Our focus is on the state's ability to maintain budgetary balance over multiple years, and whether this budget makes progress in the state's long-term fiscal sustainability," Fitch Ratings analyst Eric Kim said on Friday.

(Reporting By Karen Pierog; Editing by David Gregorio)

S&P: Despite An On-Time Budget For Fiscal 2019, It's More Of The Same In Illinois.

Timely enactment of a fiscal 2019 budget in Illinois is consistent with the stable outlook S&P Global Ratings currently maintains on the state's credit rating. At 'BBB-', however, the general obligation rating incorporates our view of the state's longer-term vulnerabilities and remains the lowest possible rating within the investment grade categories.

Continue Reading

Jun. 5, 2018

S&P: U.S. Charter School Sector Continued To Stabilize In Fiscal 2017, As Median Financial Ratios Show Minimal Change.

S&P Global Ratings maintains 286 public ratings in the charter school sector. The key financial medians for U.S. charter schools were consistent with those from the prior year, reflecting both a slowdown of rated new issuances and the sector's stabilization within our rated universe.

Continue Reading

Jun. 7, 2018

Movement to Get Public Money Out of Wall Street Comes to Wall Street.

Winsome Pindergrass wants a better chance at securing financing to buy a home. At a June 5 rally in front of the New York Stock Exchange, the 59-year-old Brooklyn resident talked about how three-quarters of her monthly income goes to her $2,200-a-month rent, which has nearly doubled since

2010. She's watched her neighbors get pushed out by rising rents.

"We don't even recognize our neighborhoods anymore," she said. "The affordable apartments are all gone, or they are disappearing fast."

Pindergrass was one of dozens of residents and community organizers who were gathered in front of the stock exchange, on Wall Street, to launch the Public Bank NYC Coalition. Made up of more than two-dozen groups, the coalition is calling for the creation of a city-owned bank that would serve as the repository of all local taxes, fees, fines and other municipal revenue — in contrast with the current system in which around 20 banks are currently authorized to provide bank accounts for New York City government as well as its various agencies and affiliated entities.

Continue reading.

NEXT CITY

BY ALINE REYNOLDS | JUNE 11, 2018

U.S. Trade Policy Fears and the Specter of Stalled Growth Drive Market Volatility.

Interest Rate Volatility

Once again bond traders participated in a volatile interest rate environment week. U.S. 10 year interest rates bounced from 2.92 to approach 3.00% by mid week and then returned back to 2.92% by the close of trading today. The volatility this week was driven by policy fears, specifically that trade tension with US trading partners could stall the pace of economic growth.

Strong Demand for California Debt

Municipal New Issue Supply was twice the YTD weekly average ($4.9bn) with approximately $10 billion coming to market this week.

California debt continues to have the strongest demand and California Municipal bonds continue to perform well, exemplified by the reception for $1.1 billion California Municipal Finance Authority AMT deal. The purpose of the deal is to design, construct, finance and maintain a 2.25 mile elevated people mover system at LAX.

In addition, the borrowing rate in California is decreasing. AAA rated City of San Francisco bonds came to market in the 5 year part of the curve at 26 basis points through AAA National Benchmark. Just a month later, AA+ Southern California Metro Water came to market with a new issue on Tuesday June 5th at 28 basis points through benchmark rates.

Election Results

On the policy front, the California voters approved a $4.1 billion state bond measure in Tuesday's primary election. Neighborly is most excited about Prop 68 authorizing $4 billion in general obligation bonds for state and local parks, environmental protection and restoration projects, water infrastructure projects, and flood protection projects. The measure requires that between 15% and 20% of the bond funds be dedicated to projects in communities with median household incomes less than 60% of the statewide average. The largest amount of bond revenue, $725 million, was earmarked for neighborhood parks in park-poor neighborhoods.

Posted 06/08/2018 by Homero Radway

Neighborly Insights

States Finalizing Fiscal 2019 Budgets.

As of June 8, 38 states have enacted a new or revised budget for fiscal 2019. 46 states begin fiscal 2019 on July 1 (New York began on April 1, while Texas begins on September 1 and Alabama and Michigan on October 1). 12 states have yet to enact a budget for fiscal 2019. In addition, another 2 states that previously enacted a two-year budget for fiscal 2018 and fiscal 2019 are currently considering a revised or supplemental budget proposal. Last year, 17 states enacted budgets covering both fiscal 2018 and fiscal 2019.

For the most current information on states' budget status, 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.

National Association of State Budget Officers

By Brian Sigritz posted 05-09-2018

Municipal Bonds Weekly Market Report: Unemployment Hits 18-Year Low at 3.8%

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 decreased again this week.
- Muni bond funds break the inflow trend with an outflow this week.
- Be sure to review our previous week's report to track the changing market conditions.

Continue reading.

municipalbonds.com

by Brian Mathews

Jun 05, 2018

[Taxpayers Lose in the Bond Market When Local Newspapers Close.]

- **Academics find interest costs rise when newspapers close**
- **With less local oversight, investors may foresee more risk**

On March 14, employees at the Denver Post were ushered into a meeting and told that the paper's owner, hedge fund Alden Global Capital, was implementing a fresh round of cost cuts at the Pulitzer Prize-winning daily that would eliminate nearly a third of the newsroom staff.

That retrenchment isn't just costing employees their jobs. It may also cost Denver taxpayers the next time the city raises money in the bond market.

A study by economists from the University of Notre Dame and the University of Illinois at Chicago found that investors demand higher yields to buy the bonds of governments in metropolitan areas where newspapers have shut down. They argue that's likely because reducing the number of reporters rooting out mismanagement and corruption allows governments to run less efficiently, which is reflected in bond-market prices.

Pengjie Gao, a professor at Notre Dame's business college, and Dermot Murphy and Chang Lee of the University of Illinois analyzed the results from 204 counties where the number of newspapers dropped to two or less between 1996 and 2015. They then compared the yields on bonds from governments in those locales with those from counties that didn't see such closures.

They concluded that the shutdowns caused bond yields to rise between 0.05 and 0.11 of a percentage point. While that appears small, it can add up to a lot in a market where state and local governments borrow hundreds of billions of dollars a year. For a $65 million debt issue, that amounts to about $71,500 annually — enough to cover a teacher's salary — or about $2 million over the life of a 30-year bond.

"That increase can really represent a higher cost to be paid to raise the same amount of money," Lee said.

The local newspaper industry has been decimated by the rise of the Internet. The industry lost more than half its jobs from 2001 through September 2016, cutting employment to about 174,000 from 412,000, according to the U.S. Labor Department.

That's left a major gap. It was the Los Angeles Times, not local law enforcement, that revealed that officials in Bell, an impoverished suburb, were rewarding themselves with massive pay packages — resulting in criminal charges. The Securities and Exchange Commission also came down on Harvey, Illinois after the Chicago Tribune ran a series of articles documenting mismanagement in the crime-ridden suburb.

JT Thompson, a portfolio manager at Aquila Group of Funds who oversees about $400 million in Utah bonds, said he relies on local newspapers when judging whether there's support for a project being financed by municipal bonds — something that would diminish the risk of the project failing.

"There has been some really good finds that you can pick up because there's support in the community for a redevelopment area, and knowing that you know the tax base will be behind it – there's the value in the local papers," he said.

The cuts at the Denver Post comes less than a decade after its major rival, the Rocky Mountain News, shut its doors.

When newspapers can't bring their resources to local communities issues go uncovered, said Jesse Paul, politics reporter at the Denver Post. He called the business of journalism a food chain, in which a local paper reports on a topic, then it's expanded upon by a statewide paper such as the Denver Post and nationalized by a paper with multi state reach.

"If that food chain gets disrupted – whether it's on the small weekly newspaper level, up to the Denver Post, these towns become black holes."

Bloomberg Markets

By Danielle Moran

June 5, 2018, 5:52 AM PDT

Why Newspaper Closures Lead to Higher Government Costs and Inefficiency.

You know how democracy dies in darkness? A new study says bureaucratic effectiveness might, too.

Local newspaper closures can lead to higher borrowing costs and more government inefficiency, according to a working paper made public last month—and the authors say it's bad news for cities and their taxpayers.

"[The findings] mean the taxpayers are paying higher expenses to finance the same projects," Chang Lee, an assistant professor of finance at the University of Illinois at Chicago and one of the study's authors, told Chicago. And when it becomes more expensive to borrow money, public works projects, like the construction of schools, hospitals, and roadways, might never even get off the ground, adds Dermot Murphy, also an assistant professor of finance at University of Illinois-Chicago and an author of the paper.

The idea for the study came from a 2016 Last Week Tonight with John Oliver segment on the implications of the decline of newspaper journalism, in which Oliver likens not having reporters at government meetings to "a teacher leaving her room of seventh graders to supervise themselves." Oliver's point was this: When a newspaper closes, the community loses an important watchdog.

Continue reading.

CHICAGO MAGAZINE

BY TERESA MANRING

PUBLISHED TUESDAY AT 11:56 A.M.

Coalition Releases 2018 New Markets Tax Credit (NMTC) Progress Report.

Report highlights NMTC project data from 2017, including 52 healthcare facilities, 69 manufacturers, 26 facilities for youth and families, and 23 vocational training centers

WASHINGTON, June 6, 2018 /PRNewswire-USNewswire/ — The New Markets Tax Credit Coalition today released its 2018 New Markets Tax Credit (NMTC) Progress Report, the fourteenth edition of the report—providing a survey of NMTC activities in 2017. As in the past, the report documents the flexibility and importance of the NMTC in meeting the needs of the distressed communities where it is deployed and helping to create jobs and grow business opportunities, from more traditional industry and community sectors to new and cutting-edge technology. Despite considerable uncertainty associated with legislative battles on Capitol Hill in 2017, demand by investors remained at record levels despite the uncertainty of tax reform.

"The report findings show that the competition for credits is fierce, and continues to drive efficiency, investment and jobs," said Kermit Billups, NMTC Coalition president and executive vice president of Greenline Ventures. "Last year's projects, once again, raised the bar even higher. We're happy to report the NMTC helped create 60,000 jobs through $5.8 billion in total project investment."

The report was prepared for the NMTC Coalition, a national membership organization of Community Development Entities (CDEs) and investors organized to advocate on behalf of the NMTC. Every year since 2005, the NMTC Coalition surveys CDEs on their work delivering billions of dollars to businesses, creating jobs, and rejuvenating the parts of the country that have been left behind. The annual NMTC Progress Report presents the findings of the CDE survey and provides policymakers and practitioners with the latest trends and successes of the NMTC.

"The Coalition's annual survey asks CDEs to report on the deployment of their allocation, investor trends, and a variety of community impact metrics," said Coalition spokesperson Bob Rapoza. "The findings clearly demonstrate that the NMTC continues to deliver capital to the communities left behind by the changing economy, with 83 percent of projects in severely distressed communities in the last year—far exceeding statutory requirements. Moreover, the program is delivering a significant 'bang for the buck' for taxpayers in terms of the jobs, amenities, community facilities, and tax revenue it generates."

Eighty-nine CDEs participated in the 2018 survey and provided data on their progress raising capital, lending, and investing for 271 projects in 2017 with the NMTC. All told, the report analyzed 81 percent of the NMTC activity in 2017, or about $3.9 billion out of $4.8 billion. Respondents reported projects in 45 states plus the District of Columbia, and they ranged from a public library to a sprawling, $200 million multi-use campus for entrepreneurship.

"As we have seen year over year, the NMTC has unleashed an unprecedented amount of investment in areas struggling with high unemployment and poverty," added Rapoza. "State by state, community by community, the impact and flexibility of the NMTC continues to create economic opportunity in every corner of the nation."

For examples of how the NMTC is making an impact in each state, see the NMTC Coalition's NMTC at Work in Communities report or check out its Project Profile Map.

Download a copy of the report at www.nmtccoalition.org.

How the New U.S. Tax Law Affects Community Development Projects.

As Congress cobbled together the biggest tax overhaul since 1986, they nearly wiped out the essential sources of funding for large-scale community development projects—namely, three federal tax credit programs that attract private investment for neighborhood revitalization. Developers, financiers, and municipalities pushed back and managed to keep most of what they wanted intact. But now they are dealing with what some of them describe as the new tax law's unintended consequences.

One of those unintended consequences: a signature component of the tax act—the reduction of the tax rate on corporations to 21 percent from 35 percent—threatens to diminish the relative value of tax credits. Developers qualify for tax credits from the federal government to help raise equity for their projects. Corporations typically invest in the projects and use the tax credits to offset their federal tax liability. But with the lower tax rate now in place, developers fear that investor appetite for the tax credits may wane.

At issue are the low-income housing tax credits (LIHTCs) that help finance the construction and upkeep of affordable rental units, the federal historic tax credits (HTCs) that preserve historic properties, and the New Markets Tax Credits (NMTCs) that support economic growth in impoverished communities. Early drafts of the tax bill would have scaled back or eliminated all of these tax incentives; when they survived, many developers were relieved—but then braced themselves for more setbacks, says Phillip Kash, a principal at HR&A Advisors, a Washington, D.C.–based consulting firm that specializes in real estate services. "Nobody died, but everybody got hurt," says Kash, a leader of the firm's affordable housing team. "We are just so relieved that we're willing to swallow the pain and find ways to deal with it."

While the three tax credit programs are not the sole source of funding for any one project, they are widely viewed as the pillars of massive community development projects, often used in combination with other financing tools, says Aaron Seybert, social investment officer at the Kresge Foundation in Troy, Michigan. That is why the industry is closely watching how these public/private partnerships will fare. "When you cut a few inches off the leg of a table, you can never be sure how things will calibrate," says Seybert, a former JPMorgan Chase community development banker. "Right now, we just don't know how the market will settle."

Low-Income Housing Tax Credits

In the affordable housing arena, LIHTCs are crucial because they enable developers to build homes with less debt and thereby offer lower rents. But the industry almost lost a key portion of the program late last year when the House version of the tax bill called for eliminating private activity bonds, which more than half of affordable housing projects have been using recently to qualify for the LIHTC. Scrapping the bonds would have effectively wiped out as much as two-thirds of affordable housing production—a loss of roughly 788,000 to 881,000 rental units over ten years, according to Novogradac & Company, an accounting firm based in San Francisco, California, that specializes in real estate services.

Even before Congress took up its tax bills, some real estate projects were affected by the anticipation of lowered tax rates. Rodger L. Brown Jr., managing director of real estate development at Preservation of Affordable Housing Inc. in Boston, says a bank that planned to invest in one of his projects pulled its letter of intent off the table just a few days after Donald Trump was elected president. The bank expected that he would soon make good on his campaign promise to slash the corporate tax rate, and the bank wanted Brown's firm to lower the price of the low-income housing tax credits in the deal.

"By then, it was too late in the process for us to rearrange our capital stack," Brown notes. "The pricing risk suddenly was shifted from the investor to us. To quote them, they said: 'We want you to share in our pain.'" To make the deal work, Brown says his nonprofit firm agreed to reduce the tax credit pricing if the corporate tax rate went down. It honored that commitment, which has left little room to pay for construction change orders and may cut into the firm's development fee by hundreds of thousands of dollars by the time the project is completed, Brown says.

Many developers say they were already struggling to deal with the shortage of federal urban development funds, high land costs, and other challenges before the lower corporate tax rate exacerbated matters. They are forced to lean more heavily on mayors and county executives for financing help at a time when many localities are cash-strapped, and they are looking for possible workarounds.

Stan Wall, a partner at HR&A Advisors, says his firm is advising housing authority officials in D.C. on a plan to redevelop Greenleaf Gardens, an aging public housing complex that spans several blocks in the city's southwest quadrant. The goal is to integrate about 1,200 new market-rate units with 500 new low-rent public housing units for the complex's current residents. Revenue from the market-rate units would help subsidize the public housing so that those tenants' rents do not rise. To fully finance the deal, tax credits must be used along with other funds. But now the tax credits will bring less to the table, Wall says, so developers and housing officials must search for other ways to close the funding gap—something that is easier to do in the District, where land values are high, than in communities where land values are low. "You'll be seeing more frequent use of public land value writedowns, property tax abatements, tax increment financing [TIF], and other funding tools in D.C. and across the nation," Wall says.

The scope of any potential impact to tax credit equity pricing requires insight into the long-term tax positions of current investors, says Peter Nichol, managing director of Pillar Finance, an affordable housing lender in San Francisco. Investors receive LIHTCs over a ten-year period, "so if they planned on using previously acquired tax credits to offset a tax liability of $100 million over ten years, but their tax liability goes down to $60 million, they're sitting on extra tax credits and might decide to put their current investing on hold," Nichol says.

Michael Novogradac, managing partner in the San Francisco office of Novogradac & Company, projects that the supply of affordable housing will shrink by 235,000 homes over the next decade with the lower corporate tax rate in place. But, many factors could affect that baseline projection for better or worse, he notes. On the plus side, housing regulators recently announced that Fannie Mae and Freddie Mac will reenter the LIHTC market in a limited way as equity investors. Affordable housing may also get a boost from a provision in the new tax law that creates tax advantages for private investment in low-income "Opportunity Zones," a program that has yet to take shape. But other provisions in the tax law that are not directly tied to tax credits could nonetheless tilt investment dollars away from such credits. "My general belief is that the headwinds are going to overwhelm the tailwinds," Novogradac says. "But that has yet to be seen."

Historic Tax Credits

While the corporate tax rate change could hurt federal historic tax credits, disruption in that market is more directly tied to changes in that program's prized 20 percent tax credit, which helps finance the rehabilitation of historic properties that will be used for commercial purposes.

Through this Reagan-era program, the federal government awards to developers historic tax credits that cover 20 percent of eligible renovation costs for a historic property. For instance, if a developer buys a historic building for $1 million and spends $1 million renovating it, the government would issue $200,000 in tax credits to the developer for renovation costs. Previously, the credits would fully vest during the year the project opened its doors. But starting January 1, 2018, under the new tax law, the credits will fully vest in installments over five years.

That structure threatens to diminish the value of the credits for impatient investors, who may not be interested in a five-year commitment. With the change pending in November 2017, developers rushed to close on as many deals as possible by year's end. (Developers were scrambling to get deals done since September, when Republicans released their tax reform framework, which would have cut the entire historic tax credit program. On November 12, the Senate Finance Committee's version of the tax bill kept the 20 percent program but parceled it out over five years. The worst-case scenario disappeared, but developers were still rushing to close by December 31, 2017, to get the more favorable one-year tax credit.)

Jonathan D. Shaver, a commercial real estate broker in New Orleans who specializes in the brokerage of historic properties, says that one of his clients put a building in New Orleans under contract the evening of December 27 and closed the deal early December 29, which he says was the fastest turnaround he has been involved in during his eight years on the job. By then—the end of 2017—industry experts were projecting a 7 percent to 15 percent shrinkage in equity raised through the tax credit after the five-year structure is in place. "That loss has to come from somewhere, whether it's the seller taking less, the investor or developer taking a lower rate of return, or the tenant paying a higher rate," Shaver says. "For the majority of projects, it just makes it harder to bring them to fruition."

The pace of purchases has slowed down as the deals that closed last year are now entering the construction phase, says Robert Lay, a partner in Atlanta at Sixty West, which develops commercial historic properties and syndicates federal and state tax credits. It may take a year or so for activity to pick up again. Investors are taking a step back to assess their next move, Lay says. They are trying to wrap their minds around how the new tax law in general—and the tax credits in particular—will affect their tax liability. They also are waiting for regulatory guidance to clarify technical questions as they decide which tax credits to invest in, if any.

Given that investors will have roughly a one-year window to think through their strategy as existing projects make their way through the pipeline, Lay says he is hopeful that there will be a relatively smooth transition. "I'm not saying it's going to be effortless or painless or without its headaches," Lay says. "But it won't be a sky-is-falling scenario."

That scenario unfolded late last year, when the House of Representatives adopted a version of the tax bill that scrapped the federal historic tax credit program, including a seldom-used 10 percent tax credit for the renovation of historic buildings erected before 1936. The National Trust for Historic Preservation and other industry stakeholders coordinated a massive letter-writing blitz to Congress and a social media campaign to save the program. Key lawmakers rallied to their side, and Congress ultimately kept the 20 percent program alive, but not its 10 percent counterpart.

New Markets Tax Credit

The New Markets Tax Credit, which lures private investment to some of the nation's poorest communities, faced a similar fate. While the affordable housing and historic properties tax credit programs were codified into law in 1986, the NMTC must be reauthorized by Congress every few years. It was set to expire in December 2019, but its supporters believed it would be extended again as it has been several times before with wide bipartisan support since its creation in 2000.

Instead, the House version of the tax bill called for a repeal of the remaining two years of the program. That proposal made no sense, says Bob Rapoza, spokesman for the New Markets Tax Credit Coalition in Washington, D.C. Between 2003 and 2015, the program had helped finance nearly 2,000 community services and facilities, such as hospitals, schools, daycare centers, and grocery stores. It had generated more than 1 million jobs during that time and lured about $82 billion in public and private investments to credit-starved areas.

The cost of this program to the federal government is more than offset by the tax revenue and economic activity it spurred, Rapoza says. Getting rid of it would not have reaped big savings, only $1.7 billion over a decade in the $1.5 trillion tax package.

The program's repeal did not make its way into the new tax law, and supporters of the NMTC are now rallying behind two measures in Congress that would make the tax credit program permanent, possibly within the next two years. A permanent authorization would help bring certainty for investors and developers, who often combine the NMTC with other sources of capital, including tax-exempt bonds and community development block grants (CDBGs) funded by the federal government. As the federal funds continue to shrink, the tax credits emerge as more critical than ever, supporters say.

"The community development world has been working in this moment of constrained federal resources for the past three decades," Rapoza says. "Tax credits have served to fill at least some of the hole created by the cuts to federal grant programs."

Urban Land Magazine

By Dina ElBoghdady

June 4, 2018

S&P Credit FAQ: Not-For-Profit Health Care Organizations and the Impact From A Revenue Recognition Accounting Rule Change.

S&P Global Ratings explains the credit implications of a recent accounting rule change on U.S. not-for-profit health care organizations.

Continue Reading

Jun. 5, 2018

Why Cities Can't Stop Poaching From One Another.

It's not just sports franchises: Tax incentives to lure companies tend to help politicians, but they don't really make economic sense.

SAN FRANCISCO — Near the bottom of the lengthy ballot San Francisco voters considered this week, in this state famous for its abundant and oddball ballot initiatives, Proposition I asked voters to establish a policy of not coveting other cities' sports teams.

The measure was part apology for poaching the Golden State Warriors from Oakland, part declaration of city principles ("San Francisco Will Not Endorse or Condone the Relocation of Any Team With an Extensive History in Another Location"). Voters, who said yes to several tax increases, looked at this largely symbolic measure and voted "no."

