

# Bond Case Briefs

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## Tucked Into the Tax Bill, a Plan to Help Distressed America

WASHINGTON — A little-noticed section in the \$1.5 trillion tax cut that President Trump signed into law late last month is drawing attention from venture capitalists, state government officials and mayors across America.

The provision, tucked on page 130 of the sprawling tax overhaul, is an attempt to grapple with a yawning hole in the recovery from the Great Recession: the fact that, in huge swaths of the country, the economic recovery has yet to arrive.

The law creates “Opportunity Zones,” which will use tax incentives to draw long-term investment to parts of America that continue to struggle with high poverty and sluggish job and business growth. The provision represents the first new substantial federal attempt to aid those communities in more than a decade. And it comes as a disproportionate share of economic growth has been concentrated in so-called “superstar” metropolitan areas like Los Angeles and New York.

[Continue reading.](#)

THE NEW YORK TIMES

By JIM TANKERSLEY

JAN. 29, 2018

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## Tax Cuts Curbed Muni Sales. Trump's Latest Plan Would Boost Them.

- **Private activity bonds expanded in draft infrastructure plan**
- **Proposal would allow advance refundings on the bonds**

Last month, Congress rolled back the ability of state and local governments to issue municipal bonds as a way to cover the cost of corporate tax cuts. Now, President Donald Trump is seeking to boost such borrowing to rebuild America’s infrastructure.

A draft outline of Trump’s proposal leaked to the press Monday calls for expanding the use of tax-exempt bonds to finance roads, sewers, airports and other public works built by businesses. It would lift state volume caps on issuance of such private activity bonds, eliminate restrictions on their use for transportation and encourage their sale by ports. It also would expand the ability to advance refinance the securities, creating potential savings that could be used for reinvestment.

The plan, if kept intact by Congress, could increase sales of state and local debt, which had been expected to decline sharply this year after governments rushed to borrow in 2017 before Congress enacted tax legislation that pulled the tax breaks from certain types of debt refinancing. Some estimates predict issuance would dip as much as 30 percent this year.

"It would certainly help the supply picture," said Adam Buchanan, senior vice president of municipal sales and trading at Ziegler Capital Markets Group in Chicago.

Trump has said he will introduce a \$1 trillion proposal to upgrade roads, bridges, airports and other public infrastructure. The White House plan calls for allocating at least \$200 billion in federal funds over 10 years to spur at least \$800 billion in spending by states, localities and the private sector.

## **Barely Dry**

The tax law approved by Congress and signed by Trump last month eliminated advance refundings, a frequently used refinancing technique that accounted for about a third of the municipal securities sold in 2016, and the initial House legislation proposed abolishing PABs. The president's plan, if not amended, would expand those refundings as well as the PAB program formerly targeted by lawmakers in the House.

"If the leak proves accurate, tax reform is barely dry and already we are seeing advanced refundings come back?" said Robert Amodeo, head of municipals at Western Asset, which manages \$22 billion in municipal bonds. "Every state and local government, frankly, all muni debt issuers, will request eligibility for advanced refundings."

The draft of Trump's plan also indicates he may allow state's to toll interstate highway travel to raise revenue that could back bonds and would hand states federal grants to cover a portion of a project's costs.

"This is encouraging because they're talking about expanding a part of the municipal market that we know works well," said Patrick Luby, municipal strategist CreditSights Inc.

Analysts said it's impossible to say precisely how the Trump plan would affect issuance, given that much of it will depend on how the provisions of the law are written. While there's no official figure for how many PABs are issued each year, Moody's Investors Service estimates that they accounted for about 25 percent to 35 percent of the \$459 billion in municipal bonds sold in 2016.

The House's push to rescind the tax exemption for newly issued PABs prompted an outcry from state and local government officials, who said it would increase the cost of public works and put the tax-cut legislation at odds with Trump's stated goal of increasing spending on infrastructure.

The White House won't comment on the contents of a leaked document but says it looks "forward to presenting our plan in the near future," spokeswoman Lindsay Walters said. The details of the plan were reported earlier by Axios and Politico.

## **Bloomberg Markets**

By Martin Z Braun

January 23, 2018, 4:00 AM PST

— With assistance by Zachary Hansen, and Elizabeth Campbell

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## **[Leaked Trump Infrastructure Plan Would Put Onus on States.](#)**

***At a time when many state transportation officials are clamoring for more financial help***

***from Washington, an outline of the president's infrastructure plan depends heavily on an influx of state and private funds.***

The Trump administration has hinted for months that its long-awaited infrastructure plan would lean heavily on new spending by states, local governments and the private sector. On Monday, a [leaked outline](#) of that plan seems to confirm that the federal government would take a back seat in funding its own infrastructure initiative.

But the outline also proposes a number of controversial changes, such as allowing states to toll existing highways, subsidizing improvements for passenger rail and encouraging states to “commercialize” interstate rest areas.

The outline does not indicate how much money the Trump administration will seek toward its infrastructure plan — prior reports suggest Trump wants \$200 billion in new federal spending to attract another \$800 billion of outside investments — but it does lay out how the administration would like to divide any new money that does materialize.

[Continue reading.](#)

GOVERNING.COM

BY DANIEL C. VOCK | JANUARY 22, 2018

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## **[Don't Expect Trump's Infrastructure Plan to Propose New Revenue.](#)**

***White House adviser DJ Gribbin also told mayors the plan would not propose cuts to existing, “formula” funding programs, like the Highway Trust Fund.***

WASHINGTON — President Trump’s infrastructure plan will not identify new revenues to help pay for spending and will also not call for cuts to certain mainstay programs now used to fund public works around the U.S., a White House official told mayors here on Thursday.

DJ Gribbin, a special adviser to Trump on infrastructure, also said the White House would submit a “relatively detailed” set of principles for the proposal to Congress one or two weeks after the president delivers his State of the Union address, which is scheduled for next Tuesday.

“Our infrastructure proposal, when we introduce it, will not include new revenue,” Gribbin said during a panel at the U.S. Conference of Mayors winter meeting.

He noted that the administration does not support, or oppose, an increase to the federal gas tax, and that the White House believes decisions about direct federal funding for the plan need to be made collectively with the House and the Senate.

Gribbin said Trump’s plan would not propose slashing so-called “formula” funding programs that the federal government now has in place to distribute infrastructure dollars to states.

“We’re not reducing current programs, we’re not eliminating the Highway Trust Fund, we’re not eliminating state revolving funds to pay for the incentive funds and other things we want to do,” he said. State revolving funds include federal-state partnership programs used to help finance water and sewer projects.

"The vision, in essence, is we keep for the most part existing programs in place," Gribbin added.

He did point out, however, the budget proposal for fiscal year 2018 that Trump sent to Congress last spring included a variety of cuts, including reductions to programs involving transit and Amtrak. "We will propose repurposing those dollars," Gribbin said.

But he added: "The major delivery mechanisms for funding for infrastructure will remain in place."

Congressional appropriators, in many instances, have not shown a willingness to adopt the sharp cuts the president's budget proposed.

Denver Mayor Michael Hancock said during Thursday's panel he was "pretty skeptical of the administration's plan. Because of the concern about where the dollars are coming from."

While he acknowledged mayors were generally supportive of the idea of an infrastructure package, he also raised worries about what federal spending could get cut to pay for it. "As cities, we don't want to see opportunities to have more federal money come in but yet, on the back end, we're having to backfill," Hancock added.

"We're very sensitive to that," Gribbin said in his response. "At the end of the day, this isn't supposed to be a net loss for cities."

Despite Gribbin's assurances, Hancock, a Democrat, told Route Fifty after the meeting that he was still uneasy about the prospect of new infrastructure spending siphoning funds from existing federal programs. "There are a lot of questions we need to ask," he said.

Two overarching principles guiding the White House's infrastructure plan, Gribbin explained, are increasing investment by \$1 trillion and shortening the federal permitting process for projects to two years.

"We are very open to ideas of how to accomplish those goals," he said. "We imagine this will be an iterative process."

The plan, Gribbin also said, would call for at least \$200 billion of direct federal funding. The thinking is that amount will spur state, local and private investment to reach the \$1 trillion target.

ROUTE FIFTY

By Bill Lucia,  
Senior Reporter

Jan 25, 2018

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## **TAX - NEW HAMPSHIRE**

### **[Public Service Company of New Hampshire v. Town of Bow](#)**

**Supreme Court of New Hampshire - January 11, 2018 - A.3d - 2018 WL 358312**

Public utility brought action against town seeking abatement of taxes as tax-exempt treatment facility.

The Superior Court granted the abatement, and town appealed.

The Supreme Court of New Hampshire held that public utility's expert's appraisal was more credible than town's.

Public utility's expert's appraisal was more credible than town's to value the utility as tax-exempt treatment facility in tax abatement matter, where trial court weighed conflicting testimony and issued 19-page order explaining why it found utility's expert's appraisal more persuasive.

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## **TAX - OHIO**

### **[North Canton City School District Board of Education v. Stark County Board of Revision](#)**

**Supreme Court of Ohio - January 2, 2018 - N.E.3d - 2018 WL 321560 - 2018 -Ohio- 1**

Purchaser of foreclosed 36-unit apartment complex sought judicial review of a decision of the Board of Tax Appeals (BTA) applying a forced-sale presumption that the sale price was not the property's value for taxation purposes.

The Supreme Court of Ohio held that:

- Evidence was sufficient to demonstrate that the sale was at arm's length, so as to rebut presumption that the sale price of the property was an improper criterion for establishing the tax value of the property, and
- Arm's-length sale price, rather than amount that included postsale repairs, was proper value.

Evidence was sufficient to demonstrate that the sale of a 36-unit apartment complex after foreclosure proceeding was at arm's length, so as to rebut presumption that the sale price of the property was an improper criterion for establishing the tax value of the property; after the property failed to sell at a sheriff's sale, it was aggressively marketed, the highest offer for the property was accepted, and the trial court found the sale price to have been commercially reasonable.

Arm's-length sale price, rather than sale price plus cost of postsale repairs, was proper tax value for foreclosed 36-unit apartment complex that failed to sell at sheriff's sale, but was later purchased after it was marketed by national real estate brokerage firm; statute in effect at time of the tax year at issue required use of amount of an arm's-length sale as property's value for taxation purposes.

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## **[Muni Market Participants Applaud PABs in Purported Infrastructure Plan.](#)**

Muni market participants are pleased that the latest purported version of the Trump administration's infrastructure plan would expand and ease restrictions on private activity bonds so that they could play a major role in helping to finance infrastructure projects.

The six-page plan was circulated on Monday by lobbyists and publications such as Axios. It makes no mention of the Trump administration and is not dated.

Sources had mixed views on its veracity.

"It's clearly an early draft put together before tax reform, so I would caution against reading too much into it," said Matt Fabian, managing director at Municipal Market Analytics.

Bud Wright, executive director of the American Association of State Highway and Transportation Officials said he is taking the document “with a grain of salt” because it “could be an earlier document that has been modified since that time.”

But Jeff Davis, a senior fellow at Eno Transportation Center, said the document “is a faithful summary of the full 60-some page summary that the National Council of Economics has been toiling to produce for at least six months.”

Several sources said they saw this plan before the tax reform debates on Capitol Hill and were shocked back then at the House tax bill’s proposal to eliminate PABs in light of this plan.

The six-page plan sets forth PAB recommendations in a section called “Funding Principles.”

The plan says the tax law should be amended to allow broader categories of public-purpose infrastructure, including reconstruction projects, to take advantage of PABs and encourage more private investments in projects to benefit the public.

The plan would eliminate the alternative minimum tax as well as the prohibition on advance refundings for PABs used for infrastructure. Additionally, It would remove the state volume cap on these PABs. It would also remove the transportation volume cap and expand eligibility in this category to ports and airports.

This is a reference to the \$15 billion cap created for highway and surface freight transfer facilities under the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) that was enacted in August 2005.

Congress or regulators would provide change-in-use provisions governing the change of use of tax-exempt bond-financed facilities to preserve the tax-exempt status of governmental bonds, according to the plan. “Change-of-use cures” would be provided for private leasing of projects to ensure the preservation of the tax exemption for core infrastructure bonds.

Joseph Krist is a Partner at Court Street Group Research, said that overall he sees the plan as positive for the muni market.

“We see lots of references to private activity bonds. The ability to advance refund private activity bonds,” he said. “This document clearly sees the municipal bond market as really, in our view, central to what they want to get accomplished.”

Brett Bolton, Bond Dealers of America’s vice president for federal legislative and regulatory policy, said BDA is encouraged by the administration’s infrastructure proposal.

“The protections for outstanding governmental tax-exempt bonds and the substantial expansion of the ability to issue tax-exempt private-activity bonds will bolster issuers and other infrastructure industry participants nationwide,” Bolton said. “Restoring the ability to advance refund PABs will save the American taxpayer money and improve our nation’s infrastructure but should be coupled with the ability to advance refund governmental bonds as well.”

Emily Brock, director of the Government Finance Officers Association’s Federal Liaison Center, said, “Some of the details of the ‘leaked’ plan in some ways are not surprising because we have heard these general themes on infrastructure from the White House for the past six months – including rural infrastructure, transformative plans and grant funding.”

“Other parts are a bit more specific and surprising,” she said. “For example, the outline seems to

suggest the White House will push a significant expansion of private activity bonds, which is a big swing away from some of the discussions with House leaders during the development of H.R.1 – the tax reform legislation.

“It shows that in their preliminary plans that they realize the policy objectives of the tool – advanced refunding creates savings which free up capital for future infrastructure investment,” said Brock. “We look forward to working with the administration to expand that exemption to municipal bonds as they continue to develop this infrastructure plan.”

The plan also makes no mention of the level of federal funding that is to be made available for infrastructure.

Most sources assume that the administration is still planning to provide \$200 billion to leverage up to \$1 trillion or \$1.8 trillion of investment in infrastructure over a 10-year period. The \$200 billion figure was included in the administration’s budget proposal for fiscal 2018 and is expected to be in the next budget request for fiscal 2019, which typically would be released the first Monday in February.

“It’s hard to assume that a bill of this type will be funded enough, in particular in the early years, to make a meaningful difference in issuer behavior,” said Fabian. “It may help extend some projects and may possibly pull a few projects forward on the calendar, but because of the state-by-state limits, it’s unlikely to have a large permanent net effect on total issuance. This is less about stimulating infrastructure investment, more about giving Washington more influence over what state and local projects are built.”

The “Funding Principles” section of the document says 50% of the total appropriated amount would be for incentive grants, with the federal share to be up to 20%. A federal agency would administer the grants and would solicit applications every six months. The agency would define eligible costs and conduct audits to ensure funds are used appropriately. Grant awards can’t exceed 20% of total project cost. No one state could receive more than 10% of the amount available.

“The question is, Can state and local governments combine this federal money with federal funding from other programs?” asked Davis.

Another 10% of appropriations would be for transformative projects and the Commerce Department would administer this program.

An additional 25% of appropriations would be for rural infrastructure projects and states would be responsible for projects funded under this program. About 80% of funds made available would be provided to the governors based on a formula.

About 7.05% of appropriations would be for federal credit programs under the Transportation Infrastructure Finance and Innovation Act and the Water Infrastructure Finance and Innovation Act as well as Railroad Rehabilitation and Improvement Financing programs and U.S. Department of Agriculture Rural Utilities Lending Programs.

Another 5% would be used for a Federal Capital Financing Fund that would allow appropriations committees in Congress to finance General Services Administration real estate deals over 15 years with repayment spread out over those years.

Under a section called “Principles for Infrastructure Improvements,” the plan would give states the flexibility to toll on interstates and reinvest toll revenues in infrastructure.

The plan also would expand qualified credit assistance and other capabilities for state infrastructure banks.

The Clean Water State Revolving Fund would be authorized for privately owned public purpose treatment works, under the plan. And WIFIA would eliminate the requirement for borrowers to be community water systems. WIFIA also could be used for flood mitigation, navigation and water supply.

The plan includes a few proposals for streamlining specific environmental regulations. It makes no specific mention of public-private partnerships, but often refers to private investment.

Wright said the document “doesn’t deal much with regulatory reform” but added that “we’re hopeful” of seeing regulatory reform.

“Probably our biggest concern with what we see here is that this document does not address the solvency of the Highway Trust Fund for long-term sustainable funding and funding predictability for transportation investment,” he said.

Wright said, “We will continue to say two things. One, there’s no replacement for direct federal funding even though private sector investment is important. Secondly, we need to fix the Highway Trust Fund. That’s going to continue to be out top priority.”

Asked about the plan, Sen. John Barrasso, R-Wyo., chair of the Senate Committee on Environment and Public Works, said, “President Trump has been a champion of upgrading America’s aging roads, bridges, dams, and ports. This infrastructure is critical to the country’s success. I agree that this is a priority.”

Barrasso added, “Any infrastructure plan should include streamlining so that projects get started and finished faster. I will continue to work with the president, the members of our committee, and the House of Representatives as we continue this important process.”

BY SOURCEMEDIA | MUNICIPAL | 01/22/18 07:10 PM EST

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## **[Chicago Sales Tax Bonds Fetch Wider Spreads in Second Sale.](#)**

CHICAGO, Jan 23 (Reuters) – Weaker demand resulted in wider spreads on Tuesday for the sale of highly rated bonds Chicago pulled from the U.S. municipal market last week in order to restructure the deal.

The pricing of nearly \$376.3 million of the city’s Sales Tax Securitization Corporation tax-exempt bonds resulted in spreads of 53 to 60 basis points over Municipal Market Data’s (MMD) benchmark triple-A yield scale.

Spreads over the MMD scale for \$174 million of tax-exempt bonds the corporation sold in its first-ever deal in December ranged from 23 to 38 basis points, although the bonds are trading at wider spreads in the secondary market.

“The original deal came at a time when every primary issue was being snapped up. Certainly not the same type of demand this time around,” said MMD analyst Greg Saulnier.



The city, which postponed an \$898 million tax-exempt bond issue by the corporation scheduled to price last week, downsized and restructured the deal to include about \$300 million of taxable bonds.

There was no immediate comment from Chicago regarding Tuesday's bond pricing and the status of the taxable bonds.

Chicago created the sales tax securitization corporation last year to refinance up to \$3 billion of its sales tax revenue and GO bonds, and produce an initial \$94 million in savings for the city's fiscal 2018 budget.

A chronic structural budget deficit, as well as a huge unfunded pension liability that totaled \$35.76 billion at the end of 2016, have led to low credit ratings and increased borrowing costs for the nation's third-largest city.

The corporation is pledging Chicago's state-collected sales tax revenue to pay off the new bonds. Investors will get a statutory lien shielding the debt from municipal bankruptcy, which is not allowed under Illinois law.

The bonds are rated AAA by Fitch Ratings and AA by S&P Global Ratings, both of which are several notches higher than the city's GO ratings of BBB-minus by Fitch and BBB-plus by S&P.

BY REUTERS | MUNICIPAL | 01/23/18 05:11 PM EST

(Reporting by Karen Pierog; Editing by Matthew Lewis)

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## **Fintech Startup Wants to Help Advisers Find and Sell Muni Bonds.**

It's like Zillow, but for bonds.

That's the idea behind Bond Navigator, a cloud-based digital marketplace for advisers to find and evaluate municipal bonds, that launched Tuesday from startup [280 CapMarkets](#).

Gurinder Ahluwalia, the co-founder and chief executive of 280 CapMarkets, said large institutions strongly influence bond prices and hold trading insights on their proprietary systems, making it challenging for independent advisers to access the bond market. Bond Navigator addresses this by aggregating data from multiple sources, which Mr. Ahluwalia said provides greater transparency into pricing and "levels the playing field for independent advisers."

Bond issuers are displayed on a map to help advisers identify investment opportunities by geographic location, and advisers can filter bond issuers to find the most relevant products for clients.

Ron Speaker, the CEO and founder of Equus Wealth Management, has been using Bond Navigator for three months during its test phase. He was impressed with 280 CapMarket's technology, particularly the map of bond issuers.

"Investing in munis is a study of geography," Mr. Speaker said. "Not even municipal bond name describes where it's from, and [280 CapMarkets] did a fantastic job with that."

Mr. Speaker, who deals exclusively in bonds of California and Colorado, said there are more than 6,000 bonds available in California at any given time. By using the map to identify areas relevant to

his clients and then applying a few preferences, he said he can cut it down to a handful in a matter of clicks.

“What these guys did was put a lot of key features all into one package,” Mr. Speaker said. “They’ve got the best sorting, screening and mapping.”

The technology is supported by a team of fixed-income professionals, who Mr. Ahluwalia said work across adviser liaison, institutional sales and institutional trading desks to ensure competitive pricing for every bond order.

He said that while technology has made it easier for advisers over the last decade to go independent, the trend has not reached fixed income.

“When you look at the fixed-income offerings today, the independent advisers, once they walk away from the firm they were with, they lose their trading desk and are on their own,” said Mr. Ahluwalia, who served as president and CEO of Genworth Financial Wealth Management before it was acquired by private equity. “They are left to the mercy of their custodian or digital exchange.”

Joel Bruckenstein, president of Technology Tools for Today, said there is a need for more transparency around bonds, and that a limited supply at custodians and broker-dealers probably keeps some advisers away from them. But he’s skeptical how much traction Bond Navigator will ultimately have.

“My sense is that only a minority of advisers purchase individual bonds for clients,” Mr. Bruckenstein said. “I’m not certain that it will encourage more advisers to trade individual bonds, but it will make it easier for those that do to improve their service to clients, and it may encourage some sitting on the fence to take another look at providing such a service.”

Prescott Nasser, 280 CapMarkets’ chief technology officer, said this is why the company is not charging a separate fee for Bond Navigator, but rather charging a commission on the bonds purchased on the platform. The hope is that advisers will see how much easier it is to access bonds and feel more compelled to use bonds as a tool for asset preservation.

## **Investment News**

By Ryan W. Neal

Jan 23, 2018

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### **[Kroll Bond Rating Agency Affirms Assured Guaranty Municipal’s AA+ Financial Strength Rating with Stable Outlook.](#)**

NEW YORK-(BUSINESS WIRE)-Kroll Bond Rating Agency (KBRA) affirmed its insurance financial strength rating of AA+, with a Stable Outlook, for Assured Guaranty Municipal Corp. (AGM), a financial guaranty subsidiary of Assured Guaranty Ltd. (together with its subsidiaries, Assured Guaranty)(NYSE:AGO).

In the report, KBRA noted the following key strengths supporting AGM’s AA+ rating:

- AGM demonstrated the ability to withstand KBRA’s conservative stress case loss assumptions

across the breadth of its insured portfolio.

- AGM has strong governance, credit and risk management protocols and a well-developed governance framework.
- AGM's tested management team is well positioned to address future portfolio risk issues should they develop given their experience through the credit crisis.
- AGM's substantial and continuing runoff in the structured finance components of its insured portfolio, down nearly 95% since the end of 2009, continues to moderate risk.

"Once again, KBRA has affirmed AGM's strong AA+ rating, reflecting the high level of protection available to investors in AGM-insured bonds," said Dominic Frederico, President and CEO of Assured Guaranty. "KBRA subjected AGM's insured portfolio to rigorous statistical modeling with elevated levels of assumed economic stress, including case-by case-stress analysis of our Puerto Rico credits. They found that, even in this highly unlikely scenario, AGM satisfied all claims in full and on time with a comfortable balance remaining."

This most recent affirmation follows KBRA's affirmations last year of Municipal Assurance Corp. at AA+ in July and of Assured Guaranty Corp. at AA in December, both with stable outlooks.

January 24, 2018

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## **Where Amazon and Municipal Bond Finance Collide.**

Amazon.com, Inc is looking for a new headquarters, but the biggest cities vying for the privilege are drowning in debt, and having a new HQ in a high debt city won't be good for Amazon going forward.

On January 18, the company released its short list of the top 20 candidates that remain in the running to land the retail giant's second home base. Many cities across the US made bold pitches to Amazon to lure the behemoth to their respective cities. The details of each city's proposal remain closely guarded secrets, with lucrative tax incentives and infrastructure components offered to hopefully convince the company to bring a reported potential \$5 billion additional investment and 50,000 new jobs to the lucky winner.

When deciding on a final location, Amazon is not just looking at what incentives they can get out of the deal. They are also looking at the financial standing of the cities vying for the coveted deal. 19 U.S. cities and Toronto, Ontario are all in the hunt. We imagine the retailer is taking into account many attributes, including local workforce capability, transportation, zoning and municipal government health. We think that there are many municipalities with qualified labor forces and good infrastructure but not all municipalities are well run from a debt management perspective.

### **Budgetary Debt and Unfunded Pensions Weigh on the Decision**

Local infrastructure is an important factor Amazon is certainly taking into consideration when choosing a location for their new headquarters. Infrastructure such as roads, airports, and modern public transportation are vital to the eCommerce giant attracting the high-quality talent they seek to employ. Amazon has reported that they are looking to hire up to 50,000 high-paid employees at their second headquarters location, so cities surrounded by quality institutions of higher learning will certainly stand out. Cities under consideration for the new headquarters with aging infrastructure will have to upgrade their systems to stay in the fight. In most cases this would mean adding debt on top of already shaky financial conditions.

Why would Amazon be concerned with the financial condition of the city it chooses for its second headquarters? One big reason would be accounting for future tax liabilities. If a municipality grants tax breaks to Amazon today, and the city's credit profile deteriorates in the future then the city may be forced to increase certain taxes levied on local companies, including Amazon, to help fund those shortfalls.

According to Bloomberg, 8 of the 20 finalists have high debt and pension fund liabilities that could hurt their chances of success. These legacy costs incurred over the last few decades could make them less attractive to the internet giant.

Interestingly, it is some of the largest cities on the short list that are experiencing financial difficulty. The cities of Atlanta, Austin, Chicago, Dallas, Indianapolis, Los Angeles, Philadelphia and Pittsburgh each have more than 250,000 residents and spend the greatest share of their annual budgets on debt, pensions, and retiree medical benefits.

In contrast, smaller metropolises like Columbus and Denver were among the finalists that have relatively low debt service requirements and pension burdens relative to their population base.

The mounting liabilities faced by the eight larger cities could make them less attractive to Amazon when compared to smaller city options.

### **If Jeff Bezos does go central USA?**

We imagine that he would chose Nashville over Chicago.

Let's take a look at these two final US cities. They are strategic from a national logistical perspective, as they are both centrally located. Being centrally located will allow Amazon to interface seamlessly with both the east and west coasts. Both cities also have a diverse demographics and therefore an equally diverse work force for Amazon to tap into. Finally, both cities are within close proximity of numerous local, well ranked universities, all of whom can provide talented new Amazon hires for years to come.

When compared on location, demographics, infrastructure, and size, Chicago and Nashville stack up fairly evenly. It is when you look into their public finances that Nashville begins to shine as a stronger candidate.

Chicago suffers from deeply troubled municipal finances, many of which are also reflected at the state level. The Chicago Public School System (CPS) is on life support at the mercy of the municipal bond market to finance their perpetual deficits. Chicago's recent financings have not been used for improvements and new construction but rather to roll-over short term borrowing with significantly higher cost long term bonds.

The Windy City currently is rated below investment grade by Moody's Ratings, which is considered to be junk bond status, as is its public-school system. Chicago Board of Education bonds are a large holding of the Van Eck Vectors High-Yield Municipal ETF (NYSEARCA: HYD), which yields over 4.25%, more than double the yield on the higher quality iShares National Muni Bond ETF (NYSEARCA: MUB)

Contrast Chicago's woes to well-run Nashville. Nashville has a stable AA2/AA investment grade bond rating, and is currently home to a number of large companies. Tens of thousands of Tennesseans are employed by companies such as Vanderbilt University Med Center, HCA Healthcare Inc (NYSE: HCA), Kroger (NYSE:KR) and Nissan. The city according to Moody's possesses strong management and as the state capital possesses a regional tax base that will continue to grow and provide the

necessary revenues to support ongoing governmental operations.

## **Our Guess**

When you dig deeper into the municipal finances of the 20 finalists, many once strong candidates begin to fall apart. We see it and we are sure the folks at Amazon do, too. We don't know Amazon's future HQ2 location. With all of our quantitative skills and higher education, we may have a 1 in 20 chance of being right. With all of the conjecture, we imagine that it could be an east coast city that wins out, supporting that thesis is a fair amount of media buzz about Atlanta, Raleigh, Washington DC, and Boston.

**Disclosure:** NatAlliance Securities LLC may hold a position in all bonds referenced, and in the future may be a buyer or a seller of the securities. This is not a recommendation to buy, sell, or hold the securities. Las Olas Wealth Management is a wealth management group within NatAlliance Securities LLC.: I, Dean Myerow, wrote this article myself, and it expresses my own opinions. I am not receiving compensation for it. I have no business relationship with any company whose stock or bond is mentioned in this article.

## **Market Exclusive**

by Bydean Myerow -January 24, 2018

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## **[The Outlook For Municipal Bonds.](#)**

The next decades will bring a level of municipal bond defaults unlike anything seen since the 1930s. Those who are interested in preserving their wealth or retirement prospects should give serious consideration to holding insured bonds.

Municipal bonds have become more attractive than ever after the recent tax reform, which left people with high income and wealth even fewer options for preserving what they already have. Given the meager returns offered by the taxable bond market, one might even wonder why municipal yields aren't lower than they are. But before you pile further into this market, let's look at the long-term outlook. It isn't all that rosy.

Government at all levels has been splurging on debt for decades with the last ten years being among the worst. This because 2008 shook investor confidence in anything without a solid guaranty behind it, and what is more solid than government that can't go out of business. Our federal government was the worst offender, doubling the national debt to \$20 trillion in just eight years. They can do this and more because they tax income and can print money. State and municipal governments are not as fortunate since they tax mainly wealth through property taxes. Their ability to tax income is limited and results in a loss of population, at least of population with income and assets.

A short reminder on the nature of debt. It is a way of robbing future revenues to satisfy current priorities and needs. When this borrowing from the future is in order to maintain the general public's well being and grow the economy, it is a positive economically and improves the quality of life for the tax payers burdened with servicing that debt. Bonds for such purposes as public works, infrastructure and housing come quickly to mind as having such positive effects. Bonds issued for budget shortfalls, pension plans, social programs and non-governmental facilities, not so much.

Today, government at all levels face a crisis that will play itself out over the next decade. This crisis

is due to trillions of dollars of unfunded mandates for pension and health care obligations as the baby boomer generation retires and draws on government funds rather than being contributors. That's right, government has not only robbed the future through excessive borrowings, it has also failed to fund its promises to public workers and citizens. Promises that were gambled away, future cash flow for debt service that produced little meaningful benefit. The crisis that is coming is when government, facing a cash crunch, has to sit down with its workers, retirees and bondholders and ask them to share the pain. While bondholders may feel that the promises to them are legal and binding, be sure the other parties feel the same way and they have the media and public opinion on their side. Be assured, bondholders will suffer the most.

We have precedent for the outcome we can expect for bondholders: Going back to the 1980s when the Washington Public Power and Supply System defaulted on \$2.25 billion in bonds. The Washington Supreme Court ruled the authority had to pay because of the wording of the state fraud statutes. However, media attention demonized bondholders as robber barons and the state legislature retroactively changed the fraud statutes to hold governmental entities to a less severe fraud standard.

We see in the current Puerto Rico debacle—where the stakes are much higher—more than \$73 billion for bondholders and \$40 billion or more of unfunded pension obligations. The hurricane damage there has given impetus to U.S. Senator Elizabeth Warren calling for a total debt forgiveness.

What is likely to happen over the next few years is governments at all levels issuing bonds for unfunded mandates. In reality, such bond issues solve nothing economically. However, issuing such bonds means that when the financing crisis hits, i.e. when there is not enough cash to meet current expenses, there will be more people sitting at the table to share the pain. If the past is any indication, bondholders will not be holding the strongest hand, it will be current employees and pensioners.