That result was perhaps predictable; coveting what others have is implicit city policy nearly everywhere. The doctrine explains why corporations are so successful at extracting tax breaks from competing communities, why sports teams know their relocation threats usually work, why Amazon's HQ2 sweepstakes has prompted such a bloated bidding war.

Continue reading.

The New York Times

By Emily Badger

June 8, 2018

"Issue Snapshots" and The Wayback Machine.

The IRS recently sent out an email (to those of you brave enough to willingly put yourselves on a government email list – rather like those intrepid souls who voluntarily follow @CIA on Twitter), regarding its "Issue Snapshots" webpage. The email lists the latest Snapshots, but the full list can be found at the bottom of the page here.

The IRS says that Issue Snapshots are not "official pronouncements of law or directives" (unclear what the difference between those two things is for this purpose). Issue Snapshots "cannot be used, cited or relied upon" as either "law or directives." They are intended to "provide an overview of an issue and are a means for collaborating and sharing knowledge among IRS employees." In essence, we are being allowed a window into the IRS's employee education program. Although the Snapshots may lack the comedic content of certain other employee training programs, and although some of them are rather untimely against the backdrop of recent legislative changes, they are an interesting glimpse into topics that the IRS thinks are worthy of clarifying for its employees. They may also provide hints as to likely future audit targets (the Issue Snapshots usually contain a section ominously called "Issue Indicators or Audit Tips").

Continue reading.

The Public Finance Tax Blog

By Johnny Hutchinson on June 6, 2018

Squire Patton Boggs

TAX - COLORADO

Colorado Union of Taxpayers Foundation v. City of Aspen

Supreme Court of Colorado - May 21, 2018 - P.3d - 2018 WL 2295585 - 2018 CO 36

Taxpayers foundation brought declaratory judgment action against city, alleging enactment of city ordinance that required grocers to charge customers a $0.20 "waste reduction fee" on disposable paper bags, passed without first obtaining voter approval, violated the Taxpayer's Bill of Rights (TABOR).

The District Court granted summary judgment in favor of city. Foundation appealed. The Court of Appeals affirmed. City petitioned for writ of certiorari, which was granted.

The Supreme Court of Colorado held that:

- Foundation had associational standing, and
- Purpose of ordinance was not to raise revenue for the general expenses of government, and thus waste reduction fee was not a tax to which TABOR applied.

Taxpayers foundation had associational standing to bring declaratory judgment action against city, alleging enactment of city ordinance that required grocers to charge customers a $0.20 "waste reduction fee" on disposable paper bags, passed without first obtaining voter approval, violated the Taxpayer's Bill of Rights (TABOR), where two of foundation's members were city residents who paid required bag charge, foundation was formed to educate the public as to the dangers of excessive taxation, regulation, and government spending, and the relief requested in the action, which was a court order that bag charge was unconstitutional, did not require participation of individual members.

Primary purpose of home rule city's ordinance that required grocers to charge customers a $0.20 "waste reduction fee" on disposable paper bags was not to raise revenue for the general expenses of government, and thus fee was not a "tax" to which the Taxpayer's Bill of Rights (TABOR) applied, in action alleging that ordinance, which was passed without first obtaining voter approval, violated TABOR; city council determined that single-use shopping bags contributed to greenhouse gas emissions, litter, harm to wildlife, atmospheric acidification, water consumption and solid waste generation, charge was assessed on consumers who chose to purchase non-reusable paper bags and grocery store remitted a majority of charge to city, which used it to defray the cost of specific waste reduction programs, and city determined charge was reasonable based on a waste-reduction study, city council's own analysis of its recycling costs, and input from community.

TAX - MISSOURI

[Cass County v. Director of Revenue]

Supreme Court of Missouri, en banc. - May 22, 2018 - S.W.3d - 2018 WL 2311309

County sought writ to prohibit the director of revenue from withholding tax revenue to reimburse city for tax revenues erroneously paid to county.

The Administrative Hearing Commission, Audrey Hanson McIntosh, Commissioner, entered decision allowing the director to redistribute the tax revenue, and county petitioned for review.

The Supreme Court of Missouri held that the Commission was not precluded from allowing the director to redistribute tax revenue on the basis it was a refund matter.

Issue regarding the amount of sales tax revenue collected from taxpayer that was owed to city, but incorrectly distributed to county, did not constitute a matter for which taxpayer was required to seek a refund, and thus, the Administrative Hearing Commission was not precluded from allowing the director of revenue to redistribute tax revenue collected in subsequent years, which would normally go to county, to reimburse city; there was no dispute that taxpayer remitted the correct amount of taxes to the department of revenue, or that the department erroneously or illegally collected or computed the amount of taxes.

TAX - FLORIDA

United States v. Jim

United States Court of Appeals, Eleventh Circuit - June 4, 2018 - F.3d - 2018 WL 2473737

Government brought action against Indian tribe member seeking to reduce income tax assessments on gaming revenue distributions to judgment. Tribe intervened as a defendant.

The United States District Court granted in part government's motion for summary judgment on affirmative defense that distributions were exempt from taxation under Tribal General Welfare Exclusion Act, following bench trial issued findings of fact and conclusions of law and entered judgment against defendants, and denied tribe's motion to alter or amend judgment. Defendants appealed.

The Court of Appeals held that:

- Indian general welfare benefits exemption did not apply to distributions;
- Distributions did not derive from tribal land, and, thus, were not exempt from federal taxation on such basis;
- District Court did not abuse its discretion in denying tribe's motion to amend judgment entered against it.

A Connecticut Bond Default Isn't Out of the Question.

Unlikely, sure. But it never pays to be overconfident.

When it comes to Connecticut connotations on Wall Street, the first thing that comes to mind is surely Greenwich, the world's hedge-fund mecca. Home to AQR Capital Management, Viking Global Investors LP and Lone Pine Capital, among others, the town's name is synonymous with money. A 500-foot stretch along U.S. Route 1 has dealerships for Alfa Romeo, McLaren and Rolls-Royce automobiles.

Take one of those cars for a spin up to Hartford, and you'll find a much different scene. Connecticut's capital approved a plan earlier this year allowing the state to pay off the city's general-obligation debt — in other words, a bailout. Without the maneuver, bankruptcy and bond defaults seemed unavoidable for a municipality where the population is declining and a third of those who remain live in poverty.

But by assuming the struggling city's debt burden, Connecticut only complicated its own problems. It has been downgraded three times in as many years by S&P Global Ratings, had a fiscal 2017 net pension liability of $37.2 billion (up almost $10 billion from a year ago) and easily has the most tax-supported debt per resident among U.S. states. On top of all that, it has the fewest jobs in finance, insurance and real estate since 1996.

Continue reading.

Bloomberg Opinion

By Brian Chappatta

June 8, 2018, 5:00 AM PDT

Puerto Rico's Sales-Tax Bonds Soar on Optimism About Deal.

- **Deal may allow senior bondholders to receive what they're owed**
- **Some money could also been steered to general-obligation debt**

Puerto Rico sales-tax-backed bonds rallied after a tentative agreement struck in the island's bankruptcy promised to steer a large share of that revenue to owners of the securities, leaving them facing smaller losses than investors previously anticipated.

The details of the pact between two court-appointed agents, disclosed in a filing late Thursday, show that owners of the bonds would get just over half of the future sales-tax revenue they're currently entitled to each year. They would also get all of the $1.2 billion of revenue that's been frozen in a reserve account until the bankruptcy court decides who has a right to the money.

The deal, if ultimately approved, would resolve a key dispute in the island's record-setting bankruptcy, where creditors have been fighting over who has the highest claim on the government's tax collections. The arrangement could leave owners of the most senior sales-tax bonds, known as Cofinas, paid in full. That's a better settlement than one floated a few weeks ago, according to a person familiar with the matter.

"Seniors are in good shape because they get the money first," said Daniel Solender, head of municipal investments at Lord Abbett & Co., which manages $20 billion of state and local debt, including Puerto Rico securities. "With more than half the money going to the Cofina side, the seniors may be fully covered."

Governor Ricardo Rossello declined to comment because he said a final agreement hasn't been reached and talks are ongoing. "We want the government to continue being part of that negotiation," he told reporters in San Juan. "For the benefit of the people of Puerto Rico, I prefer not to comment on the details of the negotiation."

Spokespeople for a group of general-obligation bondholders and a pool of senior sales-tax investors declined to comment on the details of the tentative settlement.

The bonds climbed on the details, pushing up the price of senior sales-tax securities due in 2040 by nearly 10 percent to an average of 83 cents on the dollar. Subordinated debt maturing in 2041 climbed 13 percent to 41.8 cents. The prices of the island's general-obligation bonds were little changed.

Puerto Rico's debt payments have been on hold as it works through bankruptcy. There's about $780 million that's originally earmarked to repay Cofinas in fiscal 2019. The potential settlement would give Cofina more than half of that amount, with the government receiving the rest to repay commonwealth creditors and cover essential services, according to the court documents.

"On the commonwealth side, it's not clear what goes to bondholders and what goes to everything else," Solender said. "Nothing specifically has changed for bondholders on the G.O. side, at this point."

The agents for Puerto Rico and Cofina, the Puerto Rico government-owned corporation that issued the bonds, have asked U.S. District Court Judge Laura Taylor Swain to hold off on ruling on the issue for 60 days as they work out the final details.

The rally since the tentative agreement was announced Wednesday has delivered large gains to investors who've held on to their bonds even as they plummeted in the wake of Hurricane Maria. The price of the subordinate Cofinas Friday is more than five times what they traded for in November, when they touched a record low of 8.2 cents on the dollar.

"It's better than Internet stocks," Solender, whose firm holds senior and subordinate Cofinas, general obligations and debt sold by the island's bankrupt public power utility.

Major Hurdle

Resolving the issue of the sales-tax revenue is a major hurdle in Puerto Rico's bankruptcy because it's essential to determining how much Cofina and general-obligation bondholders will recover. Those two classes of securities account for about $35 billion of the more than $70 billion that the commonwealth owes. Swain called the deal announcement "an enormously significant development" during a hearing Wednesday in San Juan.

As part of the settlement, Cofina would receive all of the money held by Bank of New York Mellon Corp., its trustee, as of June 30, 2018. There was nearly $1.2 billion in that account as of May 1, according to disclosure filings posted on Municipal Securities Rulemaking Board's website.

Starting July 1, Cofina would also get 53.7 percent of the sales-tax receipts that are dedicated to repaying the bonds, growing by 4 percent annually to a maximum of $1.85 billion by 2041. The dedicated revenue totals $783.2 million for fiscal 2019, which starts July 1.

Overdue Payments

While Puerto Rico continues to direct sales-tax revenue to the trustee, Cofina bondholders stopped receiving payments in June 2017. They're owed about $550 million of principal and interest in fiscal 2018, which ends June 30, according to disclosure filings.

Once Cofina receives its full 53.7 percent allocation of the revenue, Puerto Rico will get the rest. Those monies will be placed in escrow and used to resolve claims against the commonwealth, though the island has the ability to use the cash for essential services after its liquidity is exhausted, according to the court filing. A federal board that oversees Puerto Rico's finances will determine which services are essential.

Bloomberg Markets

By Michelle Kaske

June 8, 2018, 5:46 AM PDT Updated on June 8, 2018, 1:00 PM PDT

— With assistance by Steven Church

[Puerto Rico Tax Deal Gives Federal Board Power Over Use of Cash.]

- **That may rekindle clash between board and Governor Rossello**
- **Bonds rally as investors cheer tentative pact to end dispute**

The deal to steer some of Puerto Rico's future sales taxes to a key group of bondholders puts a U.S. oversight board in charge of whether the rest should keep crucial services running if the government runs into financial trouble again.

If the tentative pact between the court-appointed agents is enacted, the federal Financial Oversight and Management Board for Puerto Rico — and not the island's elected officials — will decide if the remaining sales-tax revenue is needed to fund "essential" services, according to terms of the proposed agreement filed in federal bankruptcy court. That will be the case even after the territory's bankruptcy ends.

Bypassing government officials may renew a court struggle between the board and Governor Ricardo Rossello, who succeeded last year in blocking the board from taking control of the island's bankrupt electric utility. To some residents, many of whom favor becoming a state, the board's power smacks of colonialism by weakening their say over Puerto Rico's fate.

On Friday, the governor said there's no final agreement and declined to comment on the details because talks are continuing. His administration wasn't part of the agreement and is still evaluating it.

"We want the government to continue being part of that negotiation," he told reporters in San Juan. "For the benefit of the people of Puerto Rico, I prefer not to comment on the details of the negotiation."

Either the board or Puerto Rico needs to outline what exactly are the island's most necessary expenditures, said Daniel Solender, head of municipal investments at Lord Abbett & Co., which manages $20 billion of state and local debt, including Puerto Rico securities.

"The concern is that there's just no clear definition out there," Solender said. "There needs to be some agreement on what's essential and what shouldn't be."

Investors have questioned the amount of money that Puerto Rico actually has, partly because they suspect that some of what the government describes as spending for essential services may be discretionary. The island has also made dire predictions that it was poised to run out of cash, only to later find the funds needed to avert a shutdown.

Under Promesa, the law passed by the U.S. Congress that allowed Puerto Rico's insolvent government entities to file bankruptcy, the federal board is responsible for developing debt adjustment plans for each agency that seeks court protection, including the commonwealth itself and the government owned utility, known as Prepa.

In November, U.S. District Court Judge Laura Taylor Swain ruled that the federal overseers must share control with local officials. She said Promesa allowed the board to put public agencies into bankruptcy, but doesn't allow it to run them.

But now the two court appointed agents, representing the central government and the agency that sold Puerto Rico's sales-tax bonds, have proposed giving the board, not local officials, control of the revenue.

Investors cheered. On Friday, Puerto Rico's sales-tax debt with the highest legal claim to the money rallied 10 percent to 83 cents on the dollar.

The case is The Official Committee of Unsecured Creditors v. Bettina Whyte, as agent of, the Puerto Rico Sales Tax Corp., 17-257, U.S. District Court, District of Puerto Rico (San Juan)

Bloomberg Markets

By Steven Church and Michelle Kaske

June 8, 2018, 2:36 PM PDT

Puerto Rico's Governor Leaves $0.00 for Bondholders.

Post-Hurricane Maria's devastation, Puerto Rico's financial struggles have worsened with parts of the commonwealth still without power and many people struggling to meet their basic needs. In his efforts to prioritize the continuation of public essential services over making debt service payments, Puerto Rico's Gov. Ricardo Rossello has recently proposed his fiscal year 2019 General Fund budget that has $0 allocation toward the island's central government debt service.

If this proposed budget passes, it will be contrary to Puerto Rico's debt oversight board's decision that contractually obligated the central government to pay $2.54 billion in debt service in the fiscal year 2019.

In this article, we will take a closer look at Puerto Rico's debt restructuring plan, adherence to the oversight board's fiscal plan and what $0 budget allocation means for Puerto Rico's bondholders.

Continue reading.

municipalbonds.com

by Jayden Sangha

Jun 07, 2018

Whether Opportunity Zones Help Low Income Residents May Fall On Mayors.

City leaders are faced with how to prepare for a major economic development opportunity "with very few guardrails at the federal level."

BOSTON — Foundation and nonprofit leaders are advising mayors to take proactive steps to ensure low-income residents benefit from a major tax incentive created by last year's federal tax overhaul.

At the U.S. Conference of Mayors annual meeting in Boston, Rockefeller Foundation President Rajiv Shah heralded the new "Opportunity Zones" as "the biggest single opportunity for driving private sector investment into lower income communities since World War II." However, without local leaders stepping up, it's unclear whether existing residents will end up benefiting from these economic development opportunities.

"Whether or not all of that investment capital—that many estimate will be in the scale of tens of billions of dollars of year—actually generates the kind of effect of lifting up families of lower income individuals is really up to those of us around this table and the actions we choose to take," Shah told the assembled mayors at the Council on Metro Economies and the New American City Task Force meeting on Friday.

The Opportunity Zones tax provision provides an infusion of capital to low-income communities by offering investors deferred taxes on previous investments for up to a decade if they reinvest their capital gains into designated opportunity zone communities. The law is designed for investments to be highly flexible, allowing investors to put money in anything from real estate to small businesses. However, with little federal guidance—or precedent—for a tax incentive of this scale, mayors and nonprofit allies of low-income communities are attempting to identify the best ways to ensure the investment is not just fruitful for the investors, but supportive of those who currently live in the designated communities.

The zones—selected by governors and then approved by the U.S. Treasury Department—do focus on areas that need investment, Shah said. The approved zones have an average unemployment rate of 13 percent, with 31 percent of residents living in poverty and a median income of $33,000. However, despite the fact that the incentive program is technically already active across most of the country, money is not yet flowing to those communities.

That is likely because no one knows how the law will ultimately work in practice.

"The law left a lot of questions unanswered," Scott Hoekman, president and CEO of Enterprise Community Asset Management, Inc., explained to the mayors. "There's been very little guidance from IRS and Treasury to date and it's uncertain when further guidance will be forthcoming."

Before an investor is going to make an investment, Hoekman explained, "they need to have assurance they are actually going to get this benefit and that requires getting some additional guidance."

Those waiting, though, should not expect much of a regulatory structure from the Treasury Department, according to Hoekman. The opportunity funds investors will need to set up, for example, will "self-certify." He also expects "very few, if any" reporting requirements or monitoring of impacts to be put in place nationally.

"This was intentionally designed with very few guardrails at the federal level," Hoekman said.

That means local leaders will be on the front lines for ensuring funds going to designated opportunity zones support the existing community.

As Shah put it to the mayors, there is "the challenge of unintended consequences." For instance, Shah said that the majority of these communities had low rent and affordable housing. That could change if opportunity funds start to see low-income area real estate as a tax haven.

Many opportunity fund investors see this as a chance to be part of the next Williamsburg, Brooklyn-type real estate boom, Hoekman said.

"That may sound terrific news for some cities that have been very underserved by capital, but it may be concerning for others that are concerned about communities being pushed out," Hoekman said. "I would encourage cities to put measures in place to drive some transparency and reporting on how are these investments actually benefiting your community."

Mayors are not without tools, however. Most large city mayors have some experience working with public-private partnerships and using zoning to shape how economic development flows into their communities.

In Ohio, Columbus Mayor Andrew Ginther's city has 44 of the state's 320 designated opportunity zones. Ginther explained how his fast-growing metropolis has already begun reviewing the city zoning codes to ensure that investment does not displace lower income communities, but rather builds mixed-income communities that raise the income of all residents.

“If we don’t focus on density and affordability, this tool, this great opportunity will actually perpetuate and drive the chasm that much further between those who are sharing the promise of success and those that have it,” Ginther told his fellow mayors. “This is an incredible tool, but it has to be used with intentionality and purpose.”

Baltimore Mayor Catherine Pugh described how her city has invested in infrastructure around new developments to provide incentives for developers, a method that allowed the city to leverage their investment to ensure community priorities were included in redevelopment.

Other mayors may be concerned about their opportunity zones being passed over by investment altogether. Shah pointed out that foundations could be helpful in this regard. The Rockefeller Foundation is collaborating with other foundations to create methods and venues for city leaders to put forward “a genuine pipeline of investment opportunities” to opportunity funds.

Detroit Mayor Mike Duggan suggested the U.S. Conference of Mayors may be in a unique position to help the administration or Congress ultimately put a more comprehensive framework around the new community investment program to ensure it properly supports low-income residents.

Mayors and federal officials may not have much time to adjust, though. According to Hoekman, the way the law is written, investment before the end of 2019 is likely to be more lucrative than waiting. This means investors have an incentive to move their money into communities as quickly as possible.

With perhaps more questions than answers for the time being, Louisville Mayor Greg Fischer simply ended the discussion by saying, “At the next meeting in January we’ll all be celebrating these great investments or be we’ll be saying, ‘this thing didn’t come to light.’”

Route Fifty

By Mitch Herckis

June 8, 2018

Mitch Herckis is Senior Editor and Director of Strategic Initiatives for Government Executive’s Route Fifty and is based in Washington, D.C.

New Florida Case Facilitates Public-Private Partnerships.

The Florida First District Court of Appeal recently decided *Crapo v. Provident Group-Continuum Properties, LLC,* which sets forth a rule that should result in more favorable property-tax treatment for P3s in Florida. In general, an economic disadvantage facing privately-owned projects, as compared to publicly owned projects, is the imposition of real estate taxes, which are often around two percent of the property value per year. Although there are many exceptions, in general, privately owned and operated developments are subject to property tax, while government-owned and operated developments are not. P3s, which have elements of both public and private developments, often operate in a legally gray area.

In *Provident Group*, the court analyzed the applicability of a P3 structure where the private partner was tasked with developing and operating student dormitories for the University of Florida (UF), pursuant to the University's standards. The P3 contract provided that the private partner would own the dorms until the end of the contract term, at which point the dorms would be transferred to UF at no cost. Even though the private developer owned the dorms during the period of the agreement, the appeals court ruled that UF was the equitable owner for purposes of property taxes, and the dorms therefore were immune from property taxes. Although P3s are often less costly to the public than a traditional public project even without favorable tax treatment, this ruling will, in many cases, make P3s an even more attractive alternative to state and local governments in Florida that are in need of new public infrastructure and services.

Bilzin Sumberg

June 8, 2018

S&P: New York State's Enacted 2019 Budget And Tax Reform Good For PIT Bondholders, But For Taxpayers It Depends.

The Tax Cuts and Jobs Act of 2017 and its extensive changes to the federal internal revenue code have significantly affected New York State tax burdens and tax receipts in S&P Global Ratings' view. As a result, the state's fiscal 2019 enacted budget decouples the state's income tax from the federal tax law.

Continue Reading

Jun. 6, 2018

S&P Medians And Credit Factors: Tennessee Local Governments.

Tennessee municipalities and counties (or local governments [LGs]) have demonstrated stable credit quality in recent years, and S&P Global Ratings expects credit quality for Tennessee LGs to remain stable in the near term.

Continue Reading

May 23, 2018

S&P: Georgia Cities Face Potential Negative Impact If Issues With Large-Scale Deannexations Become More Pervasive Or Go Unaddressed.

With the passage of Georgia Senate Bills (SB) 262 and 263, which propose revised boundaries for the City of Stockbridge (unrated) and the incorporation of Eagle's Landing without apportionment of Stockbridge's debt, S&P Global Ratings notes that the Georgia local government ratings portfolio faces potential negative impacts if this trend continues.

Continue Reading

May 30, 2018

S&P: Minnesota's New Pension Bill Is A Positive Step Toward Sustainable Funding.

Minnesota’s new pension bill is a positive step toward improving funding of the state’s pension plans, but because contributions remained fixed in state statute, there could eventually be a regression in plan funded status, in S&P Global Ratings’ view.

Continue Reading

Jun. 7, 2018

Houston’s Third Ward Turns to Community Land Trust Model.