Many bondholders may think their best option is to invest in munis via a mutual fund. The thinking is that such funds have the expertise in bond selection and offer greater diversification of risk. But their strategic priority is always to attract the next investor dollar, not to retain what they already have, so risk is generally rising to keep overall returns competitive.

Apparently bondholders are catching on since there has been a net exodus from such funds over the last two years. This is not surprising since it was these mutual funds that bought many of the Puerto Rico along with Florida Community Development Districts, pension plan funding and tobacco bonds.

The better solution is for bondholders to buy only bonds insured by a mono-line bond insurer. These are companies that insure both the principal and interest payments on a bond issue. Their advantage over the expertise of bond funds and credit rating agencies is that when they are wrong, they, not you, suffer the loss. This is why some of the Puerto Rico bonds today still trade at par.

While Puerto Rico is the focus of default today, in fact there are currently more than 70 bond issuers totaling \$1.3 billion that are being serviced by a guarantor. Historically, since 1980 more than 300 bond defaults of insured bonds totaling \$4.6 billion have been settled at full value. Most of the bond insurers have disappeared since 2008 because they strayed into insuring corporate bonds and derivatives. But even then, they were absorbed by the surviving insurers who assumed the outstanding contracts. While insured bonds may provide a fractionally smaller yield than the equivalent issue that relies exclusively on the promise of government, long-time observers know that we live in a different time politically and that in most things today, politics trump promises (no pun intended).

## Forbes

Richard Lehmann, Contributor

Jan 24, 2018

Richard Lehmann is editor of Forbes/Lehmann Income Securities Investor.

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### **Chicago Sales Tax Bonds Fetch Wider Spreads in Second Sale.**

CHICAGO, Jan 23 (Reuters) - Weaker demand resulted in wider spreads on Tuesday for the sale of highly rated bonds Chicago pulled from the U.S. municipal market last week in order to restructure the deal.

The pricing of nearly \$376.3 million of the city's Sales Tax Securitization Corporation tax-exempt bonds resulted in spreads of 53 to 60 basis points over Municipal Market Data's (MMD) benchmark triple-A yield scale.

Spreads over the MMD scale for \$174 million of tax-exempt bonds the corporation sold in its first-ever deal in December ranged from 23 to 38 basis points, although the bonds are trading at wider spreads in the secondary market.

"The original deal came at a time when every primary issue was being snapped up. Certainly not the same type of demand this time around," said MMD analyst Greg Saulnier.

The city, which postponed an \$898 million tax-exempt bond issue by the corporation scheduled to price last week, downsized and restructured the deal to include about \$300 million of taxable bonds.

There was no immediate comment from Chicago regarding Tuesday's bond pricing and the status of the taxable bonds.

Chicago created the sales tax securitization corporation last year to refinance up to \$3 billion of its sales tax revenue and GO bonds, and produce an initial \$94 million in savings for the city's fiscal 2018 budget.

A chronic structural budget deficit, as well as a huge unfunded pension liability that totaled \$35.76 billion at the end of 2016, have led to low credit ratings and increased borrowing costs for the nation's third-largest city.

The corporation is pledging Chicago's state-collected sales tax revenue to pay off the new bonds. Investors will get a statutory lien shielding the debt from municipal bankruptcy, which is not allowed under Illinois law.

The bonds are rated AAA by Fitch Ratings and AA by S&P Global Ratings, both of which are several notches higher than the city's GO ratings of BBB-minus by Fitch and BBB-plus by S&P.

Reuters Staff

(Reporting by Karen Pierog; Editing by Matthew Lewis)

JANUARY 23, 2018



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- [Interest Rate Increase Coming For Many Tax-Exempt Borrowers: Holland & Knight](#)
  - [What do Walt Disney World and the 2018 Tax-Exempt Bond Market Have in Common?](#)
  - [MSRB Seeks to Establish Advertising Rule for Municipal Advisors and Update Dealer Standards.](#)
  - [S&P Credit FAQ: Understanding Climate Change Risk and U.S. Municipal Ratings.](#)
  - [Moody's: Climate Change Adaption and Mitigation Could Affect Cities' Bond Ratings.](#)
  - [CDFA Launches Federal Financing Webinar Series.](#)
  - And finally, Tolstoy's Packing Heat! is brought to us this week by [Paiva v. Parella](#), in which the Supreme Court of Rhode Island noted that, "a local licensing authority need not write a decision rivaling *War and Peace* in length, but its decision must still address the salient reasoning for the denial of a [concealed firearm] license." Fair enough, but contemplate the hilarity of a requirement that any such decision letter clock in at 1,225 pages. We'd read that.
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## **PUBLIC PENSIONS - CALIFORNIA**

### **[Baxter v. California State Teachers' Retirement System](#)**

**Court of Appeal, Sixth District, California - December 12, 2017 - Cal.Rptr.3d - 18  
Cal.App.5th 340 - 2017 WL 6329714**

Retired teachers brought petition for peremptory writ of administrative mandamus, seeking to compel California State Teachers' Retirement System (CalSTRS) to resume paying retirement benefits at original monthly amounts, after CalSTRS reduced payments to recoup alleged overpayments.

The Superior Court granted petition. CalSTRS appealed.

The Court of Appeal held that:

- Statute of limitations for adjustment of errors with respect to benefits paid by CalSTRS incorporates discovery rule and thus is triggered when the claimant has actual or inquiry notice of the incorrect payment;
- Memorandum from school district budget analyst to county office of education, regarding disputed classification of certain class for purposes of determining teachers' retirement base, provided inquiry notice to county office regarding possibly incorrect retirement benefit payments to teachers, thereby triggering statute of limitations for CalSTRS to bring action to recover alleged overpayments;
- CalSTRS's mailing of final audit report did not constitute the commencement of an action; and
- Continuous accrual theory of limitations applied to action.

Evidence was sufficient to support finding that county office of education was ostensible agent of California State Teachers' Retirement System (CalSTRS), as would support determination that information imparted to county office in memorandum from school district budget analyst, regarding disputed classification of certain class for purposes of determining teachers' retirement base, should be imputed to CalSTRS in determining date of accrual statute of limitations for CalSTRS to recoup alleged overpayments of retirement benefits; CalSTRS counselors met with teachers at county office, counselors would access CalSTRS data through county office's computers, and school districts were instructed to direct questions about CalSTRS directives to county office rather than to CalSTRS.

Memorandum from school district budget analyst to county office of education, regarding disputed



classification of certain class for purposes of determining teachers' retirement base, provided inquiry notice to county office regarding possibly incorrect retirement benefit payments to teachers, thereby triggering statute of limitations for California State Teachers' Retirement System (CalSTRS), of which county office was an agent, to commence action to recoup incorrect payments; memorandum rendered county office aware, at minimum, of potential problem with how retirement benefits were being calculated for district teachers who had elected to work an extra period.

Mailing of final audit report from California State Teachers' Retirement System (CalSTRS) did not constitute the commencement of an action, as would be required to toll statute of limitations for actions to recoup incorrect retirement benefit payments; mailing of report did not initiate a proceeding of any kind.

Reduction of future monthly retirement benefit payments to retired teachers, by California State Teachers' Retirement System (CalSTRS), did not constitute the commencement of an action, as would be required to toll statute of limitations for actions to recoup incorrect retirement payments; reduction was not analogous to initiation of a lawsuit and did not seek declaration, enforcement, or protection of a right.

Filing of pleading entitled "Statement of Issues" with Office of Administrative Hearings, by California State Teachers' Retirement System (CalSTRS), constituted the commencement of an action, as would be required to toll statute of limitations for actions to recoup incorrect retirement payments; just as a civil action was commenced by complaint or petition, an administrative adjudicatory proceeding was initiated by statement of issues.

Continuous accrual theory of limitations applied to action by California State Teachers' Retirement System (CalSTRS) to recoup alleged overpayment of monthly retirement benefits to teachers; right of each teacher to receive monthly payments, and obligation of CalSTRS to disburse them, were continuing rights that accrued when such payments became due.

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## **ZONING & LAND USE - MASSACHUSETTS**

### **[Roma, III, Ltd. v. Board of Appeals of Rockport](#)**

**Supreme Judicial Court of Massachusetts, Suffolk.- January 8, 2018 - 478 Mass. 580 - 88 N.E.3d 269**

Landowner, who was a licensed helicopter pilot, had a heliport on his property, and did not use his helicopter for any commercial purpose, sought review of local board of appeals' decision to uphold town building inspector's enforcement order that stated that a heliport was not permitting in any of the town's zoning districts.

The Land Court Department entered summary judgment for landowner. Board of appeals applied for direct appellate review.

The Supreme Judicial Court of Massachusetts held that local zoning regarding noncommercial private restricted landing areas is not preempted by state law; abrogating *Hanlon v. Sheffield*, 89 Mass.App.Ct. 392, 50 N.E.3d 443.

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## **PUBLIC UTILITIES - NEBRASKA**

## **Amend v. Nebraska Public Service Commission**

**Supreme Court of Nebraska - January 12, 2018 - N.W.2d - 298 Neb. 617 - 2018 WL 385647**

Farmers and farm-management customers of grain warehouse that failed and closed brought action under the State Tort Claims Act (STCA) against the Public Service Commission (PSC) for PSC's alleged negligence in performing its obligations.

The District Court granted PSC's motion to dismiss. Farmers and customers appealed.

The Supreme Court of Nebraska held that action was based upon PSC's alleged failure to suspend or revoke warehouse's license.

Suit against the Public Service Commission (PSC) by farmers and farm-management customers of grain warehouse that failed and closed was based upon PSC's alleged failure to suspend or revoke warehouse's license, and thus the suit was barred under the State Tort Claims Act (STCA), where suit alleged that the PSC knew that the warehouse had violated rules and regulations regarding a minimum net worth and working capital ratio, but that the grain warehouse director for the PSC failed to institute complaint proceedings.

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## **LICENSING - RHODE ISLAND**

### **Paiva v. Parella**

**Supreme Court of Rhode Island - January 16, 2018 - A.3d - 2018 WL 444300**

Applicant filed a petition for writ of certiorari challenging decision by city chief of police denying his application for a permit or license to carry a concealed weapon.

The Supreme Court of Rhode Island held that:

- Police chief's letter denying application failed to adequately explain the salient reasoning for the denial, and
- Proper remedy for inadequacy of letter was remand for a new decision.

City police chief's cursory letter denying application for license to carry concealed weapon failed to adequately explain the salient reasoning for the denial; letter contained only bare, rote conclusions.

In issuing a decision on an application for a license to carry a concealed weapon, a local licensing authority need not write a decision rivaling *War and Peace* in length, but its decision must still address the salient reasoning for the denial of a license.

Proper remedy for inadequacy of city police chief's letter denying application for a license to carry a concealed weapon was remand for a new decision, rather than outright reversal; documents submitted to court by police chief which he obtained after denial showed that applicant's less-than-candid answers on his application, coupled with his past behavior, raised doubt as to his suitability to obtain a permit to carry a concealed weapon.

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## **ZONING & LAND USE - RHODE ISLAND**

## **Gerald P. Zarrella Trust v. Town of Exeter**

**Supreme Court of Rhode Island - January 16, 2018 - A.3d - 2018 WL 444298**

Landowner brought action against town, seeking a declaratory judgment that amendment to a statute rendered a prior injunction, which prohibited landowner from hosting commercial events on his farmland, a nullity.

The Superior Court entered judgment in favor of town. Landowner appealed.

The Supreme Court of Rhode Island held that landowner's use of his farmland to host weddings for a fee was subject to town's control.

Landowner's use of his farmland to host weddings for a fee constituted a "nonagricultural" use under the Right to Farm Act, and therefore, was subject to town's control; hosting weddings for a fee was an activity that fell outside the statutory definition of "agricultural operations."

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## **UTILITIES - WASHINGTON**

### **Acosta v. City of Mabton**

**Court of Appeals of Washington, Division 3 - January 18, 2018 - P.3d - 2018 WL 456968**

Homeowners who had several inches of raw sewage back up into their basement after city sewer line became clogged brought negligence action against city.

The Superior Court summarily dismissed homeowners' claims, and they appealed.

The Court of Appeals held that:

- Trial court did not abuse its discretion by denying city's motion to strike industrial hygienist's report, attached as an exhibit to homeowners' summary judgment declaration;
- Homeowners sufficiently rebutted city's theory that a foreign object such as a partially inflated ball caused the blockage by impeaching city's witnesses, creating a genuine issue of material fact that precluded summary judgment; and
- A genuine issue of material fact as to whether city breached its duty to maintain its sewer lines, and whether such a breach was the cause in fact of property damages sustained by homeowners, precluded summary judgment.

Trial court did not abuse its discretion by denying city's motion to strike industrial hygienist's report, attached as an exhibit to homeowners' summary judgment declaration in negligence action against city in which homeowners sought damages for the extensive property damage caused by sewer backup after city sewer line became clogged; the report was unquestionably the report of the industrial hygienist who faulted the city for failing to adequately clean its sewer system, it was submitted to the city during discovery, and the city questioned the industrial hygienist extensively about it during her sworn deposition.

Homeowners, who suffered extensive property damage when sewage from clogged city sewer line backed up into their basement, sufficiently rebutted city's theory that a foreign object such as a partially inflated ball caused the blockage by impeaching city's witnesses, creating a genuine issue of material fact that precluded summary judgment on their negligence claim against city; city could produce no credible explanation of how a partially inflated 8 ½ inch ball could get into a 10 inch sewer line, city's initial response to homeowner's complaint did not describe the blockage as being

caused by a ball, and during a city council meeting, the mayor discussed a history of blockages near plaintiffs' home as being due to sewer lines being blocked by solidified grease.

A municipality's duty to keep its sewers in repair is not performed by waiting to be notified by citizens that they are out of repair, and repairing them only when the attention of the officials is called to the damage they have occasioned by having become dilapidated or obstructed.

Where the obstruction or dilapidation of a city sewer line is an ordinary result of the use of the sewer, which ought to be anticipated and could be guarded against by occasional examination and cleansing, the omission to make such examinations and to keep the sewers clear is a neglect of duty which renders the city liable.

A genuine issue of material fact as to whether city breached its duty to maintain its sewer lines, and whether such a breach was the cause in fact of property damages sustained by homeowners who had several inches of raw sewage back up into their basement, precluded summary judgment on their negligence claim against city; city knew that grease accumulated in sewer lines, yet for more than a year, city's procedures did not involve clearing grease from the area of the blockage.

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## **[MSRB Seeks to Establish Advertising Rule for Municipal Advisors and Update Dealer Standards.](#)**

Washington, DC – Following a 2017 request for comment and further careful consideration of its advertising rule proposals, the Municipal Securities Rulemaking Board (MSRB) today filed with the Securities and Exchange Commission (SEC) a proposed new rule, MSRB Rule G-40, on advertising by municipal advisors, and amendments to [MSRB Rule G-21](#), on advertising by municipal securities dealers.

"The proposed new standards for fairness and accuracy in municipal advisor advertising will augment the MSRB's core regulatory framework intended to protect municipal entities and obligated persons," said MSRB Executive Director Lynnette Kelly. Under MSRB rules created to implement the Dodd-Frank Wall Street Reform and Consumer Protection Act, municipal advisors are subject to core standards of conduct, supervision obligations, regulations to address pay-to-play activities and professional qualification requirements.

"Proposed Rule G-40 is well-tailored for municipal advisors and municipal advisor solicitors but is similar to advertising standards for dealers, which have been in place for nearly 40 years," Kelly said. Today's rule filing includes proposed updates to the MSRB's dealer advertising rule to promote regulatory consistency with certain advertising rules of other financial regulators.

To inform its approach to the development of proposed Rule G-40 and amended Rule G-21, the MSRB in February 2017 [requested industry and public comment](#) on topics including how municipal advisors use advertising and considerations for streamlining and modernizing dealer advertising regulations. Based on commenter feedback, the MSRB revised its draft amendments to Rule G-21 to permit testimonials in dealer advertisements under certain circumstances. Further, the MSRB clarified the definition of advertisement under proposed Rule G-40 for advertising by solicitor municipal advisors.

Both rules include language clarifying that dealers and municipal advisors cannot omit any material fact or qualification from an advertisement if the omission would cause the advertisement to be

misleading. Both rules also include guidance that the determination of the number of persons receiving a response to a request for proposal or similar request is determined at the entity level, another change suggested by commenters.

The MSRB has requested an effective date of nine months for the proposed changes, if approved by the SEC following its public notice and comment process. [View the filing.](#)

Date: January 18, 2018

Contact: Jennifer A. Galloway, Chief Communications Officer  
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[jgalloway@msrb.org](mailto:jgalloway@msrb.org)

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## **[What do Walt Disney World and the 2018 Tax-Exempt Bond Market Have in Common?](#)**

Last week, all of my dreams came true when I had the good fortune of going to Walt Disney World with my family. In addition to watching my kids train to be Jedi Knights, I had the opportunity to meet a number of Disney characters, including Cinderella. In so doing, I was reminded that although tax reform eliminated tax-exempt advance refunding bonds issued after December 31, 2017 (discussed [here](#) and [here](#)), it did nothing to curb the use of so-called “Cinderella Bonds” to advance refund outstanding tax-exempt bonds. Heartened by this realization, I resolved to write this post to discuss the topic.

[Continue Reading](#)

The Public Finance Tax Blog

By Joel Swearingen

January 19, 2018

**Squire Patton Boggs**

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## **[S&P U.S. Public Power and Electric Cooperative Sector 2018 Outlook: Stability Amid An Evolving Regulatory Landscape And Operational Challenges.](#)**

Public power and electric cooperative utilities continue to face evolving regulatory and operational exposures. First off, electric utilities are grappling with numerous state and federal rules governing their power plants’ operations and emissions.

[Continue Reading](#)

Jan. 16, 2018

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## **When Proposed Public and Private Projects Collide: Nossaman LLP**

Infrastructure projects take years to develop: the environmental review, funding, design, procurement, and construction of a public project is time consuming in any state, but even more so in California given the strict regulations and oversight any public agency must comply with. During that lengthy process, private properties situated in the proposed project alignment remain in a state of flux. When those impacted properties are slated for development, what are the parties to do?

According to an article in the Morgan Hill Times, [Council OKs new housing in one of two bullet-train paths](#), this situation is currently playing out in Morgan Hill, where a residential home builder is proposing to construct a subdivision which lies in the path of one of the proposed alignments for a public transit project. Despite the potential future conflict, the City approved the developer's subdivision entitlements so building the residential units can commence. Is this the right choice, or is there a better alternative?

On the one hand, there is no guarantee the public project will come to fruition, and the final alignment has not even been selected. So it makes sense to allow the private development to go forward. On the other hand, if the public project does proceed on this alignment, instead of acquiring vacant land the agency will now have to acquire a number of new residences and relocate impacted families at a much higher price.

Under California law, the City's decision to allow the residential development to proceed is likely the correct approach. If the City refused to allow the owner to secure entitlements due to a potential conflict with the train alignment, the City would potentially be held liable for inverse condemnation. We've recently seen this [play out in the Jefferson Street Ventures case](#). Such a situation may create liability before the public project's alignment is determined, or before project funding is even available.

However, what if, in order to minimize costs and impacts, the public agency decided to acquire the potentially impacted property now, before it was developed? Unfortunately, this raises another host of issues, as the agency could eventually risk a challenge to its environmental approvals with someone claiming that the agency's purchase of the impacted property influenced the ultimate selection of the preferred project alternative. Similarly, acquiring property before securing environmental approvals of the public project could jeopardize funding for the project from federal agencies.

In situations like these, there typically is not a great solution. However, one potential opportunity that has been utilized more frequently, and that is allowed by a number of federal oversight agencies, is securing approvals to acquire potentially impacted property under a "[protective acquisition](#)" exception. Such an approach allows a public agency to acquire impacted property before environmental approvals where the acquisition is necessary to prevent the imminent development of a parcel that is likely to be needed for the proposed public project. If the agency can document that the developer has taken concrete steps to develop the property, and imminent development would conflict with the public project, such an early acquisition may be permissible.

In order to avoid tainting the environmental process and the consideration of project alternatives, protective acquisitions are only allowed under a limited number of circumstances, and the agency must comply with the Uniform Relocation Act and all other laws and regulations. But it is definitely an approach that both public and private parties should consider exploring, and may even be one that creates a win-win solution. Perhaps it could even benefit the situation currently taking place in

Morgan Hill.

Article by Bradford B. Kuhn

Last Updated: January 11 2018

## **Nossaman LLP**

*The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.*

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### **Interest Rate Increase Coming For Many Tax-Exempt Borrowers: Holland & Knight**

Many states, local governments and conduit borrowers (e.g., 501(c)(3) not-for-profit corporations) have directly placed tax-exempt loans (secured by the issuance of notes or bonds) with lenders, such as banks and their non-bank affiliates, instead of going to the public markets. Many of these direct placement loans have so called “gross-up” provisions for changes in the marginal corporate tax rates. The gross-up provisions were intended to protect banks’ investment return, because as marginal corporate tax rates decrease, the tax-exemption becomes worth less to the lender. Therefore, as corporate tax rates decrease, the gross-up provisions preserve a lender’s net rate of return by increasing the interest rate on the loan or bonds. Consequently, as a result of the recent reduction in the marginal corporate tax rate from 35 percent to 21 percent, many borrowers with direct placement tax-exempt loans containing gross-up provisions may see their interest rates increase.

Not all gross-up provisions are written equally, and borrowers, as well as lenders, will need to carefully review the applicable provisions in loan documents. In most instances, the provisions are written as an objective adjustment in which the interest rate is multiplied by a fraction, the numerator of which is equal to 1 minus the Maximum Federal Corporate Tax Rate on the date of calculation and the denominator of which is 0.65. The current factor of 1 (i.e.,  $1 - 0.35 / 0.65$ ) is increased to a factor of approximately 1.215385 (i.e.,  $1 - 0.21 / 0.65$ ). As demonstrated, this will result in an increase of the interest rate by more than 21 percent.

#### **Considerations for Borrowers and Lenders**

The increased interest rate will have a budgetary impact for states, local governments and conduit borrowers. Moreover, additional challenges can arise for borrowers who have entered into variable-to-fixed interest rate swaps, as a basis differential can arise from a change in the rate on the loan without a change in the interest component on the underlying swap. For these borrowers, the variable rate interest rate under the loan will be increased as a result of the “gross up” but the receipt of swap payments received from the swap counterparties will not change. Therefore, a borrower will be paying a higher variable interest rate under the loan than it is receiving from the counterparty under the swap. Consequently, the swap will no longer be perfectly hedged.

Due to the quick implementation of these changes, many lenders are still reviewing their loan documents to determine which of their loans have gross-up provisions, as well as the extent to which they must be implemented. Thus, it may be several months before lenders notify borrowers of the change in rates. In many cases, however, the implementation of the rate increase is automatic,



whether or not notice is given, and will become effective as of Jan. 1, 2018. Thus, governmental entities should quickly review their budgets to account for the potential rate increases.

Depending on the way the documents are written, the implementation of these changes may not be automatic and may not be equally applied across a bank's portfolio of loans. For some lenders, the documents provide that the rate "will" be grossed up (i.e., "the rate shall be increased"), but for other loans the provisions give the lender the option of whether or not to increase (i.e., "the rate may be increased at the option of the lender"). In those cases where the rate change under the loan documents is automatic, careful consideration needs to be given by bond counsel if the lender offers to waive the gross-up provision, because the failure to fully implement such a provision – or a delay in implementing its effective date – could cause a reissuance for federal income tax purposes and thus could cause the loan to become taxable. Lenders should consult with counsel prior to formalizing any waivers to ensure that the tax-exempt status is not unknowingly jeopardized.

## Footnotes

1 A similar common adjustment factor is reflected as the product of 1 minus the Maximum Federal Corporate Tax Rate on the date of calculation multiplied by 1.53846.

Article by Michael L. Wiener, Richard B. Stephens and Edward J. Rojas

Last Updated: January 11 2018

## Holland & Knight

Michael Wiener and Richard Stephens Jr. are Partners in Holland & Knight's Lakeland office and Edward Rojas is an attorney in Holland & Knight's New York office

*The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.*

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## **[S&P U.S. Transportation Sector 2018 Outlook: Credit Quality Will Largely Be Stable, But Will Infrastructure Finally Take The Spotlight?](#)**

S&P Global Ratings' 2018 outlook for business conditions and credit quality across the public transportation sector is stable across most transportation subsectors (airports, ports, federal grant-secured and parking), and positive for the toll road and bridge sector.

[Continue Reading](#)

Jan. 17, 2018

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## **[Financial Sinkhole States In The Trump Tax Era.](#)**

*What damage will the loss of a deduction do to blue states with stiff taxes?*

Do you live in a sinkhole state? There are eight of them, led by California and New York.



These are places where the population dependent on the state — for employment, welfare or a pension — is larger than the population feeding it. That excess of takers over makers is recipe enough for trouble when the next recession hits. But now some of the sinkholes have a new worry.

The Trump tax law enacted in December just about killed the federal deduction that prosperous people take for state income taxes. In states with stiff taxes, the cost of living has suddenly gone up.

[Continue reading.](#)

FORBES

by WILLIAM BALDWIN

JAN 16, 2018

William Baldwin ,

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## **[Commentary: Significant Tax Exemption Concerns Arise for the Health Care Industry.](#)**

An unmistakable theme arising from the Tax Cuts and Jobs Act is increasing Congressional skepticism that nonprofit hospitals and health systems deserve the benefits associated with tax exempt status under Section 501(c)(3) of the Internal Revenue Code. This skepticism is reflected not only in the final exempt organization provisions of the Act, but also in several significant proposals that surfaced in, but did not ultimately withstand, the full legislative process.

This theme, and the long-term sustainability of tax exemption benefits, present significant planning concerns for advisors and counsel (e.g., underwriters' counsel, bond counsel, borrower's counsel, borrower's general counsel) in the municipal bond sector as they relate to debt issued by tax exempt hospitals and health systems. These concerns exist notwithstanding the fact that the final version of the Act preserved tax exemption for interest on private activity bonds. Greater organizational effort will need to be expended in the future to support continued claims to overall tax exempt status. This includes a governing board that will be more engaged in assuring operation for charitable purposes.

Many provisions of the Act are punitive to tax exempt health care. They begin with the elimination of advance refunding bonds (i.e., bonds issued to refinance existing bonds that are not callable within 90 days of the related issuance). They continue with provisions that may increase organizational unrelated business income tax (UBIT) exposure through the new prohibition against offsetting profits and losses from various unrelated enterprises, and provisions that subject tax exempt employers to UBIT on the value of certain employee entertainment, club dues, qualified transportation and a variety of other fringe benefits. And they accelerate with the new excise tax on compensation in excess of \$1 million to "covered employees". The new excise tax applies not only to current compensation but also to all forms of deferred compensation and to "excess parachute payments."

Individually and collectively, these new provisions present significant tax planning challenges for tax exempt health care systems. As it relates to compensation in particular, these provisions place such systems at a significant disadvantage compared to privately-held, for-profit competitors in connection with executive level talent recruitment and retention.

But equally instructive were the series of punitive proposals made at some point in the legislative process but not included in the final bill. In many ways these are more illustrative of the mood of Congress towards the tax exempt hospital sector.

Most prominent among these was the provision of the House bill that served to eliminate the tax exemption for interest on private activity bonds, which alarmed, appropriately, the nonprofit sector. If enacted, it would have served to deny to tax exempt hospitals a traditional and critical vehicle for financing major capital expenditures. The House bill would also have increased UBIT exposure with respect to certain types of research conducted by tax exempt organizations.

Other proposals (beyond the excise tax as enacted) related to the manner in which tax exempt hospitals compensate their highest paid executives. The Senate Finance Committee “Chairman’s Mark” proposed sweeping changes to the tax rules relating to nonqualified deferred compensation under Code Section 457. The Finance Committee attempted to essentially eviscerate the “Rebuttable Presumption of Reasonableness” guidelines under the intermediate sanctions rules of Code Section 4958.

Proposed changes to the intermediate sanctions regime included not only the elimination of the “RPR”, but also provisions that would have (i) increased the personal financial exposure of “organizational managers” who approve excess benefit transactions; (ii) removed as an affirmative defense to excise tax liability the reliance on professional advice; (iii) added new categories of “disqualified persons” subject to intermediate sanctions; and (iv) imposed an additional excise tax on the exempt organization itself in the case of an excess benefit transaction (contrary to the historic policy of the intermediate sanctions regime).

In many respects, the concerns expressed in the recent legislative process are consistent with those expressed in the past by senior IRS Exempt Organizations officials and longstanding legislative concerns that the nonprofit health care sector is inexorably drifting towards the purely commercial sector (and thus should be taxed accordingly). These concerns have included the consistency of exempt status with several factors: e.g., (i) the emergence of the “nation-sized” nonprofits—organizations that are national (or even global) in scope and scale; (ii) the blurring of the line between tax exempt and commercial health care; and (iii) highly complex, lucrative executive compensation arrangements. Many of these concerns—and their compatibility with the community benefit standard— remain relevant today.

To be clear, the sky is not in imminent danger of falling. Despite the troubling theme that emerged during the tax reform process, tax exempt financing and the nonprofit health care sector remain alive and well. Yet the message from the Act is clear, and the unprecedented revocation of two hospitals’ tax exemptions by the IRS in a single year,[1] sends a parallel message. Both the governing board and executive leadership of health systems must invest greater effort toward communicating—for both internal and external audiences—how the delivery of health care services through a tax exempt, non-profit model is distinguishable from the delivery of such services through a proprietary model.

Such efforts can be highlighted through tangible steps: e.g., emphasizing the achievement of charitable purposes through the strategic plan; including language in board resolutions about how specific board actions reflect the intention that those actions serve charitable purposes; highlighting research and education; confirming that the compliance officer monitors compliance with the various Section 501(r) requirements for charitable hospitals; and negotiating provisions in key service agreements, joint venture agreements and major transaction documents that preserve the tax exempt organization’s control over exempt purposes and prevent unreasonable benefits to private parties.

Advisors who work with tax exempt hospitals and health systems on private activity bond issuances should anticipate the need to focus on the strength of the borrower's underlying claim to tax exempt status much more than in the past. Borrowers must not wait until a pending bond issuance to review and strengthen their documentation and operations with respect to these key issues.

## **The Bond Buyer**

By Michael W. Peregrine & Erika Mayshar

January 16, 2018

[1] See Priv. Ltr. Ruls. 201731014 (Feb. 14, 2017) and 201744019 (Aug. 7, 2017).

*The authors wish to thank their partner, Lisa Kaderabek, for her assistance in preparing this article.*

Michael W. Peregrine is a partner at the law firm of McDermott Will & Emery.

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## **[Climate Lawsuits Backfire.](#)**

Environmental activists and plaintiffs' attorneys have convinced local governments in California and New York that there is a pot of gold waiting for them in a new set of lawsuits against energy companies. The theory is that the companies raised global temperatures and thus forced cities and counties to spend billions of dollars to protect residents against rising seas.

The claim is farfetched, to begin with, and federal courts have tossed out similar arguments in the past. But now, the lawsuits are backfiring – and local governments themselves are in the crosshairs.

Here's the problem for the governments: They claim that energy companies will cause massive environmental damage, costing their cities and counties billions of dollars. But, if that claim is true, then the governments failed to reveal the risk to purchasers of their own bonds. As a result, the cities are opening themselves up to lawsuits directed at *them*.

[Continue reading.](#)

## **The Huffington Post**

John Burnett, Contributor

Businessman | Business & Political Commentator | Professor | Urban Financial Freedom Fighter | Republican Strategist

01/16/2018 12:33 pm ET

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## **[MSRB Announces Topics to be Discussed at Board Meeting.](#)**

[Read the Agenda.](#)

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## **Local Government Investment in Water and Sewer, 2000-2015.**

What investments will be needed to rebuild our national water and sewer infrastructure and provide services to a growing and shifting population and an expanding economy?

### **Introduction**

Will a new national infrastructure policy help or hurt city water and sewer services?

What is the role of the Federal Government in helping cities provide safe, adequate and affordable water and sewer in a national infrastructure policy?

Answers to these questions require knowledge of current public water and sewer economics and recent trends to help evaluate policy implications; this paper summarizes local and federal investment trends.

Congressional framers of the Clean Water and the Safe Drinking Water Acts promised local governments a technical and financial partnership to achieve national water goals. Those promises are long forgotten. Congress and the Executive branch have steadily retreated from responsibility for local water and sewer services, although they continue to stack up expensive regulatory mandates that trigger affordability burdens for low- and middle-income households. Current discussions of boosting infrastructure investments initiated by the Executive branch are long overdue; and the stated expectation that cities and states need to step up with more of their own money before they ask for federal financial assistance rings hollow in the case of local water and sewer where local government provides roughly 98 percent of the annual investments. Any major improvement in water and sewer infrastructure will rely on a new configuration of bonds, grants, loans and rate increases. A new infrastructure policy can get it right, if the new framers of the policy consider both achievements and systemic problems that have accrued over the last 40 years.

The case is well established that the federal financial partnership with cities died when Congress eliminated the construction grants program in favor of providing capitalization grants to states to disburse to local government as loans with capital and interest payments. Elimination of earmark grants for water and sewer construction soon followed, and local government picked up all the responsibility for providing local services and achieving national health and environmental goals, (Figure 1).

[Continue reading.](#)

### **The United States Conference of Mayors**

By Richard F. Anderson, Ph.D.

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## **Using Dollars with Sense: Ideas for Better Infrastructure Choices.**

With infrastructure policy set for the spotlight in 2018, the Urban Institute is hosting this series to look beyond funding and into the way we choose which infrastructure projects are built and which are not.

On this page, you will find short essays about what criteria policymakers should keep in mind to

make effective choices and what levers they can use to do so. Visiting fellow Shoshana Lew argues for one such tool in her new brief, calling attention to asset management plans.

Our authors hold various views and roles in our infrastructure system, and while they may not all agree, we hope their collective output will be a resource for infrastructure leaders to draw on as they make decisions that will reverberate in places and people's lives for decades.

We look forward to a thought-provoking and useful discussion.

[Continue reading.](#)

**The Urban Institute**

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## **SEC Accelerates Work on a 'Fiduciary' Standard.**

The Securities and Exchange Commission is accelerating work on its own version of the "fiduciary rule," a regulation issued by the Labor Department that put restraints on brokers handling retirement accounts.

The SEC hopes to vote to propose its own rule by the second quarter of 2018. That would be a first step toward creating consistent standards across brokerage accounts since the Labor Department's rules only covered 401(k)s and individual retirement accounts.

The SEC has struggled for years to harmonize the rules brokers and investment advisers face when they serve retail clients. Consumer groups that backed the fiduciary rule are likely to oppose the SEC proposal if they believe it would give Wall Street an end-run around Labor's stricter approach.

SEC staff has held meetings in recent weeks with brokerage firms and trade groups regarding work on a "fiduciary" standard. **BDA members will meet next week with SEC Chairman Jay Clayton and Commissioners Piwowar and Stein.**

The SEC proposal could emerge later than the spring of 2018 because the agency will add two new commissioners in the coming weeks. Both new commissioners, Robert Jackson and Hester Peirce, could want time to study the proposal.

Any SEC measure could affect future revisions to the Labor Department's rule affecting retirement accounts. Some want the Labor Department to exempt firms that comply with a new SEC standard from Labor's fiduciary rule. That would allow the SEC to again regulate all brokerage activity and wouldn't require the Labor Department to go through the cumbersome process of revising its regulation.

Already, under President Trump, the Labor Department has delayed parts of its fiduciary rule until July 2019, saying the rule has reduced choices for investors and imposed huge compliance problems for firms.

**Bond Dealers of America**

January 10, 2018

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## **SEC Holds First Meeting of its Fixed Income Market Structure Advisory Committee.**

The Securities and Exchange Commission held its first Fixed Income Market Structure Advisory Committee (FIMSAC) meeting on Thursday, January 11. The meeting was the first official activity for new SEC commissioners Hester Peirce and Robert Jackson, who were sworn in that morning.

The 23-member FIMSAC group, which was announced in November, includes several significant players, including three BDA members. Among the panelists was Kevin McPartland, head of market structure and technology research at Greenwich Associates, a key BDA partner.

The commissioners and panel members touched on concerns about the bond markets generally but focused this first discussion primarily on liquidity in the corporate bond market. SEC Chairman Jay Clayton did note that the municipal market is “large and vital” and has experienced significant growth in recent years. He called munis critical for U.S. infrastructure.

Bond dealers have expressed worry that regulations designed to keep banks solvent in the wake of the 2007-2008 financial crisis have de-incentivized banks to be buyers of bonds. On the municipal side, this has been a key factor in the industry’s push to classify munis as high-quality liquid assets for purposes of federal banking rules.

FIMSAC is chaired by Michael Heaney, non-executive director at Legal & General Investment Management America, and includes many corporate bond and muni experts. Some market participants have speculated that the committee could eventually lead to more efforts to harmonize muni and corporate bond rule.

### **Bond Dealers of America**

January 16, 2018

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## **Fitch U.S. Not-For-Profit Hospitals and Health Systems Criteria Revision.**

Fitch Ratings finalized its new criteria for U.S. not-for profit hospitals and health 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 15% of the portfolio, with a roughly equal mix of upgrades and downgrades. Upgrades are likely for issuers with enhanced revenue defensibility characteristics or less volatility in Fitch’s through-the-cycle analysis, while downgrades are likely for issuers with elevated operating risk and leverage, which expose them to greater volatility in a through-the-cycle analysis.

### **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. not-for-profit hospital and healthcare 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 operating cost flexibility assessment and the asset allocation of its unrestricted liquidity.

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## **[Bloomberg Brief Weekly Video - 1/18](#)**

Taylor Riggs, a contributor to Bloomberg Briefs, talks with editor Joe Mysak about this week's municipal market news.

[Watch video.](#)

**Bloomberg**

January 18th, 2018

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## **House Panel Backs Bill to Scrap Floating Prices for Money Funds.**

- Post-crisis rule raised municipal borrowing costs, critics say
- Key industry group opposes change, says markets have adjusted

The House Financial Services Committee has advanced a bill that would eliminate some of the strictures placed on the \$2.8 trillion money market mutual fund industry in the wake of the financial crisis.

The legislation, which was opposed by Fidelity Investments, Vanguard Group., BlackRock Inc. and other major asset managers, would repeal a 2014 requirement that the riskiest funds allow their share prices to float, rather than maintain a stable \$1 value. The panel's action clears the way for a House vote on the measure.

Representative Keith Rothfus, a Pennsylvania Republican who sponsored the legislation, said it aims to fix a "misguided Securities and Exchange Commission rule" that has disrupted markets and also caused municipal borrowing costs to rise. He said more than 60 lawmakers, both Democrats and Republicans, were co-sponsors of the bill.

While the prospects for passage in the Senate are dim, the 34-21 committee vote is a victory for Federated Investors Inc., which has a large money fund business and has been fighting the SEC regulation for years. The Pittsburgh-based firm joined with state treasurers, pension funds and other businesses to form the Coalition for Investor Choice to lobby for the bill.

### **Interest Rates**

Other fund companies disputed the group's contention that the SEC rule was responsible for increased borrowing costs for cities and towns. In a paper distributed on Capitol Hill, Vanguard attributed the rise to the Federal Reserve's decision to boost interest rates.

"The coincidental timing of these increases and of money market reform has led to misidentification of the true causation of higher municipal yields," Vanguard wrote.

Mutual fund firms and their trade association, the Investment Company Institute, had mostly opposed the SEC's move to require the floating share price, but they told lawmakers changing the rule would be expensive and potentially troubling to the markets.

"The new regulatory regime involved substantial and costly operational changes implemented on a very aggressive timetable, but money market funds and the money markets have adjusted," ICI President Paul Schott Stevens wrote in a Jan. 12 letter to committee members. "The consensus of our member leadership is that reopening these reforms is not appropriate or desirable."

### **Clayton Warning**

SEC Chairman Jay Clayton, in a letter last year to Representative Carolyn Maloney, also urged caution, noting that the agency's rule had only been fully put in place in October 2016. "I am concerned that making major changes at this time could be disruptive to the short-term funding markets," Clayton wrote.

The SEC's reforms came in response to a September 2008 run on the Reserve Primary Fund after its share price dropped below \$1, causing investors to withdraw money at other funds and helping



freeze credit markets. The Treasury Department was ultimately forced to stem the panic by temporarily guaranteeing shareholders against losses.

Among the lawmakers voting against the legislation were Representatives Bill Huizenga, the Michigan Republican who leads the Financial Services capital markets subcommittee, and New York's Maloney, the panel's top Democrat.

"I oppose this bill because I think it rolls back one of the most important post-crisis reforms we made," Maloney said.

## **Bloomberg Markets**

By Robert Schmidt

January 18, 2018, 9:50 AM PST

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### **[S&P Credit FAQ: Understanding Climate Change Risk and U.S. Municipal Ratings.](#)**

The U.S. municipal market has always faced credit exposure to hurricanes, floods, drought, fires, tornados, earthquakes, and other catastrophes. In addition to episodic event risk from natural disasters, S&P Global Ratings believes it is important to consider the current long-term credit...

[Continue Reading](#)

Oct. 17, 2017

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### **[Moody's: Climate Change Adaption and Mitigation Could Affect Cities' Bond Ratings.](#)**

In December, Moody's Investors Service [issued a report](#) encouraging cities to invest in climate adaptation and mitigation. Cities will be evaluated in the future at least in part on how they prepare for both short-term climate "shocks" and longer-term trends associated with climate change.

Moody's is the largest credit rating agency to date to publicly outline how it evaluates climate change risk and integrates it into its credit rating assessments.

In the report, the United States is broken into seven "climate regions," identified by both geography and the type of mostly common regional impacts—for example, drought, extreme heat, and wildfires in the Southwest; rising sea level and its impact on coastal development in the Northeast; and flooding and other impacts on agriculture in the Midwest. The report stresses, "If federal, state, and local governments do not adapt, these risks are forecast to become more frequent and severe over time."

Cities that are already taking proactive steps to address climate change mitigation and resilience may welcome this additional level of scrutiny. A municipal credit rating based in part on climate change preparation could lead to a virtuous circle—cities that invest in climate preparedness would

see a higher bond rating, allowing them to attract more low-interest capital to invest in a broader range of strategies to prepare for the short- and long-term impacts of climate change.

For cities that have not developed a climate action plan, or begun investing in climate change preparedness, Moody's report could be a wake-up call—if credit becomes harder to come by, these cities could be at a credit disadvantage to their peers, and find it hard to find the financing to catch up.

In the report, Moody's encourages cities to develop local adaptation and mitigation programs specific to their most likely short-term climate "shocks" and longer-term climate trends. In the Midwest, the report recognizes that "impacts on agriculture are forecast to be among the most significant economic effects of climate change." In the Southwest, the report recognizes that the region will become even more vulnerable to extreme heat, drought, rising sea levels, and wildfires. Rising sea levels and their effect on coastal infrastructure are the biggest projected long-term impact on the Northeast.

As Moody's recognizes climate change as a threat to municipal bond ratings, other debt markets have already begun integrating energy efficiency and climate change mitigation into their evaluation process. Fannie Mae is issuing [green mortgage-backed securities](#) for assets with a third-party green building certification or major energy efficiency improvements, and providing green financing loans to help drive these energy efficiency improvements. Earlier this year, a [study](#) by the U.S. Department of Energy and Lawrence Berkeley National Laboratory found that energy-efficient commercial buildings are less likely to default on their mortgages than their more energy-inefficient peers, further strengthening the case that commercial debt markets should incorporate energy efficiency into their underwriting process as well.

## **Urban Land**

By Billy Grayson

January 17, 2018

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### **[Market Commentary: Munis Get Slammed in a Volatile Week.](#)**

[Read the report.](#)

## **Court Street Group's Perspective**

by George Friedlander

Posted 01/16/2018

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### **[Market Commentary: Munis Outperform Treasuries as 10-Year UST Tops 2.60%](#)**

*This Market Commentary is part of Court Street Group's Weekly Perspective.*

This past week saw several milestones in broader markets with the Dow Jones Industrial Average

crossing the 26,000 point mark for the first time and the U.S. Treasury 10-year yield topping 2.60% for the first time in nearly 4 years.

Pressure from sustained Treasury losses year to date and the crossing of the technical boundary of 2.60% did eventually put pressure on municipals but overall the theme of the week was outperformance.

[Continue reading.](#)

## **Neighborly Insights**

by George Friedlander

Posted 01/19/2018

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### **NABL: Senate Bill Would Raise PAB Statutory Cap in Connection with P3's.**

U.S. Senators John Cornyn (R-TX) and Mark Warner (D-VA) introduced the Building United States Infrastructure and Leveraging Development (BUILD) Act, a bill that would allow more private activity bonds to be used in connection with public-private partnership arrangements for certain infrastructure projects. Specifically, it would raise the federal statutory cap on Private Activity Bonds (PABs) issued by or on behalf of state and local governments for highway and freight improvement projects from \$15 billion to \$20.8 billion.

For more information, [click here](#).

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### **Primary Offering Practices, Strategic Plan Among Topics at MSRB Meeting.**

WASHINGTON — The Municipal Securities Rulemaking Board will consider various topics at its meeting next week, including the market comments it received on whether new rules or guidance are needed on primary offering practices.

The board, which will meet Jan. 24 and 25, also said it will discuss the use of discretion in customer accounts and the potential of consolidating requirements in existing MSRB rules, as well as establishing limited, new requirements for greater consistency with similar rules of other regulators.

Another topic to be considered, according to an MSRB notice, is a proposed rule filing to update certain provisions of its professional qualification standards in its Rule G-3 so that they are in line with similar standards of other regulators.

The board will also review its multi-year strategy, its progress on efforts to facilitate understanding of and compliance with regulatory obligations, and its policy on interpretive guidance.

The MSRB published a concept proposal in September asking for input on numerous aspects of primary offering practices, which are covered by its Rule G-11. Also, the board's Rule G-32 covers the disclosure that must be made in connection with primary offerings.

But dealer and municipal advisor groups responded that they didn't think the board needed

wholesale changes in its rules on primary offering practices and even questioned the MSRB's authority for certain suggested changes.

The board asked, for example, whether it should amend its Rule G-11 to require members of syndicates to make a bona fide public offering of the bonds allocated to them at the public offering price.

Syndicate members sometimes agree to this in documents signed before the sale, but do not always follow through on it.

The Securities Industry and Financial Markets Association told the MSRB that underwriters must abide by their agreements and said no new requirement should be created.

"SIFMA strongly believes that the issuer has the right to determine whether it wants its new issue to be sold in a bona fide public offering or by some other means," SIFMA said in its comments.

The dealer group said it was concerned that such a rule would require "line drawing" to account for instances where a bona fide public offering would be inappropriate, such as in a private placement or limited offering.

"Any such line-drawing raises the considerable risk of regulations driving market decisions rather than the intentions of the party or free market forces," SIFMA wrote in its comments to the board.

SIFMA also said that it doesn't see a need for a new MSRB requirement for the senior syndicate manager to inform all other syndicate members simultaneously when a bond purchase agreement is executed, and explicitly state that, in negotiated sales, retail or institutional priority orders must be allocated up to the amount of priority set by the issuer before being allocated to lower priority orders.

The National Association of Municipal Advisors took issue with the MSRB's question of whether it should require the submission of preliminary official statements to EMMA. Some issuers already submit POS' to EMMA voluntarily.

"We believe that the MSRB lacks the statutory authority to create such a rule for either municipal advisors or broker/dealers and that such a requirement would violate the Securities Exchange Act" of 1934," NAMA said in comments.

Not all of the comments were negative.

Robert Doty, the president and proprietor of muni bond consulting company AGFS told the board that it should amend G-32 to require a dealer that sells any offered municipal securities to a customer to disclose all of its compensation in a negotiated offering that is dependent upon the completion of either specific stages in an offering or the entire offering.

Doty noted that undisclosed compensation based on specific stages of the transaction were key pieces of a 2016 Securities and Exchange Commission enforcement action against the Rhode Island Economic Development Corporation and Wells Fargo (WFC), in which the commission alleged a conflict of interest that should have been disclosed to bond investors.

The MSRB can choose to ask for additional market comments, propose rules or rule changes for further comment, file proposals with the SEC, or take no further action.

By Lynn Hume

## **[Calif. Cities Should Look to this S.F. Affordable Housing Finance Model.](#)**

With rent exceeding \$4,500 a month for a two-bedroom apartment in San Francisco, housing is unaffordable for 73 percent of the city's residents. We are losing teachers, artists, bus drivers, police officers, nonprofit workers and families every single day. The high cost of housing affects the very fabric of our neighborhoods and character of our iconic city, and impacts households across the income spectrum, directly connecting to many of the city's challenges, from homelessness, to health, to education. Now more than ever we must apply our collective brainpower and resources — private and public — to housing.

Affordable housing in a high-cost city like San Francisco — and the Bay Area as a whole — can't be built without the substantial investment of the public sector. But accessing government money is, by nature, a bureaucratic process that can be too slow to be competitive. Financing bottlenecks are one of several reasons that housing development is both costly and slow. The San Francisco Housing Accelerator Fund, where I'm executive director, is an example of a solution that coordinates public, private and philanthropic capital to remedy this particular contributor to our affordability crisis. The public-private model can be scaled up and is replicable — and just became even more relevant in California.

In September, the state legislature passed several bills that could generate billions for affordable housing, and more local governments are passing bond measures to support similar development. Cities around California that are concerned about affordability, and how to enable mission-driven developers to compete to secure sites for preservation or new affordable housing, can look to the [San Francisco Housing Accelerator Fund](#) while considering how to best leverage this money.

Two types of capital are critical for housing development. Acquisition capital buys land or buildings, and needs to be nimble, efficient and tolerant of the higher risk of early-stage development. Permanent capital, which subsidizes the most significant long-term costs of the housing, ensures affordability into the future.

The city of San Francisco has put a significant amount, over \$100 million annually, toward dedicated funding for affordable housing, and the new state measures and local efforts in other counties will add more to the pot of permanent capital available across localities. These dollars are essential to support the creation and preservation of housing for lower-income individuals, but it is hard for government capital to be nimble and flexible. A flexible financing vehicle, like the Fund, can bridge the gap between what's required in our real estate market — fast capital with an appetite for risk — and the government's long-term funds.

Public-private coordinated funds can take advantage of the efficiency of the private sector, while also ensuring the absolutely necessary collaboration with the public sector. Our fund was incubated within the Mayor's Office of Housing and Community Development, and we continue to closely coordinate with the city, following its policy leadership — but we can move with the agility of a startup.

The SF Housing Accelerator Fund is a nonprofit and acts as a financial intermediary that creates efficiencies by combining capital from a variety of sources — public, private and philanthropic — into a single independent capital pool. We closed on our first round of capital in April, \$37 million in

total led by investments of \$20 million from Citibank, \$10 million from the city of San Francisco, and \$6.5 million philanthropic capital from Dignity Health, the San Francisco Foundation, and the Hewlett Foundation. Our startup year was supported with seed funding led by Citi Community Development, but our business model is structured to be self-sustaining without additional fundraising.

We aim to accelerate the production and preservation of over 1,500 homes in our first five years of operations, and to grow our balance sheet, partnerships and products, to create more housing opportunities in San Francisco's future. Ten months in from our first capital raise, we are working on our sixth loan, and with the first five we've preserved or accelerated over 200 units of affordable housing.

This is urgent. We are losing affordable units at a concerning pace in the city, due to both evictions — with eviction notices increasing 87 percent between 2010 and 2016 — and drastically rising rents in rent-controlled buildings where prices reset with new tenants.

Our first transactions have included a large land purchase and the preservation of four multifamily buildings. Our land acquisition and predevelopment loan to real estate developer Bridge Housing allowed them to lock up a key site for 175 units of new affordable housing before their purchase option expired. The Fund's loans to the Mission Economic Development Agency ("MEDA"), a nonprofit that supports low-income and immigrant Latinos, provided the capital to save four six to sixteen-unit buildings from the speculative market, protecting existing tenants and ensuring the permanent affordability of the households, in addition to covering the cost of the rehabilitation of the units and the buildings' foundation. For two of the buildings, our loans are also financing the construction of new additional dwelling units in the buildings' existing garages, together representing loan sizes and risk tolerance that is only possible due to our unique mix of public, private and philanthropic capital. We have since raised an additional \$3 million from First Republic Bank, \$3 million from Beneficial State Bank, and are working towards closing on another \$3 million from another local financial institution this month. We are working through a pipeline of over \$25 million in additional building acquisitions, which will immediately prevent displacement and create permanent affordability for dozens of additional households.

Statewide, even with the promise of new funding and increasing interest among private investors, the housing shortage is so acute that the effect of the bills passed in September will not be felt immediately. Developers need to build about 100,000 new homes each year beyond what's already planned, simply to keep pace with California's population growth. The new legislation is expected to add 14,000 new homes each year. Unfortunately, years of policy restricting development can't be undone quickly. And despite this show of urgency in Sacramento, there continues to be vocal opposition to robust affordable housing development.

Financing affordable housing is already complicated. So why add a new approach to the mix with a model like the SF Housing Accelerator Fund? Public-private partnerships are inherently hard work and often messy, and require bringing many different backgrounds, priorities and assumptions to the table. Could the private sector get affordable housing built faster without any government funding? Could San Francisco deploy its pipeline of affordable subsidy dollars without the Fund? The answer to both of these questions is yes, probably. But does the private sector have the capacity to build affordable housing at scale without the government? Unlikely. And are our best and brightest public servants in local government content with doing things the way they have always been done, especially as they sit at the front lines of an affordability crisis? Absolutely not. The Housing Accelerator Fund was created to stretch private sector and philanthropic dollars to achieve more impact, more quickly. Ultimately, the goal is to leverage the public sector's dollars to achieve innovation in housing delivery. Building and growing this public-private partnership is exactly the

messy, hard work we should be challenging ourselves to do.

And we must keep at it. The need remains for all types of capital to support housing, from “fast-acting” philanthropic and private dollars to our public sector’s permanent subsidy dollars. We need to continue to innovate and collaborate to add to the resource pot and to leverage more dollars to put them to their highest and best use. We need more housing, faster, and we need to protect our current tenants.

The opportunity for impact — in our neighborhoods, in our schools, at our workplaces — as we all step up together to meet our housing challenges together, is huge.

## MARKET WATCH

BY REBECCA FOSTER | OP-ED | JANUARY 18, 2018

*Rebecca Foster is the executive director of the San Francisco Housing Accelerator Fund. Prior to leading the SFHAF, Rebecca was director of social impact investment for San Francisco Mayor Ed Lee, where she led the city’s exploration of results-driven contracting and social impact finance, and developed capital tools to address the city’s housing shortage. Prior to her work for Mayor Lee, Rebecca was an associate and vice president in public sector and infrastructure investment banking at Goldman Sachs for eight years, where she raised capital for local governments, universities, nonprofits and utilities around the U.S.*

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### **[Fitch: California Pension Ruling Highlights Reform Obstacles.](#)**

Fitch Ratings-New York-18 January 2018: A recent California judicial ruling underscores Fitch Ratings’ view that reducing public pension liabilities will be politically challenging for most state and local governments and that some will depend on favorable judicial outcomes.

The January 8 ruling by California’s First Appellate District of the Court of Appeal is one example. It affects a narrow class of plaintiffs in three counties and follows several previous legal challenges to state pension reforms adopted in 2012. The state Supreme Court has agreed to review the earlier cases but has not yet indicated a timeframe for such consideration.

The new ruling confirmed prior courts’ conclusions that future pension benefits for existing public employees may be reduced, but the circumstances under which such changes are permissible are limited. The appellate court directed the trial court to consider the financial impacts of eliminating several provisions that allowed some public workers to boost retirement pay in its assessment of whether such modifications were reasonable. In addition, the appellate court rejected the argument that pension benefit reductions were warranted by the challenged financial circumstances of public pension plans and directed the trial court to assess how such plans would be specifically impaired by the continuation of the disputed benefits.

Much of the recent California pension litigation has centered on interpretation of the “California Rule,” a state Supreme Court precedent from 1955 that established pension benefits, once granted, as a vested contractual right that cannot be subsequently impaired unless offset by a comparable new benefit. This principle has been cited as an impediment to pension benefit reductions in twelve states in addition to California. Some clarity on this point may be forthcoming from California’s Supreme Court, but we expect that legal challenges will continue to slow governmental efforts to reduce pension liabilities.

Public pensions account for an increasing share of long-term governmental liabilities across the U.S. Fitch Ratings' median long-term liability burden for states in fiscal 2016 represents 6.0% of U.S. 2016 personal income, up from 5.6% in fiscal 2015. However, long-term liabilities vary widely across states, ranging from 1.4% of personal income for Nebraska to 28.5% for Illinois. Thus, potential credit pressures due to long-term liabilities vary significantly as well. We expect many efforts to reduce pension liabilities to depend on legal decisions going forward.

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Additional information is available on [www.fitchratings.com](http://www.fitchratings.com).

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## **[S&P: California's Governor Brown, In Final Budget Proposal, Seeks To Preserve Fiscal Gains.](#)**

On Jan 10, 2018, California Governor Edmund G. Brown, Jr. unveiled his \$131.7 billion general fund (\$190 billion all-funds) budget proposal for fiscal 2019. The proposal is the final of the governor's tenure and, despite a recent revenue surge, arrives amid signs of a slowing state economy.

[Continue Reading](#)

Jan. 16, 2018

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## **[Chicago To Go To Market Next Week With Smaller Bond Sale.](#)**

\* Chicago plans \$661 mln bond sale, down from \$898 mln

\* Muni market should see little impact from any govt shutdown

Jan 19 (Reuters) - Chicago will hit the U.S. municipal market next week with a downsized version of a bond issue that originally had been slated to sell this week.

Chicago's Sales Tax Securitization Corp plans to sell \$661 million of tax-exempt and taxable bonds, according to a market source familiar with the deal. The bonds will refinance some of the city's outstanding general obligation debt.



The city had initially planned to lead this week's sales with an \$898 million tax-exempt bond issue. But it postponed the sale, citing weaker market conditions and the possibility of restructuring to include taxable debt.

The biggest market story going into next week is whether the U.S. Senate will avert a government shutdown on Friday ahead of a midnight deadline.

The effect of a shutdown, if it occurs, should be marginal on the U.S. municipal market, Barclays reported on Friday. During previous government shutdowns, municipal yields have tended to underperform U.S. Treasuries, but the underperformance was relatively small.

The municipal market will see an increase in new sales next week as \$7.15 billion of bonds and notes are expected to come to market, according to preliminary Thomson Reuters data.

The surge is nearly triple the amount of issuance from this week and an uptick from the slow start to the new year after record-breaking municipal sales in December.

Other large deals on the calendar for next week are \$832 million of Port Authority of New York and New Jersey bonds pricing through Bank of America Merrill Lynch on Tuesday and \$800 million of Connecticut special tax obligation bonds pricing through Goldman Sachs & Co on Wednesday.

Municipal funds had a second consecutive week of over \$1 billion of net inflows in the week that ended Jan. 17.

By Robin Respaut and Karen Pierog

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### **Chicago Postpones \$898 million Bond Sale, Eyes New Structure.**

CHICAGO (Reuters) - Chicago on Wednesday postponed an \$898 million bond sale until next week at the earliest, citing weaker market conditions and the possibility of restructuring the deal to include taxable debt.

The revenue bond issue, which topped this week's \$3.45 billion supply calendar in the U.S. municipal market, was aimed at refinancing some of Chicago's outstanding general obligation debt through a newly created Sales Tax Securitization Corporation.

Chicago Chief Financial Officer Carole Brown pointed to a weaker market tone and the fact that ratios between yields on tax-exempt muni bonds and comparable taxable U.S. Treasuries have risen since the city sold the first \$743.7 million of bonds through the corporation in early December to refinance outstanding sales tax revenue debt. The ratios gauge the expensiveness or cheapness of munis versus Treasuries.

"We have the flexibility and the time to possibly evaluate some alternative structuring options and make sure we are offering the appropriate deal to the market given the current market environment," she said in a telephone interview.

While the deal was meant to refund outstanding GO bonds callable within 90 days, the city could add a taxable component to refund debt callable beyond 90 days, according to Brown. The new federal tax law eliminated tax exemption for advance-refunded munis.

The tax-exempt bond deal was initially structured with serial maturities from 2031 through 2039 and a term maturity in 2042.

Chicago created the sales tax securitization corporation last year to refinance up to \$3 billion of its sales tax revenue and GO bonds, and produce an initial \$94 million in savings for the city's fiscal 2018 budget.

A chronic structural budget deficit, as well as a huge unfunded pension liability that totaled \$35.76 billion at the end of 2016, have led to low credit ratings and increased borrowing costs for the nation's third-largest city.

The corporation is pledging Chicago's state-collected sales tax revenue to pay off the new bonds. Investors will get a statutory lien shielding the debt from municipal bankruptcy, which is not allowed under Illinois law.

The bonds are rated AAA by Fitch Ratings and AA by S&P Global Ratings, both of which are several notches higher than the city's GO ratings of BBB-minus by Fitch and BBB-plus by S&P.

Reporting by Karen Pierog; Editing by Matthew Lewis

JANUARY 17, 2018

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## **[The Week in Public Finance: Feds to Revisit Payday Loan Restrictions, a Pot Appeal and a Better Way to Do Property Taxes.](#)**

A [roundup](#) of money (and other) news governments can use.

GOVERNING.COM

BY LIZ FARMER | JANUARY 19, 2018

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### **TAX - OHIO**

#### **[Notestine Manor, Inc. v. Logan County Board of Revision](#)**

**Supreme Court of Ohio - January 2, 2018 - N.E.3d - 2018 WL 321568 - 2018 -Ohio- 2**

County auditor and board of revision appealed determination of the Board of Tax Appeals adopting valuation of residential rental property, which was federally subsidized low-income housing under federal Section 202 program, by taxpayer's appraiser.

The Supreme Court of Ohio held that:

- Contract-rent appraisal method, rather than market-rent appraisal method, applied to valuation of property, and
- Statute governing valuation of real estate did not require auditor to disregard effect of governmentally imposed restrictions when determining tax value of property.

Contract-rent appraisal method, rather than market-rent appraisal method, applied to valuation of residential rental property developed as federally subsidized low-income housing under Section 202

of the Housing Act of 1959, which involved highly restrictive covenants, though county asserted contract-rent appraisal resulted in nominal value that effectively granted property local-tax subsidy; rents were restricted to minimal amounts, any federal subsidization was strictly controlled by rigorous United States Department of Housing and Urban Development (HUD)-imposed restrictions on accumulation of surpluses, there was no indication that contract rents exceeded those generally available in the market or that property benefited from additional tax incentives, and policy concerns were for legislature.

Statute governing valuation of real estate, which required auditor to determine true value of “fee simple estate, as if unencumbered,” did not require auditor to disregard effect of governmentally imposed restrictions when determining tax value of federally subsidized low-income housing, but rather governmental use restrictions should have been taken into account when valuing such property subject to those restrictions.

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## **TAX - WISCONSIN**

### **[Metropolitan Associates v. City of Milwaukee](#)**

**Supreme Court of Wisconsin - January 10, 2018 - N.W.2d - 2018 WL 341962 - 2018 WI 4**

Landowner brought action to challenge city’s property tax assessments of seven apartment building properties as excessive.