Houston’s Third Ward residents are turning to community land trusts as a push against the effects of rising home prices.

The Third Ward, a historically black community, was established in the late 19th century. Now, more than a century and a half later, the community finds itself threatened by gentrification — in particular, displacement of longtime residents by soaring house prices and property taxes. In response, residents are considering action to help preserve affordability in the face of encroaching gentrification and hold on to the rich culture of the Third Ward. The city’s response, reports the Houston Chronicle, is a city-funded community land trust.

A community land trust is a nonprofit entity that aims to make housing permanently affordable through the purchase of land that it can make available for rent or for homeownership to low-income residents at affordable rates in long-term agreements. Community land trusts are on an upswing in cities throughout the country, in response to gentrification and the displacement of low-income, longtime residents and tightly knit communities.

Continue reading.

NEXT CITY

BY BRIANNA WILLIAMS | JUNE 8, 2018

Houston Unveils $1 Billion Harvey Aid Action Plan.

Houston officials have released the first action plan for how to spend $1.15 billion in federal housing aid, part of a $5 billion package allocated to the state, the Houston Chronicle reports. The split is about 60/40 single-family homes and apartments.

“Even though a billion dollars is a lot of money, we know it isn’t enough to meet all of the housing needs in Houston,” Tom McCasland, director of Houston’s Housing and Community Development department, told the Chronicle. "But the opportunity here is one we've never had before. It's a big step toward a city where everyone has a safe, affordable home, in a thriving neighborhood."

Texas officials planned to publish one statewide plan in March, but Houston Mayor Sylvester Turner accused the state land office of "hogging the $5 billion" and cutting the city out of talks. Now, instead, Houston gets to allocate about $1 billion; surrounding Harris County will publish a similar plan for its $1 billion, and both plans will be attached as amendments to the statewide plan that will address the rest of the Gulf Coast.

Continue reading.

NEXT CITY

BY RACHEL KAUFMAN | JUNE 11, 2018

A Seismic Change Is Coming to California's General Industrial Stormwater Permit.

California is considering the first-in-the-nation general industrial stormwater permit incorporating Total Maximum Daily Load (TMDL)-related numeric action levels (TNALs) and numeric effluent limitations (NELs). These new standards have the potential to further ramp up federal Clean Water Act (CWA) citizen suit litigation. Under the State Water Resources Control Board's (State Board) proposed amendment to its stormwater general industrial permit (IGP), a "Responsible Discharger" whose stormwater discharge exceeds an applicable NEL automatically will be in violation of the IGP. Unless it complies with the permit's existing exceedance response action process, it also will be in non-compliance if its discharge exceeds an applicable TNAL.

Recognizing these consequences, and the difficulties some dischargers have complying with existing IGP requirements, the State Board is proposing two alternative compliance options. Touted as an effort to promote green infrastructure and water reuse, these options could revamp how industry manages stormwater. Both alternatives involve capture and reuse of the runoff from the 85th percentile 24-hour storm event, with the difference being the stormwater retention location. Under the "on-site" option, retention occurs at the facility. Under the "off-site" option, retention occurs at the local publicly owned treatment works (POTW).

Continue reading.

Hunton Andrews Kurth LLP

June 5, 2018

Fitch: Water Conservation Regulations Not Likely to Affect California Utilities.

Fitch Ratings-San Francisco-05 June 2018: Legislation establishing state-wide water conservation standards is not likely to affect ratings for California water utilities, according to Fitch Ratings. That said, rate affordability could become an issue over time.

The regulations, signed into law last week by Governor Brown with implementation beginning in 2022, establish goals for indoor per person water usage, require utilities to set annual water budgets, and institute incentives for recycled water. They follow California’s recent five-year drought during which the Governor declared a state of emergency and imposed a state-wide mandatory 25 percent cutback on water use and individual cutbacks for urban utilities of up to 36 percent.

In response to the drought and state mandated conservation efforts, many utilities have already adapted to new normal levels of water demand and raised rates or adjusted rate structures. As such, the legislation codifies changes already underway which, along with increasing capital investments, have pushed some utilities’ rates close to or above Fitch’s affordability threshold.

Water utilities have largely incorporated increased long-term water conservation and lower demand levels into their planning efforts and rate plans. Although the planning efforts are positive, rate affordability remains a long-term concern.

With an average rating of ‘AA’, Fitch-rated California water and sewer agencies maintain strong credit profiles overall. While increasing business pressures are likely, Fitch believes that most utilities have sufficient capacity to manage changes in water demand levels and maintain credit quality. Like other water and sewer utilities across the country, California utilities benefit from sound fundamentals rooted in their essential services, monopolistic business nature and generally local rate-setting authority that help to insulate these utilities through changing business and economic cycles.

Longer term, however, credit quality could come under pressure for individual utilities where there is an unwillingness to raise rates to accommodate potentially lower demand levels and support current and projected financial metrics. However, Fitch expects these instances to be rare given the historical willingness of California utilities to preserve their financial results despite operating challenges.

Contact:

Shannon Groff
Director, U.S. Public Finance
+1-415-732-5628
Fitch Ratings, Inc.
650 California Street, Suite 2250
San Francisco, CA 94108

Doug Scott
Managing Director
+1-512-215-3725

Media Relations: Sandro Scenga, New York, Tel: +1 212-908-0278, Email:
sandro.scenga@fitchratings.com

Additional information is available on www.fitchratings.com

[How California Could Get Its Money Out of Wall Street.]

The world's fifth largest economy could keep the money in a state-owned bank to fund local infrastructure.

California needs to spend more than $700 billion on infrastructure over the next decade. Where will this money come from? The $1.5 trillion infrastructure initiative unveiled by President Trump in February includes only $200 billion in federal funding for infrastructure projects across the U.S., and less than that after factoring in the billions in tax cuts in infrastructure-related projects.

The rest is to come from cities, states, private investors, and public-private partnerships. And since city and state coffers are depleted, that chiefly means private investors and PPPs, which have a shady history at best.

At the same time, California has over $700 billion parked in private banks earning minimal interest, private equity funds that contributed to the affordable housing crisis, and "shadow banks"—unregulated financial institutions of the sort that caused the banking collapse of 2008. If California had a public infrastructure bank chartered to take deposits, some of these funds could be used to generate credit for the state while remaining safely on deposit in the bank.

Continue reading.

Yes! Magazine

by Ellen Brown

Jun 06, 2018

- Hawkins Advisory: Cybersecurity – Municipal Disclosure
- NASACT Webinar: GASB Review 2018
- Keeping Special Revenues "Special"
- Update On S&P U.S. Public Finance Priority-Lien Tax Revenue Debt Criteria RFC.
- Assessing Exposure to Climate Risk in U.S. Municipalities.
- How an Arcane, New Accounting Standard is Helping Reporters Follow the Money.
- Lynne Bajema Testifies on GASB'S Revenue and Expense Recognition.
- Why Environmental Impact Bonds Are Catching On.
- And finally, He Would Have Wanted It That Way is brought to us this week by *Horton on Behalf of Estate of Erves v. City of Vicksburg*, in which the Supreme Court of Mississippi repeatedly refers to a fatal fall down a flight of concrete steps as a "tumble". Struck us as a tad playful, that choice of verb. But then again, perhaps Mr. Erves' final thought was, "Whee! Hey look, I'm taking a tumble!" Who are we to say?

CONSTITUTIONAL - CALIFORNIA

Delano Farms Company v. California Table Grape Commission

Supreme Court of California, California - May 24, 2018 - 2018 WL 2347160 - 18 Cal. Daily Op. Serv. 4912

Grape producers brought declaratory judgment action against Table Grape Commission to challenge constitutionality of compelled assessments funding the Commission's promotional activities.

The Superior Court granted summary judgment for Commission. Producers appealed, and the Court of Appeal, affirmed. The Supreme Court granted review, superseding the opinion of the Court of Appeal.

The Supreme Court held that grape advertising assessments were not unconstitutional compelled speech.

State of California exercised effective control over California Table Grape Commission, and thus Commission's generic advertising of table grapes through assessments paid by grape producers under Ketchum Act's compelled-subsidy scheme constituted government speech and was not improper "compelled speech" under First Amendment or State constitution, where Commission was established by an act of the Legislature with intent that Commission implement policy through expressive conduct, and Legislature was specific about its expectations for the Commission and its messaging, tasking the Commission with promoting single commodity, table grapes, for fresh human consumption and developing specific messaging campaigns.

IMMUNITY - COLORADO

City and County of Denver v. Dennis on behalf of Heyboer

Supreme Court of Colorado - May 21, 2018 - P.3d - 2018 WL 2295540 - 2018 CO 37

Conservator of motorcycle passenger brought action against the city and county for negligence and premise liability, alleging that the street's deteriorated condition contributed the automobile accident in which passenger suffered permanent brain injuries.

The District Court found that the city and county were immune from suit under the Colorado Governmental Immunity Act (CGIA) and dismissed for lack of subject matter jurisdiction. On appeal, the Court of Appeals reversed. City and county petitioned for certiorari, which was granted.

The Supreme Court of Colorado held that:

- Deteriorated condition of the road did not constitute a dangerous condition, and
- Deterioration of the road did not physically interfere with the movement of traffic.

Deteriorated condition of road on which an automobile accident occurred did not constitute a dangerous condition as an unreasonable risk to the health or safety of the public, as required for city and county to waive governmental immunity under Colorado Governmental Immunity Act (CGIA) based on the dangerous condition of a road, where a city pavement engineer examined road eight days before crash and determined it was "well worn" and in "very poor condition" but did not find any deep, wide potholes that could catch a tire or ruts that would redirect a car that would warrant immediate repair, and road did not contain features which would force a driver to make an emergency maneuver, or any other road characteristics such as a raised pavement lip that could damage a vehicle and lead to an accident.

Deterioration of road did not physically interfere with movement of traffic causing motorcycle and a third-party driver to crash, as required for city and county to waive governmental immunity under Colorado Governmental Immunity Act (CGIA) for a dangerous condition of a road, where a third-party driver impeded motorcycle and its passenger by cutting them off, the road itself did not cause motorcycle to act erratically, no safety device malfunctioned on road, and road's surface, prior to the third-party's actions, did not prevent motorcycle driver from performing as expected.

IMMUNITY - MISSISSIPPI

Horton on Behalf of Estate of Erves v. City of Vicksburg

Supreme Court of Mississippi - May 31, 2018 - So.3d - 2018 WL 2439659

Estate administratrix for tenant who died after tumbling down home's exterior concrete stairs filed a negligence complaint against landlords. Administratrix amended complaint to include city and city-code inspector as defendants, claiming that they breached their duty to inspect the property adequately and that city failed to provide reasonable supervision of inspector in his duties.

The Circuit Court granted summary judgment in favor of the city. Administratrix appealed.

The Supreme Court of Mississippi held that city owed no duty to tenant to inspect home and either condemn the home or note its handrail deficiency.

City owed no duty, to inspect home and either condemn the home or note its handrail deficiency, to tenant who died after tumbling down home's exterior concrete stairs; city code did not require city and its officials to enforce code's handrail requirement on structures designated as historic buildings when such buildings or structures were judged by the code official to be safe and in the public interest of health, safety, and welfare, residence was designated as part of the city's historical zone, and code inspector had judged residence to be safe and in the interest of public health, safety, and welfare.

IMMUNITY - MISSISSIPPI

Wilcher v. Lincoln County Board of Supervisors and City of Brookhaven, Mississippi

Supreme Court of Mississippi - May 24, 2018 - So.3d - 2018 WL 2371859

Motorist brought action against county and city to recover for injuries sustained when his vehicle crashed into a large hole left in the road overnight during bridge construction.

The Circuit Court dismissed claim on grounds of discretionary-function immunity. Motorist appealed.

The Supreme Court of Mississippi held that:

- Application of discretionary-function immunity under the Mississippi Tort Claims Act (MTCA) is governed by a two-part, public-policy function test, overruling *Brantley v. City of Horn Lake*, 152 So.3d 1106, and *Boroujerdi v. City of Starkville*, 158 So.3d 1106, and
- Discretionary-function immunity did not shield city and country from liability for hole left in the road without barricades or warning to drivers.

Lack of barricades or warnings to drivers regarding the presence of a large pit or ditch left in the road overnight by construction workers during bridge construction was not the result of a policy decision, and thus discretionary-function immunity did not shield city and country from liability for negligence in action brought by motorist alleging that he sustained injuries when his vehicle crashed into the hole.

PUBLIC RECORDS - SOUTH CAROLINA

[DomainsNewMedia.com, LLC v. Hilton Head Island-Bluffton Chamber of Commerce]

Supreme Court of South Carolina - May 23, 2018 - S.E.2d - 2018 WL 2325622

Records requester brought action against chamber of commerce, seeking injunctive relief and declaration that chamber was subject to the state Freedom of Information Act (FOIA).

The Circuit CourT granted requester's motion for summary judgment. Chamber appealed.

The Supreme Court of South Carolina held that chamber was not a "public body," and thus was not subject to FOIA.

Chamber of commerce was not a "public body," and thus was not subject to state Freedom of Information Act (FOIA) disclosure requirements; even though chamber received and expended accommodation tax funds as designated marketing organization for local government and received grant from department of parks, recreation, and tourism, FOIA was general law, and specific tax statute and proviso provided different accountability measures and public access to information regarding how funds were spent.

OPEN MEETINGS - TEXAS

[Schmitz v. Denton County Cowboy Church]

Court of Appeals of Texas, Fort Worth - May 10, 2018 - S.W.3d - 2018 WL 2144141

Neighboring landowners brought action against church and town for violation of Texas Open Meetings Act (TOMA), declaratory judgment, nuisance, and sought a temporary injunction prohibiting church from continuing construction of rodeo arena on its property.

The District Court denied request for temporary injunction and granted pleas to the jurisdiction. Landowners appealed.

On rehearing, Court of Appeals held that:

- Limited waiver of governmental immunity under TOMA applied in connection with claim that town failed to comply with open-meeting ordinances;
- Allegations were sufficiently adequate to plead waiver of town's governmental immunity under TOMA;
- Landowners did not have standing to bring claim seeking declaration that church's actions violated town's zoning ordinances;
- Landowner raised a material fact issue regarding standing and the ripeness of his injury on his private nuisance claim; and
- Denial of request for temporary injunction was not an abuse of discretion.

Allegations by neighboring landowners were sufficiently adequate to plead waiver of town's governmental immunity under Texas Open Meetings Act (TOMA), in action challenging validity of church's construction activities for rodeo arena on its property; landowners alleged in their petition that town's meeting notices were highly prejudicial, designed to convince impacted residents not to oppose zoning change, were not in compliance with town ordinances, and that town council approved zoning change after a closed meeting with no public discussion, and landowners requested a declaration that town approved change and issued a specific-use permit in violation of TOMA and that town's failure to follow ordinances and government code notices for meetings rendered its actions void.

Hawkins Advisory: Cybersecurity - Municipal Disclosure

This Advisory describes recent developments regarding disclosure of cybersecurity risks and incidents and their import for municipal disclosure.

Read the Advisory.

MSRB Launches Re-Engineered Trade Reporting System.

Washington, DC – After an intensive three-year effort to re-engineer the underlying technology of the trade reporting system that supports one of the country's key capital markets, the Municipal Securities Rulemaking Board (MSRB) is now accepting and disseminating municipal securities trade information through a modernized Real-Time Transaction Reporting System (RTRS).

"Investment in technology is critical to the MSRB's ability to ensure a fair, transparent and efficient municipal market," said MSRB President and CEO Lynnette Kelly. "Modernizing our 13-year-old trade reporting system will contribute to improved data quality and enhance the MSRB's ability to prevent and respond to significant service disruptions in this vital market transparency system."

The MSRB created RTRS in January 2005, transforming price transparency in the municipal market by requiring municipal securities dealers to report information about most trades in municipal securities within 15 minutes. This real-time trade data was made publicly available on the MSRB's Electronic Municipal Market Access (EMMA®) website in 2008. The MSRB now processes approximately 39,000 trade reports each day for transactions in the more than 1 million outstanding municipal securities. Read more about the development of the MSRB's market transparency systems.

"RTRS is now better equipped to respond to an evolving municipal market and adapt as needed to future regulatory requirements," Kelly said.

The re-engineered RTRS will continue to accept computer-to-computer trade reports from dealers in the same manner but with some improvements to the way errors are detected and assigned. Dealers that report trades or monitor compliance with trade reporting requirements through the RTRS Web user interface will notice streamlined navigation and enhanced display of information. The MSRB Transaction Subscription Service has also been re-engineered to improve data quality and strengthen system security and reliability. Questions about the RTRS system may be directed to MSRB Support.

Date: May 30, 2018

Contact: Jennifer A. Galloway, Chief Communications Officer
202-838-1500

jgalloway@msrb.org

[The Places in the U.S. Where Disaster Strikes Again and Again.]

In the last 16 years, parts of Louisiana have been struck by six hurricanes. Areas near San Diego were devastated by three particularly vicious wildfire seasons. And a town in eastern Kentucky has been pummeled by at least nine storms severe enough to warrant federal assistance.

Continue reading.

THE NEW YORK TIMES

By SAHIL CHINOY

MAY 24, 2018

Muni Bonds Measure Heads to White House.

The Economic Growth, Regulatory Relief and Consumer Protection Act – good for counties – moves on to the White House for president's signature

On May 22, the U.S. House of Representatives passed S. 2155, the Economic Growth, Regulatory Relief and Consumer Protection Act, which is now headed to the president's desk for his signature.

A provision in the bill — Section 403 — is particularly beneficial to counties because it reclassifies municipal debt as a High-Quality Liquid Asset (HQLA). Under current law, banks are required to meet a Liquidity Coverage Ratio (LCR) to ensure each bank has enough liquid assets in the event of financial stress. By classifying municipal securities as a Level 2B asset, required to account for at least 15 percent of a bank's total stock, banks will be further incentivized to invest in these bonds. This change Muni bonds measure heads to White House would make municipal debt more attractive to investors and banks, keeping the demand for municipal bonds high and interest costs of issuance low for counties and other issuers.

Tax-exempt municipal bonds are used to finance the construction of and repairs to infrastructure important to counties, including roads and bridges, public transportation, seaports and airports, water and wastewater facilities, electric power and natural gas facilities.

Classifying investment grade municipal securities as HQLA will help ensure low-cost infrastructure financing remains available as municipal issuers continue building the local infrastructure on which our communities and the national economy rely.

National Association of Counties

May 28, 2018

[2018 State of the Cities Report from NLC: Economic Growth, Infrastructure Top Issues for American Mayors.]

WASHINGTON – May 30, 2018 – The National League of Cities (NLC) released its 2018 State of the Cities report today at a national morning press event with city leaders and policy experts. The report shows that economic development, infrastructure, budgets, housing and public safety continue to top the list of agenda priorities for U.S. mayors, as well as revealing that opioids, broadband access and climate change have emerged as new and growing concerns.

Now in its fifth year, NLC's annual report analyzes key issues and trends in the state of the city (SOTC) speeches mayors deliver each year to outline their top priorities. This year's report examined 160 mayoral speeches delivered between January and April 2018 and includes cities across population sizes and geographic regions.

Continue reading.

National League of Cities

May 30, 2018

Lynne Bajema Testifies on GASB'S Revenue and Expense Recognition.

On April 23, 2018, NASACT provided a joint response with the National Association of State Treasurers to the Revenue and Expense Recognition invitation to comment from the Governmental Accounting Standards Board.

On May 30, during the GASB public hearing on the Revenue and Expense Recognition ITC, Lynne Bajema, Oklahoma state comptroller, provided testimony on behalf of the association. Ms. Bajema is co-chair of NASACT's Committee on Accounting, Reporting and Auditing, and chair of the National Association of State Comptroller's Committee on Accounting and Financial Reporting.

Ms. Bajema testified that the overwhelming majority of NASACT members responding to the ITC agree that the exchange/non-exchange model is the best to classify transactions in a governmental environment. This model is similar to the current approach and will result in less room for misinterpretation when applying the standard since it builds on existing standards. Therefore, it would likely result in a more feasible and consistent implementation across entities.

Ms. Bajema further stated that preparers and auditors are familiar with the exchange/nonexchange terminology and have established processes and procedures for preparing and auditing financial statements using this model.

NASACT does agree that it would be effective to provide additional guidance for classifying and recognizing exchange and nonexchange transactions, including:

- Additional clarification on what is considered equal value;
- Clarifying at what point in time revenue should be considered "earned and reportable" for financial reporting purposes,
- Recognition of certain exchange transactions, one specifically mentioned was multi-year licenses.

Wednesday, May 30, 2018

NASACT

[NASACT Webinar: GASB Review 2018]

National Association of State Auditors, Comptrollers and Treasurers

July 18 | 2:00 – 4:00 PM EDT

NASACT is pleased to announce the latest in its series of training events addressing timely issues in government accounting, auditing and financial management.

As fiscal year-end for most state governments quickly approaches and a new year begins, it's an opportune time for financial statement preparers and auditors to get a refresher on standards that will be effective for June 30, 2018, financial statements, as well as recently released GASB statements that will require attention in fiscal year 2019.

This webinar will provide "must know" guidance on previously-issued GASB statements that are effective for June 30, 2018 and 2019.

CLICK to see full event details.

NASACT

Contact:
Pat Hackney
Email: phackney@nasact.org
Phone: (859) 276-1147

Fitch: Natural Disaster Risk Varies for U.S. State & Local Government Ratings.

Fitch Ratings-New York-29 May 2018: Natural disasters have become increasingly acute and chronic, which is presenting operational and financial challenges to some U.S. state and local governments, according to Fitch Ratings. The rating agency considers environmental factors in its U.S. public finance credit ratings through the lens of fundamental credit risk, as detailed in a new report.

The federal government approved $130 billion in aid for natural disasters last year, a considerable 0.7% of the country's $19.7 trillion economy. That said, financial support from the federal government is not guaranteed. Additionally, proposals by current and past administrations have been presented to address the burden of disaster recovery assistance on the federal budget. And although Fitch does not currently anticipate this, a pullback in the level of federal government aid would be viewed as a negative credit factor for state and local governments.

"The federal government's role in disaster response is critical in mitigating natural disaster risk for ratings on state and local governments," said Senior Director Michael Rinaldi.

Rating actions directly linked to climate change or natural disasters have historically been limited, a notable anomaly being Hurricane Katrina and subsequent downgrades of the state of Louisiana and affected areas. However, the damage to vital infrastructure and widespread repopulation that was seen during Katrina has become more commonplace, most recently with Hurricanes Harvey, Maria and Irma last year.