The Circuit Court, Milwaukee County affirmed. Landowner appealed, and the Court of Appeals affirmed. Landowner appealed.

The Supreme Court of Wisconsin held that:

- Use of mass appraisal to initially value apartment building property, followed by use of single property appraisal after valuation was challenged, complied with statutory mandate to use “the best information that the assessor can practicably obtain,” and
- Evidence was sufficient to support finding that city’s tax assessment of apartment property was not excessive.

Evidence was sufficient to support finding that city’s tax assessment of apartment property was not excessive; while city’s appraisal under sales comparison approach did not adjust for economic characteristics, valuations reached through city’s income approach supported the valuations reached under the sales comparison approach, and city properly accounted for the market trend with regard to expense ratio in the income approach appraisal by imputing a lower expense ratio more in line with the market.

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## **[Airbnb and Tennessee Reach Tax Deal.](#)**

Some Chattanooga rental hosts and local officials say an agreement allowing Airbnb to collect state and local sales taxes on short-term rentals in Tennessee is a good thing, but it doesn’t go far enough.

The home-sharing company said Thursday it has reached an agreement with the Tennessee Department of Revenue to collect and remit the 7 percent state sales tax, plus local sales taxes in varying rates, on rentals rather than relying on its 7,700 Tennessee hosts to do so.

Airbnb Creates an Affordable-Housing Dilemma for Cities Airbnb's Tax Deal With Kansas May Be Model for Midwest Airbnb Strikes Tax Deal With Miami-Dade Mayor Instead of Fighting, Some Cities Team Up With Airbnb and Uber Airbnb Settles Lawsuit With San Francisco

Airbnb spokesman Benjamin Breit said in a news release taxes generated from Tennessee bookings last year were worth \$13 million. The revenue department can't say how much of that was actually remitted, spokeswoman Kelly Cortesi said, because the state doesn't break out and track taxes collected on home-sharing.

Breit said that with the tax agreement in place, "the state will be able to fully capitalize on people visiting Tennessee and staying longer through home sharing. This agreement will ensure all of this revenue is collected in a way that is easy for the hosts and state."

But the agreement doesn't cover city or county hotel-motel tax, which totals another 6 percent.

A couple of local hosts said it only makes sense for Airbnb to collect all the taxes.

Presenting a bill with 9.25 percent in sales taxes listed and then asking the guest for 6 percent more looks bad, said John Queen, whose North Chattanooga property stays busy with bookings.

"That kind of screws up the plan a little. It makes us look greedy," Queen said.

"How can you say, 'This tax doesn't include the hotel, and you pay me and I'll pay the city.' They're going to say, 'Right.'"

Otherwise, hosts will have to raise rates or just eat the 6 percent hotel-motel tax, he said. "They need to do the whole thing."

Host Phil Cross said having Airbnb collect taxes would be a help to him and also might help assure a level playing field by identifying hosts who don't have business licenses.

That's a big problem in the fast-growing home-sharing market.

Hamilton County Trustee Bill Hullander's office collects hotel-motel taxes for the county and its municipalities. He said "maybe 45 or 50 [home-share hosts] are participating like they're supposed to. In my opinion, there's probably that many more out there that aren't."

He said his office has been working with Airbnb on a separate agreement to collect the local hotel-motel tax for Chattanooga and the other municipalities that have home-sharing.

"We're probably months away from that happening, if we can get it worked out," Hullander said.

Cross said he got his business license and paid his taxes from the start, but it's hard to compete with under-the-table operators.

"That's a big tax burden to do this. If somebody's not doing that, they're putting 17.25 percent in their pocket, or they're reducing their nightly rate."

Queen said the same thing.

"I am perfectly fine with paying the taxes, Chattanooga invested a lot in the city to make it attractive, I just don't want to be the only one among five houses [used for home-sharing in his neighborhood] to do it," he said.

Chattanooga has taken its own steps to regulate short-term rentals, setting up a district where

they're welcome and creating rules for operation. In December the city council voted to contract with Host Compliance LLC to monitor the industry. The company will use computer algorithms to track rentals and the city will match those with business-license lists. If caught without a license, operators will have 30 days to get legal.

Kerry Hayes, deputy chief of staff for Mayor Andy Berke, said Host Compliance is just now getting started in the city and it's too early to see results.

Hullander and the local hosts noted the agreement announced Thursday doesn't apply to other home-sharing companies such as HomeAway and VRBO.

Cortesi said taxpayer confidentiality rules prevent her from saying whether the state is negotiating for similar agreements with other home-sharing companies.

By Judy Walton

BY TRIBUNE NEWS SERVICE | JANUARY 19, 2018

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## **[Live Webcast and Q&A: S&P 2018 U.S. Infrastructure Outlook.](#)**

**Jan. 30, 2018 | New York**

Please join S&P Global Ratings U.S. Public Finance on Tuesday, January 30, 2018 at 2:00 p.m. Eastern Time for a live Webcast and Q&A discussion on the U.S. Public Power, Transportation and Water and Wastewater sector outlooks.

[Register For This Webcast](#)

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## **[Report: Other Cities Not Likely to Follow Hartford's Financial Path.](#)**

A variety of factors have led Hartford down the path of financial hardship, but it is a route not likely to be followed by other cities in the state, according to a report by Fitch Ratings.

The report, titled "Connecticut City Review: Hartford Weaknesses Not Common," outlines the capital city's financial state and compares it to that of other cities in the state of similar size and demographics: Bridgeport, New Haven, Waterbury and New Britain.

The comparable cities maintain stable ratings with New Haven and New Britain having A- grades, Bridgeport an A and Waterbury a AA-. The other Fairfield County cities — Danbury, Stamford, Norwalk and Greenwich — all have a AAA grade from Fitch Ratings.

Meanwhile, Hartford teetered on the brink of bankruptcy last year before being bailed out by the state budget that was finally passed in late October.

Fitch does not rate Hartford, but the other two major credit rating agencies — Moody's and Standard & Poor's — rate the state's capital city in the junk range.

A city or town's credit rating is an indicator to potential investors about the quality of bonds or other

debt securities offered by the municipality.

“The surprise (of the report) was the extent of the deterioration of Hartford’s financial position,” said Kevin Dolan, director in Fitch’s U.S. Public Finance group. “The level of debt ramped up quickly and there wasn’t the revenue to support it. You don’t typically see that in other Connecticut towns — at least not to that magnitude.”

The other cities analyzed stand apart from Hartford because of their financial flexibility, deeper reserves, ability to obtain employee labor concessions and other factors.

“Fitch does not believe that the Connecticut cities that Fitch rates are on the path that led Hartford to its recent crisis,” the report reads.

### **How Hartford got there**

There are many reasons Hartford is in financial dire straits.

Because it is the state’s capital city and has a number of state buildings in its downtown, Hartford has an inordinate number of properties that are tax-exempt. In fact, Hartford does not collect taxes on nearly half the properties in the city.

Property taxes are a main source of revenue for municipalities and, indeed, for Hartford it is the second-largest source of revenue. The city has argued it should be reimbursed more for its tax-exempt situation because the city provides services to those properties.

To combat that loss of revenue, Hartford has raised taxes to the point it has the highest property tax rate in the state for fiscal 2017. It nearly doubled the rate between 2001 and 2005, and continued to slowly increase property taxes through 2013.

Hartford has squeezed about as much as it can out of its taxable properties, the report reads.

“Hartford has little practical ability to raise rates given steep increases since 2001 and the challenged economic base,” according to the report, which also notes that one-third of the population has a wealth level below the poverty line.

Dolan added the high tax rate “makes it less desirable to live there or start a business there and causes property values to drop.”

Hartford has also seen its population decline over the last several decades and its median household income is 44 percent of state levels.

While the other cities in the report negotiated employee benefit concessions following the recession, Hartford had only limited success.

“Annual pension expenses are expected to continue to rise due to aggressive investment return assumptions,” the report reads. The Fitch analysis shows annual carrying costs for debt services, pension contributions and other employee benefits to be about 15 percent of total city spending in 2016, compared to 7 percent in 2010.

Long-term liabilities for city and school projects contributed to Hartford’s financial decline, as well, with outstanding debt up nearly 66 percent since 2012.

Throughout much of 2017, it looked as though Hartford was headed toward declaring bankruptcy. It

turned to the state for help, but the state budget had its own financial difficulties. When the state finally passed a budget in late October, it included an additional \$40 million for Hartford.

The funding may have held off bankruptcy, but the financial challenges persist.

“Enactment of the state budget improves near-term clarity of municipal revenue and expenditure assumptions; however, the reprieve for local governments may prove temporary,” the Fitch report reads. “The state’s finances continue to be stressed, and local aid cuts are sure to continue to be part of budget balancing discussions.”

### **Other cities stable**

While potential investors see Hartford surrounded in red flags, New Haven, Waterbury, New Britain and Bridgeport all received stable outlooks from Fitch Ratings.

New Haven feels pressure from growing pension and debt service costs, but the city has increased its tax base through new development and associated construction fees. New Haven’s tax rate of 38.7 mills is significantly lower than Hartford’s 74.3.

Waterbury, which has seen financial hardships in the past, is on stable footing due to solid reserves, strong financial policies and consistent revenue, the report said. New Britain has “relatively stable revenue” and “adequate expenditure flexibility,” as well as strong reserve levels.

The Fitch report said Bridgeport, while dealing with spending pressures, mitigated budget imbalances by cutting costs, refunding debt, increasing the tax rate and receiving state aid.

“Such actions helped restore balanced operations and management is making efforts to increase fund balance,” reads the report. “Fitch expects economic development underway and planned to lead to gradual growth in the tax base over the next several years.”

High-functioning schools, location, housing stock, quality of life, commercial development and high incomes are among the factors that contribute to other Fairfield County cities receiving AAA ratings.

“There has been a considerable amount of new development in the last few years (in Fairfield County) and we expect moderate development to continue,” Dolan said.

### **newstimes**

By Chris Bosak

January 21, 2018

cbosak@hearstmediact.com; 203-731-3338

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## **[CDFA Launches Federal Financing Webinar Series.](#)**

### **CDFA Launches Federal Financing Webinar Series — New Series to Highlight Federal Agency Programming —**

The [CDFA Federal Financing Webinar Series](#) is an exclusive, five-part online offering that will convene finance experts, federal agencies, and local practitioners to discuss the development

finance programs offered by the federal government. The webinar series is designed to offer participants a thorough overview of the development finance tools offered by federal agencies, with an emphasis on valuable programs that are often overlooked.

The CDFA Federal Financing Webinar Series is a 5-part offer available throughout the year. Each webinar will include in-depth examinations of specific financing programs offered by a federal agency along with program details, advice on applying, and examples of successful program implementation. Participants are encouraged to bring their project questions for our expert panelists, as they work to demystify the federal government's myriad financing options.

Those interested in attending the series can register for each webinar individually or all at once as a package deal. CDFA recommends registering for all of the webinars at once to take advantage of the best available pricing.

**The webinar series will focus on the following agencies:**

**U.S. Department of Housing and Urban Development (HUD)**

February 28, 2018

[>>>Register for the HUD Webcast](#)

**U.S. Department of Transportation (DOT)**

April 12, 2018

[>>>Register for the DOT Webcast](#)

**U.S. Department of Agriculture (USDA)**

June 14, 2018

[>>>Register for the USDA Webcast](#)

**U.S. Environmental Protection Agency (EPA)**

August 16, 2018

[>>>Register for the EPA Webcast](#)

**U.S. Economic Development Administration (EDA)**

October 18, 2018

[>>>Register for the EDA Webcast](#)

**CDFA has provided two options for registering for the CDFA Federal Financing Webinar Series:**

**Individual Webinars**

Participants may register at any time for individual webinars at the following rates:

CDFA Member: \$65

Non-Member: \$95

**Full Webinar Series**

Participants may register for the full webinar series and receive access to recordings of past or missed webinars. Participants will receive a \$50.00 discount when purchasing all five webinars. Participants may register at any time for the full webinar series at the following rates:

CDFA Member: \$275

Non-Member: \$425



Webinars will be recorded and placed online for participants to access afterwards. Only attendees who purchase the webinar, either individually or the full series, will have access to the online recordings. Attendees who miss a webinar will have access to the online recordings as well.

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## **[A Brave New World for Munis: A Post Tax-Reform Review - Webinar Recap](#)**

### **Hosted by MBFA in Partnership with Court Street Group Research LLC**

On Wednesday, January 17th, over 65 industry groups representing issuers, investors, and state and local governments participated in the webinar, “A Brave New World for Munis: A Post-Tax Reform Review,” hosted by the Municipal Bonds for America (MBFA) Coalition in partnership with Court Street Group Research. The webinar focused on the political, economic, and market dynamics of the Tax Cuts and Jobs Act and the overall impact on the municipal industry post-tax reform.

The webinar recording that includes the powerpoint presentation can be viewed [here](#).

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## **[Public-Private Partnership Withstands Court Challenge.](#)**

*Attorney Mariah DiGrino of DLA Piper details a recent Illinois court case.*

Housing for chronically homeless individuals in Lake County, Ill., has been preserved and expanded through a public-private partnership that recently withstood a court challenge by opposing residents. The Lake County Housing Authority is working with PADS Lake County, a local nonprofit homeless services provider, to provide permanent housing for chronically homeless individuals, using funding under the Department of Housing and Urban Development’s (HUD’s) Continuum of Care program.

The public-private partnership in this case uses a multifaceted approach to reach a narrow segment of the homeless population, whose unique challenges have proven difficult to address. This approach allows the housing authority to tap into multiple resources to reactivate a vacant facility: HUD funding, existing public housing tenant selection processes, and PADS’ experience and expertise serving the chronically homeless. PADS itself is a nonprofit organization that engages a variety of community and financial resources to address homelessness.

The public-private partnership in this case follows a long history of government efforts to engage the private sector in housing programs, beginning with New Deal-era loan guarantees and subsidized loan programs. So-called P3s have evolved to include a variety of arrangements, but all share the common features of combining government resources and authority—such as public funding, public property or facilities, access to better financing, credits, or other incentives—with private-sector funding and expertise to achieve a government objective.

The Lake County case is a reminder that public-private partnerships remain a valuable tool for providing a coordinated and customized approach to housing. It’s also a reminder that, while the public-private partnership framework encourages alliances and broad-based support, such projects are not immune from opposition. Local regulations and stakeholder dynamics are important considerations that can either support or hinder the public agency’s objectives. In this case, local zoning regulations and building officials cleared the way for a project that would otherwise not be

permitted absent the involvement of the housing authority but not before community opposition and a decision by a local zoning board delayed the project for two and half years. Given the cyclical and competitive nature of funding, justice delayed is often justice denied.

In recent decades, HUD has sought to use P3s to increase local control of housing efforts, partly in an effort to reduce the reliance on federal funds. The current administration's goals suggest that trend will continue. While there are unique challenges associated with negotiating and implementing a public-private partnership, P3s provide a unique opportunity to leverage private-sector expertise and resources to achieve a public objective.

PADS previously provided permanent housing for 13 chronically homeless individuals through a lease arrangement with a federal Veterans Affairs health-care center. Hospital administration notified PADS that it needed to reclaim the space, requiring PADS to relocate the residents. After looking for suitable replacement units for several years, PADS and the housing authority entered into a master lease, pursuant to which PADS would sublease units in a vacant facility, known as Midlothian Manor, to chronically homeless individuals, enabling PADS to preserve the existing 13 units and add a new unit. Midlothian Manor was acquired by the housing authority in 2001 as part of its non-federally funded housing inventory and was operated by the housing authority as an assisted-living facility for low-income seniors. Because it was never federally subsidized, the occupancy rate was perpetually low, and the housing authority closed the facility in 2010.

After PADS obtained permits for the proposed project from the local building department, nearby residents objected to the proposed reuse by filing a lawsuit seeking to stop the proposed project. The residents objected on the grounds that their homes and Midlothian Manor are located in the R-1 Residential District under the Lake County Unified Development Ordinance (UDO), which establishes zoning and development regulations throughout unincorporated Lake County. The R-1 district permits low-density, large-lot residential development. The objectors contended that re-occupancy of Midlothian Manor would be inconsistent with the R-1 district regulations.

After a two-and-a-half year battle, PADS, represented by DLA Piper LLP (US), successfully argued to the Circuit Court in November 2016 and then again to the Appellate Court in August 2017 that the project was permitted under the UDO as a "Government Use," which is a permitted use in all zoning districts under the UDO. "Government Use" is defined under the UDO as a "building or structure owned or leased by a unit of government and used by the unit of government in exercising its statutory authority." The effect of this definition is that a use which would otherwise be prohibited in a given zoning district is permitted when the governmental requirements of the definition are met, even though the uses may be functionally identical.

In upholding the building department's decision permitting the project, the Second District Illinois Appellate Court held in October that the housing authority's ownership of Midlothian Manor and the public-private partnership with PADS satisfied the definition of "Government Use." The objectors had argued that, with a public-private partnership arrangement, the property would not be "used by the housing authority," but would instead be used by PADS. The court rejected this argument and held that the public-private partnership leveraged the housing authority's express power to contract with and assist other entities—public or private—to reuse Midlothian Manor in a way that fits squarely within the agency's statutory purpose of providing safe and sanitary housing.

## **Affordable Housing Finance**

By Mariah DiGrino

January 17, 2018

*At DLA Piper, Mariah DiGrino concentrates her practice in the areas of land use and zoning, public-private financing, public incentives, historic preservation, and community and economic development.*

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## **Municipal Bond Funds See Record Inflows to Kick Off New Year.**

*Municipal-bond funds saw \$3.1 billion of net new money last week, says ICI*

It's only been a month and municipal bond funds are on a tear.

The Investment Company Institute estimated that muni bond funds saw net inflows of \$3.1 billion for the week ending Jan. 10. That record-breaking sum is the biggest since the survey began in January 2007.

The bullish flows into munis represents a turnabout for the a sector that a few weeks ago looked bleak. As President Donald Trump's tax plans rushed toward completion, muni-focused mutual funds saw around \$1.3 billion in net outflows in December.

At one point, the Republican tax bill threatened to do away with interest deductibility for municipal paper, which would have produced a major headwind for muni investing.

That's because the principal target investor for munis is wealthy individuals looking to cut their tax bill and earn tax-free interest income. Other measures included a repeal of private activity bonds, debt sold by municipalities to finance the projects of corporations like airports.

But sentiment over the sector swiftly turned bullish once the tax plan took its final and more benign form.

"Flipping that pancake to the other side, once the tax bill was finalized and signed, and once it became apparent that the tax rate for the top bracket was very high. Once that all became definitive, perhaps folks that took the outflow train took the inflow train," said Alan Shankel, municipal credit strategist for Janney Montgomery Scott.

Analysts now say negatives of the overall tax plan should be diminished. The Republican tax bill outlawed the use of so-called advanced refunding bonds, a roundabout way for municipalities to refinance their debt. Such bonds represented 15% of total issuance over the past decade, estimated Abigail Urtz, municipal strategist for FTN Financial.

The diminishing supply could give a boost to municipal bond-buyers and push yields lower. Debt prices rise as yields fall.

However, it may not all be rosy for munis.

Urtz said the outlook for demand could be a major wild card because one of the chief pieces of the bill was a cut to the corporate-tax rate to 21% from 35% this year.

The reduced corporate-tax rate may undercut appetite from banks and insurance companies, which have grown into significant players in the municipal-bond market (see chart lower). Banks now own more than \$500 billion of the \$3.8 trillion sector, according to Federal Reserve data.

"With banks the fastest growing buyers of municipals in recent years, fears about tax reform's

impact on the municipal market have naturally focused on this provision,” she said. “These buyers will be grappling with some sticker shock as previously cheap valuations start to look less appetizing.”

## **Market Watch**

by Sunny Oh

Published: Jan 18, 2018 7:32 a.m. ET

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### **Public Finance Associate - Boston, MA**

#### **Description**

We are looking for an associate with 1-3 years' experience to join our Public Finance group in Boston. Mintz Levin's nationally renowned practice offers challenging work, an entrepreneurial and collegial environment, and a unique opportunity to work with a dynamic practice group. Our associates have the opportunity to work closely with our senior lawyers handling sophisticated matters throughout the country.

#### **Responsibilities**

The candidate would support the firm's Public Finance group.

#### **Qualifications**

- Ideal candidate will have legislative and/or government agency experience, as well as a background and/or strong interest in finance, mathematics, securities law, state and municipal law, and/or tax law.
- Must possess a strong academic background, as well as strong written and interpersonal skills, solid analytical skills, and the ability to handle multiple projects at one time.
- Must be committed to excellence, teamwork and superior client service

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### **Moody's Raises Newark's Credit Outlook To Positive.**

*Ratings firm cites development projects, better financial management; it maintains Baa3 rating for New Jersey's largest city*

Moody's Investors Service has raised its rating outlook for Newark to positive from negative, citing ongoing development projects and improving financial management in New Jersey's largest city.

Newark Mayor Ras Baraka said the change marked the first time in eight years that the city received a positive credit-rating outlook.

Newark's credit rating for its general-obligation bonds remains unchanged at Baa3, Moody's lowest investment grade rating, although the positive outlook indicates an upgrade is possible in one to two years.

The city has been downgraded four notches by Moody's since June 2010, when its credit-rating was A2 with a negative outlook.

The city's finances and economy are still in a "challenged state" with poverty, crime and budget strains continuing to pose problems, Moody's said in a report published Thursday.

Newark, the state's largest city with a population of more than 280,000, has long relied on state aid to stay afloat. But recent interest by developers seeking to capitalize on ample vacant land and easy access to New York City has helped the city's tax base, which expanded for two consecutive years for the first time since the recession and reached \$16 billion in 2017, according to Moody's.

"That was key to us, seeing the economic growth translate into tax base growth," said Orlie Prince, vice president and senior credit officer at Moody's. "There was no need to rely on short-term borrowing to get through the fiscal year, which for us was a telling sign that things were on the mend."

Newark's Mr. Baraka said in a statement that Moody's outlook represented "confirmation of our progress in restoring the city's financial health" through efforts such as recruiting new businesses, hiring more police officers, expanding affordable housing and improving the city's roads.

Newark's liquidity has improved from 2014, when it had a cash deficit by Moody's calculations. The city ended 2016 with \$64.8 million in operating cash, representing 9.8% of revenues, Moody's said. The ratings firm said it will watch for continued improvements in budget management and sustained economic development in considering whether to upgrade the city's credit rating.

Also on Thursday, New Jersey Gov. Chris Christie signed legislation authorizing a multi-billion dollar tax-incentive package for Amazon if it builds its second headquarters in New Jersey. Mr. Christie has proposed Newark as the ideal location, and the city has offered up to \$2 billion in tax abatements and wage-tax waivers to lure the online retailer. The state, through its Economic Development Authority, has offered up to \$5 billion in tax incentives over 20 years if Amazon creates 50,000 new jobs.

Mr. Christie, a Republican, will leave office Tuesday after eight years in Trenton. He will be replaced by Gov.-elect Phil Murphy, a Democrat.

THE WALL STREET JOURNAL

by KATE KING

Jan. 11, 2018 5:22 p.m. ET

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## **[Black & Veatch: 2018 Smart Cities & Utilities Report.](#)**

Black & Veatch's just-released **2018 Strategic Directions: Smart Cities & Utilities Report** explores the current landscape of smart city efforts, as 2017 marked an inflection point for initiatives around the world. The report finds that Big Data's potential to improve community quality

of life while making critical human infrastructure more efficient and sustainable is overcoming lingering fears about costs. Bold advances in data analytics, electric transportation and next-generation communications systems are propelling smart city development, while creative financing strategies challenge old notions about massive upfront investments.

[Read the Report.](#)

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## **Puerto Rico: Do First Claims on Sales Taxes Really Protect Your Municipal Bond Investment?**

**A combination of poor financial oversight, non-adherence to fiscal policies and an overextension of its financial leverage has led Puerto Rico into a decade-long fiscal decline, which has resulted in its inability to meet the financial obligation to its crushing debt.**

In May 2017, the Federal Financial Oversight Board pushed Puerto Rico into a restructuring process, known as Title III, which is quite like the restructuring processes that occurred in Detroit, MI, and Stockton, CA, amid their financial struggles. However, what sets this restructuring apart from Detroit or Stockton is its magnitude. Puerto Rico's financial restructuring process for its \$70 billion debt portfolio, and potential restructuring of its \$40 billion pension liabilities, will be one of the biggest undertakings for any local or state government in the history of the United States. The financial crisis of this U.S. commonwealth has contributed to a high poverty rate, where 40% of Puerto Rico's citizens are living under the poverty line and the unemployment rate has hit above 10%, along with a nearly insolvent public healthcare system.

In this article, we will take a closer look at Puerto Rico's general obligation debt and its revenue-backed debt and the implications of the restructuring process, as well as how under the financial insolvency of a local government, bonds with higher credit ratings could be subordinate to GO bonds with lower credit ratings.

[Continue reading.](#)

**MunicipalBonds.com**

Jayden Sangha

Jan 18, 2018

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## **European Insurers Find Yield in U.S. Municipal Bond Market.**

- **Higher credit quality than corporates fuels foreign interest**
- **Longer maturities are focus for European insurance companies**

The global hunt for yield is so vigorous that payments to protect against car losses, deaths and storms in Europe are helping to bankroll roads and utilities in the U.S.

The \$3.8 trillion municipal-bond market, long the investment mainstay of U.S. residents, is seeing demand from European insurance companies drawn to higher yields and ratings than they can find closer to home. It's boosting the liquidity of a market where U.S. states and local governments raise

money. And it's also providing a new source of business to asset managers.

"It's been very robust demand," said Ben Barber, head of municipals at Goldman Sachs Asset Management, which manages about \$52 billion of the securities. "We're seeing brand new entrants into the market that are coming to institutional investors like us."

The interest from corporations such as Germany's Munich Re underscores the changing landscape in the municipal market, which is so U.S. focused that radio commercials for New York commuters tout local bonds. By the end of September, foreign buyers had increased their holdings of the securities to about \$104 billion, more than double what they held a decade earlier, federal data show.

Municipals once held little allure overseas because federal tax breaks depress the yields. But in the era of low and even negative yields on global bonds, foreigners have taken a closer look, particularly in the taxable sector, where rates are higher.

### **Higher Quality**

European insurers in particular are drawn to the higher quality of municipals compared with corporate debt. Sixty-seven percent of the Bloomberg Barclays Municipal Index is rated AA or higher, while just 11 percent of the comparable U.S. investment-grade corporate bond index is, according to an analysis by Matt Caggiano, who helps oversee more than \$9 billion of insurers' municipal holdings at Deutsche Bank AG.

And for the higher credit quality, foreign investors are getting more in return, even considering currency fluctuations, according to an analysis from Bloomberg Intelligence.

To better match their liabilities, life insurers also favor longer-maturity bonds, which are more common in the municipal market than in the corporate world. And European Union regulations effective in 2016 allow insurers to put aside less in capital for holding infrastructure debt than corporate bonds.

"Municipals are an attractive investment, and we will use opportunities to accentuate our positions," said Josef Wild, a spokesman for MEAG, the asset manager for Munich Re, which provides reinsurance and insurance. The company likes municipals for their high ratings and spreads over Treasuries and are using them to diversify its investments, he said by email.

### **New Funds**

While Munich Re handles its investments internally, other insurers have outsourced their municipal strategies. Goldman Sachs Asset Management has seen its holdings of taxable municipals for European insurers increase by 89 percent in about a year. In September, Nuveen Asset Management launched a new high-grade municipal fund spurred by interest from clients outside the U.S., according to John Miller, co-head of fixed income. Overall, it's managing \$2.5 billion in taxable municipals for foreign insurers as of the end of 2017 from nothing a little more than a year ago, he said.

To make room, some insurers are selling Treasuries, as well as European and U.S. corporate bonds, while others don't necessarily need to.

"There's a lot of cash being thrown off, and it's an easy way for them to make another allocation in decent yielding credit markets," said Jason Pratt, head of insurance fixed income at Neuberger Berman, which manages about \$30 billion in assets for insurers.

Foreigners have made an impact: liquidity in taxable municipals has improved as trading activity shows, said Goldman's Barber. And new taxable deals have more potential buyers than bonds available than was seen in the past, said Deutsche's Caggiano.

The European insurers are likely to step up their purchases as they grow more comfortable with municipals, as yields remain competitive globally and as supply of taxable municipals picks up. Some analysts expect that the recent ban on advance refundings in the U.S., a previous source of tax-exempt debt, may compel issuers to refinance via taxable securities.

"We know from talking to potential clients that there's still capacity," Caggiano said.

## **Bloomberg**

By Romy Varghese, Katherine Chiglinsky, and Julie Edde

January 19, 2018, 5:23 AM PST

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### **[KBRA Assigns a Long-Term Rating of AA with a Stable Outlook to TBTA's General Revenue Bonds, Series 2018A.](#)**

Kroll Bond Rating Agency (KBRA) has assigned a long-term rating of AA with a Stable Outlook to the Triborough Bridge and Tunnel Authority (TBTA), General Revenue Bonds, Series 2018A. KBRA has affirmed the long-term rating of AA with a Stable Outlook on the TBTA's outstanding general revenue bonds and the long-term rating of AA- with a Stable Outlook on TBTA's outstanding subordinate revenue bonds. KBRA has also affirmed the short-term rating of K1+ on the TBTA's General Revenue Bond Anticipation Notes, Series 2017A.

To access the full report, please click on the link below:

[TBTA's General Revenue Bonds, Series 2018A](#)

If you have any difficulties accessing the report, please contact [info@kbra.com](mailto:info@kbra.com) or visit [www.kbra.com](http://www.kbra.com).

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### **[KBRA Assigns Rating of AA+/Stable Outlook to Connecticut's Special Tax Obligation Bonds Transportation Infrastructure Purposes.](#)**

Kroll Bond Rating Agency (KBRA) has assigned a AA+ with a Stable Outlook to the State of Connecticut's Special Tax Obligation Bonds Transportation Infrastructure Purposes, 2018 Series A. Additionally, KBRA has assigned a AA+ with a Stable Outlook to the State of Connecticut's outstanding Special Tax Obligation Bonds Transportation Infrastructure Purposes; and has assigned a AA+ with a Stable Outlook to the State of Connecticut's outstanding Second Lien Special Tax Obligation Bonds Transportation Infrastructure Purposes.

The long-term rating assignment is based on KBRA's [U.S. Special Tax Revenue Bond Rating Methodology](#).



To access the full report, please click on the link below:

[State of CT's Special Tax Obligation Bonds Transportation Infrastructure Purposes](#)

If you have any difficulties accessing the report, please contact [info@kbra.com](mailto:info@kbra.com) or visit [www.kbra.com](http://www.kbra.com).

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- [Localities Will Deliver the Next Wave of Transportation Investment.](#)
  - [S&P: U.S. Local Government Sector 2018 Outlook: Resourcefulness Will Be Key To Managing New Obstacles.](#)
  - [Market Commentary: The 2018 Outlook for Investors.](#)
  - [State Private Activity Bond Volume Caps Boosted 5.2%.](#)
  - [Deduct This. and Taxes as Charity? New Jersey Towns Try to Elude G.O.P. Tax Law.](#) on early work-arounds to the elimination of the SALT deduction.
  - [S&P Live Webcast and Q&A: 2018 U.S. State and Local Government Outlooks.](#)
  - And finally, shout-out to the Court of Appeals of North Carolina for wading in and [opining](#) on the most judicially divisive, vexing legal issue of our time: does a gun range constitute farming? “Old McDonald had a gun range” just doesn’t have quite the same ring to it, now does it? E-I-E-I-O.

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#### **DAMAGE CAPS - ALABAMA**

##### **[Wright v. Cleburne County Hospital Board, Inc.](#)**

**Supreme Court of Alabama - December 29, 2017 - So.3d - 2017 WL 6629201**

Nursing-home resident brought personal-injury action against nursing home. After resident’s death one day following the filing of the complaint, personal representative of resident’s estate was substituted as a party and the complaint was amended to assert personal-injury and wrongful-death claims against local hospital board that ran the nursing home and against nurses in their individual capacities.

The Circuit Court ruled that the \$100,000 cap on damages under statute on damages recoverable against governmental entities applied to the claims against the nurses. Personal representative sought permission for an interlocutory appeal.

The Supreme Court of Alabama held that statute providing for a cap on damages recoverable against governmental entities is not applicable to individual-capacity claims.

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#### **PUBLIC UTILITIES - CALIFORNIA**

##### **[California Public Utilities Commission v. Federal Energy Regulatory Commission](#)**

**United States Court of Appeals, Ninth Circuit - January 8, 2018 - F.3d - 2018 WL 31557518  
Cal. Daily Op. Serv. 239**

California Public Utilities Commission (CPUC) petitioned for review of Federal Energy Regulatory Commission’s (FERC) determination that utility whose participation in regional transmission

organization was involuntary and mandated by state law was eligible for an incentive adder for remaining a member of regional transmission organization.

The Court of Appeals held that:

- FERC's determination that its order authorized FERC to grant incentive adder to utility whose participation in transmission organization was involuntary and was mandated by state law was plainly erroneous;
- FERC's interpretation of order as authorizing it to grant incentive adder to utility whose participation in transmission organization was involuntary and was mandated by state law constituted post hoc rationalization of the order on review;
- FERC order permitted challenges to incentives awards granted by FERC on ground that they would not induce continuing participation in transmission organizations;
- FERC's award of incentive adder to utility whose participation in transmission organization was involuntary and mandated by state law was arbitrary and capricious;
- Award constituted impermissible generic adder; and
- CPUC's challenge to award was not prohibited collateral attack on original order as would violate Federal Power Act (FPA).

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## **IMMUNITY - CONNECTICUT**

### **[Hull v. Town of Newtown](#)**

**Supreme Court of Connecticut - December 26, 2017 - A.3d - 327 Conn. 402 - 2017 WL 6520734**

Assistant nurse manager who was shot by patient taken into involuntary custody and transported to hospital pursuant to civil mental health commitment statute brought personal injury action against town alleging that police had ministerial, non-discretionary duty to search patient pursuant to police department's arrest policy.

The Superior Court granted summary judgment for town. Manager appealed.

The Supreme Court of Connecticut held that:

- Officers did not have ministerial duty to search patient under arrest policy, and
- Officers did not have ministerial duty to search patient under transportation policy.

Police officers who took patient into involuntary custody and transported him to hospital pursuant to civil mental health commitment statute did not have ministerial duty to search patient under police department's arrest policy. Policy did not impose duty on officers to search those taken into custody pursuant to statute, as "custody," under policy, applied solely in criminal context, and patient was not taken into custody under policy, as he was not arrested and, thus, was not subject to search requirement.

Police officers who took patient into involuntary custody and transported him to hospital pursuant to civil mental health commitment statute did not have ministerial duty to search patient under police department's transportation policy. Policy stated that, prior to transport, all prisoners were to be thoroughly searched for weapons or contraband, but patient was not prisoner who had to be searched under policy.

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## **EMINENT DOMAIN - NEBRASKA**

### **[Cappel v. State Department of Natural Resources](#)**

**Supreme Court of Nebraska - December 22, 2017 - N.W.2d - 298 Neb. 445 - 2017 WL 6543842**

Farmers brought inverse condemnation action and related claims against Department of Natural Resources (DNR) following regulation of surface water use in river basin under interstate Compact.

The District Court determined the State was not protected by sovereign immunity, but dismissed the complaint without leave to amend because no taking took place. Farmers and DNR appealed.

The Supreme Court of Nebraska held that:

- Farmers' § 1983 claim was barred by sovereign immunity;
- Farmers did not have property rights superior to interstate Compact;
- Department's actions were not a regulatory taking;
- State did not waive its sovereign immunity with respect to claims for violations of due process;
- Section 1983 provided farmers with the exclusive remedy to obtain damages for alleged violations of procedural and substantive due process;
- District Court lacked subject matter jurisdiction over farmers' due process claims; and
- District Court lacked subject matter jurisdiction over farmers' restitution claim.

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## **IMMUNITY - NEVADA**

### **[McCrosky v. Carson Tahoe Regional Medical Center](#)**

**Supreme Court of Nevada - December 28, 2017 - P.3d - 2017 WL 6629160**

Patient brought medical malpractice action against hospital, alleging that hospital was directly and vicariously liable for alleged negligence of physician, who delivered her infant and worked at hospital as independent contractor, after delivery resulted in infant suffering permanent, debilitating injuries.

The First Judicial District Court granted hospital partial summary judgment on issue of vicarious liability and, upon jury verdict, entered judgment finding that hospital was not directly negligent. Patient appealed.

The Supreme Court of Nevada held that:

- Statute abrogating joint and several liability did not preclude patient from seeking to hold hospital vicariously liable for physician's alleged negligence;
- Patient's settlement with physician did not extinguish her claims of vicarious liability against hospital;
- Fact issue precluded summary judgment on patient's vicarious liability claim;
- State statute preventing collateral sources from recovering directly from prevailing plaintiffs in medical malpractice cases was preempted, to extent that it prevented recovery of federal collateral source payments, by federal law.

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## **ZONING & LAND USE - NORTH CAROLINA**

### **[Hampton v. Cumberland County](#)**

**Court of Appeals of North Carolina - December 5, 2017 - S.E.2d - 2017 WL 6001873**

Property owners sought petition for writ of certiorari, challenging order of the County Board of Adjustment, affirming in part and modifying in part a notice of violations penalizing owners for violating county's zoning ordinance by operating a firing range on their property without a site plan and permit.

The Superior reversed. County appealed.

The Court of Appeals held that:

- Findings were insufficient to support Board's order;
- Factual findings were for the Board, rather than the appellate courts, to make in the first instance; and
- Owners' acquisition of a federal Farm Identification Number did not render operation of shooting ranges exempt from county zoning regulations.

Findings of the County Board of Adjustment were insufficient to support its order affirming in part and modifying in part a notice of violations penalizing property owners for violating county's zoning ordinance by operating a firing range on their property without a site plan and permit; ordinance provided exceptions from zoning regulation of outdoor firing ranges, and Board failed to make findings regarding how the ranges were used and who used them.

Where findings of the County Board of Adjustment were inadequate to support its order affirming in part and modifying in part a notice of violations penalizing property owners for violating county's zoning ordinance, appellate courts could not properly make findings of fact on disputed evidence, but were required to remand for the Board, as the finder of fact, to decide such factual issues in the first instance.

Property owners' acquisition of a federal Farm Identification Number did not, alone, render subsequent construction and operation of shooting ranges on the property a farm use exempt from county zoning regulations.

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## **ZONING & LAND USE - SOUTH DAKOTA**

### **[McDowell v. Sapienza](#)**

**Supreme Court of South Dakota - January 3, 2018 - N.W.2d - 2018 WL 285839 - 2018 S.D. 1**

Adjacent owners brought action against property owners and city based on theories of negligence and nuisance, seeking injunctive relief relating to new home being constructed by property owners, and alleging city was negligent in issuing building permit.

After a trial, the Circuit Court entered judgment in favor of adjacent owners. Property owners and city appealed.

The Supreme Court of South Dakota held that:

- City zoning ordinance addressing chimneys was not a setback requirement;
  - Historic-district regulations applied to property owner's new home constructed in historic district;
  - Issuance of injunction requiring property owners to modify their newly-constructed home to comply with regulation for historic districts was warranted;
  - Laches did not apply; and
  - Building codes do not create a duty of care that will support a negligence claim.
- 

## **Municipal Bonds Will Survive Tax Reform.**

Like the schools and bridges and levees they make possible, municipal bonds are built of strong stuff. They're facing more tough tests, but I expect this indomitable financial sector to prevail once again. Not everyone agrees, but my contrarian message is to keep calm and trust your tax-exempts.

Recall that a 10% drop in muni-bond prices after Donald Trump's election did not persist. The downturn rested on speculation that Congress would quickly pass massive income tax rate cuts, which would undercut the value of municipals to affluent retirees who count on every dollar of after-tax income.

As usual with munis, the knee-jerkers blew it. Tax reform wasn't quick, and the segment rebounded, aided by the tight supply of new issues and decent economic growth that did not ignite interest rates or inflation. Municipals outgained Treasuries for 2017 and returned about the same as high-grade corporate bonds. After investors pocketed what they saved by not paying Uncle Sam, tax-exempts had a considerable bottom-line edge.

So, then, what is clouding the outlook for the muni market now? It's this: Americans are facing a realignment of the relationship between the U.S. Treasury and the states and localities. No one in Congress aims to topple the tax-exempt bond market. Cities and states run by Republicans and Democrats alike sell road and school bonds. But some of the so-called tax reforms that seemed on the cusp of approval as we went to press may have unexpected consequences. Assuming legislation is enacted by the time you read this (or soon thereafter), what might limited deductibility of state and local income and property taxes mean to the muni market? Or, what if millions of taxpayers suddenly take the standard deduction rather than deduct mortgage interest?

Whatever your opinion of (and tolerance for) local taxation, gazillions of dollars of tax-free bonds from all over America are backed by general tax revenues. As Washington rescinds some of its help bearing those burdens, you can bet on a surge in appeals of assessments and pressure to cut local property taxes. Real estate values could suffer, along with state and local coffers. Many cities, counties, hospitals and school districts might then struggle to raise cash when they need it, and ratings agencies would be poised to downgrade issuer after issuer. For investors, that is bearish.

There are some other technical hazards, but even if tax reform manages to simplify the system, it's likely that the judging and pricing of individual bonds will become more complex and unpredictable. How, then, can I square such worries with my conviction that tax-exempt bonds will parry yet another challenge? Here's my reasoning:

I expect way fewer new bond issues. And that's despite the fact that investor demand is already overwhelming the volume of available bonds. Further shortages would prop up prices and offset some of the above risks.

Munis have many fans. I won't say tax-free bonds have a cult following among investors, but readers

sometimes tell me they so deeply hate to pay taxes that they don't care if the after-tax yield on a taxable alternative would be to their advantage. Jim Colby, VanEck Funds' municipal bond chief, says he's heard the same thing "right from investors' mouths."

Chicken Littles are rarely right. Everyone who has in recent years emphatically declared that municipal bonds are headed for an existential crisis has turned out to be wrong, not counting the dire warnings about Puerto Rico. More broadly, advocates of a tax cut tend to exaggerate its benefits for economic growth and for investor optimism generally, and opponents overestimate its drawbacks. But until and unless there's a recession—which would be a serious matter for the soundness of municipal debt—keep calm and carry on.

## **Kiplinger's Personal Finance**

by Jeffrey R. Kosnett, Senior Editor

January 8, 2018

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### **TAX - COLORADO**

#### **[Medina v. Catholic Health Initiatives](#)**

**United States Court of Appeals, Tenth Circuit - December 19, 2017 - 877 F.3d 1213**

Retirement plan participant brought putative class action against her employer, a nonprofit organization created to carry out the Roman Catholic Church's healing ministry which operated hospitals and other healthcare facilities, the plan administrator, and individual plan fiduciaries, alleging the plan was not an exempt church plan under Employee Retirement Income Security Act (ERISA) and so should have complied with ERISA's reporting and funding requirements, and that ERISA's church-plan exemption violated the Establishment Clause.

The United States District Court denied participant's motion for partial summary judgment and granted summary judgment to defendants. Participant appealed.

The Court of Appeals held that:

- Employer was associated with a church, as required for ERISA's church plan exemption to apply;
- Plan administrator maintained the plan for the benefit of employer's employees, as required for ERISA's church plan exemption to apply;
- Plan administrator was a principal-purpose organization within meaning of ERISA exemption for church plans maintained by a principal-purpose organization;
- Plan administrator was also associated with a church, as required for ERISA's church plan exemption to apply;
- Substantially all plan participants were employees of a church or associated organization, as required for ERISA's church plan exemption to apply;
- Avoiding was plausible secular purpose for ERISA's church plan exemption;
- ERISA's church plan exemption did not convey an impermissible message that religion was favored or preferred; and
- ERISA's church plan exemption avoided the excessive entanglement with religion that would likely occur in its absence.

Tax-exempt nonprofit organization that operated hospitals and other healthcare facilities was associated with a church, as required for retirement plan the nonprofit offered its employees to

qualify as a church plan exempt from ERISA; the nonprofit was the civil-law counterpart of an entity that, under the Roman Catholic Church's canon law, was regarded as an official part of the Catholic Church, as the Vatican approved the entity's canonical statutes, which were analogous to a corporation's articles of incorporation, and it was accountable to the Vatican in several ways, and the nonprofit's articles of incorporation provided that it was organized and operated exclusively for the benefit of, to perform the functions of, and/or to carry out the religious, charitable, scientific, and education purposes of the canonical entity.

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## **TAX - MISSISSIPPI**

### **[Tunica County Board of Supervisors v. HWCC-Tunica, LLC](#)**

**Supreme Court of Mississippi - December 14, 2017 - So.3d - 2017 WL 6381257**

Taxpayer filed bill of exceptions challenging county's proposed ad valorem tax levy and increase in millage rate.

The Circuit Court rendered levy unlawful and ordered a refund. County board of supervisors appealed.

The Supreme Court of Mississippi held that:

- Taxpayer's bill of exceptions challenging validity of county's ad valorem tax levy was appeal from tax assessment;
- Taxpayer's failure to obtain signature of president of county board of supervisors did not deprive circuit court of jurisdiction;
- Statutory advertising requirements relating to tax levies were mandatory, rather than directory; and
- County board of supervisors failed to comply with statutory advertising requirements prior to approval of ad valorem tax levy.

Taxpayer's bill of exceptions challenging validity of county's ad valorem tax levy was appeal from tax assessment, and therefore circuit court had subject matter jurisdiction over matter, where court ultimately made its decision after the taxes had been assessed and paid under protest.

Taxpayer's failure to obtain signature of president of county board of supervisors did not deprive circuit court of jurisdiction to review taxpayer's bill of exceptions challenging county board of supervisors' ad valorem tax levy; bill of exceptions made specific claims with regard to the actions of the board of supervisors and incorporated as an exhibit the pertinent minutes.

Statutory advertising requirements relating to levy of taxes were mandatory, rather than directory, and therefore failure to comply with such requirements rendered resulting levies void.

County board of supervisors failed to comply with statutory advertising requirements prior to approval of ad valorem tax levy, and therefore levy was void; board approved levy and increased millage rates before public hearing was advertised and held, and levy was not a new levy for which a hearing was not required.

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## **MSRB Publishes 2017 Annual Report and Audited Financial Statements.**

Washington, DC – As the municipal securities market’s self-regulatory organization (SRO), the Municipal Securities Rulemaking Board (MSRB) publishes an annual report highlighting the previous year’s initiatives in support of a fair and efficient market, as well as information about the organization’s financial position. The MSRB’s 2017 Annual Report emphasizes the organization’s commitment to an inclusive, transparent approach to safeguarding market integrity.

“The success of the MSRB – and the integrity of our market – depends on the expertise and insight of market participants who represent investors, communities that issue bonds and the financial professionals who serve them,” said Board Chair Lucy Hooper. “The MSRB’s SRO model leverages the benefits of the public and private sectors, with government providing a clear statutory mandate and strong oversight, and industry practitioners contributing insight into the practical realities of developing and implementing regulatory objectives.”

The annual report describes the MSRB’s regulatory initiatives throughout 2017, which include the development of extensive written guidance to assist municipal securities dealers in preparing to comply with mark-up disclosure regulations, and the implementation of the Municipal Advisor Representative Qualification Examination (Series 50 exam).

The annual report also details the continuing evolution of the MSRB’s Electronic Municipal Market Access (EMMA®) website, which was enhanced with new tools and resources, including municipal market yield curves and indices, a new issue calendar and enhanced trade statistics in 2017. Additionally, the annual report reviews the MSRB’s efforts to support understanding of the municipal securities market through objective, authoritative education, such as the growing catalog of interactive, online MuniEdPro® courses geared toward municipal market professionals seeking continuing education.

The MSRB annual report presents financial highlights for the fiscal year, as well as full audited financial statements. “The MSRB is dedicated to managing resources responsibly and maintaining sufficient reserves to operate without interruption, regardless of market conditions,” said MSRB Executive Director Lynnette Kelly. “The MSRB intends to continue its diligent financial stewardship while evaluating ways to diversify its funding sources in the year ahead.”

[Read the report.](#)

Date: January 11, 2018

Contact: Jennifer A. Galloway, Chief Communications Officer  
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## **GOP Tax Law Could Starve Cities of Revenue.**

***Housing experts predict that the tax overhaul will spur home values and property tax revenues to drop, forcing cities to find new ways to raise money – or to cut spending.***

The recent, sweeping overhaul of the federal tax code holds the potential to shake the foundation of municipal finance and could lead cities to look elsewhere to raise revenues in the coming years, according to housing analysts.



Under the new tax plan, passed by Congress in December and signed by President Donald Trump just days before Christmas, the mortgage interest deduction will now be capped at \$750,000, down from the previous cap of \$1 million, and homeowners will no longer be able to deduct state and local taxes from their federal tax liability. Under the new plan, homeowners with existing mortgages above \$750,000 can continue to deduct the interest, but new homeowners cannot.

The new plan also caps the deduction for state and local taxes at \$10,000 and doubles the standard deduction. According to a study by the real estate website Zillow, 44 percent of U.S. homes were valuable enough to incentivize their owners to itemize and take the mortgage interest deduction. The new cap on mortgage interest deduction and state and local tax means only 14.4 percent of homes are valuable enough to incentivize their owners to itemize instead of taking the standard deduction.

In other words, the vast majority of homeowners will take the standard deduction, which analysts expect to drive down property values. And that means significantly less revenue for cities.

“Only 6 percent of homeowners have mortgages exceeding \$750,000, and only 5 percent pay more than \$10,000 in property taxes, but most homeowners won’t itemize under the new regime,” said Elizabeth Mendenhall, president of the National Association of Realtors, in a statement released after passage of the new tax code.

The mortgage interest deduction and the ability to deduct state and local tax has long been seen by real estate groups as a strong incentive for families to purchase homes. Capping the deductions could negatively impact a sector that economist largely agree has not fully recovered from the 2008 housing crisis.

“The new tax regime will fundamentally alter the benefits of homeownership by nullifying incentives for individuals and families,” Mendenhall added in her statement after Congress passed the bill.

The results could be chilling on housing markets nationwide, with estimates ranging from a 4 percent drop in home prices (according to Moody’s) to a 10 percent drop (according to the National Association of Realtors). Hotter markets in states and municipalities with higher property tax burdens — such as New York, California and the Washington, D.C. metro area — could experience more precipitous drops in home prices, according to Moody’s.

The blow to the housing market could ripple throughout municipal finance structures, since cities rely on property tax for nearly half of their revenue. According to the Tax Policy Center, local governments collected \$442 billion in property tax in 2013, the most recent year data for which data was collected — 47 percent of the general revenue collected by those municipalities. In Northeast states, including Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, and Rhode Island, property taxes accounted for three quarters of local tax revenues.

The passage and signing of the bill prompted Washington, D.C., Mayor Muriel Bowser to make a late-December plea to homeowners in her city to pre-pay their taxes before the New Year (and prior to the implementation of the new tax code) in order to take advantage of the old tax deductions.

“Because of how hastily this tax reform legislation was created and passed, even its authors cannot fully explain all of the many ways it will hurt millions of hardworking Americans. ... One way Washingtonians can get the highest deduction possible is to pre-pay property taxes before the year ends,” Bowser said in a statement Dec. 20.

Homeowners from the affluent northern Virginia suburbs to New York made haste to file taxes prior

to the Jan. 1 deadline.

Capping of the mortgage interest deduction has traditionally been a policy position supported by progressives. Economists and progressive tax policy groups have long called for reforms to the mortgage interest deduction, which they say amounts to welfare for the wealthy and economists say inflates the value of homes and does little to incentivize broad homeownership.

In fact, several countries that do not utilize mortgage interest deductions have higher rates of homeownership than the United States.

“The evidence is pretty strong that in its prior form it was clearly a very expensive subsidy that mainly benefited high income homeowners who did not need the help,” says Stockton Williams, executive director of the Urban Land Institute’s Terwilliger Center for Housing. “And it doesn’t seem to be a significant driver of homeownership.”

The effectiveness of the mortgage interest deduction in inducing homeownership is a mixed bag.

Of the top 20 countries in terms of homeownership rate, 11 don’t offer the benefit to homeowners, according to a recent study. Canada, Great Britain and Australia have higher rates of homeownership without offering the benefits of a mortgage interest deduction.

Homeownership rates are already at a 50-year low, according to the National Association of Realtors. Credit remains tight, limiting access to mortgage loans for new homeowners. In addition, the housing market recovery has been largely limited to luxury condominiums, high-priced homes and high-priced rentals. A dearth of affordable housing, and smaller starter homes has driven up prices for the available housing stock.

The provision protecting the interest deduction for existing mortgages might keep homeowners in their houses longer, but the inability to deduct local and state taxes could trigger a sell-off, says Williams.

“There could be further tightening in some of these high value housing markets.”

What is clear is that cities will have to think of new ways to raise more revenue — or make tough choices to cut spending.

Local property taxes pay for wide range of services, from public safety to parks to schools. Raising fees could help cities make up for lost tax revenue. But those fees are often seen as regressive taxes which land heavier on households on the lower end of the income spectrum.

“The cap on local and state taxes is going to force those communities to make some tough choices,” Williams says. “There’s reason for concern. Localities will have to get more creative in bringing in revenue.”

GOVERNING.COM

BY J. BRIAN CHARLES | JANUARY 9, 2018

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## **[Taxes as Charity? New Jersey Towns Try to Elude G.O.P. Tax Law.](#)**

FAIR LAWN, N.J. — Faced with a new federal tax law that limits state and local tax deductions, three

communities in New Jersey have come up with a novel solution: They want people to donate to a town-run charity as a way of mitigating their property taxes.

The three towns — Paramus, Park Ridge and Fair Lawn — announced on Friday that they would allow residents to donate the same sum they would have been charged in property taxes to pay for municipal services. Under the tax bill signed by President Trump last month, deductions for state and local taxes, including property taxes, are limited, but charitable donations are not.

“The tax hike bill Congress passed last year is a ticking time bomb for New Jersey,” said Representative Josh Gottheimer, a Democrat from northern New Jersey who helped hatch the plan and whose district includes the three communities. “But today, we are proudly declaring that New Jersey won’t shy from a fight. We won’t be America’s piggy bank.”

The move is one example of how states and towns across the country with high tax rates are working feverishly to come up with creative ways to circumvent the federal tax law. In New York, Gov. Andrew M. Cuomo, a Democrat, has threatened legal action and is exploring the possibility of eliminating the state income tax and replacing it with a payroll tax. In California, a new bill proposes setting up a similar charitable contribution system to allow taxpayers to make donations instead of paying certain state taxes.

As with all the ideas there are many questions about whether the New Jersey towns’ plan could work without approval from Internal Revenue Service and possibly state legislation. Another question is whether people would be required to make a charitable contribution and, if so, whether that would make it in essence a tax.

The new plan, like any tax loophole, is simple in theory and complex in execution, but it could work more or less like this: Paramus, for example, would start a charitable trust and a taxpayer who pays \$20,000 in annual property taxes would contribute that exact amount to the charitable trust.

The charitable trust would then allocate the \$20,000 to various entities — the schools, the police department and other agencies — as though the donation were a tax payment. The town would then credit the taxpayer for 90 to 95 percent of the donation, making it nearly entirely deductible. (The town could factor in administrative costs to lessen a donation’s value.)

But building a town-run trust to take the place of a local tax collection process is relatively uncharted waters — for one thing such a change in municipal governance would require approval by each town’s local governing body.

“Our attorneys are already going through the plan,” said Richard LaBarbiera, the mayor of Paramus.

Still, in New Jersey, which has the highest property taxes in the country and where municipalities rely on them to pay for schools, libraries, police departments, fire departments and other essential functions, the three towns want to alleviate what would be a major burden on taxpayers.

Governor-elect Philip D. Murphy, a Democrat who has made finding ways to lessen the impact of federal tax plan a high priority, supports the towns’ efforts.

“We are all in on this,” Mr. Murphy said on Friday. “Not just this — we’ll continue to pursue all available means, legal, constitutionally, tax code and otherwise. But this one, we believe, has real legs and real precedent.”

The Trump administration seems keenly aware about efforts to come up with new loopholes.

"I understand what they are trying to do for their cities and their states and their taxpayers," Gary Cohn, Mr. Trump's top economic adviser, said in an interview on Friday with Bloomberg Television. "We at the federal government still have to collect revenue so we're going to have to evaluate what decisions they make in terms of what it does for overall collections at the federal level and the federal tax system."

It is not clear that using charitable donations to fund government operations is actually feasible.

The conservative Tax Foundation released a report suggesting that such a maneuver could violate I.R.S. rules. The reason is that the donation is being given purely for the financial benefit of the donor.

"To be deductible, charitable contributions must have a genuinely charitable aspect, and cannot primarily benefit the contributor or involve a quid pro quo," wrote Jared Walczak, a senior policy analyst at the Tax Foundation. "Payments which function as taxes may be classified as taxes even if states choose to call them something else."

Mr. Gottheimer noted that the idea of using charitable donations to help taxpayers was a process that is already in place in various forms in other states, including Alabama, Arizona and California. In Alabama, residents can receive a dollar-for-dollar tax credit when they donate to an approved organization that funds education scholarships. In California, residents and local businesses can receive a 50-percent state tax credit for donations to a state-run fund that raises money to help students pay for college.

The move by New Jersey communities comes as confusion and frustration have spread across the country among anxious taxpayers.

Last week, thousands of taxpayers scrambled to prepay their 2018 property taxes believing they could deduct them under the rules of the old tax code. But an I.R.S. advisory warned that not everyone would be eligible to write off property taxes from this year.

In response, Representative Leonard Lance, a Republican from New Jersey, said he planned to introduce legislation that would ensure that homeowners who prepaid their 2018 property taxes would be able to deduct the full amount, rather than just the portion of their 2018 property taxes that they had already been assessed.

"It will not affect a lot of people, but it will affect those who paid their 2018 property taxes in 2017," Mr. Lance said.

The lack of clarity over the tax plan could lead to a wave of litigation, and state treasurers are anticipating that Congress will work to clarify murky parts of the law. In the meantime, state officials have been approaching tax experts for help in finding ways to diminish the tax burdens on residents since the federal tax plan now allows taxpayers to deduct a total of \$10,000 in state and local taxes.

In Washington, Congress is likely to face pressure to find ways to close new loopholes, but Democrats, who were shut out of the process of rewriting the tax code, are unlikely to help Republicans do anything that would harm taxpayers in blue states seeking relief. This will be an especially fraught challenge in a midterm election year and it puts Republicans in the awkward position of trying to regulate state tax systems, despite the party orthodoxy that states know best how to regulate themselves.

"It's a classic federalism conflict," said Itai Grinberg, a Georgetown University law professor and

former tax policy official at the Treasury Department.

In New Jersey, Mr. Gottheimer came up with the idea for a municipal charitable trust after a bipartisan bill he sponsored with Mr. Lance to save the state and local tax deductions never made it out of committee.

But the hope among all the Democrats involved in developing and promoting the donation idea was that the issue of taxes and helping New Jersey taxpayers would transcend politics.

"This is not partisan," Mr. Murphy said. "This is a smart versus not smart."

THE NEW YORK TIMES

By NICK CORASANITI and ALAN RAPPEPORT

JAN. 5, 2018

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## **Moody's Raises Newark's Credit Outlook To Positive.**

***Ratings firm cites development projects, better financial management; it maintains Baa3 rating for New Jersey's largest city***

Moody's Investors Service has raised its rating outlook for Newark to positive from negative, citing ongoing development projects and improving financial management in New Jersey's largest city.

Newark Mayor Ras Baraka said the change marked the first time in eight years that the city received a positive credit-rating outlook.

Newark's credit rating for its general-obligation bonds remains unchanged at Baa3, Moody's lowest investment grade rating, although the positive outlook indicates an upgrade is possible in one to two years.

The city has been downgraded four notches by Moody's since June 2010, when its credit-rating was A2 with a negative outlook.

The city's finances and economy are still in a "challenged state" with poverty, crime and budget strains continuing to pose problems, Moody's said in a report published Thursday.

Newark, the state's largest city with a population of more than 280,000, has long relied on state aid to stay afloat. But recent interest by developers seeking to capitalize on ample vacant land and easy access to New York City has helped the city's tax base, which expanded for two consecutive years for the first time since the recession and reached \$16 billion in 2017, according to Moody's.

"That was key to us, seeing the economic growth translate into tax base growth," said Orlie Prince, vice president and senior credit officer at Moody's. "There was no need to rely on short-term borrowing to get through the fiscal year, which for us was a telling sign that things were on the mend."

Newark's Mr. Baraka said in a statement that Moody's outlook represented "confirmation of our progress in restoring the city's financial health" through efforts such as recruiting new businesses, hiring more police officers, expanding affordable housing and improving the city's roads.

Newark's liquidity has improved from 2014, when it had a cash deficit by Moody's calculations. The city ended 2016 with \$64.8 million in operating cash, representing 9.8% of revenues, Moody's said. The ratings firm said it will watch for continued improvements in budget management and sustained economic development in considering whether to upgrade the city's credit rating.

Also on Thursday, New Jersey Gov. Chris Christie signed legislation authorizing a multi-billion dollar tax-incentive package for Amazon if it builds its second headquarters in New Jersey. Mr. Christie has proposed Newark as the ideal location, and the city has offered up to \$2 billion in tax abatements and wage-tax waivers to lure the online retailer. The state, through its Economic Development Authority, has offered up to \$5 billion in tax incentives over 20 years if Amazon creates 50,000 new jobs.

Mr. Christie, a Republican, will leave office Tuesday after eight years in Trenton. He will be replaced by Gov.-elect Phil Murphy, a Democrat.

## **The Wall Street Journal**

By Kate King

Jan. 11, 2018 5:22 p.m. ET

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### **Muni Bonds May Not Be the Reliable Bet They Once Were.**

***Investors should make sure to better understand the risks, and perhaps adjust their strategy accordingly***

Can investors still use municipal-bond funds as core holdings in their taxable accounts?

For a long time, many have done just that—taking advantage of the bonds' big tax benefits, and using their low risk as a haven in times of stock-market turmoil.

But munis aren't looking like such a reliable bet anymore. Since the financial crisis, some big municipalities have defaulted on their obligations, while a number of states, cities and now Puerto Rico are currently facing financial woes. And bankrupt municipalities are increasingly making bondholders scrounge for what's left after paying employee pension funds.

So while it may still be possible to keep a muni fund as a core holding, investors should understand how the asset class has changed.

Price swings in the digital currency led to explosions in trading volume, assets under management and volatility at Bitcoin Investment Trust.

Municipal bonds offer investors interest that's tax-free at the federal level and at most state and local levels, if investors own bonds issued by any government entity within their state of residence.

When deciding whether to buy muni bonds, investors usually make a comparison between the yields of a muni bond and a U.S. Treasury note or bond of similar maturities. The "taxable yield equivalent" to a municipal bond is the municipal bond's yield adjusted for the investor's tax bracket.

So if an investor is hypothetically in a 50% bracket, including both federal and state taxes, a taxable yield twice that of a municipal yield—or a municipal yield half that of a taxable bond—would make

two bonds equivalent. In that case, if a highly rated muni bond offered more than half the yield of a comparable U.S. Treasury, an investor could consider the muni bond the better choice in a taxable account.