State governments' exposure to environmental risk is limited thanks in large part to the sovereign powers bestowed on states under the U.S. government framework along with ample economic resources that ensure fiscal flexibility and resilience to event risks and systemic challenges. Local government ratings, by contrast, are more vulnerable to climate risk, particularly governments that encompass a small geographic territory or feature a concentrated revenue base. In response, local governments are incorporating environmental risk mitigation and adaptation strategies within long-term financial and capital plans more broadly than in the past.

"Local governments have history on their side in terms of showing financial resilience and prioritizing spending where needed, which in concert with federal and state recovery aid can mitigate credit risk to natural disasters," said Rinaldi.

'Environmental Risks in U.S. State & Local Government Ratings' is available at www.fitchratings.com.

Contact:

Michael Rinaldi
Senior Director
+1-212-908-0833
Fitch Ratings, Inc.
33 Whitehall Street
New York, NY 10004

Media Relations: Sandro Scenga, New York, Tel: +1 212-908-0278, Email: sandro.scenga@fitchratings.com

Additional information is available on www.fitchratings.com

Teleconference Replay: Fitch Rates LINXS APM Project

Fitch Ratings hosted a call with investors to discuss its recent 'BBB+ (EXP)' of the California Municipal Finance Authority's (CMFA) approximately $1.2 billion senior lien revenue bonds. The proceeds of which will be used by the borrower (LAX Integrated Express Solutions, LLC (LINXS)) to construct an automated people mover at Los Angeles International Airport.

Listen to the teleconference.

Fitch: Hawaii Credits Unaffected as Volcano Continues.

Fitch Ratings-New York-30 May 2018: Based on Fitch Ratings' review of initial reports and damage assessments, rating changes are unlikely for Hawaii's U.S. public finance, port and airport credits following ongoing volcanic activity on Hawaii Island. Fitch does expect the state's tourism-driven economy to feel some adverse peripheral effects from the volcanic activity in the short term, but ultimately the fiscal impact of the eruption on rated entities in Hawaii will be largely mitigated by Hawaii's financial flexibility, support from federal and state governments, and private insurance policies.

Kilauea, one of four active volcanoes on Hawaii Island, has been erupting continuously since 1983. The island's major tourist attraction, Hawaii Volcanoes National Park, has closed during the recent increase in eruptive activity but reflects the positive role of volcanoes in Hawaii County's economy. Volcanic events during the most recent activity include localized lava flows, ash and gas eruptions affecting air quality and visibility, and related seismic activity.

The local government most affected by the eruption to date, Hawaii County, is likely to use a combination of federal relief funds, state support and insurance claims to pay for most volcano-related damage. The May 11 federal disaster declaration for Hawaii County enables individuals and local governments to seek individual assistance from the federal government.

Fitch maintains an 'AA+' Issuer Default Rating (IDR) on Hawaii County (population of nearly 200,000), which incorporates an 'aaa' operating performance assessment based in part on its available liquidity. While the ultimate impact of the Kilauea eruption to Hawaii County's economy is not yet known, property damage has been modest to date, destroying 100 to 200 homes in a relatively remote region of the island. Several thousand residents have been displaced, and short-term impacts on tourism, a key industry, appear likely. However, property taxes supporting most local government services are not expected to be materially affected. Lava flows have also threatened Puna Geothermal Venture, which provided one-quarter of the island's electrical supply prior to its recent shutdown, but local utility managers report sufficient reserve capacity to offset this loss.

On the transportation side, management for Hawaii's harbors division (a division of the Hawaii Department of Transportation [HDOT] with harbor system revenue bonds rated 'AA-' with a Stable Outlook) has confirmed to Fitch analysts that commercial ports on Hawaii Island, including facilities at Hilo Harbor and Kawaaihae Harbor, are fully operational with no restrictions resulting from volcanic activity. The harbors division consists of 10 commercial harbors on six islands. Honolulu serves as the state's principal port and trans-shipment station for cargo that is bound for the other islands.

Cargo and passenger operations remain unimpeded, with vessels continuing to safely enter the harbors and dock. Cargo continues to be discharged without impediment with passengers disembarking and embarking from cruise vessels. Furthermore, management for the harbors division commented that seismic events related to the volcanic activity have not affected the structural integrity of HDOT port facilities to date; HDOT personnel continue to conduct ongoing assessments to monitor potential structural damage to harbor facilities as seismic activity continues.

Similarly, management of Hawaii's airports division (another division of HDOT, airport system revenue bonds rated 'A+' and subordinate COPs 'A' with a Stable Outlook) has confirmed to Fitch that, to date, there has been no disruption to air service at either of the airports on Hawaii Island (Ellison Onizuka International Airport at Keahole and Hilo International Airport), and that there has been no structural damage to either facility. The airports division manages airports across the Hawaiian archipelago.

While port and airport facilities are unscathed by the eruption, follow-on effects to the broader tourism-driven economy are likely in the short term. The closure of Volcanos National Park is likely to affect overall visitor numbers, and certain airlines have waived change fees for travel to Hawaii Island. Harbor division management further acknowledged that certain cruise lines have chosen to reroute ships to avoid Hawaii Island due to the volcanic events.

Airport division management indicated to Fitch that they continue to monitor the tourism industry as it relates to the Kilauea eruptions. For May, they noted that air traffic is at or above levels seen a year prior, indicating limited effects from the volcano on overall results thus far. Management noted that most travellers diverting from Hawaii Island are choosing to travel to other Hawaiian islands rather than forgoing Hawaiian travel altogether. Fitch will continue to monitor activity levels for both airport and harbors divisions to evaluate any longer-term effects on financial results.

Contact:

Emma Griffith
Senior Director, Global Infrastructure & Project Finance
+1-212-908-9124
Fitch Ratings, Inc.
33 Whitehall Street
New York, NY 10004

Stephen Walsh
Director, U.S. Public Finance
+1-415-732-7573

Seth Lehman
Senior Director, Global Infrastructure & Project Finance
+1-212-908-0755

Alan Gibson
Director, U.S. Public Finance
+1-415-732-7577

Media Relations: Sandro Scenga, New York, Tel: +1 212-908-0278, Email: sandro.scenga@fitchratings.com

Additional information is available on www.fitchratings.com

Fitch: SCOTUS Janus Ruling Impact Limited for State and Local Governments.

Fitch Ratings-New York-31 May 2018: A potentially landmark Supreme Court ruling concerning public school teachers and right-to-work laws is not likely to have a meaningful effect on state and local government finances, according to Fitch Ratings in a new report.

Recent mass labor actions by public school teachers in several states are shedding light on the practical limitations state and local governments face in managing expenditures. Meanwhile, the SCOTUS is set to rule shortly in Janus vs. AFSCME Council 31, which could potentially eliminate the requirement that non-union public sector employees pay “agency fees” to contribute to the cost of collective bargaining and related activities. If the SCOTUS rules for the plaintiff, it would reverse a precedent-setting SCOTUS decision from 40 years ago.

28 states have adopted right-to-work laws. The Janus ruling, if favorable to the plaintiff, would convey this legal framework throughout the country. Regardless of the legal framework, state and local governments remain limited in their ability to control labor spending. ‘States with right-to-work laws that limit collective bargaining powers can still confront labor-related spending pressures,’ said Managing Director Amy Laskey.

Any change to expenditure flexibility that arises from the decision is likely to be incremental. ‘A productive and flexible working relationship can be achieved regardless of the legal structure, in which case the workforce evaluation is a neutral factor,’ said Laskey.

‘What Investors Want to Know: The Impact of a Changing Labor Environment on Credit Quality’ is available at www.fitchratings.com.

Contact:

Amy Laskey
Managing Director
+1 212 908-0568
Fitch Ratings, Inc.
33 Whitehall Street
New York, NY 10004

Media Relations: Sandro Scenga, New York, Tel: +1 212-908-0278, Email: sandro.scenga@fitchratings.com

Additional information is available on www.fitchratings.com

Fitch Updates Thermal Power Project Rating Criteria.

Link to Fitch Ratings’ Report(s): Thermal Power Project Rating Criteria

Fitch Ratings-New York/Chicago/London-01 June 2018: Fitch Ratings has completed the annual update of its “Thermal Power Project Rating Criteria”. The update included refining the revenue risk key rating driver (KRD) assessment, and establishing a clearer link between the revenue risk assessment and indicative coverage guidance.

The update revises the Indicative Coverage Ratios Guidance table in Figure 5 by linking indicative coverage thresholds to the revenue risk KRD. For projects with no merchant exposure and a stronger revenue risk assessment, the indicative coverage thresholds guidance is lowered to 1.5x for ‘A-‘ rated projects, 1.3x for ‘BBB-‘ rated projects and 1.15x and for ‘BB-‘ rated projects. Revenues for projects with a stronger revenue risk KRD rely almost exclusively on contracted capacity payments from strong investment grade counterparties, with cash flows independent of dispatch levels, justifying using lower coverage threshold guidance. The indicative coverage guidance remains unchanged for projects with weaker and midrange revenue risk assessments.

The update clarifies that ratings at or below the ‘B’ category are guided by Fitch’s ratings definitions and also the assessments assigned for all the qualitative key rating drivers.

The update also includes minor clarifications throughout the text and some editing changes.

Fitch does not expect any rating changes as a result of the updated criteria. The report replaces the June 8, 2017 version and is available at www.fitchratings.com or by clicking on the link above.

Contact:

Alex Nouvakhov
Director
+1-646-582-4876
Fitch Ratings, Inc.
33 Whitehall Street
New York, NY 10004

Greg Remec
Senior Director
+1-312-606-2339

Jelena Babajeva
Senior Director
+44 203 530 1375

Kim Locherer
Director
+44 203 530 1918

Media Relations: Sandro Scenga, New York, Tel: +1 212-908-0278, Email: sandro.scenga@fitchratings.com

Additional information is available on www.fitchratings.com

Biggest U.S. Banks Cut Municipal-Bond Holdings as Tax Rates Fall.

- **Shift may mark banks' first retreat from market since 2009**
- **Bank of America, Citigroup, JPMorgan, Wells reduced stakes**

More than a half dozen of the biggest U.S. banks reduced their holdings of state and local government bonds by billions of dollars after the federal government slashed corporate tax rates, making the securities less valuable to one of the market's key buyers.

Bank of America Corp., Citigroup Inc., JPMorgan Chase & Co. and Wells Fargo & Co. together cut their stakes by $7.8 billion during the first three months of 2018, according to quarterly filings with the U.S. Securities and Exchange Commission. State Street Corp., Morgan Stanley and First Republic Bank also reduced their municipal-debt holdings.

The figures show a significant pullback from buyers that had been steadily expanding their ownership of state and local government securities since the end of the recession, helping bolster demand. If the large banks are a guide, the quarter will mark the first time the industry has retreated from the $3.9 trillion market since 2009.

"Definitely the tax change has reduced banks' appetite for municipal bonds, although they'll still be part of the mix going forward," said Alan Schankel, managing director and municipal strategist at

Janney Montgomery Scott.

The filings confirm the widespread view among Wall Street analysts that tax-exempt debt would be less alluring to banks after the corporate tax rate was dropped this year to 21 percent from 35 percent. Some of the selling may also have been encouraged by an accounting rule shift that allowed banks to make state and local debt available for sale rather than continuing to hold it to maturity, Tom Kozlik, municipal strategist at PNC Capital Markets, wrote in a report.

The selling may not continue at the same pace since the partial rollback of the Dodd-Frank law this year allows them to use the bonds to satisfy liquidity requirements, giving them an incentive to hold the securities. And the low default rate of municipal bonds will continue to make them a draw to banks that need to manage risk, said Scott Siefers, a bank analyst at Sandler O'Neill & Partners.

"Banks are going to try to prudently manage to maintain high credit quality within the portfolio but to also generate some income as well," Siefers said.

But so far, the corporate tax cut seems to be having the biggest effect. By the end of last year, banks held a record $570 billion of municipal bonds, making them the third largest buyer, according to Federal Reserve figures. While the Fed has yet to release first-quarter data, Barclays Plc analysts estimate that banks decreased their municipal-debt exposure during that time by a combined $15 billion and will continue to pull back, albeit at a slower pace.

Among the biggest banks, JPMorgan reported the largest drop, with its holdings of municipals — which includes those for trading, available for sale and held to maturity — declining by about $2.9 billion to $54.1 billion as of March 31. Wells Fargo's dropped by $2.1 billion to $59.3 billion during that time. Bank of America and Citigroup cut their stakes by $1.5 billion and $1.3 billion, respectively, the filings show.

Among rivals, State Street's holdings dropped by $1.8 billion, First Republic's by $1.3 billion, Morgan Stanley's by $363 million and Bank of New York Mellon's by $231 million.

Spokespeople for the banks declined to comment on changes in their municipal-debt holdings.

The tax cut made the securities far less valuable than they were previously to businesses. For example, yields on benchmark tax-exempt bonds due in 30 years were 2.9 percent Wednesday. That would have been equivalent to a 4.46 percent taxable yield under previous rates. But now it's about 3.67 percent, less than what they could earn on top-rated corporate debt with similar maturity, according to a Moody's Investors Service index.

Banks' demand for municipal bonds may also be further diminished as the Federal Reserve raises interest rates. Dick Bove, a former banking analyst who now serves as chief strategist at Hilton Capital Management, said tighter monetary policy may make banks extend more capital to making overnight loans, since that could be more of a draw if short-term rates rise faster than long-term ones.

"The yields on long-term securities have not kept pace with the yields on federal funds," Bove said.

Bloomberg

By Michelle Kaske

May 31, 2018, 6:12 AM PDT

Coming Soon to Cleveland: Luxury Tower Built With Tax-Free Bonds.

- **The $80 million junk-bond sale to finance non-profit project**
- **Offering comes amid strong demand for high-yield securities**

Taxpayers will be subsidizing a luxury apartment in Cleveland that's complete with a yoga studio, fire pits, pool and grill areas.

Not-for-profit Playhouse Square Foundation, which just hosted Disney's Aladdin and will soon be home to Broadway musical Hamilton, is using some of a tax-exempt, $80 million junk-bond offering to finance a $138.9 million, 34-story apartment tower. Once it opens in 2020, the Lumen will have 318 apartment units (including 12 penthouse units) and a parking garage as well as other amenities like a concierge entrance and fitness center, according to bond offering documents.

Though tax-exempt municipals often finance affordable housing projects, it's rare for debt with a tax break to finance luxury apartment buildings. The bonds will be sold through a local authority and the proceeds will be loaned to Playhouse Square, a non-profit company that will be responsible for repaying the debt.

The speculative bond deal is likely to fetch strong interest from buyers who have flocked to high-yield municipal funds. After releasing information about the bond sale, at least two investors contacted the foundation and are coming to Cleveland to visit later this week, Art Falco, chief executive officer of Playhouse Square, said in an interview.

The apartment complex will be located a short walk away from the foundation's center for TV and radio stations, theaters, art galleries, and the ballpark for the Cleveland Indians baseball team. Playhouse Square got its start during a movement four decades ago to save theaters built in the 1920s that were going to be bulldozed as television hurt the live-performance industry. The foundation now owns and operates 11 performance spaces, hosting more than 1,000 events with 1 million attendees in fiscal 2017, according to bond offering documents. It had $70.5 million in revenue in the most recent year, with most of that coming from theater tickets.

Playhouse Square helped build a hotel in the 1990's and owns several offices in downtown Cleveland. It has a "full service" real estate services division that manages its properties.

"What we found was that we had to become a leader in some of these developments in order to see them to reality," Falco said.

Falco said he views the luxury apartment project as a "working endowment" that will provide the foundation with a small return on its investment.

"It's not dissimilar to taking some funding and investing it in the stock market as an endowment would do," he said. The foundation, which has a $24.1 million endowment as of fiscal 2017, has received $95.3 million in pledges for a $100 million fundraising campaign it started in 2014, according to bond offering documents.

While the foundation has a proven track record, it has little experience with residential property management, S&P Global Ratings analysts said in a report this month. The center's work with both performing arts and real estate makes it unique, said analyst Gauri Gupta. The real estate arm adds to the diversification of its revenue stream, which is a positive, she said.

Risks facing investors include the foundation losing its “current national, regional and local reputation as a leading producer and presenter of the performing arts,” according to initial offering documents. The bonds will be a general obligation of the foundation, the S&P report says.

The developer is optimistic, with almost 100 people already expressing interested in the apartments, Falco said. “We feel that the project is going to be successful,” he said.

Bloomberg

By Amanda Albright

May 29, 2018, 5:56 AM PDT

Seattle and Columbus Show How Cities Can Win.

Turns out location isn’t everything.

In the modern U.S. economy, prosperity depends more and more on creating successful cities. But what is success, and how can it be achieved? Seattle, Washington, and Columbus, Ohio, offer some clues.

In tracking the rise and fall of American cities, people often pay attention to population growth. It isn’t a perfect proxy for urban success, especially because many cities restrict new housing development and thus prevent their population from growing. But it’s definitely one important measure, because more residents equals a larger tax base.

It’s interesting, therefore, to look at which cities are growing and which are shrinking. The U.S. Census Bureau recently released its 2017 estimates for the country’s 25 largest municipalities:

Continue reading.

Bloomberg

By Noah Smith

May 29, 2018, 3:00 AM PDT

California Must Be Doing Something Right in Trump’s America.

The president loves to hate on the Golden State, but the proof is in the profits.

Just about every policy Donald Trump imposes to make his America great is opposed by the world’s fifth-largest economy. That would be California, which is growing faster and outperforming the U.S. in job growth, manufacturing, personal income, corporate profits and the total return of its bonds. The most populous U.S. state, with 39.5 million people, supplanted the U.K. as No. 5 in the world with an equivalent gross domestic product of more than $2.7 trillion, increasing $127 billion last year, according to data compiled by Bloomberg.

Trump attributes the prosperity of the U.S. economy during his 17 months as president to his evisceration of environmental regulations and other consumer protections, abandoning the Paris climate accord, aggressively deporting undocumented immigrants, prohibiting people from certain nations (mostly majority Muslim) from emigrating to the U.S., prosecuting sanctuary cities for protecting immigrants, cutting taxes most for corporations and the rich, and appointing a Supreme Court justice who just wrote the 5-4 decision limiting the rights of tens of millions of workers.

Jerry Brown, California's longest-serving governor, takes the opposite approach, and his state thrives. California is the global leader among governments committed to safeguarding the planet from climate change. Corporate California's revenues from clean energy companies dwarf those of the other 49 states or any country. The state's auto emissions law, now contested by the Trump administration, is the nation's most stringent. The legislature voted to become a sanctuary state, preventing police from participating in federal enforcement or asking people about their immigration status. The same assembly also made California the first state to declare a $15-an-hour minimum wage and to require solar panels on new homes. Its citizens approved Proposition 30, temporarily raising personal income and sales taxes to fund education.

California's 4.9 percent increase in GDP last year was more than twice the gain for the U.S. and enabled the state's jobless rate to slide to 4.2 percent, the lowest on record since such data was compiled in 1976. Per capita income since 2013 grew 20.5 percent, making California the perennial No. 1. Among the biggest states sharing the Trump agenda, Texas remains an also-ran with less than a third of California's $31.8 billion in receipts from agriculture, forestry and fishing and $63 billion less than California's $289 billion in equivalent GDP as the nation's largest manufacturer, according to data compiled by Bloomberg. While the Texas unemployment rate is lower at 4.1 percent, California's is falling faster and its total workforce of 17 million is 37 percent greater and has increased 2 million during the past five years, more than any other state.

Investors also make California the best-performing state, with 462 native companies in the Russell 3000 index producing a 587 percent total return (income plus appreciation) during the past decade, 262 percent the past five years, 76 percent the past two years, and 27 percent the past year — easily surpassing the Russell 3000's total return of 371 percent, 154 percent, 59 percent, and 22 percent, respectively. In the market for state and local government debt, California also is superior, representing more than 20 percent of the No. 1 BlackRock Strategic Municipal Opportunities Fund, according to data compiled by Bloomberg.

Although the president said climate change is a Chinese hoax, California takes warming seriously. No country or state has more companies that derive at least 10 percent of their revenue from clean energy, energy efficiency or green technology, according to Bloomberg New Energy Finance. (California has 24 such companies.) The average annual revenue from clean energy companies is 11.8 percent of the sales from the state's major companies, up from 4.5 percent five years ago.

The average revenue of California clean energy companies is 140 percent of their domestic peers' average sales. Only five years ago, the ratio was 49 percent. Their revenue grew 33 percent last year when their counterparts throughout the U.S. reported less than half that increase.

Trump and his enablers in the Republican Party fail to grasp the reality that clean energy increasingly is good for business, especially in California. "He can't distinguish the white horse of victory from the pale horse of death, to quote the Apocalypse," said Brown during an interview at his Sacramento office last week. "He's riding a dead horse. That will become obvious to more and more people."

Brown said that the market forces driving California ahead of other states are inexorable: "China also appears to be ready to adopt ever increasing requirements for zero emissions vehicles. That's the biggest market. That is the market, and they have to sell into it with electric cars and California is trying to do the same thing as well as the states that follow us. It can't be resisted. It's too powerful a force."

Investors already are benefiting from the trend, reflected in analyst estimates compiled by Bloomberg showing the sales of California clean companies rising 29 percent, 16 percent and 11 percent in 2018, 2019 and 2020, compared to 17 percent, 8 percent and 6 percent for similar out-o--state firms.

Shares of California's clean companies, which spend twice as much on research and development as their out-of-state peers, gained an average of 70 percent the past two years, or 23 percentage points more than the average return for the rest of the country. At the same time, California's clean companies created twice as many jobs as their counterparts elsewhere. Productivity also is unsurpassed in California, where the revenue per employee of clean companies rose 7 percent last year, while it fell 3 percent outside the state, according to data compiled by Bloomberg.

The new California law mandating that new homes be built with solar energy is a boon for the renewable industry. San Francisco-based Sunrun Inc., whose shares appreciated 122 percent the past 12 months, will report sales growth of 36 percent in 2018, according to analysts surveyed by Bloomberg. The same analysts predict Sunrun will appreciate another 21 percent by December.

That's another way of saying companies have a better chance of becoming greater when they make their business in California.

Bloomberg Opinion

By Matthew A. Winkler

May 29, 2018, 7:00 AM PDT

— With assistance by Shin Pei

This column does not necessarily reflect the opinion of the editorial board or Bloomberg LP and its owners.

Goodbye, Newspapers. Hello, Bad Government.

The collapse of local print media correlates with deteriorating municipal finances.

All across the country, the offices of local newspapers are shutting their doors. The print apocalypse is truly upon us.

It's interesting to ask just why this is happening. It seems very doubtful that simultaneous bad management decisions on the part of dozens of newspapers all across the country could be behind the decline — it must be something structural. The internet is the obvious culprit. Free online classified ads like those on Craigslist capture one source of ad revenue, while platforms like Facebook and Google take the lion's share of other ads. The internet also breaks local news' quasi-monopoly over information, by putting infinite news source alternatives at the tip of every consumer's fingers. In other words, the internet has simultaneously disrupted every aspect of the traditional newspaper business model.

It’s highly unlikely that newspapers will disappear — people will always want professional journalists to provide them with news, and op-ed writers like myself to provide them with opinions, ideas and expertise. Instead, the industry will probably consolidate, with a few large players dominating a nationwide (or global) market. This could happen via newspapers acquiring each other, or — as serial media entrepreneur Ev Williams predicts — with Netflix-like platforms offering subscription services for media content.

Continue reading.

Bloomberg

By Noah Smith

June 1, 2018, 7:00 AM PDT

The Hidden Costs of Losing Your City's Newspaper.

Without watchdogs, government costs go up, according to new research.

When local newspapers shut their doors, communities lose out. People and their stories can’t find coverage. Politicos take liberties when it’s nobody’s job to hold them accountable. What the public doesn’t know winds up hurting them. The city feels poorer, politically and culturally.

According to a new working paper, local news deserts lose out financially, too. Cities where newspapers closed up shop saw increases in government costs as a result of the lack of scrutiny over local deals, say researchers who tracked the decline of local news outlets between 1996 and 2015.

Disruptions in local news coverage are soon followed by higher long-term borrowing costs for cities. Costs for bonds can rise as much as 11 basis points after the closure of a local newspaper—a finding that can’t be attributed to other underlying economic conditions, the authors say. Those civic watchdogs make a difference to the bottom line.

Continue reading.

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KRISTON CAPPS

MAY 30, 2018

Assessing Exposure to Climate Risk in U.S. Municipalities.

May 22, 2018 – 427 REPORT. Cities and counties are bearing the costs of the sixteen billion-dollar disasters in the United States in 2017, raising concerns over the resilience of municipalities to the impacts of climate change and associated financial shocks. Credit rating agencies are increasingly integrating physical climate risk into their municipal rating criteria; however, they lack concrete metrics that compare and assess which municipalities are exposed to climate impacts. Four Twenty Seven's new local climate risk scores provide comparable, forward-looking data to fill this gap. This report discusses our approach to measuring exposure to climate hazards and highlights cities and counties most exposed to the impacts of climate change.

Continue reading.

By Nik Steinberg

May 22, 2018

CDFA Summer School.

August 6-10, 2018 | Pittsburgh, PA

CDFA Summer School is a week long series of courses presented by the CDFA Training Institute. CDFA Summer School will offer five different training courses at the Renaissance Pittsburgh Hotel, in Pittsburgh, PA. Learn from our expert practitioners and experience CDFA's most interactive educational event of the year live in Pittsburgh.

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Strategies for Addressing Non-Performance and Loan Defaults

August 14, 2018 @ 2:00 PM Eastern

Successful RLF programs always make every attempt to craft a good loan. Some businesses, though, will inevitably struggle to repay. How your fund handles loans and borrowers during this difficult period can help minimize losses and maximize recovery. As part of the CDFA EDA RLF Best Practices Program, this webinar will highlight a variety of corrective action strategies and proactive approaches that can successfully reduce defaults.

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Register in advance to confirm your participation and receive login information. Registration is free and is open to all interested stakeholders.

Register

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August 16, 2018 | 2:00 PM Eastern

In this webinar, experts on EPA financing programs will give a thorough overview of the financing options the EPA provides to support brownfields redevelopment and the development of water infrastructure. CDFA will place a specific emphasis on the various EPA Brownfields Grant Programs, including Brownfields Assessment Grants, Brownfields Revolving Loan Fund Grants, and Brownfields Cleanup Grants, as well as the financing offered through the Water Infrastructure Finance And Innovation Act (WIFIA).

Register Now

Colorado Supreme Court Interprets TABOR, Holding City's "Waste Reduction Fee" is Not a Tax .

Municipalities wield considerable power over local businesses as a recent Colorado Supreme Court decision demonstrates.On May 21, the Colorado Supreme Court decided the case of *Colorado Union of Taxpayers Foundation v. City of Aspen*. The Court held, in a 4 to 3 ruling, that a City of Aspen ordinance imposing a charge of $0.20 on the right to use a paper bag at a grocery store was not a tax, subject to Colorado's Taxpayer Bill of Rights (TABOR), which was enacted in 1992.

The City of Aspen ordinance was adopted by the City Council in 2012, and prohibits grocery stores in the city from providing disposable plastic bags to customers at check-out, while also imposing a charge of $0.20 on each use of a paper bag, which is known as a "waste reduction fee." The City Council concluded that the use of single-use shopping bags contributed to greenhouse gas emissions, litter, atmospheric acidification and solid waste generation.

TABOR "specifically limited the legislative taxing power of the state and local governments by requiring that a new tax must receive voter approval prior to implementation." However, the Court also notes that TABOR did not define the term "tax." The Court held that this fee is not a tax because it is not a revenue-raising device, but is assessed to defray the city's costs in administering a "specific, regulatory, waste-reduction scheme, and, particularly, to recoup the costs of recycling the bags that the shoppers are still permitted to use under this regulatory scheme."

The dissenters argued that this fee was clearly a tax, indeed a "sin tax," and that the Court , in reaching this decision, failed to follow its precedents in interpreting TABOR.

Additional Source: Court Finds Plastic Bag Ban Constitutional

Pillsbury Winthrop Shaw Pittman LLP – Anthony B. Cavender

May 31, 2018

Keeping Special Revenues "Special"

Special revenues may not be as special as many bondholders have historically expected. Two recent rulings[1] from District Court Judge Laura Taylor Swain in the Puerto Rico PROMESA proceeding have held that bond issuers are not required to make post-petition special revenue bond payments during a pending Puerto Rico Oversight, Management, and Economic Stability Act ("PROMESA")[2] Title III bankruptcy proceeding. Judge Swain also held that unless the Oversight Board authorizes special revenue payments, the court lacks authority to compel the payment. The rulings are at odds with existing precedent, legislative history, and market expectations and have alarmed the municipal finance industry.

In this blog post, we look at the immediate impact of Judge Swain's interpretation of the Bankruptcy Code—pending appeal—and consider how to mitigate bondholder risk for new special revenue secured bond issuances.

What does the Bankruptcy Code say about special revenues?

Special revenues are revenues derived from a project or system, for example toll revenue generated by a highway or bridge project. Under section 928 of the Bankruptcy Code, special revenues acquired after the commencement of the case remain subject to any lien resulting from any security agreement entered into by the debtor before the commencement of the case.

Section 922 of the Bankruptcy Code expressly provides that the filing of a petition does not operate as a stay of application of pledged revenues to payment of indebtedness secured by such revenue. The marketplace has commonly understood that section 922 of the Bankruptcy Code protects special revenues and directs their payments to issuers notwithstanding a pending bankruptcy.

What did Judge Swain say about the automatic stay and special revenues?

Despite market expectations, Judge Swain held in the Assured Adversary Proceeding that the holders of special revenue bonds cannot compel the debtor to apply special revenues to debt service post-petition. Specifically, the Court held that the exception to the automatic stay found in section 922(d) did not authorize actions to compel the debtor to apply net special revenues to debt service—it merely allows debtors to voluntarily make such payments if they so choose.

Judge Swain cited legal commentary, noting that nothing in the plain language of section 922(d) demonstrates congressional intent to give the holders of special revenue secured bonds the power to compel continued application of such revenues to payments during the course of a Chapter 9 proceeding.

Is this ruling consistent with the Bankruptcy Code and prior precedent?

Legislative history suggests that section 922(d) was intended to avoid the impairment of special revenue bonds in bankruptcy by excluding such payments from the automatic stay. Indeed, the market has long viewed the continuation of payments on special revenue debt as a certainty.

Consistent with that expectation is Judge Thomas Bennett's decision in the Jefferson County Chapter 9 proceeding. In Jefferson County, Judge Bennett analyzed a pledge of special revenues pursuant to the definition contained in section 902(2)(A) to find that specifically pledged sewer revenues were not subject to the automatic stay.[3] Judge Bennett held that the automatic stay does not bar application of pledged special revenues to indebtedness, regardless of whether the special revenues are generated pre- or post-petition or whether they have been paid over to the trustee. The Jefferson

County opinion does not address whether such payments were voluntary or compulsory, but the ruling is consistent with perception that Congress intended to protect special revenues in an effort to ensure a stable municipal finance market.

What is the Basis for Judge Swain's Opinions?

Judge Swain dismissed the bondholder's claims in the Assured Adversary Proceeding, holding that section 922(d) only grants a municipality "permission" to continue paying special revenue obligations in its discretion during a bankruptcy and does not compel a debtor to make such payments. The Court narrowly read the plain language of section 922(d), finding no express payment obligation, and concluded that section 922(d) does not sanction non-consensual interference with governmental properties or revenues under section 305 of PROMESA. Section 305 of PROMESA is similar to section 904 of the Bankruptcy Code—they both protect debtor property from court interference. Section 904 generally prevents a court from issuing any stay, order, or decree that might interfere with any of the property or revenues of the debtor. Under section 304 of PROMESA, the consent of the Oversight Board is required or the enforcement must be in connection with a plan of adjustment if property rights or revenues are to be implicated.

While the Assured Adversary Proceeding merely touches on the authority of the court under section 305 of PROMESA, the ACP Adversary Proceeding takes a deeper dive. In the ACP Adversary Proceeding, Judge Swain dismissed a complaint by bondholders regarding the payment of special property tax and clawback revenues, ruling that section 305 of PROMESA denied the Court subject matter jurisdiction to enforce the payment of special revenues post-petition because the Oversight Board did not consent to such payments. Judge Swain read section 305 of PROMESA broadly. Taking these two opinions together, Judge Swain has held that where the debtor is in possession of the special revenue proceeds and they have some property interest in those funds (be it a small reversionary interest or something else) or the funds are the debtor's revenues, the Bankruptcy Code does not compel that the payments be made and section 305 of PROMESA prevents the court from ordering the Debtor to pay.

How Safe Are Special Revenues?

Not as safe as they were prior to Judge Swain's rulings, but safe enough if a bondholder is able to establish as a matter of law that they hold an enforceable security interest and lien on special revenues. Bondholders with liens are still able to prove their lien and seek payment and/or adequate protection once a Chapter 9 proceeding is filed.

The market's reliance on the assumption that the Bankruptcy Code protects special revenues and mandates their application to debt service in a Chapter 9 proceeding must adjust to reflect the new reality—that the payment of special revenue bonds post-petition is not mandatory, but permissive. Both rulings are on appeal to the First Circuit Court of Appeals[4] and, until those appeals are determined, parties structuring special revenue bond issuances should consider the difference between permissive and mandatory turnover of special revenues post-petition in pricing and in accessing risk in the event of an issuer Chapter 9 filing.

If a special revenue issuance is protected by a state statutory lien, there may be broader protection in the event of a Chapter 9 filing. This is particularly true if the state statute requires the special revenues to be received by a third party, never be in the possession, custody or control of the issuer, and state or other applicable law requires that the funds received be applied to debt service.[5]

Bond documents should clearly identify the statutory lien and be consistent with state statutory requirements regarding the flow of funds. There is greater protection when a statute prohibits the issuer from ever receiving the special revenues because under this scenario, to allow a debtor to receive and perhaps reallocate special revenues would be a violation of state law. It is important when issuing special revenue secured debt pursuant to a state statute that the offering statement, indenture, issuer's resolution, and payment agent agreement are consistent and comply with the statute.

What Does the Future Hold?

It depends on what the First Circuit determines on appeal. If the First Circuit accepts Judge Taylor's statutory interpretation, then the certainty previously enjoyed with regard to turnover of special revenues post-petition must be reconsidered in terms of deal structure and pricing and risk to enforceability during a bankruptcy proceeding. Market access for some issuers will be limited unless state law provides for a statutory lien and payment through a third party intermediary and not the debtor. Should the First Circuit uphold Judge Swain's ruling, we expect that there will be pressure on Congress from all parties within the municipal finance industry, including issuers, to revise section 922(d) to require or mandate turnover of special revenues after a Chapter 9 filing.

[1] *Assured Guaranty Corp. et al. v. Commonwealth of Puerto Rico et al.* Adv. Proc. No. 17-155-LT and 17-155-LTS (Bankr. D.P.R., January 30, 2018) ("Assured Adversary Proceeding"); *ACP Master, LTD., et al. v. The Financial Oversight and Management Board for Puerto Rico as representative of Commonwealth of Puerto Rico, et. al.,* Adv. Proc. No. 17-189-LTS (Bankr. D.P.R., Jan. 30, 2018) ("ACP Adversary Proceeding"). The Assured Adversary Proceeding and the ACP Adversary Proceeding were filed in *In re The Financial Oversight and Management Board For Puerto Rico, as representative of Commonwealth of Puerto Rico*, No. 17BK 3283-LTS (Bankr. D.P.R.). The Puerto Rico Highways and Transportation Authority ("PRHTA") is one of several Title III debtors.

[2] PROMESA was enacted by the U.S. Congress and signed into law in 2016. PROMESA is codified at 48 U.S.C. §§2101, et seq.

[3] *In re Jefferson Cnty., Ala.*, 47 B.R. 228, 262-74 (Bankr. N.D. Ala. 2012).

[4] *See* appellate case numbers 18-1165/18-1166 (Assured) and 18-1108 (ACP Master Fund).

[5] Note that in the *Assured* case, the Puerto Rico Fiscal and Advisory Authority, on behalf of PRHTA, delivered instructions to the fiscal agent directing the agent not to make scheduled payments to bondholders and that any such payment, if made, would violate the automatic stay under PROMESA. Accordingly, the fiscal agent did not make the payments.

By Karol Denniston and Peter Morrison on May 29, 2018

Squire Patton Boggs

With Shootings on the Rise, Schools Turn to 'Active Shooter' Insurance.

Gun violence costs lives — and money. The financial burden can overwhelm governments, especially when they're small or struggling.

After every mass shooting, more calls come in: from private companies, from large stadiums, and — increasingly — from government agencies and public schools. They all want to talk about the same thing. "We probably have seen a tenfold increase in inquiries since Parkland," says Paul Marshall, an insurance broker for McGowan Program Administrators, an underwriter based in Ohio. “People just feel vulnerable when [a shooting] happens. And that’s when we get phone calls, because it feels inevitable and very difficult to manage.”

Since the February attack on Marjory Stoneman Douglas High School in Parkland, Fla., which killed 17 and launched a nationwide push for additional gun control measures, at least seven South Florida school districts have purchased about $3 million worth of “active shooter” coverage from McGowan. This kind of coverage, which the insurance broker first began offering in 2016, is a small but rapidly growing slice of the company’s portfolio. There’s no database that tracks which school districts carry this type of coverage, but Marshall says his company is consistently seeing 20 percent increases in the number of inquiries month over month. Other insurance companies are also seeing an increase in inquiries and purchases of this type of insurance. Over the course of one week shortly after Parkland, Hugh Nelson, senior vice president at Southern Insurance Underwriters Inc., says he received half a dozen inquiries. According to Reuters, while some insurance companies have offered these policies since 2011, many more have sprung up since 2016.

It’s one trend following another, deeply troubling one: The incidence of active shooter events is going up. According to FBI data, the average number of shootings per year jumped from 6.4 between 2000 and 2006 to 16.4 in the period from 2007 to 2013. (Overall, active shooter incidents, which the FBI defines as events in which an individual is actively engaged in attempting to kill people in a populated area, claimed 1,043 lives between 2000 and 2013.) In 2014 and 2015, that number rose again, to 20 shootings per year. About 10 percent of those occurred on government property, while an additional 24 percent occurred in schools. In fact, according to data recently compiled by The Washington Post, since the 1999 massacre at Columbine High School in Littleton, Colo., some 208,000 children at 212 schools have experienced gun violence on campus.

Some of the deadliest of these incidents have happened in just the past six years. In addition to the Parkland shooting in February, there’s been a mass-casualty shooting at a concert in Las Vegas, which killed 58; in the Pulse night club in Orlando, which killed 49; in a San Bernardino, Calif., city center, which killed 14; and at Sandy Hook Elementary in Connecticut, which killed 26. In May, the latest attack took place: A student shot and killed 10 of his classmates at Santa Fe High School in Texas.

Aside from the loss of life and the pain these events inflict on a community, deadly shootings also have financial costs that can be difficult for governments, especially small or struggling municipalities, to bear. San Bernardino had already filed for bankruptcy when it had to pay $4 million for the response to the terrorist attack at the Inland Regional Center. Connecticut gave the city of Newtown $50 million just for the costs of rebuilding Sandy Hook Elementary School. The total costs from the 1999 shooting at Columbine High School also came to roughly $50 million. In Parkland, the Florida Attorney General’s Office paid for funeral costs, and the school district plans to tear down and rebuild the part of the school where the shootings occurred.

The tangible costs alone can overwhelm a government: litigation, compensating victims, paying for funerals, providing trauma counseling, reconstructing or refurbishing buildings, and investing in new security measures to prevent another attack, to name a few. The impact of intangible costs to a community — reputational damage, loss of tourism revenue and high turnover among workers — is impossible to measure, according to experts. “These events are very expensive in so many ways. People are so traumatized by responding to the event that they leave the field. I’ve talked to people who’ve left education because of this,” says Mike Dorn, a school security expert at Safe Havens International who is currently working on his 13th active shooter case. Dorn was also a school district police chief at Bibb County Public Schools in Georgia for 13 years.

In the face of these potentially huge costs, there is debate about whether and to what extent general liability policies will cover active shooter events. Marshall, the McGowan insurer, says that general liability policies typically have what’s called a “duty to defend” clause, meaning that they require a lawsuit to be filed in order to activate coverage. That’s a process that can take months or even years. And general policies will not provide victims with the kind of compensation that’s likelier to stave off litigation.

In contrast, active shooter policies tend to go into effect as soon as a person walks onto the organization’s property and commits a targeted attack, and they generally cover attacks with any weapon, such as guns, knives, bombs or vehicles. Coverage pays for a host of expenses associated with these events as well, including victim expenses, particularly medical bills; agency costs, like extra security and business income losses; and traditional liability costs for lawsuits.

Some insurance companies that offer this kind of coverage also offer risk assessment and mitigation strategies to organizations trying to prevent an active shooter attack, says Nelson of Southern Insurance Underwriters. “Many governments are already doing this type of [risk mitigation and preparation] thing, but they want to see what more can be done,” Nelson says.

McGowan’s risk mitigation policies also make up a substantial part of its coverage, though Marshall says some governments and agencies already feel like they’re doing enough to secure their properties. Marshall says one prominent city parade hired risk-mitigation services from McGowan this year, which included social media monitoring and coordination with local police. According to him, it was the first year the parade didn’t have to deal with a violent attack threat.

That aspect of the coverage was one of the main reasons that Palm Beach County School District, the fifth largest district in Florida and the 10th largest in the country, decided to purchase active shooter insurance last summer. Dianne Howard, the district’s director of risk and benefits management, says Palm Beach was one of the first jurisdictions to adopt this kind of insurance in her state. “We wanted the risk assessment and training service” that came with the coverage, Howard says. “Sometimes, departments tell you that they’re doing everything they need to do, but when you look at other places where [attacks] have happened, you see there was actually a problem. So I wanted an outside perspective to see what else we could do.”

Howard purchased the district’s insurance from McGowan, and she said the company found some “areas where we could improve” in terms of mitigating risk. She purchased $1 million in coverage, which she said she hopes to increase. (According to Marshall, many others have done so since the Parkland shooting.)

Some risk mitigation techniques, however, can actually interfere with their insurance policies. Arming teachers — an idea that has received support mainly among Republicans in Congress and in statehouses — is one such security strategy. When some Kansas school districts considered letting teachers and campus administrators carry concealed weapons after the Sandy Hook massacre, their insurance companies pushed back. “Concealed handguns on school premises pose a heightened liability risk. We have chosen not to insure schools that allow employees to carry concealed handguns,” EMC Insurance Companies wrote to Kansas districts. Several districts abandoned their plans to arm teachers as a result.

“We don’t recommend arming teachers in the United States,” Dorn, the school security expert, says. “Trying to teach people to [use a gun against] an active shooter is even harder than just teaching them how to use a firearm.” Dorn says that even police officers sometimes don’t respond appropriately in emergency situations. In Parkland, a campus police officer notoriously stayed outside of the building even as he heard gunshots inside.

Dorn also cautions against similar solutions, like the Pennsylvania superintendent who suggested students were protected from active shooter situations thanks to a bucket of river rocks in the classroom, or the other Pennsylvania school district that issued mini baseball bats to teachers. “Great idea. Now some kid gets mad and gets ahold of the bat and beats up another kid and we have a $4 million lawsuit on our hands,” Dorn says.

He says behavioral interventions — like identifying potentially violent students and intervening before anything takes place — are by far the most effective strategy for stopping violence on school property. They’re also less expensive than physical solutions such as bulletproof glass and metal detectors. “If you’re a school without strong behavioral approaches [to preventing violence], you’re extremely vulnerable to litigation, because this is so well established. It’s like a standard of care,” Dorn says. “You can spend $5 million [on extensive security measures] and still have a shooting because you didn’t spend a tiny fraction of that on good behavioral approaches.”

As the difficulty of preventing violence becomes clearer to the public, and if violent incidents like Parkland continue to become more common, Marshall and Nelson both say they expect that this portion of their insurance practice will continue to grow. Just recently, Marshall says, a large municipality flew him out for an informational presentation and decided immediately to buy coverage.

And insurance companies keep updating the coverage they offer in response to tragic events. A year ago, McGowan did not offer coverage for vehicle attacks. Now it does. The sorts of coverage that insurance companies provide will continue to evolve, says Marshall. “At this point, [people feel that] everyone is kind of a target.” Attackers today, he says, have become more likely “to handle disputes in a violent manner, with guns, knives, vehicles, bombs. It’s very concerning to people.”

GOVERNING.COM

BY NATALIE DELGADILLO | JUNE 2018

How to Calculate What Opioid Overdoses Cost Government.

New research provides a formula to help cities and counties know what to expect, financially, when drug deaths spike.

As governments grapple with the rising cost of the opioid crisis, one group may have found a way to predict how high those costs will go.

For every three fatal overdoses, a local government’s public safety costs can increase by an average of 1 percent, or $150,000, according to research from the data platform OpenGov. What’s more, once deaths start spiking, government costs tend to steadily increase at that rate for about three years until they begin to plateau.

The findings give local governments an idea of what to expect financially as they respond to rising overdose deaths. The data were gathered from 20 cities and counties across five states considered to be on the front lines of the crisis — Kentucky, Maryland, Massachusetts, Ohio and Pennsylvania — and released exclusively to Governing.

Continue reading.

GOVERNING.COM

BY LIZ FARMER | JUNE 4, 2018

How an Arcane, New Accounting Standard is Helping Reporters Follow the Money.