### **A changed asset class**

For decades, that was a reasonable comparison, and largely all that investors had to consider about munis. The chance of losing an investment was not even an issue: The historical default rate of the roughly \$3.8 trillion market with more than 80,000 issuers has been low—0% for AAA-rated bonds and only 0.30% for AA- and A-rated bonds from 1970 through 2009, according to a Moody's study.

Unfortunately, municipal profligacy has begun to result in more high-profile distress and bankruptcy in recent years, including Jefferson County, Ala.; Detroit; Harrisburg, Pa.; Central Falls, R.I.; and Vallejo, San Bernardino and Stockton in California. Now the fate of more than \$70 billion that creditors have lent to Puerto Rico is in doubt, as Hurricane Maria battered the island already struggling with manufacturing and population loss.

An updated Moody's study from 2016 notes that the "sector has changed over the past decade and more profound changes may be in the offing. The once-comfortable aphorism that 'munis don't default' is no longer credible, although default rates remain low."

In some cases, investors betting on munis have gotten burned. Recently, Franklin Double Tax Free Income fund merged with Franklin High Yield Tax Free Income fund (FHYVX) after it inflicted significant losses on investors. The fund had more than half its assets in Puerto Rico bonds.

Some analysts warn that many bond issuers are heading into precarious financial situations. In a 2016 research report from PNC Capital Markets, Tom Kozlik argues that around 20% of issuers haven't adjusted their spending to reflect diminished revenue after the financial crisis.

Mr. Kozlik doesn't cite names, but other observers have pointed fingers at issuers at risk.

"Though I'm not warning of an industrywide municipal-bond crisis, I think investors have to think carefully about individual credits and what, exactly, they're investing in," says Nicole Gelinas of the Manhattan Institute think tank. In the case of Chicago, "it's difficult to see, 10 years from now or even sooner, how, exactly, Chicago figures out [its problems with underfunded pensions] without bondholders having to take some sort of hit, as well." (Chicago officials declined to respond to a request for comment.)

And when a municipality goes bankrupt, investors aren't always first in line to recover their money. Stockton and San Bernardino honored their obligations to state-employee pension funds at the expense of bondholders in their bankruptcies. "General obligation" bondholders, once thought to be above revenue bondholders in the case of defaults, aren't necessarily ahead of unions.

### **Munis aren't Treasuries**

Not all municipal-bond experts are pessimistic. Tracy Gordon, a senior fellow at the Urban Institute think tank, says investors shouldn't be alarmed about munis' safety, emphasizing their low historical default rates. "It's unfair to paint the whole sector with a broad brush," she says.

But if investors choose munis as a core holding, many analysts advise using a diversified fund to lessen the risk of issuers defaulting. What's more, investors shouldn't expect the bonds to rally during a stock-market decline, as U.S. Treasuries often do.

That's because munis have become closely tied to the health of state-employee pension funds. If stocks fall and pension funds lose money, the funds often turn to municipalities to make up

losses—which makes muni bonds less attractive and hurts muni investors.

Indeed, the Bloomberg Barclays Municipal Index lost nearly 2.5% in 2008 during the stock crash—instead of providing municipal-bond investors with protection. That’s hardly catastrophic, but it might not have represented the resilience that the bond investors were expecting. And results might be less benign during the stock market’s next wipeout.

## **The Wall Street Journal**

By John Coumarianos

Jan. 7, 2018 10:08 p.m. ET

*Mr. Coumarianos, a former Morningstar analyst, is a writer in Laguna Niguel, Calif. He can be reached at [reports@wsj.com](mailto:reports@wsj.com).*

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### **[Fitch: Diverse Economy Buys Puget Sound Local Governments.](#)**

Fitch Ratings-San Francisco-11 January 2018: Washington’s economic epicenter will continue to benefit from key local governments’ robust revenue growth and strong operating performance, according to Fitch Ratings in a new report.

More people are finding favor with this cluster of counties and cities by Puget Sound as seen by a spike in population growth and a strong post-recession economic bounce-back. Market participants point to the Puget Sound region’s increasingly diverse economy as a key driver of the region’s rising appeal.

“While heavy manufacturing is still important, the Puget Sound region’s ongoing diversification into information technology has been a big driver of growth, particularly for Seattle,” said Alan Gibson. “Even a city like Tacoma that has had a tougher time transitioning away from heavy industry is benefiting from a diversifying economy and a competitively priced housing market.” As a result, Seattle and Tacoma’s revenue growth is far exceeding the pace throughout the rest of the country.

Fitch expects that overall debt and retiree benefits will remain low to moderate relative to local economic resource bases. This coupled with exceptionally strong gap-closing capacity and solid budget flexibility means ample reserve safety margins that King County, Seattle, and Tacoma can sustain throughout economic cycles.

As a result, Fitch-rated Puget Sound local government ratings, which range from ‘AAA’ to ‘AA’ along with Stable Rating Outlooks, are likely to remain strong over the next couple of years. ‘Credit Strengths of Puget Sound Local Governments’ is available at ‘[www.fitchratings.com](http://www.fitchratings.com)’ or by clicking on the above link.

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## **SALT Shift Bolsters Munis' Appeal to Wealthy in High-Tax States.**

- **With deductions capped, investors may look for new tax breaks**
- **Analysts expect uptick in demand from states like California**

Residents in New York, New Jersey and Connecticut who waited in queues to pay their property taxes early and take advantage of an expiring tax deduction may be lining up in 2018 to buy municipal bonds issued in their home states.

Strategists from Barclays Plc and Charles Schwab Corp. say demand for munis could increase from wealthy residents of high tax states this year because the Republican tax bill caps state and local property and income tax deductions at \$10,000.

That kind of money doesn't go a long way in Manhattan, where the average deduction per tax return is about \$25,000 or Marin County, across the Golden Gate Bridge from San Francisco, where it's about \$17,000, according to the Tax Foundation. So residents may be eager to find other ways to reduce what they owe to the federal government.

"What are the remaining tax havens? Munis are still one of them," said Mikhail Foux, the head of municipal strategy for Barclays in New York.

Californians, who pay a top income-tax rate of 13.3 percent or residents of New York City, which has a combined state and local rate of 12.7 percent, now have even more incentive to buy local debt because the interest is exempt from both state and federal taxes, he said.

### **Fewer Bargains**

By increasing the cost of state and local taxes to wealthier residents, the federal shift may make it more politically difficult to raise taxes and curb the pace of bond sales backed by such revenue. Just four states — California, New York, New Jersey and Illinois — account for about 42 percent of long-dated, fixed-rate municipal bonds, Citigroup Inc. analysts led by Vikram Rai said in a Jan. 11 note to clients.

"A pullback on debt issuance by any of these states can cause a scarcity shock in the space for long-dated municipals," they wrote.

At the same time, the increased demand for tax-free income may bring greater attention to mutual funds targeted at specific states.

Nuveen Asset Management's California High Yield Municipal Bond is the best-performing open-end California municipal bond fund over the past 10 years, according to Morningstar Direct. It invests 36 percent of its assets in real-estate-related debt and has benefited from a run-up in property values since the Great Recession, said John Miller, Nuveen's co-head of fixed income, who oversees \$131 billion of muni debt.

Municipalities in California can sell bonds backed by assessments on homeowners to pay for roads and sewers in new neighborhoods.

"There's really nothing that actually went into default in the last cycle in California in this type of bond," said Miller, whose fund delivered annual returns of 6.25 percent for the 10-year period ending Dec. 31. "Some of these districts did trade 50-60 cents on the dollar. Now you have heavy, heavy overcollateralization."

Miller said it will become harder to find bargains in the municipal market once the federal tax bill stokes even greater demand for higher-yielding California bonds. At the same time, limits on the ability of states and local governments to refinance their debt are promising to cut the pace of new sales.

"It's going to get more challenging because pricing is tighter," Miller said.

### **Low Defaults**

Nationally, high-yield bonds offer a spread of about 2.7 percentage point more than AAA rated debt, but the premium is narrower for risky municipal debt issued in California, Miller said. And muni defaults remain low, with only \$500 million defaulting for the first time in 2017, the least since 2008, he said.

"A growing economy tends to narrow spreads and low defaults tends to narrow spreads," Miller said. "If spreads are narrowing, all else being equal, high-yield has an opportunity to outperform. You still have to pick the right credits."

Delaware Funds Tax-Free New York Fund is the best performing New York retail fund over the 10-year period ending Dec. 31, returning 4.7 percent, according to Morningstar.

Almost half of the fund's assets are invested in bonds in the A or BBB category, with about 15 percent in junk-rated or non-rated bonds. The largest portion of its holdings, 23.1 percent, is in the education sector.

New York offers investors a diverse range of bonds, said Greg Gizzi, who helps manage Delaware's New York fund. For example, in the higher-education sector, the state has more than 100 private colleges and universities, from AAA rated Columbia University to BB rated Metropolitan College of New York.

"We're going to seek to diversify into those lower investment grade and those below investment grade categories despite the fact that we exist in a world that has constrained supply," Gizzi said.

### **Bloomberg**

By Martin Z Braun

January 12, 2018, 7:34 AM PST

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### **[Bloomberg Brief Weekly Video - 1/11](#)**

Taylor Riggs, a contributor to Bloomberg Briefs, talks with editor Joe Mysak about this week's municipal market news.

[Watch video.](#)

## **Bloomberg**

January 11th, 2018, 9:41 AM PST

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### **Florida's Population Boom Helps Fuel Demand for Dirt Bonds.**

- **Sunshine State may gain 6 million more residents by 2040**
- **Land-backed debt returned 8% in 2017, most in three years**

Florida's population boom and a shortage of housing are fueling demand for local municipal debt sold for neighborhood developments.

Community development district bonds, or CDDs, are sold in Florida to help finance home building projects. The debt, called dirt bonds, tends to offer higher yields as investors take on the risk that demand for housing may wane. That threat may be decreasing in Florida as its population is expected to swell nearly 30 percent by 2040 following a 9 percent increase since 2010.

"The housing construction has been really ratcheted down post 2008 so now you have a situation where household formation exceeds home construction, which means the demand profile is good for what they're building," said John Miller, co-head of fixed income at Nuveen Asset Management, which hold \$1.5 billion of Florida CDD bonds sold for 220 different communities, with \$1.7 million of that debt in default.

Jobs are luring people to Florida. The state's 3.6 percent unemployment rate is the lowest in a decade and below the 4.1 percent national average. Homes in the state are selling at the fastest pace in three years. The median time it took to sell a house in the third quarter of last year was 82 days, the lowest for any three months since at least 2014, according to FloridaRealtors, a trade association that collects housing data.

"We are seeing recoveries across numerous areas of Florida that were previously under a lot of financial pressure," Miller said.

Such land-backed debt is repaid with assessment fees that homeowners pay. Many of the developments fell into default during the housing crisis that began in 2008 and have been refinanced. Dirt bonds overall have gained in value, returning nearly 8 percent in 2017, the most since 2014, according to S&P Dow Jones Indices.

"They have done quite well in terms of the recoveries and the resuscitation of the project," said Richard Lehmann, publisher of the Distressed Debt Securities newsletter in Miami Lakes, Florida.

Corkscrew Farms, a district in Fort Myers, Florida, sold \$28 million of CDD bonds last month to help finance the construction of 696 single-family homes, part of a larger plan to build 1,325 houses on nearly 1,000 acres, according to the deal's offering documents. The debt doesn't carry credit ratings. Bonds maturing in 2050 sold at par with a yield of 5.124 percent and last traded Jan. 9 with a 4.924 percent yield, according to data compiled by Bloomberg.

While the bonds are benefiting from a stronger housing market, land-backed debt accounts for 25 percent of payment failures in the \$3.8 trillion municipal market. Of the \$9.3 billion of municipal

debt in default — excluding Puerto Rico — \$2.3 billion, the largest portion, are dirt bonds, according to Municipal Market Analytics.

Florida's population is expected to reach 26.4 million by 2040, up from an estimated 20.5 million in 2017, for a gain of 5.9 million new residents, according to the Bureau of Economic and Business Research at the University of Florida.

## **Bloomberg Markets**

By Michelle Kaske

January 11, 2018, 12:11 PM PST

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### **Muni Market Set for Slow January After Tax-Fueled Rush to Market.**

- **Citigroup says muni-bond sales unlikely to exceed \$15 billion**
- **Muni market tends to outperform during January slowdown**

Municipal bond issuance could be poised for a multi-year low this month, setting up state and local debt to deliver hefty returns.

The drop in sales is expected to come after issuers rushed to sell a monthly record of bonds in December to avoid changes to the municipal market as part of federal tax reform. Municipal bond analysts say they expect very light issuance during what is typically a slow month for sales.

"I think you could see a record-low issuance," said James Dearborn, who oversees \$29.5 billion as head of municipal bonds at Columbia Threadneedle Investments in Boston. "The forward calendar indicates it's going to be a very quiet month, if not quarter."

The 10-year low for January bond sales came after a similar rush to market when the Build America Bonds program was set to expire in 2010. Issuance totaled just \$13.6 billion in January 2011, well below the \$24.8 billion average for the month seen over the last decade, according to data compiled by Bloomberg.

Bond sales last month broke the previous monthly issuance record set in December 1985, which was driven by Congress' overhaul of the tax code. The next month, municipal bond issuance was a paltry \$1.69 billion, according to Bond Buyer data. Bond sales are unlikely to fall below that figure, though, as \$722 million in bonds have already been sold this month as of Jan. 5 and \$3.6 billion in sales are scheduled for the week of Jan. 8 alone, according to data compiled by Bloomberg.

RBC Capital Markets is forecasting muni-bond sales of \$10 billion in January, while Citigroup analysts say they would be "extremely surprised" if issuance exceeds \$15 billion. Other analysts say they are hesitant to give a forecast for January given the mad dash to sell late last year.

"There are definitely deals that are going to be coming over the next couple of weeks, but it's difficult to figure out which issues are left to get done in January because of the deals that got accelerated," Tom Kozlik, managing director and municipal strategist at PNC.

The municipal bond market typically outperforms in January due to a drop-off in supply combined with investors looking to reinvest cash received from matured bonds and coupon payments.

While it's "nearly impossible" to predict supply this month, the drop-off in sales will cause this trend to continue, said Peter Block, managing director at Ramirez & Co. Net supply stood at negative \$9.5 billion on Jan. 5, with \$9 billion in bonds set to mature and \$8.7 billion in bonds being called, according to data compiled by Bloomberg.

"Demand is going to be extremely high and you're going to see municipals outperform Treasuries because of the principal and interest that's been received," he said. "That's how the dynamic is going to be received."

## **Bloomberg Markets**

By Amanda Albright

January 9, 2018, 4:00 AM PST

— *With assistance by Elizabeth Campbell*

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### **California's Brown Backs Fiscal Restraint Cheered by Wall Street.**

- **With reserves swelling, state eyes potential risks ahead**
- **Backed by financial turnaround, bonds trade near AAA yields**

California is raking in cash from surging stocks and is sitting on billions in reserves. Governor Jerry Brown is resisting the urge to spend it all, keeping with the fiscal restraint that's won applause from Wall Street.

The Democrat's proposed budget for the next fiscal year, released Wednesday, holds spending in line with the pace of revenue growth for the biggest U.S. state as the stock market hovers at record highs and its economy faces potential fallout from the federal tax overhaul enacted last month. It boosts the rainy day fund to \$13.5 billion with a supplemental transfer of \$3.5 billion.

"We've had 10 recessions since World War II and we have to get ready for the 11th," Brown said in a briefing in Sacramento. "The whole point is to think ahead and minimize the pain that is coming because of the way our business cycle works."

Brown, who took office in 2011 while the state was still reeling from the effects of the recession, has strove to keep more of a cushion for future downturns, a theme he kept in his last proposed budget as governor. He boosted reserves by 27 percent to \$8.5 billion in this year's \$126 billion plan.

The additional deposit in the coming year would make the rainy day fund fully meet the constitutional goal of saving 10 percent of tax revenue. His budget indicated that California also plans to slow the pace of general-obligation bond sales to about \$2.5 billion over next six months, down from \$3.4 billion estimated under the current budget. He proposed \$1.6 billion of sales in the second half of the year.

Obstacles ahead include possible federal setbacks ranging from the effects of the recently enacted tax overhaul — which will fall heavily on some residents by capping state and local tax deductions — to the potential loss of funding for children's health insurance, the state said in budget documents released Wednesday.

Bond buyers have rewarded the fiscal turnaround in California, which has been boosted to the

fourth-highest rank by the three major rating companies, its best standing since the turn of the century. The extra interest, or spread, investors demand to hold California 10-year bonds instead of top-rated debt is 0.09 percentage point and hit as little as 0.06 percentage point last month, the lowest since at least 2013. The spread was as high as 0.67 percentage point in June 2013, data compiled by Bloomberg show.

Investors have welcomed the government's restraint, given the state's vulnerability to booms and busts. California draws a large share of taxes from wealthy residents whose incomes are tied closely to the stock market, which saddled the state with huge budget deficits after the Internet and real estate bubbles burst. The top 1 percent of earners accounted for nearly half of the state's personal income-tax collections in 2015.

## **Bloomberg Markets**

By Romy Varghese

January 10, 2018, 6:00 AM PST Updated on January 10, 2018, 11:34 AM PST

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### **California's Brown Raises Prospect of Pension Cuts in Downturn.**

- **Supreme Court is set to consider if benefit cuts permissible**
- **Ruling could provide relief to cash-strapped localities**

California Governor Jerry Brown said legal rulings may clear the way for making cuts to public pension benefits, which would go against long-standing assumptions and potentially provide financial relief to the state and its local governments.

Brown said he has a "hunch" the courts would "modify" the so-called California rule, which holds that benefits promised to public employees can't be rolled back. The state's Supreme Court is set to hear a case in which lower courts ruled that reductions to pensions are permissible if the payments remain "reasonable" for workers.

"There is more flexibility than there is currently assumed by those who discuss the California rule," Brown said during a briefing on the budget in Sacramento. He said that in the next recession, the governor "will have the option of considering pension cutbacks for the first time."

That would be a major shift in California, where municipal officials have long believed they couldn't adjust the benefits even as they struggle to cover the cost. They have raised taxes and dipped into reserves to meet rising contributions. The California Public Employees' Retirement System, the nation's largest public pension, has about 68 percent of assets needed to cover its liabilities. For the fiscal year beginning in July, the state's contribution to Calpers is double what it was in fiscal 2009.

Across the country, states and local governments have about \$1.7 trillion less than what they need to cover retirement benefits — the result of investment losses, the failure by governments to make adequate contributions and perks granted in boom times.

"In the next downturn, when things look pretty dire, that would be one of the items on the chopping block," Brown said.

## **Bloomberg Politics**

By Romy Varghese

January 10, 2018, 1:28 PM PST

— *With assistance by John Gittelsohn*

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## **[The Week in Public Finance: Deficits in 25 States, Exxon Sues California Localities, and New Jersey's Lottery Claim.](#)**

A [roundup](#) of money (and other) news governments can use.

GOVERNING.COM

BY LIZ FARMER | JANUARY 12, 2018

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## **[State Private Activity Bond Volume Caps Boosted 5.2%.](#)**

WASHINGTON – States can issue up to \$37.55 billion in new tax-exempt private activity bonds in 2018, 5.2% more than last year, after these bonds barely escaped termination in the recently enacted tax overhaul legislation.

The increase is \$1.86 billion from the \$35.69 billion national PAB volume cap for 2017 for 50 states, the District of Columbia and Puerto Rico.

This year's formula allows each state \$105 per capita with a guarantee of at least \$311.38 million for states with smaller populations.

That's an increase from the formula for 2017, which was \$100 per capital or a minimum of \$305.32 million for lower population states.

PAB volume caps increased at least 6% or more for a dozen states.

Fast growing Florida leads the nation with the largest percentage increase of 6.9% to just over \$2.2 billion in new PAB issuing authority, up from \$2.06 billion last year.

The nation's most populous state, California, has the largest dollar amount of volume cap — \$4.15 billion – up 5.8% from roughly \$3.93 billion in 2017.

In addition to California and Florida, eight other states also have more than \$1 billion in PAB issuing capacity: Texas with \$2.97 billion, New York with \$2.08 billion, Illinois and Pennsylvania, with \$1.34 billion each, Ohio with \$1.22 billion, Georgia with \$1.09 billion, North Carolina with \$1.08 billion, and Michigan with \$1.05 billion.

Seventeen states and the District of Columbia have the minimum caps of \$311.38 million.

Annual population estimates for the states, published by the U.S. Census Bureau in late December, are used in determining the caps. The Internal Revenue Service published the formula for the 2018 volume caps in October in Revenue Procedure 2017-58.



The fate of new tax-exempt PABs was in limbo until the end of the year because of congressional debates over federal tax reform legislation.

Congress was divided on whether to terminate new tax-exempt PABs after Dec. 31, 2017. The House version of the bill would have terminated new PABs while the Senate bill, which prevailed on this issue, would leave them untouched.

The final bill signed by President Trump on Dec. 22 terminated advance refundings after Dec. 31 and made tax-exempt bonds in general a less attractive investment for corporate purchasers because of the decrease in the corporate tax rate to 21% from 35%.

The Internal Revenue Service doesn't track how much each state uses of its annual volume cap.

"I don't think that's generally our function," Christie J. Jacobs, head of the Indian Tribal Affairs/Tax-Exempt Bond Office, told The Bond Buyer last month. "I know there have been industry concerns about keeping track of those volume caps and I know we've looked some at what the states do to keep track of their own volume caps and I don't think we found those approaches lacking."

Since the framework for private activity bonds was essentially created in the Revenue and Expenditure Control Act of 1968, the number of eligible purposes or projects for which they can be used has gradually increased from 12 activities to 22, according to the nonpartisan Congressional Research Service.

Thirteen of those 22 activities are subject to annual state volume caps. Among them are multifamily housing bonds, single-family mortgage revenue bonds and qualified student loan bonds.

Others include small issue bonds, redevelopment bonds, exempt facility bonds such as water and sewage facilities, hazardous waste facilities and other utility facilities.

Among the PABs not subject to volume caps are those financing airports, docks, wharves and projects for nonprofit 501(c)(3) organizations such as hospitals and universities.

A bond is a private activity bond if more than 10% of the proceeds are used for private business and more than 10% of the proceeds are secured by or derived from a private business. A PAB is only tax-exempt if it would finance a project that falls into certain categories specified by the tax code.

The tax code also contains a private loan financing test. Under this test, a bond is not tax-exempt if more than the lesser of 5% or \$5 million of the proceeds of the issue are to be used directly or indirectly to make or finance loans to persons other than governmental persons.

By Brian Tumulty

BY SOURCEMEDIA | MUNICIPAL | 01/09/18 07:16 PM EST

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## **[Multifamily Housing Bond Issuance May Drop in 2018.](#)**

WASHINGTON - Issuance of multifamily bonds may drop this year from the recent high of \$14 billion in 2016, according to experts at a recent housing conference who were uncertain whether the decline will be significant.

Multifamily housing bond issuance had been expected to decline last year from the 2016 peak, but



some projects were rushed to market at the end of 2017 when private activity housing were nearly terminated under tax reform.

“Part of the drop off, if there is one, might be that many states issued as many bonds as they could to make sure they preserved that bond authority,” Garth Rieman, interim executive director of the National Council of State Housing Agencies, told The Bond Buyer.

Final Thomson Reuters’ (TRI) data on housing issuance for 2017 won’t be released until February.

Multifamily housing bonds have been the largest component of PAB issuance subject to state volume caps and Rieman expects that to continue.

The demand for affordable housing remains “extraordinary,” Rieman said adding, “I think there are a lot of underlying reasons why production will remain high.”

On the plus said, Rieman expects a pickup in use of mortgage revenue bonds by states to assist first-time homebuyers. “As interest rates rise, that creates a little bit more separation between tax-exempt rates and taxable rates which may allow tax-exempt bonds increase activity,” he said.

Some of the MRBs used in early 2018 will be left over from late 2017, Rieman cautioned, but state housing finance agencies overall are likely to support more single-family home purchases this year.

Housing advocates remain hopeful that Congress may act on bipartisan bills to enhance the low-income housing tax credit which is linked to housing bonds in financing about half of the nation’s multifamily housing rehabilitation and new construction.

The bipartisan Affordable Housing Credit Improvement Act (H.R. 1661) has 122 cosponsors in the House and the companion bill in the Senate (S. 548) has 22 cosponsors, including Senate Finance Committee Chairman Orrin Hatch, R-Utah.

Housing experts who attended a recent panel discussion here sponsored by the National Conference of State Housing Agencies also hope Congress and the Trump administration can be persuaded to include affordable housing in their plans for infrastructure spending.

“Elements like that might support more activity later this year,” Rieman said.

For now, public housing agencies and developers are adjusting to the tax changes enacted by Congress that make housing bonds a less attractive investment.

The drop in the corporate tax rate to 21% from 35% is expected to make housing bonds less attractive as investments, experts agreed during the panel discussion.

There will be changes in housing bond pricing but nothing as extreme as what happened in the 2008-2009 Great Recession, said Anthony Freedman, a partner at Holland & Knight.

“The substance of the program hasn’t changed at all,” Freedman said.

“We weren’t devastated, but we definitely were damaged,” said Michael Novogradac, the managing partner in the San Francisco office of Novogradac & Co. His firm estimates the tax changes will produce a roughly a 14% drop in the value of investing in projects using the low-income tax credit which is often paired with housing bonds.

“In terms of what impact that is going to have coming up, I wish I knew,” Novogradac said. “I know

it's negative. I know it's adverse."

Foreign banks, in particular, are reassessing their investments because of complex new rules involving the base-erosion and anti-abuse tax (BEAT) said Priya Jayachandran, senior vice president for housing development at Volunteers of America.

Jayachandran, who is taking over as president of the National Housing Trust on Feb. 1, said another possible setback for affordable multifamily housing development this year would be if interest rates rise.

Scott Hoekman, senior vice president and chief credit officer of Enterprise Community Investment, said that despite the negatives of the new tax law, "The final changes are survivable."

The multifamily housing sector is flexible enough to figure it out how to cope, Hoekman said.

"What would have turned our world upside down was if private activity bonds had been eliminated," Hoekman said.

By Brian Tumulty

BY SOURCEMEDIA | MUNICIPAL | 01/12/18 07:08 PM EST

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## **Chicago Suburb Follows City with Securitization, Bypassing Junk Rating.**

CHICAGO - A junk-rated Chicago suburb is following the city's lead by securitizing its state supplied sales tax revenue in a \$47 million deal.

The bonds priced Wednesday, according to underwriter George K. Baum & Co.

The village of Bridgeview southwest of Chicago published an offering statement and investor presentation Monday. Fitch Ratings released its report assigning a BBB-plus rating to the deal on Tuesday.

At the same time, Fitch gave the village a first-time issuer default rating of BB-plus, one notch below an investment grade. S&P Global Ratings in March dropped the village to the speculative grade level of BB-minus when it cut its rating by four notches from BBB.

Chicago's Sales Tax Corporation received a AAA rating from Fitch ahead of its inaugural \$575 million securitization earlier this month that refunded sales tax bonds. It returns next month with a \$795 million issue to refund general obligation bonds.

The village has struggled to manage its debt burden after its investment in a stadium to house Major League Soccer's Chicago Fire has fallen far short of fiscal expectations.

The village of 16,000 issued \$135 million for the stadium in 2005, which has been followed by tax increases, asset sales, refinancings and restructurings. Bridgeview, which has about \$240 million of debt, had previously been considering restructuring debt beyond the useful life of the stadium, according to S&P.

The securitization sale included a tax-exempt A series for \$26.6 million and a taxable B series for \$20.4 million. The borrower is the special purpose entity Bridgeview Finance Corp.

Baum is the sole underwriter and Austin Meade is advising on the deal.

Proceeds will ease pressures on the village's balance sheet by refunding its 2008A-2 bonds, covering a debt service payment on the village's series 2005 bonds, and financing some capital projects. The B series will refund the village's series 2008B-1 and series 2008B-2 bonds, eliminating the village's floating-rate obligations.

The new securitization bonds hold a first lien on the village's state-collected portion of its home rule sales tax and local share of the statewide sales tax.

"The BBB-plus sales tax securitization bond rating is based on the bankruptcy-remote, statutorily defined nature of the issuer and a bond structure involving a perfected first lien security interest in the sales tax revenues," Fitch wrote.

The legal structure supports a true sale of the revenues and, in Fitch's opinion, insulates bondholders from any village operating risk. Under the structure, the village will sell all right, title and interest in the pledged revenues to the corporation and the state will direct all pledged sales tax revenues to the trustee.

Louis F. Cainkar Ltd. is bond counsel to the corporation. Burke Burns & Pinelli Ltd. is counsel to the corporation and Quarles & Brady LLP is disclosure counsel. Nixon Peabody LLP is special bankruptcy counsel.

Nixon Peabody gives its "reasoned and qualified opinion" in the offering statement that were the village to enter a bankruptcy - which is not currently allowed under state law - the corporation "would not be subject to substantive consolidation with the village nor would payments to bondholders be subject to the automatic bankruptcy stay."

The village's finance director referred calls for comment on the transaction to Dan Denys at Austin Meade but he did not return calls to discuss the deal.

The review of the pledged sales tax being leveraged drove the sharp contrast between the Bridgeview and Chicago ratings. Bridgeview faces stagnant growth prospects in its pledged tax revenue and the tax base faces risks from a concentration of the top 10 tax generators accounting for over half of pledged sales taxes.

The differential in ratings "proves the point that we look at the underlying sales tax base," Fitch analyst Matthew Wong said in an interview.

"It's a very stark contrast with Chicago," analyst Amy Laskey said.

Fitch said a severe decline would pressure the rating but collections have shown resilience through economic cycles. Coverage is strong and sales tax revenue is able to tolerate a 66% decline to 1 times coverage. No additional debt is allowed under the bond resolution.

Fitch's speculative grade issuer default rating reflects a "very high liability burden" that includes its bonded debt and pension liabilities which are at 61% of village personal income.

"The village has made several budget management decisions in the last several years that have eroded its ability to support operations, including general obligation backing of the Chicago Fire stadium," Fitch wrote. "Fitch expects that ongoing budget management may be somewhat constrained by the sales tax securitization issuance as it diverts a portion of its sales tax revenue away from the general fund to pay for debt service and may require a corresponding increase in

property tax rates.”

The Illinois General Assembly approved the new local borrowing program over the summer at Chicago’s behest as a means to bypass weak general obligation ratings by using a bankruptcy-remote structure.

Some market participants say the sturdiness of the new structure can’t truly be known until tested. They cite the ongoing challenge to some Puerto Rico’s debt. Others warn that the program could be abused by borrowers that lack fiscal restraint.

The stark rating differences between Chicago and Bridgeview provide “a great example of why techniques like securitization have to be viewed on an individual basis,” said Joseph Krist, a partner at Court Street Group LLC. “Securitization in and of itself is not a panacea for credits across the board.”

Krist said he sees why the securitization is attractive to the village because it provides a path to achieve some of its fiscal goals while addressing a market concern over its GO credit largely due its investment in a sports stadium that has disappointed.

When S&P junked the rating in March, it placed the rating on CreditWatch for a possible further downgrade due to concerns over market access and weakened liquidity. S&P removed the watch status and assigned a negative outlook in August after the village successfully modified its letter of credit with BMO Harris Bank NA. The village had been looking at borrowing to pay off \$25 million of debt. BMO agreed to an extension of its amortization schedule. The securitization sale will allow the village to shed the floaters.

By Yvette Shields

BY SOURCEMEDIA | MUNICIPAL | 12/20/17 07:18 PM EST

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## **[Endangering Community Investment with Tax “Reform”](#)**

There is a significant divergence in meaning between endanger and glimmer. In fact, this may be the first time the two words have been used in the same sentence. They also capture different perspectives on the economic outcome likely to result from tax reform.