MARK NIESSE WAS one of two reporters in a conference room inside a government building in downtown Atlanta in June 2017, listening to a presentation about an obscure accounting rule change. For the first time ever, governments were required to release detailed information about tax breaks given to companies. Niesse, a reporter at the Atlanta-Journal Constitution, hoped to answer a question that had long nagged him: Are tax incentives worth it?

In Fulton County, the largest of nine counties in the Atlanta metro area, officials were trying to comply with the new disclosures and had hired Ernst & Young to help. As the accountants spoke, Niesse peppered them with questions. At one point, the accountants left the room to discuss the accuracy of their numbers. “When they came back out, they agreed they needed to present the information in a clearer way,” Niesse recalls. That’s when Niesse noticed an extensive spreadsheet on an accountant’s laptop, open on the conference room table. Unlike the PowerPoint, the spreadsheet was crystal clear: it showed the parcel IDs and property taxes not paid on every recent development in Fulton County.

Niesse made a verbal FOIA request to the public relations officials in attendance. “They weren’t counting on that,” he recalls. Back in the newsroom, he followed up with a written request, and by late June, the spreadsheet—with its 56 columns and 77 rows of data—was open on his computer. “It was a lot of good information,” he recalls. “I would have had a hard time doing that myself.”

Continue reading.

Columbia Journalism Review

By Mya Frazier

MAY 29, 2018

Why Environmental Impact Bonds Are Catching On.

They give cities a way to share the risk and learn whether new approaches work.

Washington, D.C., had a problem. Like many cities with antiquated sewer systems, D.C. was under orders from the Environmental Protection Agency to reduce stormwater runoff that threatened the region’s water quality. To solve the problem, the city wanted to experiment with “green infrastructure” as an alternative to building costly new pipes and pumps. But green infrastructure had not yet been tried at that scale, so how could the city finance this unproven approach?

The answer, for D.C., was to launch the nation’s first environmental impact bond in 2016. An EIB enables the city to share the risks — and the rewards — of innovative problem-solving with investors. EIBs are considered a "pay for success" strategy because investors' returns depend on whether the project meets its goals. Because of the need for extensive measurement around those goals, the jurisdiction also learns what works best for future planning. This approach is catching on, with Baltimore and Atlanta recently announcing plans to issue EIBs.

In Washington, the impact investing firm Quantified Ventures worked with DC Water on a $25 million EIB for large-scale green infrastructure: rain gardens, permeable pavement and other landscaping designed to absorb and divert stormwater. The EIB was privately placed with Goldman Sachs' Urban Investment Group and Calvert Impact Capital.

The need for intervention was clear. D.C. (like more than 770 other American cities) has an outdated combined sewer system, meaning that stormwater is funneled into the same pipes that handle raw sewage. On a good day, all that wastewater goes to a sewage treatment plant. But on a bad day — and climate change guarantees more of those — heavy precipitation exceeds the capacity of the pipes and untreated sewage is discharged directly into local rivers.

In 2005, D.C. entered into a consent decree with the EPA to address this problem. The city's plan A was a $2.6 billion tunnel system to capture the combined-sewer overflow. But halfway through that 20-year project, green infrastructure began to look like a viable and less expensive plan B. And green infrastructure has the potential to create ancillary benefits such as increasing access to green space, reducing the urban heat island effect and creating ongoing jobs in landscape maintenance. The EIB allows D.C. to test that hypothesis at scale.

Of course, testing a hypothesis depends on rigorous monitoring and evaluation, a feature that distinguishes EIBs from other modes of finance, such as standard municipal bonds. But while the full results of the D.C. EIB won't be known until the project's completion in 2021, other cities are already betting on the new approach.

Baltimore, another city with combined sewer problems, also will utilize EIBs to finance green infrastructure. Here, too, the need is urgent: Baltimore is required by federal and state regulators to reduce and treat polluted runoff from more than 4,000 acres of pavement and buildings by 2019. In partnership with the Chesapeake Bay Foundation and with support from The Kresge Foundation, Baltimore plans to issue up to $6.2 million in EIBs later this year to help pay for stormwater management in some three dozen neighborhoods.

And Atlanta is the first winner of the "Environmental Impact Bond Challenge," funded by the Rockefeller Foundation and in partnership with Quantified Ventures and municipal-bond broker Neighborly. Atlanta's will be the first publicly offered EIB, allowing residents to invest in improving their city. The city plans to use EIBs to fund approximately $12.9 million worth of green infrastructure projects in flood-prone neighborhoods on the city's west side.

Kresge and Rockefeller believe that EIBs can deploy impactful solutions to resilience, water quality and other environmental challenges. But not everyone has embraced environmental impact bonds. Some, for example, have compared them unfavorably to "green bonds" (which are similar to standard muni bonds but earmarked for environmental projects), observing that EIBs are more costly to issue and that the monitoring and evaluation they require diverts time and resources from funded projects.

Ben Cohen, a senior associate at Quantified Ventures, concedes that "EIBs are not the best tool for every issue and geography." But when cities want to try unproven approaches, scale up solutions that have been tested on a small scale, or share financing costs with other entities that may benefit from projects, the monitoring and evaluation requirement "is a feature, not a bug," Cohen says.

Evaluation is essential to make sure that taxpayers are not on the hook for projects that don't work, while providing investors — who often have a social or environmental impact mandate — with an assessment of the outcomes their dollars are creating.

By focusing on outcomes and carefully measuring progress along the way, EIBs can also garner bipartisan support from those who want to see more government effectiveness and accountability. And as cities experiment with untested solutions to the unprecedented challenge of a warming planet, EIBs offer a valuable way to share risks and rewards. "EIBs are a powerful new tool in the municipal toolbox," says Cohen.

governing.com

By Laurie Mazur | Contributor
Editor of the Island Press Urban Resilience Project

MAY 25, 2018

Update On S&P U.S. Public Finance Priority-Lien Tax Revenue Debt Criteria RFC.

On Nov. 13, 2017, S&P Global Ratings issued a Request for Comment (RFC) on its proposed "Priority-Lien Tax Revenue Debt" criteria. Given the change in the proposed methodology and the criteria's potential impact on existing ratings, we undertook a substantial effort to reach a broad base of constituents interested in the proposed criteria.

Continue Reading

May 29, 2018

Save the Crew (Part Two)!

Last week, we posted a story about the lawsuit brought by the Ohio Attorney General under Ohio's "Art Modell Law" to prevent Major League Soccer's Columbus Crew from moving to Austin, Texas. We wondered aloud whether other states might enact similar laws if Ohio can succeed in preventing the Crew's departure. Readers might have wondered (aloud or otherwise) whether Ohio's efforts to enforce the Art Modell Law would inhibit professional sports leagues from expanding to Ohio.

The answer, at least for now, appears to be "no." Major League Soccer announced on May 29 that Cincinnati has been awarded an expansion team, FC Cincinnati, which will commence play in 2019. The stadium in which FC Cincinnati will play will be financed, in part, with taxpayer funding, which will bring the team within the scope of the Art Modell Law. The law didn't impede MLS expansion in Ohio, and it just might leave Ohio with two MLS teams, rather than one.

The Public Finance Tax Blog

By Michael Cullers on May 31, 2018

Squire Patton Boggs

Tough Conversations About Climate Change Planning in California.

The nature of sea-level rise is such that it threatens whole regions at once, with no respect for municipal boundaries. But in most cases, local communities are left to develop their own strategies for addressing the threat. And the decisions they make, based on local concerns about environmental conditions and property rights, have ramifications that spread out to neighboring cities and towns.

The coastal city of Del Mar, California, in San Diego County, is currently facing that challenge. Last week, the Del Mar city council, which represents about 4,300 residents, voted against including the strategy of "managed retreat" in its long-term Sea-Level Rise Adaptation Plan.

Managed retreat refers to a simple concept that can be very complicated in practice: abandoning land and sometimes developed property in coastal areas as the sea rises. It's considered a last resort for sea-level rise adaptation. While the city had initially included the strategy in its plan last month, the city council ultimately decided to strike it from the documents after residents objected that it would sink the values of their properties overnight.

Continue reading.

NEXT CITY

BY JARED BREY | MAY 29, 2018

Neighborly Issuer Brief: What the Supreme Court Ruling on Sports Betting Means for Credit.

This Issuer Brief is brought to you by Court Street Group.

Supreme Court OKs Legal Sports Betting: What Does it Mean for State Credit?

The recent U.S. Supreme Court decision that eliminated a 25-year ban on legal sports gambling in all but four states is a case study on state credit.

Different stakeholders have wondered whether the legalization of sports betting would produce some kind of windfall for state revenues through taxation of those activities. If we were to bet, we would take the under on that play from a state credit point of view, with a number of factors to support such a wager.

Not every state has current plans to implement sports betting. Only Connecticut, Pennsylvania and 16 other states have stated an interest in legalizing sports betting. So while there has been support for the concept, it is far from clear how large the amount of revenues from would be from the taxes collected on those activities and whether they would be captured at all.

Continue reading.

Neighborly

by Joseph Krist

05/30/2018

[Last Week in the Muni Market: Italian Government Debt Making Waves.]

The Muni market was a passenger on the interest rate roller coaster last week. First, U.S. interest rates reacted to Sovereign Bond issues in Italy. Italian Government Debt was the big focus as a possible shift in administration flamed fears of Italy becoming more indebted and less interested in being part of the EU. U.S. rates rallied in a flight to quality bid to 2.78% on 10yr U.S. Government bonds. Flight to quality is also referred to as a Risk-Off trade — the idea being that in times of uncertainty the assets of choice are high quality debt tied to stable currencies.

Municipal Bonds underperformed as the bids to buy was not at the same pace as that of U.S. Government debt. The Municipal market demand was most pronounced for California debt.

Finally Italy's coalition government was sworn in and Spain's Prime Minister was toppled in a no-confidence vote. And traders ate their ant-acid/Tums and went back to business as usual. The volatile rate environment reversed over the course of the week, ending with Friday's surprising May Non-Farm Payrolls data release by the Bureau of Labor and Statistics (BLS). The unemployment rate dipped to 3.8% and wage growth surpassed expectations with average hourly earnings rose 0.3%.

The stronger employment data have traders feeling more confident that the Fed will raise rates at the next meeting in June.

Overall, there was lots of volatility but rates ended up near where we started the week at 2.90%.

This week will be a larger than average (~$5bn per week YTD) Municipal new issue supply week with an expected $10bn of Muni New Issues. The State of Connecticut's $500 Million deal pricing will get most of the attention as the State's fiscal issues and pension obligation is on most market participants radar.

Neighborly Insights

Posted 06/04/2018 by Homero Radway

[The Nation's Freshwater Coast Is a Key Fulcrum for Rust Belt Revival.]

There's growing evidence of rapidly spreading income and opportunity divides between the dynamic, growing metropolises of America's East and West coasts and the Heartland in between.

Yet there is a third U.S. coast, a "freshwater coast" along the more than 10,000 miles of Great Lakes shoreline, that is proving to be an important fulcrum for economic renewal in America's interior.

Continued federal efforts are especially critical for securing the future of many smaller communities that line that coast.

As documented in prior posts, heavy industry along the Great Lakes shores and rivers of the region powered the Midwest's economic growth. Green Bay, Wis. grew as a paper mill town, fouling the Fox River as it entered Lake Michigan. Across the lake in Muskegon, Mich., paper mills, chemical plants, and auto parts plants turned spectacular Muskegon Bay into a toxic hotspot. Duluth, Minn.'s waterfront was an industrial port, where the Front Range's iron ore was shipped to Marquette across Lake Superior and on to the steel mills abutting the Great Lakes in Gary, Ind., Cleveland, and Buffalo.

Continue reading.

The Brookings Institute

John C. Austin

Thursday, May 31, 2018

Evolving Tax Incentives: A Shared Value Approach to Economic Development in Portland.

In 2015, the global auto manufacturer Jaguar Land Rover (JLR) invested in a $4 million innovation incubator in Portland to encourage and support new software-based automotive technologies. The incubator created slots for up to 12 startup firms, each benefiting from mentoring, space to test and deploy technology, and up to $3 million in contracts from JLR. In turn, the incubator provides fertile grounds in which JLR can jointly test technologies with smaller firms.

Many companies invest in local incubators, but a unique incentive program run by Prosper Portland, the city's economic development arm, distinguishes this approach. To receive a tax incentive, JLR entered into a public benefits agreement and committed to partnering with the local startup community on inclusive entrepreneurship programs, identification of career ladder opportunities for underrepresented populations, and diversity goals around hiring and training underrepresented populations.

The work that JLR is doing is emblematic of a shared value approach, a concept wherein companies find business opportunities in solving social problems. Using this model, Prosper Portland has turned its traditional economic development tax incentive program, the Portland Enterprise Zone (E-Zone), into an innovative, nation-leading model which aims to identify shared value between business, community, and the public sector.

The work that JLR is doing is emblematic of a shared value approach, a concept wherein companies find business opportunities in solving social problems.

Acknowledging the past, changing our ways

The pivot toward the shared value approach has its roots in the city's racist history: Discriminatory practices from the 1950s to the 1980s, such as redlining, destabilized communities of color and people who were not landowners. Prosper Portland's own subsequent urban renewal efforts, while focused on the preservation of Portland's neighborhoods and a lively downtown, also created conditions ripe for gentrification. Those conditions pushed lower-income households, frequently people of color, to more affordable areas of east Portland at the outer fringe of the city.

The result has been gaping disparities in employment, income, and wealth between white communities and communities of color in our city. Today, Portland has a booming economy, but due to decades-long patterns of institutional discrimination, widely shared prosperity is not flowing to those who have been displaced and live at the city's edges. Wage earners in the less diverse central city and west Portland earn an average $102,209, while wage earners in east Portland, home to a higher percentage of communities of color, earn an average $44,328.

Prosper Portland's response to that dichotomy is to deepen its commitment to building an equitable economy, driven by a strategic plan based on four cornerstones: growing family-wage jobs, advancing opportunities for prosperity, collaborating with partners for an equitable city, and creating vibrant neighborhoods and communities.

Embracing shared value

Over the past 30 years, Prosper Portland has administered tax incentives, including local tax abatement and state income tax credits, to compete with other regions and states for new economic development projects. The direct benefits of job creation and investment continue to be core to our efforts to recruit and retain businesses.

Today, however, corporate social responsibility has become equally important to both workers and customers, and society demands that companies act differently.

These norms align with the shared value model. According to the Shared Value Initiative, "More companies are now building and rebuilding business models around social good, which sets them apart from the competition and augments their success. With the help of NGOs, governments, and other stakeholders, business has the power of scale to create real change on monumental social problems."

Corporate social responsibility has become equally important to both workers and customers, and society demands that companies act differently.

Already, we are seeing the private sector collaborate with schools and universities, nonprofits, and government, agreeing on shared values that strengthen both the business and social framework—a new way to achieve economic success across previously underserved communities. Businesses are recognizing that their competitiveness relies on investments in surrounding economic and social environments, and therefore are more willing partners.

Using the E-Zone program to engage businesses in creating shared value

As we endeavor to create an environment where all Portlanders can thrive, business leaders—local, national, and international—have expressed interest in doing the same.

These new norms presented an opportunity for Prosper Portland to turn the E-Zone program into a tool to address wider disparities. We convened work sessions with representatives from every high school in Portland, local colleges, universities, government, businesses, and more than 50 nonprofit leaders. This effort birthed a public benefits agreement menu which we now use to guide our efforts.

As of 2017, a new city policy requires companies that receive tax incentives through the E-Zone program to engage with public benefits agreements. Prosper Portland defines a public benefit agreement as a legally binding agreement between a governmental organization and a business with the goal of creating shared value and partnership, where the competitiveness of a company and the prosperity of the public we serve are interdependent.

Under this framework, participating companies must fulfill certain requirements—wage levels, career ladder development, local purchasing, and equitable contracting—and then must choose from a menu to provide additional benefits related to jobs, partnerships, neighborhoods, prosperity, and equity. Companies are held accountable for their commitments with obligatory annual tracking and reporting. This is an evolving program, driven by the community, and those same partners who built the menu are now actively working to implement new partnerships between business, community, education, and government.

Impact and goals moving forward

We now have eight companies that have signed agreements, ranging from food manufacturers to software developers, with many more in the pipeline. We hope to deploy this model across our entire portfolio of economic development incentive programs. Other local jurisdictions and statewide programs in Oregon are beginning to incorporate elements of our benefits agreements into tax incentive programs, and companies outside the incentive program have expressed strong interest in joining our efforts even without receiving tax savings.

The city of Portland is home to 32,000 businesses. Our hope and dream is that each of them engage for good, even on just one or two things—where every kid has a summer job or internship if they want one, where every small business has access to free business consulting from larger companies, and where communities that have been left behind have more hope for the future. Scaling the effort to this degree offers yet another opportunity for the shared value approach, wherein big data and artificial intelligence could be deployed to track results.

As Portland Mayor Ted Wheeler said while introducing the new city policy that established the shared values model, "When we create policy that enables companies to do more, we see the positive results in neighborhoods and among residents throughout the city. That is the path to an equitable economy."

The Brookings Institute

by Andy Reed
Project Manager – Prosper Portland

Tuesday, May 29, 2018

Early Decade Big City Growth Continues to Fall Off, Census Shows.

Suburban growth outpaces city growth for second straight year

Newly released census data for city population growth through 2017 show that what I and others previously heralded as the "decade of the city" may be less valid during the waning years of the 2010s. While most big cities are still gaining population, the rates of that gain are falling off for many of them as the nation's population shows signs of broad dispersal.

The new numbers for big cities—those with a population of over a quarter million—are telling. Among these 84 cities, 55 of them either grew at lower rates than the previous year or sustained population losses. This growth fall-off further exacerbates a pattern that was suggested last year. The average population growth of this group from 2016 to 2017 was 0.83 percent—down from well over 1 percent for earlier years of the decade and lower than the average annual growth rate among these cities for the 2000 to 2010 decade (see Figure 1).

Continue reading.

The Brookings Institute

William H. Frey
Senior Fellow – Metropolitan Policy Program

Tuesday, May 29, 2018

Municipal Bonds Weekly Market Report: Unemployment Hits 18-Year Low at 3.8%.

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 decreased again this week.
- Muni bond funds break the inflow trend with an outflow this week.
- Be sure to review our previous week's report to track the changing market conditions.

Continue reading.

municipalbonds.com

Brian Mathews

Jun 05, 2018

Modernizing Infrastructure Policies to Advance Public-Private Partnerships.

In an era of political tribalism, infrastructure investment is one of the few areas of American public policy that polls well among everyone. Which makes sense; who doesn't like the idea of filling potholes, new airport terminals, and water systems that don't burst?

The challenge is keeping up with the country's enormous investment needs, whether it's maintaining what we've already built, integrating new digital technologies, or adding capacity in growing regions. State and local governments—who are responsible for managing our public assets—continue to spend larger amounts, but there is always more to do.

One of the most promising innovations to emerge over the past decade is greater use of public-private partnerships (P3s) to complement traditional funding. When designed well, collaborating with the private sector can attract greater net investment, unlock new management efficiencies, and strike an ideal balance between protecting the public interest and generating private return on investment. Yet not all collaborations are designed well, and there is a growing recognition that it is often state and local governments who are not yet ready to tap these new approaches.

Continue reading.

The Brookings Institute

by Annibel Rice, Ranjitha Shivaram, and Adie Tomer

Tuesday, May 22, 2018

Financing the New Water Infrastructure.

When it comes to addressing the nation's water infrastructure crisis, cities and towns are ground zero. They account for 80% or more of spending on drinking water, stormwater and wastewater nationwide, as federal and state support for these vital public services have dwindled over the last thirty years. The news is filled with concerning estimates that it will take billions, or trillions, to address municipal water resource needs going forward.

But it may be that these gloomy estimates are overblown.

Green and distributed infrastructure options are having their moment, and municipal leaders are taking notice. Permeable pavements capture and filter stormwater; recycling technology is turning buildings into treatment facilities; water-efficient appliances, landscaping and water smart tech tools are stretching water supply far beyond projections.

Continue reading.

By NLC Staf on May 29, 2018

IRS to Crackdown on SALT Deduction Cap Workarounds.

On May 23, 2018, the IRS and the Treasury Department issued Notice 2018-54 announcing their intention to propose regulations addressing the federal tax treatment of state workarounds to the $10,000 ($5,000 in the case of married individuals filing separately) state and local tax deduction limitation (SALT Cap) under IRC section 164 as revised by the Tax Cuts and Jobs Act. The regulations will address certain state responses to the SALT Cap, which offers taxpayers an option to contribute to state or local controlled funds in exchange for credits against state or local tax obligations. These state responses to the SALT Cap are intended to provide taxpayers with a deductible charitable contribution in lieu of state and local tax payments, the deduction of which would be limited under the SALT Cap. The regulations will emphasize that federal income tax substance-over-form principles, not state laws, dictate the determination of whether a payment is a charitable contribution or is otherwise deductible for federal income tax purposes.

New York (S.B. 7509), New Jersey (S.B. 1893), and Connecticut (Subst. S.B. 11) already have enacted workaround legislation intended to allow taxpayers to claim a federal tax deduction for payments that exceed the SALT Cap. New Jersey, for example, has authorized its municipalities, school districts, and counties to create charitable funds that grant contributors property tax credits for up to ninety percent of their payments. New York offers a similar arrangement, offering tax credits for payments to state charitable funds, up to eight-five percent of the amount of such contributions in the case of state income taxes and up to ninety-five percent for local property taxes. Other states such as California (S.B. 227) and Illinois (H.B. 4237) have introduced similar bills allowing tax credits for charitable contributions. The California bill passed in the Senate and is held up in the Assembly, while the Illinois bill passed in the House and its third reading in the Senate is scheduled for today, May 24, 2018.

A key question the impending regulations will likely address, given the Notice's mention of substance-over-form principles and a reference to the federal charitable contribution deduction, is the charitable intent of the taxpayer. IRC section 170 provides that a taxpayer may deduct any "charitable contribution," defined generally as a contribution or gift to or for the use of qualifying entities, from taxable income. Such contributions must be made voluntarily and with donative intent. If the taxpayer is making the contribution in order to obtain the credits, the donative intent may not be present. Additionally, if a taxpayer receives a benefit for a charitable contribution, the related deduction is generally limited to the amount that the transfer surpasses the fair market value of the benefit received. Hence, workaround contributions in New Jersey, as noted above, would be limited to a ten percent deduction.

by Robert S. Chase II, Jeffrey A. Friedman, Taylor M. Kiessig, Todd A. Lard, Benje A. Selan and Samantha K. Trencs

Eversheds Sutherland LLP

USA May 24 2018

The Week in Public Finance: Can the IRS Stop States' Tax Reform Workarounds?

The IRS wants to thwart state efforts to avoid the new cap on state and local tax deductions. It's unclear whether that would be legal — or effective.

Now that three states have created workarounds to a part of last year's federal tax overhaul, the Internal Revenue Service (IRS) is trying to stop others from following.

Last week, the IRS announced that it would propose regulations that address attempts by states to help their residents avoid the new federal cap on state and local tax deductions. So far, California, New Jersey and New York are nearing passage of laws that would allow residents who owe more than $10,000 in state and local taxes to pay the remainder into a state charitable trust. Because charitable contributions are still tax-deductible under federal law, the state trust contribution offers residents a workaround.

It's no surprise, says Jared Walczak, a senior analyst at the conservative-leaning Tax Foundation, that the IRS is striking back. "The IRS was never going to be fooled by these workarounds."

Continue reading.

GOVERNING.COM

BY LIZ FARMER | JUNE 1, 2018

Fighting Neighborhood Displacement, One Sewer Plant at a Time.

A San Francisco infrastructure project shows the potential for creating good jobs that can preserve and strengthen a marginalized community.

Bayview-Hunters Point, a low-lying, four-square-mile pitch of southeast San Francisco, has seen its fair share of transition, and even drama. Occupied by the Ohlone people before the arrival of the Spanish, it once hosted slaughterhouses that fed the city's growing population. To support the wars of the 20th century, the Navy made dramatic investments in the shipbuilding industry there. And in 1982, long before Candlestick Park was turned into dust, Dwight Clark made a miraculous endzone catch to bring home a championship to a city that badly needed some good news.

During the Great Migration, blacks came to the region on the promise of good blue-collar jobs at the shipyards, and "the Bayview," as the community is known to locals, became a bastion of black home ownership. Even today, as the community continues to reckon with crime and poverty, the area's majority of black and Asian-American residents forge strong and diverse social networks bound by churches, neighborhood groups, youth organizations and community gardens.

Now the Bayview is undergoing yet another transition. Massive real estate projects on the sites of the decommissioned Navy shipyard and Candlestick Park are bringing thousands of new homes and associated commercial activity, signaled by the appearance of craft breweries, coffeehouses and rising real-estate prices that are displacing long-time residents. This is happening even as the realities of environmental injustice continue to burden the community. Only recently were its gas-fired power plants shut off, and questions around remediation of a former Navy radiation lab remind everyone of the public-health risks the community has long grappled with.

Continue reading.

GOVERNING.COM

by Jayant Kairam | Contributor

JUNE 4, 2018

Congress Considers Big Changes to New Federal Water Infrastructure Bank.

Click here to read the Latham & Watkins Client Alert.

Latham & Watkins LLP

May 25 2018

USDA Seeks Applications for Rural Water and Waste Disposal Infrastructure Projects, Planning Grants.

PORTLAND, Oregon, May 24, 2018 — The U.S. Department of Agriculture (USDA) Rural

Development is seeking applications for rural water and waste disposal infrastructure projects, including planning grants.

The Water and Waste Disposal Program provides loans, loan guarantees, and grants to fund the construction, upgrade, or expansion of clean and reliable drinking water systems, sanitary sewage or solid waste disposal infrastructure, and storm water drainage in rural areas. With the passage of the 2018 omnibus spending bill, up to $65 million in direct loans and $10 million in grants is available in Oregon this fiscal year, which concludes on September 30.

Most state and local government entities, private nonprofits, and federally-recognized tribes are eligible to apply. Projects must be located in a rural area with a population of 10,000 or less. Applications are accepted year-round.

The Water and Waste Disposal Predevelopment Planning Grant Program assists low-income communities with initial planning and development of applications for USDA Water and Waste Disposal loans, grants, or loan guarantees. Grants of up to $30,000 or 75 percent of the predevelopment planning costs are available. Most state and local government entities, nonprofits, and federally-recognized tribes serving an area with a median household income below the poverty line or less than 80 percent of the statewide non-metropolitan median household income are eligible to apply.

Additional planning grant funding is available for communities with a population of less than 2,500 and a median household income of less than $42,284 through the Special Evaluation Assistance for Rural Communities and Households (SEACH) Program.

Contact a local Community Programs Specialist near you today to discuss your project concepts and to learn more about submitting a successful application.

Contact: Erin McDuff
(503) 414-3304

Financing Water Infrastructure Projects Under WIFIA.

Click here to view the Latham & Watkins Client Alert White Paper.

Latham & Watkins LLP

USA May 25 2018

States Request $82 Billion for Water Infrastructure.

Boston — New data show that project requests to fund water and wastewater infrastructure projects through the U.S. EPA-administered State Revolving Fund (SRF) Program have increased 25 percent since last year. For the most recent cycle, 2017/2018 fiscal year, $26.9 billion has been requested for drinking water and another $55.3 billion for clean water (wastewater), according to new state-by-state project analysis from Bluefield Research (http://www.bluefieldresearch.com/research/state-revolving-fund-budget-allocations).

“Outside of revenue generated from customer billing, the SRF program represents a bedrock source of funding for municipal utilities, reaching almost 20 percent of their capital expenditure needs,” according to Erin Bonney Casey, Research Director for Bluefield. “Although, the $67 billion difference between requested and awarded funding signals the looming financial challenge for system owners.”

This year, $14.4 billion was committed to SRF loans and grants, which include federal allocations, state matching funds, and state-specific financing programs for water infrastructure projects. Of awarded funds, treatment system projects received the lion’s share — 36 percent of drinking water projects and 53 percent of clean water projects. Other types of projects include transmission and distribution networks, sewer collectors and interceptors, water or stormwater storage, water reuse, and stormwater overflow corrections.

Bluefield’s annual analysis of the SRF Program identifies projects and systems that requests these low-interest loans and grants to fund capital improvements. The data also demonstrate high variability from state-to-state that is underpinned by more local factors.

State highlights include the following:

- Ohio dominates the funding allocations because it has committed to fund all eligible projects, totaling $2.2 billion in 2017.
- Illinois issues bonds to augment the available money from state revolving funds.
- California and Texas voted in financing to address drought concerns in 2014 and 2013, respectively, which have boosted the size of SRF resources.
- Select states, such as Tennessee, have not fully matched federal funding, therefore left funding on the table in the short and long term.

The current program is already oversubscribed, with only 17 percent of the total requests receiving funding — loans or grants. Further, only a small percentage of municipalities leverage the program. Of the approximate 49,000 drinking water and 18,000 wastewater systems in the U.S., Bluefield has mapped, 3,911 drinking water and 3,730 wastewater systems that have requested funding this fiscal year.

“The noted success of the SRF program has not been overlooked in Washington,” Casey said. “In light of what else is happening in D.C. to tackle the nation’s infrastructure challenges and roll-backs of EPA regulations, the SRF program has remained intact amid budget reviews and cuts that have impacted other programs.”

Civil + Structural Engineer Magazine

MAY 30, 2018

Opportunity Zones Could Worsen Blight.

More and more, American leaders are realizing that economic policies must be designed with a specific region in mind. Usually, the context is discussion of how to revitalize regions in decline, such as rural Appalachia or the post-industrial Midwest. That’s important, because when many people leave these areas, those who remain — for family reasons, or because it’s costly to move — are stuck with half-abandoned neighborhoods and infrastructure that’s too expensive to maintain. Revitalizing declining regions can help promote economic efficiency, as well as giving aid to those unable to relocate.

But there’s another important reason to focus on struggling places — equality. It’s not just declining regions that need help, but poor neighborhoods within big cities.

Cities have always had slums and poor areas. But in the mid-20th century, things went from bad to worse for many impoverished city residents. The loss of industrial jobs from urban cores, along with white flight, left many people and their descendants stranded in blighted neighborhoods with few economic opportunities.

In the late-20th century, a number of states tried to revive their most blighted urban areas, with programs called enterprise zones. These programs, however, were not very effective. Several studies by economists in the late 1990s and early 2000s showed little or no improvement from state enterprise zones on local employment.

Then the federal government stepped in. In 1993, Congress created empowerment zones in the poor neighborhoods of six cities — Atlanta, Baltimore, Chicago, Detroit, New York and Philadelphia-Camden, New Jersey. The zones, which averaged about 10 square miles and 113,000 people, would receive federal assistance for a period of 10 years. These were truly blighted areas, with poverty rates averaging 48 percent.

Companies that employed workers within the empowerment zones could receive tax credits proportional to the wages they paid, up to the first $15,000 (about $26,000 in today’s dollars), as long as the workers also lived in the zones. This was essentially a wage subsidy. Each zone also received a $100 million block grant, to be spent on things like business investment and lending, assistance and support to private businesses, infrastructure and worker-training programs. In total, about $400 million was spent on the first six zones (a series of follow-up bills later in the decade created more empowerment zones).

Unlike the state-level programs, the federal empowerment zones were effective in improving blighted areas. A 2013 paper by economists Matias Busso, Jesse Gregory and Patrick Kline carefully compared the zones to similar areas that didn’t receive federal assistance, and concluded that the impact on the local economies of these neighborhoods was substantial and enduring.

Busso et al. focused on three main indicators of economic success — wages, employment and rents. Comparing the years 1990 (well before the program was implemented) and 2000, they found that the federal empowerment zones boosted employment of local residents by about 18 percent, and wages by 8 percent to 13 percent. Housing costs, meanwhile, may have increased slightly over the long term, but in the short term the authors couldn’t detect an increase.

In other words, the empowerment zones substantially boosted the economic fortunes of the urban poor. Nor was this success the result of a favorable choice of location by the federal government — before the zones’ creation, the targeted areas had all been doing worse than the other areas the author used for comparison. The authors estimate that the increased income created by the programs, when added up over the years, totaled around $700 million — a good deal more than the cost of the program.

In other words, policies aimed at revitalizing blighted urban areas can really work. They don’t produce miracles, and they require some outlays of money, but the rewards to society’s most disadvantaged people and places can be significant.

Now, President Donald Trump’s new tax reform aims to repeat the success of the empowerment zones with a new program called opportunity zones. Instead of investing in companies and paying them to hire workers, the opportunity zones offer tax credits for investment in poor areas.

Will the opportunity zones work as well as the empowerment zones? It seems unlikely. This is because much of the investment money lured into the zones may flow into real estate. In empowerment zones, money was targeted toward businesses, but the new program may direct money into houses.

That wouldn't create many jobs in blighted areas. But it could easily push up housing costs, including starter-home prices and rents. If real estate investment in opportunity zones causes landlords to convert rental units into condos, it would exacerbate an already severe shortage of housing supply in the nation's cities. Rent across the country is rising faster than prices overall.

Poor areas don't need wealthy investors to plow money into houses and buildings. They need investment in businesses that will give them jobs and better wages. Let's hope the new opportunity zones result in increased business investment, like the empowerment zones did.

THE POST AND COURIER

BY NOAH SMITH

May 30, 2018

Noah Smith is a Bloomberg Opinion columnist.

Will The New Opportunity Zones Work As Intended?

Concerns regarding developers lack of interest in tax incentive programs that aim to help revitalize low-income communities has some questioning the effectiveness of the Opportunity Zone Program — the first new economic tax incentive program to surface in nearly two decades following last year's federal tax cut legislation

The goal of OZP is to provide an incentive, in the form of a potentially sizable federal tax break, for investors to reinvest capital gains into economically distressed areas.

"The Opportunity Zones initiative is the most ambitious federal attempt to boost private investment in low-income areas in a generation, one with the potential to drive billions of dollars in new private investment to struggling communities over the coming decade," Economic Innovation Group President John Lettieri told Congress in testimony this month.

Continue reading.

BisNow

Dees Stribling, Bisnow National

May 29, 2018

TAX - UTAH

Triumph Mixed Use Investments III, LLC v. Commissioner of Internal Revenue

United States Tax Court - May 15, 2018 - T.C. Memo. 2018-65 - 2018 WL 2228198 - T.C.M. (RIA) 2018-065 - 2018 RIA TC Memo 2018-065

Taxpayer, a limited liability company (LLC) that was subject to partnership provisions of the Tax Equity and Fiscal Responsibility Act (TEFRA), petitioned for redetermination of final partnership administrative adjustment (FPAA) in which IRS determined it could not claim charitable contribution deduction for its donation of real property to city, that it had unreported gross receipts and net earnings from self-employment with respect to two tax years, that it could not claim long-term capital loss or bad debt deduction, and imposed accuracy-related penalties.

The Tax Court held that:

- Taxpayer was not entitled to claim charitable contribution deduction;
- Taxpayer did not have unreported income for year in which IRS failed to provide substantive evidence linking it to unreported income;
- Taxpayer had unreported income from installment sale obligation that was transferred to it;
- Taxpayer could not claim long-term capital loss for property conveyed upon loan default;
- Taxpayer could claim bad debt deduction;
- Taxpayer was required to report gross receipts attributable to sale of property as self-employment income; and
- Taxpayer was liable for accuracy-related penalties.

Benefit that taxpayer received from its contribution of real property and development credits to city was not incidental to the transfer, but rather, was expected, thus defeating the donative intent necessary for a charitable contribution deduction from income tax; taxpayer requested and received approval of its development plan and expected that another plan would also be approved after transferring the property in response to initial public opposition to its proposed plan and city council's requirement, as solution to such opposition, that taxpayer dedicate open space and reduce density before plan was approved.

TAX - MISSISSIPPI

Rankin County Board of Supervisors v. Lakeland Income Properties, LLC

Supreme Court of Mississippi - May 10, 2018 - So.3d - 2018 WL 2147128

Tenant, which operated shopping plaza on land leased from airport, appealed decision of county board of supervisors assessing ad valorem taxes.

The Circuit Court granted summary judgment to tenant but found that exemption applied for only one tax year. Parties appealed.

The Supreme Court of Mississippi held that:

- A taxpayer who claims entitlement to an exemption from ad valorem taxation that is automatic or self-operating need not file an objection before appealing to the circuit court;
- Tenant was entitled to exemption from ad valorem taxation;
- Tenant's exemption was automatic; and

- Tenant's right to refund was subject to general three-year statute of limitations.

Lease between tenant and airport, under which tenant used land to operate shopping plaza, was for "commercial purposes" in connection with operation of airport, and thus tenant was entitled to exemption from ad valorem taxation; leased premises had a commercial purpose, and with noise concern, land leased for commercial purpose was compatible with airport.

The Role of Community Land Trusts After Hurricane Maria.

Lucy Cruz has lived all of her 58 years in Caño Martín Peña, an informal community centrally located in the Puerto Rico capital of San Juan. Eight distinct neighborhoods make up the community, clustered around a stream, a caño, that gives the area its name and identity.

Some 1,200 homes in Caño Martín Peña lost their roofs during Hurricane Maria, according to Cruz, who says that the community has worked collectively to gather supplies and rebuild those roofs. They have managed to rebuild 75 completely, but in many places, blue tarps keep out the elements, according to Cruz. Access to federal funds can make a substantial difference.

For working class areas of Puerto Rico, like Caño Martín Peña, it's been a tough go of accessing those funds. FEMA, the Federal Emergency Management Agency, has strict requirements for emergency funding recipients to prove homeownership. Proving that in the aftermath of a Hurricane can be difficult.

Continue reading.

NEXT CITY

BY ZOE SULLIVAN | JUNE 1, 2018

Illinois Passes Budget, Moving to Avert Repeat of Impasse.

- **House approves spending plan that Senate passed late Wednesday**
- **Budget now goes to Governor Rauner's desk for signature**

Illinois lawmakers approved a bipartisan spending plan, leaving the state poised for its first on-time budget in four years and avoid a repeat of the record impasse that pushed its credit rating to the brink of junk.

The state House of Representatives voted Thursday to approve the $38.5 billion spending plan for the year that starts July 1, after the Senate approved the measure late Wednesday. Governor Bruce Rauner said he will sign the package of bills, which will mark the first time since the Republican took office in 2015 that the state has enacted a full-year budget on time.

"We've had to come a long way to get to this point," said Representative Greg Harris, a Democrat, who thanked his colleagues on both sides of the aisle. "It is a balanced budget."

Both Harris and Representative Tom Demmer, a Republican, presented parts of the appropriations bill on the House floor to demonstrate the plan's bipartisan nature. Harris pointed out that Hans

Zigmund, Rauner's budget director, was sitting in the gallery and had helped advise lawmakers.

This "reflects a true sense of bipartisan negotiation to find a budget that's balanced, a budget that's workable, and something that can give us stability and predictability over course of the upcoming year," Demmer said on the floor before the vote.

Illinois's bonds, which had already rallied this month amid optimism a budget would be approved on time, moved higher on Thursday, when the debt was among the most-frequently traded in the municipal market. Taxable debt due in 2033, the most active, climbed 1.7 percent to 96.3 cents on the dollar, pushing the yield down 16 basis points to 5.46 percent, according to data compiled by Bloomberg.

Both legislative chambers approved the spending plan with broad support from Republicans and Democrats, a stark contrast to previous years of contentious debate. Last year's partisan fighting over the budget nearly turned Illinois into the first U.S. state to lose its investment-grade status. The failure of the Democrat-led legislature and Rauner to reach an agreement led to a record two-year stalemate that wrecked havoc on the state's finances.

That impasse ended last July after lawmakers overrode Rauner's veto to enact a tax-hike. The money from that levy made this year's budget negotiations easier as the gap between spending and revenue had narrowed.

"There's still a lot that needs to be done, but it's a big positive sign," said Dan Solender, head of municipal investments at Lord Abbett & Co., which holds $20 billion of state and local debt, including Illinois bonds. "Given the optimism now, it could bring in more buyers," he said, adding that "the trends are turning positive instead of further down."

Starting June 1, a three-fifths majority of each legislative chamber is required to pass any bill, making approval of a spending plan more difficult. The state's unpaid bill backlog stands at $6.6 billion, according to the comptroller's office, which is less than half of what it was last July, after they piled up because of the stalemate.

The 2019 budget spends more on education and includes cuts to the department of corrections and other operating areas, as well as some pension savings through buyouts and other changes, according to lawmakers. The state's unfunded pension liability across its five retirement systems climbed to $137 billion as of last June, bond documents show.

On Thursday, Moody's Investors Service, which rates Illinois Baa3, one step above junk, warned that the state is facing an "inflection point" as its pension costs are poised to climb in the coming years, eating up more of the budget. Without changes, like foisting more pension costs on lower levels of government, state spending on pensions, debt and other retirement benefits will climb $1.3 billion, eating up about 30 percent of revenue next year, Moody's said in an emailed report.

"I don't think just getting a budget passed by the end of the regular session is any sort of accomplishment that's positive for the state's credit," Ted Hampton, Moody's lead analyst on Illinois, said in a telephone interview. "A key point of consideration for us will be whether the enacted budget helps manage or exacerbates the state's long-term fixed cost challenge."

Bloomberg

By Elizabeth Campbell

May 31, 2018

Illinois’ Accounting Practices Deny Investors Transparency.

It has been nearly two decades since the state of Illinois had a balanced budget.

Faced with a mounting debt crisis and growing social unrest, the state is grappling with the very real possibility of being downgraded to junk status. Yet, Illinois’ most recent budget deficit ran much smaller than many had expected, raising fresh suspicion over the state’s accounting practices.

A study conducted by the Illinois Policy Institute found that state lawmakers employed “cash-based” accounting as a way to mask the true extent of the budget shortfall. The Policy Institute determined that the reported deficit of just under $8 billion for fiscal 2017 was really $14.6 billion when factoring in spending incurred in the actual year.

Against this backdrop, investors must be reminded that Illinois’ perilous financial situation cannot be concealed or distorted through unethical accounting practices. This is important to bear in mind when weighing the decision to invest in the state’s municipal bonds.

Continue reading.

municipalbonds.com

Sam Bourgi

May 31, 2018

Savings From Illinois' Pension Buyout Plan Could Fall Short.

CHICAGO (Reuters) – Illinois might not be able to bank on all of the $423 million in much-needed pension savings from a buyout plan included in a fiscal 2019 budget that received final approval in the state legislature on Thursday, government finance experts said.

The budget for the fiscal year that begins on July 1 calls for bond-financed buyouts of pension benefits after past attempts to cut retirement benefits were tossed out by courts on constitutional grounds.

The fact that buyouts would be voluntary raised concerns about the feasibility of the projected savings.

Illinois is struggling with an unfunded pension liability that has climbed to $129 billion after years of skipped or actuarially inadequate annual state contributions to its five retirement systems. Those contributions are projected to grow from $8.43 billion in fiscal 2019 to just over $10 billion by fiscal 2023, according to a state legislative commission report.

Under the buyout plan, current workers could cash in the 3 percent compounded cost of living adjustment (COLA) owed them in retirement for 70 percent of the value and a reduced 1.5 percent COLA. The state would also offer vested former workers 60 percent of the value of their pensions if they choose to end them.

Steve Malanga, George M. Yeager Fellow at the Manhattan Institute, a conservative think tank, called the savings from the buyouts "speculative."

"Often these buyouts don't attract as many participants in the public sector as they might in the private sector because of how good the benefits are for government employees," he said in an interview.

He added that given the "especially generous" compounded 3 percent COLA, only workers urgently in need of money may opt for a buyout of that benefit.

But Republican State Representative Mark Batinick, who has worked on pension buyout legislation for three years, said the plan is based on reasonable assumptions.

"I don't think the issue with any of this is going to be the (buyout) takers," he said.

Laurence Msall, president of the Civic Federation, a Chicago-based government finance watchdog, said it was difficult to determine the effectiveness of the plan without an actuarial analysis. He also took issue with the up to $1 billion of general obligation bonds the state would sell over three years to fund the buyouts.

"The state has had an expensive practice that will continue this year to rely on borrowing to fund the pension buyout," he said.

MISSOURI PENSION BUYOUTS

So far Missouri is the only state to offer pension buyouts to former workers, according to Keith Brainard, research director at the National Association of State Retirement Administrators. He added he is unaware of any states buying out COLAs.

Of the 17,005 former workers in the Missouri State Employees Retirement System, 3,740 applied for a lump sum payment, resulting in a first-year saving of about $2.5 million and a projected long-term reduction in state contributions of nearly $90 million, the pension fund reported in January.

Ted Hampton, a Moody's Investors Service analyst, said the pension buyout and other aspects of the enacted state budget will be evaluated to see if they "really advance the capacity to deal with retiree benefits and debt service long-term, or whether they are primarily a way to provide near-term fiscal relief."

Pensions, along with retiree healthcare and debt service on bonds, will consume 30 percent or more of state revenue in fiscal 2019, Moody's said in a report released on Thursday.

While that is about triple the median level for U.S. states, Moody's warned that reducing statutory pension funding requirements would weaken Illinois' credit rating, which at Baa3 with a negative outlook is just a notch above junk.

Reporting by Karen Pierog in Chicago; Editing by Matthew Lewis

MAY 31, 2018

Moody's Says State Withholding Harvey Money is "Credit Negative" for all

Illinois Municipalities.