“GOP’s tax measures endanger a preservation success story” was the original and more appropriate headline in my home delivery edition of the Chicago Tribune on Nov. 24, 2017. I don’t know who at the paper read the column by its architecture critic Blair Kamin and thought the headline should be changed to “Glimmer of Hope” for the online version. I’m seeing very little glimmer knowing that the Institute of Cultural Affairs’ GreenRise historic restoration may be endangered.

[Continue reading.](#)

### **ShelterForce**

By Ted Wysocki

January 4, 2018

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## **S&P: Indiana, New York, Virginia State Aid Intercept Program-Based Local Government Ratings Withdrawn On Misapplied Criteria.**

CHICAGO (S&P Global Ratings) Jan. 8, 2018–S&P Global Ratings has withdrawn its ratings on various Indiana, New York, and Virginia local government issues that were based on state aid intercept programs following our determination that we misapplied our State Credit Enhancement Programs criteria.

[Continue Reading](#)

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## **S&P: List Of Current Credit Ratings Affected By Withdrawal Of Indiana, Virginia, And New York State Credit Enhancement Programs.**

On Jan. 8, 2018, S&P Global Ratings withdrew its ratings on various Indiana, New York, and Virginia local government issues that were based on state aid intercept programs following our determination that we misapplied our State Credit Enhancement Programs criteria.

[Continue Reading](#)

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## **S&P Live Webcast and Q&A: 2018 U.S. State and Local Government Outlooks.**

**Jan. 22, 2018 | New York**

Please join S&P Global Ratings U.S. Public Finance on Monday, January 22, 2018 at 2:00 p.m. Eastern Time for a live Webcast and Q&A discussion on the U.S. State and Local Government Credit sector outlooks.

[Register For This Webcast](#)

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## **S&P: U.S. Not-For-Profit Health Care Sector 2018 Outlook: Balance Sheet Strength Drives Stable Outlook Despite Expectations That Operations Will Weaken.**

S&P Global Ratings has affirmed its stable outlook on the U.S. not-for-profit health care sector for 2018. Our view is based on the overall strength of balance sheets in the sector...

[Continue Reading](#)

Jan. 11, 2018

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## **S&P: U.S. Local Government Sector 2018 Outlook: Resourcefulness Will Be Key To Managing New Obstacles.**

Resiliency and resourcefulness will be increasingly important in U.S. local government credit analysis in 2018. When we published our 2017 U.S. Local Government Outlook in January 2017, we described the sector as stable and resilient.

[Continue Reading](#)

Jan. 10, 2018.

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## **S&P U.S. State Sector 2018 Outlook: Short-Term Gain, Long-Term Strain.**

Tightening labor markets and the increased business investment that could accompany corporate tax rate reductions have the potential to strengthen economic conditions in 2018. Subject to caveats related to geopolitical risk and ongoing policy uncertainty, S&P Global Ratings believes that on slightly firmer economic footing throughout the next year, U.S. states could enjoy an uptick in revenue...

[Continue Reading](#)

Jan. 9, 2018

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## **S&P: Assessing Local Governments' Use Of New York State's Pension Smoothing Program.**

Since 2011, some New York local governments have used the state's Contribution Stabilization Program (CSP) to amortize a portion of current year pension expenses. S&P Global Ratings considers this amortization a deferral of annual operating expenses.

[Continue Reading](#)

Jan. 11, 2018

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## **S&P Live Webcast and Q&A: 2018 U.S. Not-for-Profit Health Care Outlook.**

**Jan. 17, 2018 | New York**

Please join S&P Global Ratings U.S. Public Finance on Wednesday, January 17, 2018 at 2:00 p.m. Eastern Time for a live Webcast and Q&A discussion on the U.S. Not-for-Profit Health Care sector outlook.

[Register For This Webcast](#)

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## **S&P: New Jersey And Local Governments Face Numerous Issues In 2018, Including Increased Pension Contributions And Tax Reform.**

NEW YORK (S&P Global Ratings) Jan. 9, 2018—S&P Global Ratings today said that the State of New Jersey (A-/Stable) and its local governments face several challenges in 2018 given recent events.

[Continue Reading](#)

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## **NABL: House Problem Solvers Caucus Releases Infrastructure Report.**

The bipartisan House Problem Solvers Caucus Infrastructure Working Group released its report on infrastructure policy recommendations. The report entitled, “Rebuilding America’s Infrastructure,” calls for, among other things, the preservation and expansion of “tax-advantaged infrastructure financing options by maintaining the federal tax-exempt status for municipal bonds and private activity bonds as well as increasing the private activity bond state volume cap for all infrastructure categories.”

The report is available [here](#).

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## **Deduct This.**

***How states can undo one of the most potentially destructive elements of the Republican tax law.***

One of the most controversial—and ill-conceived—changes in the new federal tax law passed last month is a \$10,000 cap on the deduction that households can claim for tax payments to state and local governments. The provision—which primarily penalizes residents of blue states—has prompted officials in some of the areas most affected by the cap to consider new tax credit programs that would, in essence, transform now nondeductible state and local tax payments into deductible charitable contributions to state and local government organizations. Such a credit program, if well crafted, would stand on solid legal ground and moreover would represent an effective state response to a destructive new federal tax law.

Let’s consider how such a charitable credit program might work.

Imagine a city—let’s call it Springfield—that funds its schools, parks, police and fire departments, and other public services through local property taxes. Springfield could set up a Springfield Schools Fund, a Springfield Parks Fund, a Springfield First Responders Fund, and so on to support various branches of the city government. For every dollar that a resident voluntarily donates to such a fund, she would qualify for a tax credit that would reduce her property tax liability by 80 cents.

[Continue reading.](#)

**slate.com**

By Joseph Bankman, Daniel Hemel, Darien Shanske, and Kirk Stark

January 11, 2018

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## **[Market Commentary: Issuance Stalls, Investors Take Profits on Instability.](#)**

Below we review the market this past week as well as how December was a record-breaking month for the municipal market. Next week, we will publish our full 2018 Outlook for the municipal industry.

### **Issuance Stalls and Investors Take Profits on Political Instability**

Over the last week munis have outperformed Treasuries on most parts of the curve. While the Dow Jones Index hit all-time highs, we are seeing investors profit-take and move into safer assets given the political instability associated with the current Administration and international affairs.

The conflux of international politics and the historical record of economic trends in the United States, converging with Dodd-Frank regulations and an expected lower issuance flow for investors leads us to believe that outperformance to Treasuries and other domestic fixed-income asset classes is expected. Issuance thus far in January has been very low and expected issuance for the rest of the month confirms this expectation.

[Continue reading.](#)

### **Neighborly Insights**

Posted 01/08/2018 by George Friedlander

*This Market Commentary is brought to you by Court Street Group.*

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## **[Market Commentary: The 2018 Outlook for Investors.](#)**

The start to this year is the most complex and uncertain transition in the municipal bond market since the 1986 Tax Reform, due to four main factors:

- 1) The impact of the Tax Reform Law on the supply/demand structure of the market
- 2) The continuing move toward higher short-term rates
- 3) The potential for an infrastructure bill of uncertain size and scope, and other concerns about infrastructure
- 4) Likely continued erosion in average credit quality.

[Continue reading.](#)

### **Neighborly Insights**

Posted 01/09/2018 by George Friedlander



## **Why Did the House Want to Repeal Tax-Exempt Private Activity Bonds?**

Happy New Year to all. When we last spoke, we were all breathing a sigh of relief that tax-exempt private activity bonds were spared the sword in the final tax reform legislation, and we poured out a little eggnog for our old friend, the tax-exempt advance refunding bond, gone too soon.

But based on comments from House Ways & Means Committee Chairman Kevin Brady, and the insights of those who hear the whispers in D.C., tax-exempt private activity bonds aren't safe yet. Indeed, the House leadership likely hasn't changed its mind about tax-exempt private activity bonds in the short time between November 2, when the Ways and Means committee released its proposal, and the enactment of the Tax Cuts and Jobs Act.

The question is: why?

[Continue reading.](#)

### **The Public Finance Tax Blog**

**By Johnny Hutchinson on January 11, 2018**

**Squire Patton Boggs**

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## **Tax Reform's New Incentives For Investments In Low-Income Communities: Part 1**

HIGHLIGHTS:

- A new tax incentive in the recently enacted Tax Cuts and Jobs Act would allow investors selling appreciated securities or other investment property to defer tax on those gains to the extent that the proceeds are reinvested in an Opportunity Zone Fund. Further tax incentives would allow for exclusion of both some of the deferred gain and any post acquisition gain if the Fund is held long enough.
- Each of the 50 states and the District of Columbia (as well as U.S. possessions) will have an opportunity to nominate a minimum of 25 Opportunity Zones located within the state, district or territory.
- Eligible zones must generally must be nominated by the governor of a state within a 90-day period starting on the Act's date of enactment (by approximately March 22, 2018, unless a 30-day extension is applied for and granted).

[Continue reading.](#)

Article by Kathleen M. Nilles and Kristin A. DeKuiper

January 9 2018

**Holland & Knight**

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## **22nd Annual Governmental GAAP Update (Encore Presentation)**

**Training Type:** Web-Streaming

**Course Status:** Repeat Offering

**Date and Time:** Jan 18 2018 - 1:00pm to 5:00pm EST

**Region:** Eastern

**Level:** Intermediate

**Field of Study:** Accounting – Governmental

**CPE Credits:** 4

**Member Price:** \$180.00

**Non-Member Price:** \$195.00

[Register Online](#)

**Prerequisite:** Knowledge in state and local governmental accounting and financial reporting.

### **Speakers:**

- David A. Vaudt – Chairman Governmental Accounting Standards Board
- Todd Buikema – Senior Manager GFOA
- Peg Hartnett – Senior Manager GFOA
- Melinda M. Gildart, CPA, MBA – Controller Chicago Public Schools
- Bob Scott – Chief Financial Officer City of Carrollton
- Ted Williamson – Partner RubinBrown, LLP
- Chris Morrill – Executive Director/CEO GFOA

**Who Will Benefit:** State and local governmental accounting and financial reporting professionals, State and local government CFO's, and auditors of state and local governments.

### **Program Description:**

Final authoritative guidance on:

- asset retirement obligations
- the use of Fiduciary funds
- various topics covered in the 2017 Omnibus, including pension and OPEB issues
- debt extinguishment issues, including use of existing resources and prepaid insurance leases

Recent GASB implementation guidance

Proposed guidance on debt disclosures for direct borrowings and direct placements

Proposed implementation guidance for accounting and financial reporting for OPEB

Other ongoing GASB projects

Update on the GASB financial reporting model improvements for governmental funds

Update on the uniform grant guidance, including procurement guidelines

Proposed changes to the Yellow Book

## Common financial reporting deficiencies

### *Topics subject to change*

#### **Seminar Objectives:**

Participants in this year's GAAP Update should obtain a practical knowledge of:

- GASB Statement No. 83, *Certain Asset Retirement Obligations*
- GASB Statement No. 84, *Fiduciary Activities*
- GASB Statement No. 85, *Omnibus 2017*
- GASB Statement No. 86, *Certain Debt Extinguishment Issues*
- GASB Statement No. 87, *Leases*
- GASB Invitation to Comment, *Financial Reporting Model Improvements— Governmental Funds*
- *GASB ED on Certain Disclosures Related to Debt, including Direct Borrowings and Direct Placements*
- Forthcoming GASB ED Implementation Guide, *Accounting and Financial Reporting for Postemployment Benefits Other Than Pensions*
- Common financial reporting deficiencies encountered in the GFOA's Certificate of Achievement for Excellence in Financial Reporting Program.
- Government Accountability Office 2017 ED of *Government Auditing Standards*
- Updates on the Office of Management and Budget's *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (the Uniform Guidance)*

#### [GAAP Update FAQs](#)

#### **Agenda:** [Download](#)

#### **Other Documents:**

[Brochure](#)

[Technical FAQs](#)

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## **[KBRA Affirms the Long-Term Rating of A+ with a Stable Outlook on the Township of Bethel Sewer Authority, Township of Bethel, PA](#)**

Kroll Bond Rating Agency (KBRA) has affirmed the long-term rating of A+ with a Stable Outlook on the Township of Bethel Sewer Authority ("the Authority"), Township of Bethel ("the Township") Pennsylvania's Guaranteed Revenue Notes and General Obligation Debt. This rating applies to all of the Township's general obligation and guaranteed debt, except for bonds backed by a letter of credit or liquidity facility.

To access the full report, please click on the link below:

[Township of Bethel Sewer Authority, Township of Bethel, PA](#)

If you have any difficulties accessing the report, please contact [info@kbra.com](mailto:info@kbra.com) or visit [www.kbra.com](http://www.kbra.com).

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## **[KBRA Assigns Rating of AA+/Stable Outlook to Connecticut's Special Tax Obligation Bonds Transportation Infrastructure Purposes.](#)**

Kroll Bond Rating Agency (KBRA) has assigned a AA+ with a Stable Outlook to the State of Connecticut's Special Tax Obligation Bonds Transportation Infrastructure Purposes, 2018 Series A. Additionally, KBRA has assigned a AA+ with a Stable Outlook to the State of Connecticut's outstanding Special Tax Obligation Bonds Transportation Infrastructure Purposes; and has assigned a AA+ with a Stable Outlook to the State of Connecticut's outstanding Second Lien Special Tax Obligation Bonds Transportation Infrastructure Purposes.

The long-term rating assignment is based on KBRA's [U.S. Special Tax Revenue Bond Rating Methodology](#).

To access the full report, please click on the link below:

[State of CT's Special Tax Obligation Bonds Transportation Infrastructure Purposes](#)

If you have any difficulties accessing the report, please contact [info@kbra.com](mailto:info@kbra.com) or visit [www.kbra.com](http://www.kbra.com).

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## **[KBRA Assigns AA+ Rating with Stable Outlook to the MTA TRBs Series 2018A-1 & 2018A-2 and K1+ Rating to Transportation Revenue BANs Series 2018A.](#)**

Kroll Bond Rating Agency (KBRA) has assigned a long-term rating of AA+ with a Stable Outlook to the Metropolitan Transportation Authority's (MTA) Transportation Revenue Bonds (TRBs), Series 2018A-1 and 2018A-2 (Mandatory Tender Bonds). KBRA has also assigned a short-term rating of K1+ to the MTA's Transportation Revenue Bond Anticipation Notes (BANs), Series 2018A.

KBRA has affirmed the long-term rating of AA+ with a Stable Outlook on the MTA's outstanding Transportation Revenue Bonds. KBRA has also affirmed the short-term rating of K1+ on the following outstanding MTA's BANs: Series 2015A-2F, Series 2017B, and Series 2017C.

To access the full report, please click on the link below:

[MTA TRBs Series 2018A-1 & 2018A-2](#)

If you have any difficulties accessing the report, please contact [info@kbra.com](mailto:info@kbra.com) or visit [www.kbra.com](http://www.kbra.com).

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## **[KBRA Revises Ratings on the New York State Housing Finance Agency 160 Madison Housing Revenue Bonds.](#)**

Kroll Bond Rating Agency (KBRA) has revised the long-term rating to AA- from A+ with a Stable Outlook and the short-term rating to K1+ from K1 on the New York State Housing Finance Agency

160 Madison Avenue Housing Revenue Bonds, 2013 Series A & B and 2014 Series A. The Bonds were issued as variable rate demand obligations with credit and liquidity support provided by an irrevocable Direct Pay Letter of Credit (DPLC) issued by PNC Bank, National Association. The DPLC was issued for a period of five years and will expire on December 5, 2018, unless extended for an additional one-year period. The rating action reflects KBRA's upgrade of PNC's long-term and short-term ratings to AA- and K1+, from A+ and K1, respectively, on January 4, 2018.

To access the full report, please click on the link below:

[NYSHFA 160 Madison Housing Revenue Bonds](#)

If you have any difficulties accessing the report, please contact [info@kbra.com](mailto:info@kbra.com) or visit [www.kbra.com](http://www.kbra.com).

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## **[Bipartisan Report Underscores Hard Truths About Infrastructure Funding.](#)**

***"Our attention has been on that baseline has not really been adequately funded, or appropriately dealt with," according to U.S. Rep. Elizabeth Esty of Connecticut. "That needs to be addressed."***

WASHINGTON — Recommendations for upgrading the nation's public works that a bipartisan group of House lawmakers released this week underscore the difficult budget math Congress will face coming up with the money for any eventual White House infrastructure plan.

The Problem Solvers Caucus, a group of 48 lawmakers, outlined their recommendations in a [report issued Wednesday](#). Reps. John Katko, a New York Republican, and Elizabeth Esty, a Connecticut Democrat, led a caucus working group that authored the report.

In the backdrop, is a yet-to-be-released proposal from the Trump administration for major new investment in the nation's roads, bridges, waterworks and other infrastructure.

Details that have surfaced so far suggest that the White House is aiming for \$200 billion of direct federal investment, with the hope of attracting another \$800 billion from state, local and private sources.

[Continue reading.](#)

ROUTE FIFTY

BY BILL LUCIA

JANUARY 11, 2018

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## **[White House Updates Senators on Trump's Infrastructure Plan.](#)**

***Administration officials told the lawmakers to expect more details about the proposal around the time of the president's State of the Union address, Sen. John Barrasso said Wednesday.***

WASHINGTON — The top Republican on the Senate's public works committee said Wednesday that Trump administration officials informed him and other lawmakers in a meeting Tuesday that the White House would release details about its infrastructure plan around the time of the president's Jan. 30 State of the Union address.

"Certainly within the next month," Sen. John Barrasso, the Wyoming Republican who chairs the Environment and Public Works Committee, told reporters, as he discussed when additional information about the proposal would be released.

White House officials previously signaled that they were aiming to release the long-awaited plan sometime in January.

Barrasso said that most members of his committee, both Republicans and Democrats, attended Tuesday's meeting. White House officials that were on hand included Secretary of Transportation Elaine Chao, chief economic adviser Gary Cohn and DJ Gribbin, who is a special assistant to the president on infrastructure policy, according to Barrasso.

The committee's ranking member, Sen. Tom Carper, of Delaware, described the meeting as civil and constructive.

Both he and Barrasso sidestepped questions about where lawmakers might find the \$200 billion of federal funding the White House has indicated it would like to see included in its infrastructure package.

"We'll talk about it as time goes on," Barrasso said in response to a question about whether he had any preference for where the money could come from.

Asked if he had a favored approach for how to come up with the \$200 billion sum, Carper responded: "Not today."

Trump administration officials have previously described a plan that would involve \$200 billion of direct federal spending over a decade, combined with \$800 billion from private and state and local government sources. Carper said he and other Democrats are skeptical the \$200 billion could be "leveraged" to come up with the \$800 billion.

"Can we save some money on streamlining? Sure. We've already done that. Can we do more? Probably. Can we better leverage private sector money, and money from other sources? Probably," Carper said. "Does it add up to \$800 billion? I'm not sure that it does."

The White House has also indicated that thinning down and speeding up federal permitting and approval processes for projects will be a part of its program.

Trump in a separate bipartisan meeting with lawmakers on Tuesday continued to tout the viability of his pending public works plan—one of his stated priorities since taking office.

"One thing that I think we can really get along with on a bipartisan basis—and maybe I'm stronger on this than a lot of the people on the Republican side, but I will tell you, we have great support from the Republicans—is infrastructure," he said, according to a White House transcript of the meeting.

"I think we can do a great infrastructure bill," the president continued. "I think we're going to have a lot of support from both sides, and I'd like to get it done as quickly as possible."

Carper noted that Republicans on the Environment and Public Works Committee are working on

authorizing language that could guide new spending on infrastructure that is called for in the White House plan, and that Democrats are working on a similar package.

But he added: "We need for the administration to show us their proposal. Not just principles. But what do they actually want to do."

ROUTE FIFTY

By Bill Lucia,

JANUARY 10, 2018

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## **California Municipalities' Debt Disclosures Contrast With Climate Warnings.**

### ***Exxon Mobil cites investor documents in legal battle over risks***

California communities demanding oil companies protect them from rising sea levels weren't as sure about their vulnerability to climate change when they sold debt to investors, according to court filings and bond documents.

Seven local governments in California are suing Exxon Mobil Corp. and other major oil producers for court orders forcing those companies to cover the costs of sea walls and other infrastructure projects meant to fortify low-lying areas.

Now Exxon, one of the defendants, is launching a new counterattack by highlighting past bond disclosures in which its government critics suggested they couldn't predict whether and when sea levels would rise. The company filed court papers in Texas on Monday seeking to force government officials to answer questions under oath about those statements.

The underlying lawsuits are part of an aggressive strategy to hold fossil-fuel companies responsible for climate-change costs that the plaintiffs estimate could run to billions of dollars. Local officials are arguing that Exxon, BP PLC and other companies knew or should have known about the potential impacts of burning oil and gas but instead tried to sow public doubt about the science behind global warming.

The companies dispute those allegations, casting the lawsuits as an abusive campaign by California law-enforcement officials to target political opponents through the legal system and stifle debate on climate change. Scientists have linked rising sea levels to fossil-fuel emissions and warming global temperatures.

"The idea that oil companies might sue public servants personally in an attempt to intimidate them from protecting their communities and environment is abhorrent but consistent with their prior behavior," San Mateo County counsel John Beiers said. "We will not be intimidated."

The cities of Oakland, San Francisco, Santa Cruz and Imperial Beach are also plaintiffs as are Santa Cruz County and Marin County.

The legal battle is intensifying while awareness grows among investors about the potential credit risk to U.S. municipalities from future changes in world-wide temperatures. In November, Moody's Investors Service flagged environmental disruptions as a "growing negative credit factor" for coastal

municipalities and said it would adjust its ratings methodology to take climate change into account.

Moody's didn't issue any credit downgrades but warned local governments to start dealing with climate risks or else possibly lose their access to low-cost financing.

Exxon's Monday filing in Tarrant County, Texas, laid out what it said was a disconnect between the claims in those lawsuits and what the municipalities told their bond investors about their exposure to climate risks.

San Francisco's lawsuit said it faced "imminent risk of catastrophic storm surge flooding," while a general obligation bond offering last year said the city "is unable to predict whether sea-level or rise or other impacts of climate change...will occur."

Santa Cruz County said in its complaint it was experiencing more frequent and extreme droughts, precipitation events, heat waves and wildfires, and faced a 98% chance of a "devastating" three-foot flood by 2050. Yet a bond offering last year mentioned only "unpredictable climatic conditions, such as flood, droughts and destructive storms" as a risk factor.

"Each of the municipalities warned that imminent sea level rise presented a substantial threat to its jurisdiction and laid blame for this purported injury at the feet of energy companies," Exxon said. "Notwithstanding their claims of imminent, allegedly near-certain harm, none of the municipalities disclosed to investors such risks in their respective bond offerings."

Santa Cruz city attorney Anthony P. Condotti said the evidence linking climate risks to fossil-fuel industry practices "has no bearing on any bond offering documents issued previously."

The lawsuits against Exxon, BP, Chevron Corp. , ConocoPhillips and Royal Dutch Shell PLC allege the companies are a "public nuisance" and ask courts to force them to create a fund for local governments to pay for climate change-related infrastructure.

The lawsuits have drawn comparisons to U.S. states' legal campaign against tobacco manufacturers in the 1990s, which netted multibillion-dollar settlements to offset the public costs of smoking-related disease.

In 2015, New York Attorney General Eric Schneiderman began an investigation into Exxon Mobil that was joined by Massachusetts Attorney General Maura Healey. Mr. Schneiderman, a Democrat, has alleged that Exxon misled investors about how it accounts for the impact of climate change on its business.

Exxon has alleged the investigation is part of a conspiracy by activists and oil antagonists to smear the company. A number of Republican lawmakers and attorneys general have sought to join Exxon's effort to fight the probe and have also sought to investigate Mr. Schneiderman.

## **The Wall Street Journal**

By Andrew Scurria

Updated Jan. 8, 2018 10:32 p.m. ET

*—Alejandro Lazo and Bradley Olson contributed to this article.*



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## **Have California Munis Misled Investors And Bond Insurers About Climate Risk?**

### **Summary**

- Last summer, seven California cities and counties sued 17 oil and gas energy producers claiming that they have created a public nuisance and have caused climate change related damage.
- Given the severity and specificity of the claimed harm and damages sought, it is peculiar that the disclosures in the plaintiff's municipal and city bond issuance documents are very limited.
- There is little doubt that these suits have been the result of the dissatisfaction some states feel towards federal environmental and energy policies.

Last summer, seven California cities and counties sued 17 oil and gas energy producers claiming that they have created a public nuisance and have caused climate change related damage that has increased sea levels in California and exposed the plaintiff governments to massive damages from natural disasters. Exxon Mobil (XOM) has now filed a petition, in District Court, to depose a number of people in the matter.

This is the latest in a series of lawsuits brought by California, Massachusetts, Vermont, and New York and a small number of other cooperating state and local governments against auto, utility, and energy-producing businesses.

Given the severity and specificity of the claimed harm and damages sought, it is peculiar that the disclosures in the plaintiff's municipal and city bond issuance documents make very limited disclosures of any climate change risks. As a result, it appears these suits will either (A) create new economic risks and hazards for bond investors and, in the case of 'wrapped' deals, the bond insurers that wrap those California municipal debts or (B) provide the investors and bond insurers with the information with which to claim they have been defrauded by those municipalities.

Ironically, as a result of the subprime mortgage crisis, many of the same California counties that brought these latest environmental lawsuits filed suits against the five largest municipal bond insurers for "forcing" local governments to needlessly buy bond insurance in order to get higher credit ratings and issue debt with lower interest rates.

### **Analysis**

We have compiled a full analysis of each municipal bond issued within each plaintiff geography and all relevant details. In the coming days, we will quantify the wrapped versus unwrapped exposures and, in the case of an insured transaction, the bond guarantor. In 2016 and 2017 alone, these issuers sold bonds with over \$25.36 billion of principal amount.

### **Have the tables turned?**

The lawsuits against Chevron (CVX), Exxon Mobil, BP (BP), Shell Oil (RDS.A) (RDS.B) and over a dozen other firms now may provide the bond insurers and investors with a cause of action against the California plaintiffs in this case for failure to disclose, in bond deals, what it claims are massive environmental risks and damages to those counties and cities.

While the lawsuits claim significant harms to those cities and counties, those harms were not disclosed in the hundreds of bond issuances by those governments. In fact, while the plaintiffs in the suits claim grave and specific harms, their bond filings were largely silent on those risks and harms.

As The Wall Street Journal highlighted in a headline today: "California Municipalities' Debt Disclosures Contrast With Climate Warnings." As a result, the issuers were almost certainly able to benefit from lower issuance costs that they would have been had they disclosed the risk to investors and, in the case of bonds that were wrapped by bond insurers, they likely paid lower insurance premiums than they would have had they fully disclosed the risks to the insurers.

As example, the City of Oakland claimed, in the lawsuits massive fossil-fuel production causes a gravely dangerous rate of global warming and ongoing and increasingly severe sea level rise harms to Oakland and that by 2050, a hundred year flood will occur every 2.3 years. These claims are in stark contrast to Oakland's disclosures in its bond disclosures in this they state:

"The City is unable to predict when seismic events, fires or other natural events, such as sea rise or other impacts of climate change or flooding from a major storm, could occur, when they may occur, and, if any such events occur, whether they will have a material adverse effect on the business operations or financial condition of the City or the local economy."

Similarly, San Francisco, another plaintiff, claims it is planning to fortify its Seawall in an effort to protect itself from rising sea levels and that the short-term costs of doing so will be more than \$500 million with long-term upgrade costs of \$5 billion. In San Francisco's bond disclosures, it has stated:

"The City is unable to predict whether sea-level rise or other impacts of climate change or flooding from a major storm will occur, when they may occur, and if any such events occur, whether they will have a material adverse effect on the business operations or financial condition of the City and the local economy."

Similar inconsistencies exist between the claimed harms and bond disclosures of Marin County, San Mateo County, the City of Imperial Beach, the County and City of Santa Cruz (the other plaintiffs in the lawsuits).

If one looks at the history of state, municipal and local lawsuits against various parties for damages related to their contribution to climate change, it becomes clear that these suits are actually targeting environmental federal policies through legal actions against federally regulated entities.

## **Background**

In 2004, eight states, three land trusts, and the City of New York filed two coordinated lawsuits against five power generation companies, including American Electric Power (NYSE:AEP). The cases were consolidated as *Connecticut v. Am. Elec. Power Co.*, 406 F. Supp. 2d 265 (S.D.N.Y. 2005). The plaintiffs alleged the pollution created by the defendants generation of power led to global warming and constituted a public nuisance under federal common law.

In 2006, California Attorney General filed another related lawsuit, this time against the six-largest U.S. automakers. The suit alleged the automakers' emissions contributed to global warming and that the State had suffered property and other damage as a result.

In 2011, the Supreme Court ruled against the plaintiffs, and for the industry, in the AEP suit. In the Opinion of the Court, Justice Ginsberg stated: "[W]hen Congress addresses a question previously governed by a decision rested on federal common law," the Court has explained,

“the need for such an unusual exercise of law-making by federal courts disappears... We hold that the Clean Air Act and the EPA actions it authorizes displace any federal common law right to seek abatement of carbon-dioxide emissions from fossil-fuel fired power plants. Massachusetts made plain that emissions of carbon dioxide qualify as air pollution subject to regulation under the Act. 549 U. S., at 528-529. And we think it equally plain that the Act “speaks directly” to emissions of carbon dioxide from the defendants’ plants.”

The current suit by five California municipal governments is filed as tort complaints against Exxon Mobil and 17 other energy companies accusing them of harms associated with rising sea levels. While we believe the chances of success by the plaintiffs are remote, the risks they create for all parties are meaningful and worth watching.

## **Politics**

While each of these suits targets different business interests commonly associated with climate change and global warming risks there is little doubt that these suits have been the result of the dissatisfaction some states feel towards federal environmental and energy policies. As example, in explaining the basis for the AEP lawsuit, one of the strategists behind it stated,

“the cases were brought in response to the lack of response from the George W. Bush Administration to the climate change crisis. Specifically, the public nuisance lawsuit, seeking only injunctive relief, was filed after the Administration announced it would not support amendment of the Clean Air Act to impose new emissions limits on CO<sub>2</sub>, and after the White House disavowed the Kyoto Protocol”.

## **Seeking Alpha**

Josh Rosner

Jan. 9, 2018

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## **Localities Will Deliver the Next Wave of Transportation Investment.**

### **INTRODUCTION**

There is a growing consensus that the United States should boost investment in transportation infrastructure, but simply throwing more money at projects overlooks a crucial trend: the United States is moving into an era where more of the agenda setting and funding responsibilities are falling to local governments.

This is a natural evolution. Cities, counties, and regional governments have long had major investment responsibilities within the national transportation system: they maintain the most roadway mileage in the country, they operate most of the country’s transit systems, and they own and operate most sea ports and airports. But local governments are also especially attuned to local needs. Their ability to plan and design infrastructure upgrades in light of their long-term economic development priorities have built support for some of the country’s most ambitious transportation investments in recent memory, from committing over \$100 billion in Los Angeles county to flexible bond issuances in Denver and Atlanta.

Yet not every locality starts from a position of strength when planning and paying for transportation improvements.[1] Fiscal conditions are far from ideal in many places, especially in those cities that

still have not seen their General Fund revenues return to levels seen before the Great Recession.[2] Meanwhile, a 2016 national survey of city finance officers found infrastructure needs are a top source of fiscal burden.[3] Combined with changing demands to how people travel and how businesses and people purchase goods, many places face deep uncertainties on how to both maintain today's assets and find resources to make sensible investments for the future.