On p. 32 of its new Credit Outlook this week, Moody's notes last week's decision by the Illinois comptroller partially denying the City of Harvey's request for relief from revenue withholding under a state law requiring minimum pension contributions is the latest in a series of events involving Harvey that reinforce strong protections for pensions to the detriment of bondholders, and is thus credit negative for Illinois' local governments. The comptroller's response has important implications for other municipalities in the State of Illinois (rated Baa3/negative outlook) struggling to provide services and pay pensions because it clearly prioritizes underfunded pensions over municipal services.

Harvey is structurally insolvent, with an available fund balance of negative $56 million, or negative 199% of revenue, as of the fiscal year that ended April 30, 2017. The city has already racked up numerous general obligation bond defaults, missing two debt service payments in fiscal 2016, six in fiscal 2017 and as of February had missed four in fiscal 2018. Harvey historically has underfunded actuarially determined contributions (ADCs) for its public safety pension plans, contributing very little to its firefighter pension fund from 2009-2013, and even its far higher 2017 contribution fell far below the ADC.

Local pension plans in Illinois can request that the state withhold revenue from a sponsoring municipality if that municipality does not make minimum contributions. Harvey's public safety pension funds have made such requests, and the state has withheld more than $2 million to date. In protest, Harvey warned that it cannot afford to provide essential public services. The city asserts that it will soon be unable to meet payroll, and last month announced layoffs. The state comptroller's office has responded that it has no discretion under state law to consider Harvey's hardship.

Now facing solvency challenges, Harvey's pension funds have won legal judgments that mandate city funding. Following a host of judicial rulings and appeals over the state's revenue withholding, including at the Illinois Supreme Court, the state comptroller's office announced its intention to send $2.3 million of withheld revenue to Harvey's police pension fund to begin satisfying that judgment.

We estimate that at least 25%, or roughly $5.4 million, of the city's $21.9 million of budgeted general fund revenue in fiscal 2017 was eligible for withholding under the comptroller's announced framework. Since the city's two pension judgments amount to nearly $20 million, it will likely take several years of revenue withholding to retire the obligations unless a court intervenes, a settlement is reached or state law is changed.

Moody's declaration of "credit positive" or "credit negative" does not connote a rating or outlook change. It is indicative of the impact of a distinct event or development as one of many credit factors affecting the issuer.

Capitol Fax

Tuesday, May 29, 2018

- GASB Establishes New Implementation Guidance to Assist Stakeholders with Recent Pronouncements.
- Custodial Receipts: A Useful Tool for Restructuring Insured Municipal Bonds.
- The Week in Public Finance: Governments Haven't Had Rules for Revealing Their Private Debt —

Until Now.
- Banking Bill Expected to Help Lower State and Local Borrowing Costs.
- Better Disclosure Is One Florida Issuer's Path to Lower Borrowing Costs.
- Three Sneaky Ways Brokers or Dealers Can Take Advantage of Bond Transactions.
- Fitch: Build IL Downgrade Contrasts State/Local Dedicated Tax Approach.
- A Narrow Win for Bondholders Still Sets an Ominous Precedent in Illinois.
- BDA's 10th Annual National Fixed Income Conference is Open for Registration.
- And finally, James Madison, I Need a Hug is brought to us this week by *Manley v. Law*, in which the Federal Court of Appeals had to gently break it to a school board member that she did not have a "protected liberty interest in her emotional well-being upon which she could base her procedural due process claim." While we do not recall this particular issue arising in Con Law, that is almost certainly due to the fact that this is simply the first incident in which the government has failed to tend to the emotional well-being of (3/5 of) its citizens. Surely no group has been treated as insensitively as school board members who have been publicly shamed for "accosting a student outside a high school play." Surely.

HIGHWAYS - CALIFORNIA

Lamar Advertising Company v. County of Los Angeles

Lamar Advertising Company v. County of Los AngelesEyeglasses – Previously viewed in last 30 days for current Client IDSaved to Folder Court of Appeal, Second District, Division 8, California - May 8, 2018 - 232 Cal.Rptr.3d 394 - 18 Cal. Daily Op. Serv. 4295 - 2018 Daily Journal D.A.R. 4287

Billboard owner, which had rebuilt billboard that was blown over in a windstorm, filed petition for writ of mandate to challenge citation issued by County Department of Regional Planning for violation of county zoning ordinances.

The Superior Court denied the petition, and billboard owner appealed.

The Court of Appeal held that:

- Reconstruction did not constitute "customary maintenance" under the Outdoor Advertising Act;
- Advertising display was completely destroyed in windstorm such that billboard was not eligible for customary maintenance and its re-erection was a placement of a billboard; and
- Billboard did not fall within county ordinance allowing restoration of a "damaged or partially destroyed" nonconforming structure.

Reconstruction of non-conforming billboard which was blown down by wind did not actively maintain its display in its existing approved physical configuration and size dimensions, and therefore did not constitute "customary maintenance" under the Outdoor Advertising Act; reconstructed billboard had a smaller wood surface face, reconstruction added an electrical box as well as new lateral supports and a new catwalk, and billboard repairs were not incidental, but rather owner essentially replaced and upgraded the entire display mounted on the posts.

Billboard's advertising display was completely destroyed in windstorm such that it was not eligible for customary maintenance and its re-erection was a "placement of a billboard" under the Outdoor Advertising Act, even if some of the support poles did not fall over in the windstorm, where owner replaced the entire advertising display mounted on the posts.

Billboard blown over in windstorm was totally destroyed and thus did not fall within county ordinance allowing restoration of a “damaged or partially destroyed” nonconforming structure, where billboard could no longer function in any way as an advertising surface, billboard was unrecognizable after the windstorm and consisted only of some remaining “telephone posts” and “lateral boards,” there was no message for the motoring public to see, and billboard owner had to replace entire advertising display mounted on the posts.

LAND USE - CALIFORNIA

Hardesty v. Sacramento Metropolitan Air Quality Management District

United States District Court, E.D. California - March 31, 2018 - F.Supp.3d - 2018 WL 1567757

Property owners and operator of sand and gravel mine on their property brought action alleging that county and county officials revoked owners’ right to continuing mining on their property in violation of their procedural and due process rights, and retaliated against them by dramatically increasing financial deposit necessary to continue operating mine after they filed case.

After jury verdict in plaintiffs’ favor, defendants filed renewed motion for judgment as matter of law and, in alternative, for new trial.

The District Court held that:

- Defendants waived claim that plaintiffs lacked any cognizable due process liberty interest;
- Substantial evidence supported jury’s determination that owners had due process property interest in continuing to conduct mining operations on their property;
- Clear weight of evidence supported jury’s conclusion that plaintiffs had due process liberty interests in pursuing their chosen occupations;
- Substantial evidence supported and clear weight of evidence was not against jury’s finding that plaintiffs had vested right to mine entire tract;
- There was sufficient evidence to support jury’s determination that county officials acted with improper motive;
- Substantial evidence supported jury’s finding that plaintiffs experienced complete deprivation of their substantive due process rights;
- Jury’s damages award of $105 million was not excessive;
- Evidence supported jury’s finding that officials violated plaintiffs’ procedural due process rights;
- There was sufficient evidence to support jury’s finding that county retaliated against owners for filing suit;
- Member of county board of supervisors was not entitled to legislative immunity;
- Issue of whether officials were entitled to qualified immunity was for jury; and
- Substantial evidence supported jury’s punitive damages awards.

EMINENT DOMAIN - FLORIDA

Chmielewski v. City of St. Pete Beach

United States Court of Appeals, Eleventh Circuit - May 16, 2018 - F.3d - 2018 WL 2225053

Owners of beachfront property brought § a 1983 action against city, alleging that city encouraged and invited access to property by the general public, causing an illegal seizure in violation of their Fourth Amendment rights, and a taking without just compensation in violation of the state constitution.

The United States District Court denied city's motion for judgment as a matter of law, and subsequently entered judgment on the jury verdict, and awarded $1,489,700 in damages. City appealed.

The Court of Appeals held that:

- Evidence was sufficient to support takings claim, under Florida law, and
- City was not entitled to transfer of fee title to beachfront property.

Evidence was sufficient to prove that city encouraged and invited access and use by the general public of owners' beachfront property, supporting judgment in favor of owners, in takings claim against city, under Florida law; the testimony and other evidence presented showed that the city placed beach access signs, cleared vegetation around the parcel, created nearby parking spaces, hosted events at the property, and refused to remove trespassers from the property.

City was not entitled to transfer of fee title to beachfront property, upon jury verdict in favor of property owners and award of damages in the amount of $1,489,700, in takings claim against city, under Florida law; jury did not find that city had affected a physical taking of the entire beachfront parcel, but that the city's actions in encouraging general public access gave members of the public a permanent and continuous right to pass across the parcel, which was in the nature of an easement, and the damages award was based on appraisal which determined the loss of the value to the owners' property as a result of the easement-type taking.

ATTORNEYS' FEES - IDAHO

City of Middleton v. Coleman Homes, LLC

Supreme Court of Idaho, Moscow - April 2018 Term - May 18, 2018 - P.3d - 2018 WL 2271385

City brought action for declaratory relief against home developer and homeowners' association, seeking declaration that parties' impact fee agreement and parks dedication agreement were valid and enforceable.

After developer and homeowners' association amended their original answer and conceded validity of agreements, the District Court entered order declaring that agreements were valid and enforceable. Parties then filed cross-motions for summary judgment regarding amount of public access space developer and homeowners' association were responsible for under parks dedication agreement. The District Court ultimately ordered developer and homeowners' association to designate 12.8 acres of land as public access space and ruled that they were obligated to provide financial guarantee, if necessary, and found city to be the prevailing party and awarded city $28,048.17 in attorney fees. Developer and homeowners' association appealed, and city cross-appealed.

The Supreme Court of Idaho held that:

- Trial court did not abuse its discretion by considering declaratory judgment in determining that

city was prevailing party for purposes of rule providing that prevailing party was entitled to costs;
- Trial court did not abuse its discretion by failing to consider impact fees that city returned to developer and association when determining that city was prevailing party for purposes of rule entitling prevailing party to costs;
- Trial court did not abuse its discretion by failing to consider that developer and association were four separate entities when determining which party was prevailing party for purposes of rule entitling prevailing party to costs;
- Trial court's error, if any, in failing to consider that developer and association were four separate business entities was invited;
- Trial court did not clearly err by determining that judgment was entered on date when clerk placed filing stamp on judgment, not on date when judge signed judgment;
- Trial court did not clearly err by determining that city's petition for attorney fees and costs was served on date listed on certificate of service; and
- Trial court did not abuse its discretion by awarding city attorney fees.

CONSTITUTIONAL LAW - ILLINOIS

Manley v. Law

United States Court of Appeals, Seventh Circuit - May 10, 2018 - F.3d - 2018 WL 2148188

School board member and her husband brought § 1983 action in state court against school district and district superintendent, alleging their handling of investigation of board member's alleged bullying of student and their public criticism of board member violated her due process rights.

Defendants removed action to federal court. The United States District Court granted summary judgment to district and superintendent. Board member appealed.

The Court of Appeals held that:

- There is no liberty interest, protected by the Due Process Clause, in a feeling that the government has dealt with an individual fairly;
- Board member did not have a protected liberty interest in her emotional well-being upon which she could base her procedural due process claim; and
- District's and superintendent's alleged failure to follow school board policy and state procedural law in investigating board member did not constitute a denial of any constitutionally protected liberty interest.

SEWER IMPACT FEES - NORTH CAROLINA

Quality Built Homes Incorporated v. Town of Carthage

Supreme Court of North Carolina - May 11, 2018 - S.E.2d - 2018 WL 2175808

Developers brought action seeking declaration that water and sewer impact fee ordinances adopted by city exceeded city's municipal authority under Public Enterprise Statutes.

The Superior Court granted summary judgment in favor of city. Developers appealed. The Court of Appeals affirmed. Developers sought discretionary review, which was granted. The Supreme Court reversed and remanded. On remand, the Court of Appeals, 795 S.E.2d 436, reversed and remanded to trial court on statute of limitations grounds. Town sought discretionary review, which was granted.

The Supreme Court of North Carolina held that:

- Claims accrued at time of fee payments rather than on effective date of ordinances;
- Three-year statute of limitation for a “liability created by statute, either state of federal,” applied, overruling *Point South Properties LLC v. Cape Fear Public Utility Authority*, 243 N.C. App. 508, 778 S.E.2d 284; and
- Doctrine of estoppel by the acceptance of benefits did not bar developers’ claims.

Developers, who claimed that water and sewer impact fee ordinances adopted by city exceeded city’s municipal authority and sought to recover fees, sustained injury when they were required to make impact fee payments for development approvals, rather than when impact fee ordinances were adopted, and thus claims accrued at time of fee payments rather than on effective date of ordinances.

Three-year statute of limitation for a “liability created by statute, either state of federal,” applied to developer’s action seeking declaration that water and sewer impact fee ordinances adopted by city exceeded city’s municipal authority and seeking to recover fees; overruling *Point South Properties LLC v. Cape Fear Public Utility Authority*, 243 N.C. App. 508, 778 S.E.2d 284.

Doctrine of estoppel by the acceptance of benefits did not bar developers’ claim that water and sewer impact fee ordinances adopted by city exceeded city’s municipal authority and seeking to recover fees; developers did not receive any benefit from the payment of the challenged water and sewer impact fees that they would not have otherwise been entitled to receive, and developers’ only alternatives were to either pay the fees or to discontinue development business.

EMINENT DOMAIN - NORTH DAKOTA

North Dakota Department of Transportation v. Rosie Glow, LLC

Supreme Court of North Dakota - May 14, 2018 - N.W.2d - 2018 WL 2188924 - 2018 ND 123

Department of Transportation (DOT) initiated quick-take eminent domain proceeding.

Following trial, the District Court entered judgment on jury verdict awarding landowner severance damages in excess of amount deposited by DOT as well as attorney’s fees and costs. Landowner appealed award of fees and costs.

The Supreme Court of North Dakota held that:

- Court is not limited to awarding fees for only a single attorney;
- Court’s explanation for drastically reducing first attorney’s requested fees was inadequate;
- Court adequately explained reason for reducing second attorney’s fee request;
- Court adequately stated reasons for awarding landowner $5,625 for expert’s appraisal;
- Court acted arbitrarily by failing to consider expert appraiser’s review of DOT appraisal; and
- Landowner could recover costs which expert appraiser incurred in preparing for and attending DOT’s deposition.

SPECIAL ASSESSMENT LIENS - OHIO

Williams v. Schneider

Court of Appeals of Ohio, Eighth District, Cuyahoga County - March 14, 2018 - N.E.3d - 2018 WL 1353291 - 2018 -Ohio- 968

Mortgagee, construction company, and other interested parties brought civil actions, in which city later intervened, as a result of the failure of a mixed-use development whose owner later pleaded guilty to criminal charges.

After consolidation of the cases and the appointment of a receiver, the Court of Common Pleas issued a determination of the priority of liens. Mortgagee and construction company appealed. The Court of Appeals affirmed in part, reversed in part, and remanded. On remand, the Court of Common Pleas entered summary judgment that mortgage on one of the five parcels that composed the development was a valid lien and that construction company's mechanics' liens were invalid, then later determined that city's special assessment was not a valid lien, denied construction company's supplemental motion for summary judgment as to the validity of company's judgment lien, and made determinations relating to the distribution of receivership assets. City, mortgagee, and construction company appealed.

On reconsideration, the Court of Appeals held that:

- City substantially complied with requirements to levy a special assessment on the development; but
  Trial court had authority to authorize the sale of the development free and clear of the city's lien by special assessment; but
- City's special-assessment lien had priority over other liens, except for the 10% secured-creditor allocation set up for the benefit of the receivership; but
- City was not entitled to collect legal fees, engineering fees, other professional fees, and miscellaneous expenses associated with its special-assessment lien;
- Legal description in mortgage on parcel in development was sufficient to provide constructive notice to construction company; and
- Trial court abused its discretion by ordering receiver to distribute to unsecured creditors any remaining funds in secured-creditor allocation account.

City substantially complied with requirements to levy a special assessment on failed mixed-use development, and thus any issues with compliance did not constitute a reason to hold the assessment invalid, despite argument that city began work on the project prior to the passage of the special assessment; then-owners petitioned the city to make the special assessment, then-owners knowingly waived defects and irregularities, and subsequent owners benefited from the improvements to the land.

Trial court had authority to authorize the sale of the failed mixed-use development free and clear of the city's lien by special assessment, where the total amount owed on the mortgages and liens on the development exceeded the value of the properties that composed it as estimated before the sale, and where the trial court determined that a sale of the properties other than one free and clear of liens, claims, and encumbrances would have adversely affected the receivership estate and would have been substantially less benefit to the receivership estate.

City's special-assessment lien had priority over other lienholders as to failed mixed-use development, except for the 10% secured-creditor allocation set up for the benefit of the receivership, despite mortgagee's argument that the city began construction on the development before the city passed an ordinance to proceed; only a fraction of work had been done on the project before the city passed its resolution and ordinance to proceed.

City was not entitled to collect legal fees, engineering fees, other professional fees, and miscellaneous expenses associated with its special-assessment lien on a failed mixed-use development, even though the fees may have been part of the project-development agreement where such fees were not included in city's ordinance nor certified to the county auditor for collection.

Legal description in mortgage on parcel in a mixed-use development was sufficient to provide constructive notice to construction company that recorded a mechanic's lien against the parcel, as would support finding that mortgagee's lien had a higher priority than company's mechanics' lien, even though construction company might not have had a legal obligation to do a title search; title agent found that mortgage's legal description for the parcel ended abruptly at a semicolon, and agent also noted that the description's missing portions were along dedicated public roadways whose boundaries could be determined by other instruments of record.

Trial court abused its discretion by ordering receiver to distribute to unsecured creditors any remaining funds in secured-creditor allocation account from the proceeds from the sale of a failed mixed-use development, even though the remaining balance in the account was minimal; funds placed in the account were derived directly from the assets of each secured claim, and secured creditors had vested rights in the balance of the account by operation of law.

IMMUNITY - WYOMING

Whitham v. Feller

Supreme Court of Wyoming - April 30, 2018 - 415 P.3d 1264 - 2018 WY 43

Minor student and his parents brought action against county school district and school district employees, alleging that employees had committed various torts, including negligence, battery, child endangerment, civil trespass, assault, false reporting, and intentional infliction of emotional distress, that school district was liable for employees' actions under doctrine of respondeat superior, and that school district also committed direct acts of negligence.

The District Court found that school district and employees were immune from suit under the Wyoming Governmental Claims Act and granted school district's and employees' motion to dismiss with prejudice. Parents and student appealed.

The Supreme Court of Wyoming held that:

- Student and his parents failed to allege that employees were acting outside scope of their duties, as was required for student and parents to allege that employees and school district were not entitled to immunity under Act, and
- Supreme Court would reject student's and parents' argument that Court, in determining whether school district and employees were entitled to immunity under Act, should balance respective equities and recognize exception to immunity for violations of school policy and/or criminal conduct.

[D.C. Airport Bonds to Lead Holiday Week in U.S. Muni Market.]

(Reuters) – Washington, D.C.'s airports authority will lead a holiday-shortened week in the U.S. municipal bond market, issuing $578 million in refunding bonds as it forges on with capital projects at the region's two main airports.

City and state government agencies will borrow $3.41 billion in bonds and another $464 million in notes next week, with markets closed on Monday for Memorial Day. Municipal bond issuance has been slow this year as a result of U.S. President Donald Trump's tax overhaul.

The Metropolitan Washington Airports Authority manages Reagan National Airport and Dulles International Airport, which cover a total of nearly 13,000 acres in northern Virginia. The bonds, underwritten by Barclays, will help fund a new regional airline concourse and parking garage at Reagan, and infrastructure improvements at Dulles, according to bond documents.

The South Carolina Ports Authority will issue $325 million in negotiated revenue bonds next week, underwritten by Bank of America Merrill Lynch, while the biggest note issuance will come from the New York City Transitional Finance Authority, a $100 million negotiated offer underwritten by Jefferies.

With muni issuance low and banks trimming municipal holdings, Trump on Thursday signed legislation that reclassifies investment-grade municipal bonds as high-quality liquid assets (HQLA).

The law means banks can hold muni bonds as part of their liquidity requirements, potentially making those bonds more attractive.

Public officials say the long-awaited move will help lower financing costs on infrastructure projects nationwide, but some analysts aren't so sure.

"Lawmakers have taken concrete action to … better position states to invest in infrastructure projects at the state and local level," said Beth Pearce, Vermont's state treasurer and president of the National Association of State Treasurers.

But Barclays analyst Mikhail Foux said in a Friday note that the move, while a positive development for the municipal market, is "unlikely to preclude banks from trimming their municipal holdings."

"At this point, we believe that HQLA is less important to banks, as most have [liquidity coverage] ratios well above 100 percent," Foux said.

Reporting by Nick Brown; Editing by Paul Simao

MAY 25, 2018

[The Week in Public Finance: Governments Haven't Had Rules for Revealing Their Private Debt -- Until Now.]

A new requirement forces states and municipalities to annually report the terms and amount of loans they have taken directly from banks. It's a growing source of financing for many public entities.

A new rule is going into effect next month that many believe will shed light on a controversial spending area for state and local governments: how much they owe banks for private loans.

The rule, issued by the Governmental Accounting Standards Board (GASB), lays out standards for reporting these loans in government financial reports. Unlike public debt — which is issued through the municipal bond market and subject to regular disclosure requirements — disclosures about direct loans from banks are not regulated. So, up until now, governments revealed as much — or as little — as they wanted about their private debt.

The lack of continuity has been a source of growing frustration, particularly as governments' private debt rolls have ballooned. Since 2009, banks have more than doubled their municipal holdings to $536 billion in securities and loans.

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BY LIZ FARMER | MAY 25, 2018

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Transparency: A Means to Improving Citizen Trust in Government

Author: Shayne Kavanagh Vincent Reitano
Year: 2018

Citizens' trust in government is vital to the functioning of a democratic system. Transparency is one way in which governments can build trust. However, "transparency" does not mean just making financial data available to those who have an interest in it. In fact, psychological research suggests that people do not rely solely or even primarily on logic and reason to form judgements, such as trust. Hence, governments must go beyond open and accessible data strategies in order to build trust. There are costs associated with transparency. These range from time and money spent on transparency initiatives to less obvious concerns about unintended consequences, like misunderstandings about what data means and giving too much access to special interest groups. Thus, the future of government may not necessarily lie in more transparency, but rather in smarter transparency that:

- Shows that the values government operates by are the same core values held by its citizens;
- Demonstrates that government officials care about citizens' well-being and acting fairly; and
- Provides information on government performance with enough context for citizens to evaluate the quality of government's work.

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