[Continue reading.](#)

## **The Brookings Institute**

Adie Tomer and Joseph Kane

January, 2018

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### **Whiplashed Planners Fear GOP Swerve on Infrastructure.**

#### ***After close call on public-private financing tool, all eyes on 2018***

Los Angeles has gained national notice for a series of ambitious projects affecting all facets of southern California's transportation network, from the city's light rail system to Los Angeles International Airport.

Many of the projects — a multibillion dollar expansion of the airport, work on roads leading to and from the busy ports of Los Angeles and Long Beach and a new light rail line, among others — were or will be financed with a tool called private activity bonds.

Known as PABs by those who use them, the bonds are issued by public-sector authorities to raise tax-exempt financing for private entities doing a project with a public benefit. Buyers of the bonds don't have to pay tax on the interest income, allowing the issuer to borrow at a lower rate than would otherwise be available.

But Republican lawmakers sent a shudder through the groups that rely on the financing tool by proposing to eliminate the tax exemption in versions of the tax overhaul bill cleared by Congress just before Christmas.

"I think surprised is an understatement," said Annie Russo, vice president of government affairs at Airports Council International-North America, a Washington group that describes itself as "the voice of airports."

Congress eventually decided to keep the exemption, but the proposal to do otherwise put a spotlight on the importance that stakeholders give to private activity bonds. The proposal, which originated in the House tax bill and wasn't matched in the Senate version, also raised questions about what could be included in Republican plans for infrastructure legislation in 2018.

President Donald Trump campaigned on a pledge to spend \$1 trillion on infrastructure over 10 years. He had said most of that would come from the private sector, but has more recently been quoted saying he doubts the value of public-private partnerships. The administration is expected to deliver a plan early this year.

In and out of Washington, some who work in the transportation sector had hoped the tax bill would

include provisions to help pay for infrastructure projects, or at least provide incentives for the private sector to do more. At one time in the run-up to the tax bill, Republicans even talked about encouraging corporations to repatriate profit held abroad and steering that money into infrastructure projects.

So the House Republicans' proposed treatment of private activity bonds caught the industry off guard. Some saw the potential for hundreds of millions of dollars in additional interest costs on projects already underway. The House summary of its tax proposal — referring to the exemption as a giveaway — rang alarm bells on Republican thinking about the future.

According to Adam S. Wallwork, a public finance lawyer at Ballard Spahr, private activity bonds are a \$102-billion-a-year business, representing 20 percent of the tax-exempt bond market.

### **Flying high on PABs**

Airports in particular rely on private activity bonds for work on terminals.

Under the last major tax code rewrite in 1986, commercial U.S. airports — despite being almost universally owned and operated by public entities with bond-issuing authority — cannot issue standard municipal bonds for improvements to terminals because they benefit private companies like airlines and shops and restaurants.

But airport terminals have a clear public benefit, and therefore qualify for tax-exempt private activity bonds.

“Almost any” expansion or renovation of an airport terminal is financed through private activity bonds, Russo said.

Several parts of the Los Angeles airport's multibillion-dollar overhaul — including a \$5.5 billion “automated people mover” to connect the airport terminals to the city's transit system, a new 18-gate international terminal and major renovations to other terminals — were financed through private activity bonds.

Mark Waier, director of communications for the Los Angeles airport, said PABs would finance about \$5.1 billion of the roughly \$8 billion of spending remaining to complete the project. Losing the tool could add \$500 million just to interest payments on that total, he said.

Waier won't speculate on how the loss of that financing would affect the project, but said it would require either a new source of revenue or a smaller scope of one or more components of the program.

“If this was eliminated, we would need to either identify new sources of revenue or make a reduction to scope that would equate to \$500 to \$550 million out of our capital investment plan,” he said.

### **A tool for transit**

Unlike airport terminals, public transit systems haven't traditionally relied on private financing for expansions, but major projects in recent years included private partners, making private activity bonds an option for funding. Transit agencies that now have access to federal Transportation Infrastructure Finance and Innovation Act, or TIFIA, loans and local payments would be better positioned to work with a private partner.

“It's one more tool in the toolbox,” said Rob Healy, vice president of government affairs for the

American Public Transportation Association.

Denver's \$2.2 billion Eagle public-private partnership project combined a number of development options. The project, which added two new light rail lines and the starting component of a third, got the bulk of its funding through a 2011 \$1.03 billion grant from the Federal Transit Administration.

But its second-biggest source was private activity bonds, which provided \$398 million for the project, according to the Department of Transportation. Other funding and financing sources for the Eagle project include new sales tax revenues, a TIFIA loan, other federal grants and private equity contributions.

### **A furious response**

The House proposal to drop the tax exemption engendered a backlash in part because it contradicted one of Trump's early ideas for an infrastructure package — incentives for private sector involvement.

Private activity bonds have been used for "pretty much every project" that's part of a public-private partnership, said Robert Puentes, president and CEO of the think tank Eno Center for Transportation. So far, PABs have worked well and without much controversy. Taking them away wouldn't serve anyone's interest, he said.

"It doesn't seem to serve any public interest to get rid of it at this point, unless there are some kind of egregious problems," Puentes said. "But it's the opposite that we're seeing."

The near-universal outcry from infrastructure stakeholders that greeted the House proposal on PABs produced some echoes on Capitol Hill.

Senate Commerce, Science and Transportation Chairman John Thune, a South Dakota Republican who served on the conference committee that negotiated the final tax bill, told reporters during negotiations that PABs had fierce support in both chambers, leading to the removal of the House provision.

That account was backed up by a Dec. 13 letter from 39 House Republicans calling for members of the conference committee to protect private activity bonds. The letter nodded at Trump's onetime proclamation that private sector money would be a key part of his infrastructure plan.

"Given the administration's stated priority for increasing investment in infrastructure, we believe the elimination of tax exempt private activity bonds would be a step in the wrong direction toward fulfilling the president's goal," they wrote. "In fact, it will make infrastructure projects more expensive."

But the criticism of private activity bonds in some ways aligns with the critique of public-private partnerships generally. The difference is that Republicans were the critics of the interest exemption on PABs, while Democrats are more likely to criticize proposals that turn public infrastructure assets over to private operators in exchange for investment.

A summary of the original House proposal said PABs were essentially a giveaway to private interests that created an uneven playing field.

"The federal government should not subsidize the borrowing costs of private businesses, allowing them to pay lower interest rates while competitors with similar creditworthiness but that are unable to avail themselves of PABs must pay a higher interest rate on the debt they issue," the summary

said.

The House proposal may also have failed to split some hairs among Republicans who like the bonds for transportation projects, but dislike their use for things such as sports stadiums and housing.

A 2016 Brookings Institution paper said private activity bonds are sometimes used to finance professional sports stadiums, a popular punching bag for those deriding “corporate welfare.”

Small-government conservatives have issues with the use of private activity bonds for housing, which accounts for about 80 percent of the private activity bonds issued, said Marc Scribner, a senior fellow at the libertarian Competitive Enterprise Institute. When used for housing, the bonds can turn into tax breaks for well-connected developers without fixing the fundamental problems driving housing shortages, he said.

But in terms of transportation infrastructure, the bonds encourage private sector involvement, and CEI has supported them for transportation projects, especially highways, he said.

The House bill’s solution to scrap the entire private activity bond function would hurt the ability of the private sector to spend on transportation infrastructure, he said. The system could be improved, but eliminating private activity bonds completely would be a mistake, tantamount to “throwing the baby out with the bath water,” Scribner said.

“If you want to increase the private sector in the provision of public-sector infrastructure, eliminating private activity bonds is a really bad way to do that,” he said.

The measure was “not very well thought out and certainly not thought out in terms of broader goals outside of tax issues,” he said.

**rollcall.com**

by Jacob Fischler

Jan 10, 2018

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## **[Will U.S. Tax Reform Alter The Muni Landscape?](#)**

With a new U.S. tax law now upon us, many investors are questioning what the potential impacts may be on their portfolios – and on their potential investment selections going forward. Rafael Costas and Sheila Amoroso, co-directors of Franklin Templeton Fixed Income Group’s Municipal Bond Department, address the major areas of potential impact the new legislation could have on muni bonds and offer their thoughts around each of these areas.

The recent passage of the US tax reform bill has caused some uncertainty within the municipal bond market. But it’s not necessarily bad news.

### **Supply Impact**

Overall, we feel supply will decline somewhat from the elevated levels we saw in 2017, when many issuers issued debt they were intending to issue in 2018. Concerns about changes in the tax code that could affect certain kinds of bond issues led to the acceleration of those plans into 2017. The

two primary areas of concern were advanced refundings and what are known as private activity bonds. Early versions of the tax bill were targeting the removal of the tax-exemption for each type.

Advanced refunding debt allows issuers to take advantage of refinancing opportunities before a bond's first call date. We would note that advanced refundings lost the tax exemption only on a prospective (going forward) basis; outstanding advanced refundings are "grandfathered."

Private activity bonds usually finance projects that have some component of private activity, but that are deemed to also meet "public needs." While projects like stadia are often quoted as an example of "abuse," the fact is that the majority of these bonds are issued by hospitals, private colleges, airports, housing authorities, and electric utilities that use the proceeds for pollution control equipment, for example.

In the final tax legislation, private activity bonds were left untouched while advanced refunding bonds lost their tax exemption. We believe that, given the current very low interest-rate environment, advanced refunding debt was not going to be a very significant part of the municipal market in the foreseeable future.

### **Demand Impact**

We expect the demand picture for munis to be mixed, given various changes resulting from the new law. On the individual side, we expect increased demand from individuals as the new cap on state and local tax (SALT) deductions could cause them to look at increasing their exposure to tax-advantaged investments, with municipal bonds being a natural choice.

We also don't feel that the lowering of the top marginal individual tax rate to 37% from 39.6% will materially reduce demand from current levels. Over time, demand for municipal bonds tends to be more affected by changes in long-term interest rates than by the level of individual income tax rates.

On the other hand, we could see reduced demand from corporations as a result of the reduction in the corporate tax rate to 21%. However, we note that this investor base represents a much smaller percentage of demand than the individual taxpayer, which should help minimize the impact to overall muni demand.

Finally, although the alternative minimum tax (AMT) for individuals remains, it was modified such that fewer taxpayers are expected to be subject to it. As a result, we could see demand for municipal bonds subject to AMT increase and the difference in yields between AMT and non-AMT munis compress as a result.

### **Credit Impacts**

In our view, the fundamental credit problem facing the state and local government sector is unfunded pension liabilities and other retirement benefits. The new tax law per se did not address this issue, and so we do not expect to see a direct, immediate impact as a result of the new law.

We have not favored this sector for quite a while due to these concerns. The general fund debt sector does not represent a large portion of the overall municipal bond market, giving us a wide variety of other sectors and segments to invest in.

The limitation of SALT deductions and the potential for a reduction in revenue among high-tax jurisdictions may force municipalities to confront their pension issues sooner rather than later by forcing them to be more strategic in balancing budgets. The effects will be analyzed on a case-by-case basis. For example, although California has the potential to be negatively impacted from the



SALT limitation, the funding ratio of its state pensions is much higher than many other states across the nation.

In summary, we think the new tax reforms will be less impactful to the municipal bond market than was expected when the legislation was introduced. The municipal market will continue to be an attractive investment for taxpayers who are looking for an allocation to provide tax-free income to their portfolios.<sup>1</sup>

For further information on additional aspects of tax reform, see Franklin Templeton's prior commentaries, [\*"US Tax Reform: This May not be the End"\*](#) and [\*"The Market Implications of Tax Reform a Bit Unclear."\*](#)

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*This information is intended for U.S. residents only.*

## **What Are the Risks?**

All investments involve risks, including possible loss of principal. Because municipal bonds are sensitive to interest-rate movements, a fund's yield and share price will fluctuate with market conditions. Bond prices generally move in the opposite direction of interest rates. Thus, as prices of bonds in a fund adjust to a rise in interest rates, the fund's share price may decline. To the extent a fund focuses its investments in a single state or territory, it is subject to greater risk of adverse economic and regulatory changes in that state or territory than a geographically diversified fund. Changes in the credit rating of a bond, or in the credit rating or financial strength of a bond's issuer, insurer or guarantor, may affect the bond's value. A fund may invest a significant part of its assets in municipal securities that finance similar types of projects, such as utilities, hospitals, higher education and transportation. A change that affects one project would likely affect all similar projects, thereby increasing market risk. Investments in lower-rated bonds include higher risk of default and loss of principal.

For investors subject to the alternative minimum tax, a small portion of municipal bond fund dividends may be taxable. Distributions of capital gains are generally taxable

Federal and state laws and regulations are complex and subject to change, which can materially impact your results. Always consult your own independent financial professional, attorney or tax advisor for advice regarding your specific goals and individual situation.

## **Footnotes**

For investors subject to the alternative minimum tax, a small portion of municipal bond fund dividends may be taxable. Distributions of capital gains are generally taxable.

## **Franklin Templeton Investments**

*By Rafael Costas, Senior Vice President, Co-Director, Municipal Bond Department & Sheila Amoroso, Senior Vice President, Co-Director Municipal Bond Department*

Jan. 12, 2018

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## **Post-Trade Group Working to Further Shorten U.S. Settlement Cycle.**

NEW YORK (Reuters) – The post-trade processor for U.S. stocks, as well as corporate and municipal bonds, said it is taking steps to further cut the time it takes to settle trades in a bid to reduce risk in the financial system and free up more capital.

The U.S. financial services industry moved to a two-day settlement cycle, which refers to the time an investor's order is executed to when cash and ownership of the security must be exchanged, from three days in September. Three-day settlement had been in place since 1995.

The move reduced capital requirements for financial firms by 25 percent, or \$1.36 billion, in part because it meant trading margins did not need to be held as long, according to the Depository Trust and Clearing Corporation.

Now the DTCC, an industry-owned organization that processes nearly all U.S. securities transactions, plans to cut another full market day of risk from the settlement cycle by settling trades in the morning, pre-market open, instead of later in the afternoon, said Mike McClain, head of equity clearing at the DTCC.

The move, planned for early next year, will not require any changes by industry participants and will again reduce capital requirements for trading firms, McClain said in an interview. He said the DTCC is working on a study to determine the exact amount of savings to the industry.

The idea of shortening the settlement cycle gained steam during the 2007-09 global financial crisis as a way for firms to limit the risk associated with the person or firm on the other side of a trade defaulting.

Currently, traders can choose to have their orders settled in a single day, but it can be difficult to find the other side of a trade that is also seeking faster settlement. Such trades make up less than one percent of the 56 million trades the DTCC processes on an average day.

In an effort to make it easier to match buyers and sellers who want expedited settlement, the DTCC is also in talks with two alternative trading system (ATS) operators about helping to create exchange-like trading venues that would only accept orders for single day settlement, McClain said.

He declined to name the ATS operators because the talks are ongoing, but said at least one of the trading venues could have the changes in place this year.

Reporting by John McCrank; Editing by Susan Thomas

JANUARY 12, 2018

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- [The Tax Cuts and Jobs Act: The Impact on the Municipal Bond Market.](#) \*WEBINAR TOMORROW\*
  - [MSRB Reminds Dealers of Existing Guidance on Filtering of Bids and Offers.](#)
  - [Fitch Credit Outlook Teleconferences.](#)

- [S&P U.S. Public Finance Year In Review.](#)
  - [U.S. Tax Reform: What Will The New Law Do To Municipal Credit Quality?](#)
  - [The Tax Reform Roller Coaster Ends – Summary of Provisions Affecting Public Finance.](#)
  - And finally, Take That, Hippie! is brought to us this week by [State ex rel. Town of Tiverton v. Pelletier](#), in which the Supreme Court of Rhode Island found itself grappling with the definitions of “manufacture” and “compost” in a case where a man was charged with – you guessed it – manufacturing compost. Dude’s argument was that no one can, like, manufacture compost because it’s, like, a natural process, man. He also noted that the statute in question didn’t define “compost” because it’s, like, beyond definition, man. The court suggested “controlled, biological decomposition of selected solid organic waste materials under aerobic conditions resulting in an innocuous final product.” Works for me. You good? Cool.
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## **EMINENT DOMAIN - INDIANA**

### **[Bellwether Properties, LLC v. Duke Energy Indiana, Inc.](#)**

**Supreme Court of Indiana - December 20, 2017 - 87 N.E.3d 462**

Landowner brought action against electrical utility, asserting claim for inverse condemnation based on increase of required clearance around electrical lines, which increase extended clearance requirement beyond size of utility’s easement to maintain such lines on landowner’s property.

Utility filed motion to dismiss, asserting that landowner’s claim was barred by six-year statute of limitations. The Circuit Court granted utility’s motion. Landowner appealed. The Court of Appeals reversed and remanded. Utility sought transfer, which was granted.

The Supreme Court of Indiana held that record did not establish when landowner’s claim for inverse condemnation accrued and, thus, complaint should not have been dismissed for failure to state a claim based on contention that statute of limitations had expired.

Record did not establish when landowner’s claim for inverse condemnation against utility accrued, and, thus, complaint should not have been dismissed for failure to state a claim based on utility’s contention that six-year statute of limitations had expired; while utility argued that claim accrued by operation of law when Utility Regulatory Commission adopted edition of National Electric Safety Code that expanded required safety clearance beyond ten feet allowed by utility easement on landowner’s property, landowner countered that claim did not accrue until Code expanded easement, which occurred only when there was sufficiently high voltage associated with utility’s operation of its electrical lines, and complaint did not state when additional burden beyond what easement authorized first occurred.

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## **PUBLIC CONTRACTS - MARYLAND**

### **[WM. T. Burnett Holding LLC v. Berg Brothers Company](#)**

**Court of Special Appeals of Maryland - December 21, 2017 - A.3d - 2017 WL 6540520**

Property owner brought action against neighbor and city department of housing, seeking declaration that neighbor violated consent agreement with department and, in doing so, terminated scrap metal yard’s status as lawfully non-conforming use.

Following trial, the Circuit Court dismissed property owner’s claims for lack of standing. Property

owner appealed.

The Court of Special Appeals held that property owner lacked standing to enforce terms of consent agreement between neighbor and department.

Property owner lacked standing to enforce terms of consent agreement between neighbor and city department of housing which provided that neighbor would construct wall on boundaries of scrap metal processing yard by certain date; language of consent agreement included references to property owner as interested party, but did not express intention that property owner would be third-party beneficiary of agreement, and department of housing had discretion as local zoning authority to modify terms of consent agreement notwithstanding disapproval of property owner.

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## **SCHOOL FINANCE - MARYLAND**

### **[Monarch Academy Baltimore Campus, Inc. v. Baltimore City Board of School Commissioners](#)**

**Court of Appeals of Maryland - December 18, 2017 - A.3d - 2017 WL 6421282**

Charter schools brought breach-of-contract actions against city school board for board's alleged failure to provide commensurate funding and failure to provide certain financial information as required by contract between charter schools and school board.

After the actions were consolidated, the Circuit Court denied school board's motion to dismiss. School board petitioned for declaratory relief before the State Board of Education and asked the State Board to declare that school board's funding formula complied with statute on charter-school funding. Following State Board's dismissal of the petition, school board filed a counterclaim against charter schools in circuit court as to funding allocated for administrative services. The Circuit Court dismissed school board's counterclaims with prejudice and sua sponte stayed the proceedings pending administrative review by the State Board. Charter schools appealed, and school board again petitioned for declaratory relief before the State Board, which dismissed the petition. The Court of Special Appeals dismissed charter schools' appeal. Charter schools petitioned for a writ of certiorari.

The Court of Appeals held that:

- Stay order was a final and appealable judgment;
- Circuit court abused its discretion by issuing stay order; but
- State Board had primary jurisdiction over the issue of whether school board's allocation to charter schools was commensurate funding; disapproving *Baltimore City Board of School Commissioners v. Koba Institute, Inc.*, 194 Md.App. 400, 5 A.3d 60.

Circuit court's stay order in charter schools' breach-of-contract action, which stayed proceedings pending administrative review by the State Board of Education, had the effect of putting the charter schools entirely out of court with no clear procedural path they could follow to return to court within a reasonable period of time, and thus the stay order was a "final judgment," as required for an appeal; order suspended all claims before the circuit court, order did not specify what, precisely, the charter schools needed to do in order for proceedings to resume, no proceeding was pending before State Board when order was issued, and State Board might have declined to issue a declaratory ruling on issues that did not involve public education laws or Board's own regulations.

Circuit court abused its discretion by issuing sua sponte a stay order in charter schools' breach-o-

-contract actions against city school board over commensurate funding levels, which stayed proceedings pending administrative review by the State Board of Education in lieu of granting school board's motion to dismiss; the sua sponte ruling meant that charter schools had no reason to offer arguments against an immediate stay, as charter schools had done on school board's prior and unsuccessful motion to dismiss before a different judge, and stay order did not clearly state which issues needed to be resolved before the State Board and how the charter schools could have resumed proceedings before the circuit court.

State Board of Education had primary jurisdiction over the issue of whether city school board's proposed per-pupil funding allocation to charter schools was commensurate funding, which underlay charter schools' breach-of-contract actions against school board, and thus it would be appropriate to stay proceedings in the breach-of-contract actions once charter schools obtained the financial and related information in discovery necessary to fairly present the commensurate-funding dispute before the State Board; statutory-interpretation issues as to commensurate funding had not been finally resolved through regulation; disapproving *Baltimore City Board of School Commissioners v. Koba Institute, Inc.*, 194 Md.App. 400, 5 A.3d 60.

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## UTILITIES - NEW YORK

### [Prometheus Realty Corp. v. New York City Water Board](#)

**Court of Appeals of New York - December 19, 2017 - N.E.3d - 2017 WL 6454306 - 2017 N.Y. Slip Op. 08801**

Property owners brought article 78 petition challenging city water board's annual rate increase and its one-time bill credit to certain tax class following mayor's elimination of board's rental payments to city, asserting that board's determinations with respect to rate increase and bill credit were irrational, arbitrary and capricious, and exceeded its authority.

The Supreme Court, New York County, vacated board's resolutions. Defendants appealed. The Supreme Court, Appellate Division, affirmed. Defendants appealed.

The Court of Appeals held that:

- Board's decision to provide credit to some, but not all, customers based on their tax class was not arbitrary or irrational;
- Board's decision to increase rates system-wide while also providing credit to some, but not all, customers was not arbitrary or irrational; and
- Board's system-wide rate increase while also providing credit to some, but not all, customers did not amount to impermissible tax.

City water board's decision to provide \$183 credit to some, but not all, water customers based on their tax class following mayor's elimination of board's rental payments to city was not arbitrary or irrational, where customers who received credit, including single-family households and owners of small apartment buildings, had been excluded for years from previous rate relief programs, and limiting credit to certain tax class served purpose of allocating relatively modest gain from rent forbearance in manner that was meaningful to very large category of customers.

City water board's decision to increase rates system-wide while also providing \$183 credit to some, but not all, water customers based on their tax class following mayor's elimination of board's rental payments to city was not arbitrary or irrational, since board set water rates to maintain revenue

stability over at least five-year forecast, and eliminating one-time credit would not remove need for rate increase, and board was not obligated to set lowest possible rate every year, rather it could balance rate-setting with other needs and goals.

City water board's system-wide rate increase while also providing \$183 credit to some, but not all, water customers based on their tax class following mayor's elimination of board's rental payments to city did not amount to impermissible "tax," since rate increase was tied to board's forecast of cost of furnishing service, such that any rate disparity between classes of customers amounted to decrease in some customers' charges at expense of other customers.

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## **LIABILITY - NEW YORK**

### **[Dibble v. Village of Sleepy Hollow](#)**

**Supreme Court, Appellate Division, Second Department, New York - December 6, 2017 - N.Y.S.3d - 2017 WL 6029696 - 2017 N.Y. Slip Op. 08503**

Driver brought personal injury action against village and other parties after manhole cover exploded underneath driver's vehicle.

The Supreme Court, Westchester County, granted village's motion for summary judgment. Driver appealed.

The Supreme Court, Appellate Division, held that village was not liable for driver's injuries because it did not receive prior written notice of the alleged dangerous condition that caused driver's injuries.

Village was not liable for personal injuries allegedly sustained by driver when manhole cover owned by village exploded underneath driver's vehicle; village did not receive prior written notice of the alleged dangerous condition that caused driver's injuries, and village did not create the alleged condition through an affirmative act of negligence.

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## **EMINENT DOMAIN - NORTH CAROLINA**

### **[Beroth Oil Company v. North Carolina Department of Transportation](#)**

**Court of Appeals of North Carolina - November 21, 2017 - S.E.2d - 2017 WL 5584057**

Landowners brought inverse condemnation action against Department of Transportation for recordation of transportation corridor map affecting their properties.

The Superior Court granted landowners' motion for partial judgment on the pleadings, granted landowners' partial summary judgment, and established rules and procedures by which Department would adhere moving forward. Department appealed.

The Court of Appeals held that:

- Department did not hold substantial right involving title and area taken;
- State waived sovereign immunity;
- Department was judicially estopped from denying that no taking had been admitted; and
- Separation of powers did not justify immediate review of trial court's order.

Department of Transportation did not hold substantial right involving title and area taken in eminent domain proceeding, and thus Department did not carry its burden of demonstrating that order from which it sought to appeal was immediately appealable despite interlocutory nature, since the right was of one who holds an interest in property and not of the condemnor when that condemnor holds no interest.

State waived sovereign immunity to the extent of the rights afforded in statute governing transportation in condemnation action regarding recordation of transportation corridor map, and thus State could not immediately appeal trial order, since General Assembly established statutory framework conferring rights to landowners when State exercised its eminent domain power.

Department of Transportation was judicially estopped from denying that no taking had been admitted following Department's recordation of transportation corridor map, and thus trial order could not be appealed as interlocutory appeal, where Department admitted map recordation placed restrictions on landowners' fundamental property rights, other courts determined that taking occurred based on Department's admission, and Department was attempting to avoid payment of just compensation via technical argument denying taking.

Constitutionally-mandated separation of powers did not provide substantial right justifying immediate review of trial court's order in eminent domain proceeding regarding recordation of transportation corridor map, where taking has been established and statute provided landowners avenue for compensation.

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## **BALLOT INITIATIVES - OREGON**

### **[Wilson v. Rosenblum](#)**

**Supreme Court of Oregon, En Banc - December 14, 2017 - P.3d - 362 Or. 226 - 2017 WL 6379648**

Challengers sought review of the legal sufficiency of Attorney General's certified ballot title for an initiative petition regarding taxes on tobacco products.

The Supreme Court of Oregon held that:

- Ballot title's proposed caption that stated that proposed initiative would "increase cigarette taxes" was legally insufficient;
- Any reference in caption to the amount of proposed increase in the cigarette tax had to be expressed in terms of an amount per pack, not an amount per cigarette;
- Caption and "result of 'yes' vote" statement were not required to state that the measure applied retroactively;
- Proposed initiative would not necessarily increase taxes on cigars;
- Caption and "result of 'yes' vote" statement were not misleading in mentioning only limitations on the uses of revenue from cigarette taxes; and
- Ballot title's summary was not required to state that initiative would reduce revenue for entities that relied on existing cigarette-tax revenue.

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## **ZONING & LAND USE - RHODE ISLAND**



## **State ex rel. Town of Tiverton v. Pelletier**

**Supreme Court of Rhode Island - December 15, 2017 - A.3d - 2017 WL 6395807**

Following bench trial, landowners were convicted in the Superior Court of violating zoning ordinance by manufacturing compost on residential property. Landowners appealed.

The Supreme Court of Rhode Island held that:

- Convictions were supported by sufficient evidence;
- Manufacture of compost was not permitted as “accessory use” under ordinance; and
- Omission of definitions of “manufacturing” and “compost” in ordinance did not render ordinance unconstitutionally vague.

Landowners’ convictions of violating zoning ordinance by manufacturing compost on residential property were supported by sufficient evidence, including uncontradicted evidence that landowners procured truckloads of waste materials to be transported to their property, actively combined these materials with heavy industrial equipment, and produced large quantities of finished compost that were ultimately used off-site.

Manufacture of compost on residential property was not permitted as “accessory use” under zoning ordinance, where ordinance expressly prohibited manufacturing, storing, processing, and fabricating activities.

Omission of definitions of “manufacturing” and “compost” in zoning ordinance prohibiting manufacture of compost on residential property did not render ordinance unconstitutionally vague, since such terms had plain and common sense meanings.

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## **Congress Fumbles Tax Fix to Stadium Subsidies.**

In the midst of an NFL season rife with controversy, Congress has added more fuel to the fire. The final tax reform bill cut a House provision that Americans of all political stripes can agree on: closing the loophole that subsidizes stadium construction. Despite many previous attempts to end this absurd giveaway, real reform has failed once again.

It’s no secret that state and local governments give tax money to professional sports teams, but not many people realize that the federal government — and therefore, every taxpayer — is on the hook, too.

Because interest from municipal bonds is exempt from federal income taxes, the \$13 billion in municipal bond handouts given to stadiums that opened between 2000 and 2016 adds up to \$3.7 billion in federal taxpayer losses. That’s the cost of 39 F-35 Joint Strike Fighters or two Arleigh Burke-class destroyers.

[Continue reading.](#)

**insidesources.com**

by Michael Farren and Anne Philpot

January 03, 2018



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## **The Tax Reform Roller Coaster Ends - Summary of Provisions Affecting Public Finance.**

On December 22, 2017, the President signed the Tax Cuts and Jobs Act (the “Final Bill”) into law, bringing an end to the nearly two-month rollercoaster ride that had the public finance industry white-knuckled and a little green in the face.

At the end of the day, the Final Bill is a far cry from the initial assurances that tax reform “won’t touch tax-exempt bonds.” However, given the rather shocking provisions initially included in the House Bill, the end result could have been a lot worse. The Final Bill ultimately will affect the municipal bond market with some ups and downs as things settle, but hopefully the transition will be more carousel and less roller coaster.

### **Corporate and Individual Tax Rates Reduced**

The most prominent feature of the Final Bill is the reduction of the corporate tax rate from a maximum rate of 35% to a flat rate of 21%. On the individual side, the top tax rate was reduced from 39.6% to 37%, although this reduction expires at the end of 2025. Potentially offsetting this benefit to taxpayers is the change to certain deductions available under current law; most notably the reduction of the mortgage interest deduction from \$1 million to \$750,000 for married filers and the capping of the deduction of state and local taxes at \$10,000. While it may be too early to quantify with any precision how the rate reductions will affect the public finance industry, it is likely that the result will be increased interest rates on tax-exempt bonds due to the decrease in the value of the tax-exemption (especially in the case of corporate bond purchasers).

### **Alternative Minimum Tax (AMT) - Eliminated for Corporations; Exemption Increased for Individuals**

In the past, despite being “tax-exempt,” interest earnings on PABs were treated as an item of tax preference includable in alternative minimum taxable income for purposes of determining the AMT imposed on individuals and corporations. As a result, purchasers of PABs generally demanded higher interest rates than they would for governmental bonds.

The Final Bill significantly changes the AMT in a number of ways. For corporations, the AMT is repealed in its entirety for tax years beginning after December 31, 2017. For individuals, both the AMT exemption amount and the exemption amount phaseout thresholds are increased and indexed for inflation for tax years beginning after December 31, 2017 but before January 1, 2026. With the repeal of the AMT for corporations and the increased exemptions (albeit temporary) for individuals, the typically higher interest rates associated with PABs (compared to non-AMT bonds) may be reduced – however, any benefit from this change in law will likely be tempered by the overall reduction in the tax rates discussed above.

### **Private Activity Bonds Live On (At Least for Now)**

The Final Bill retains all categories of tax-exempt private activity bonds (PABs), which include, among others, bonds issued for projects owned by section 501(c)(3) organizations; low-income multifamily housing developments; single-family mortgage bonds; airports; docks, wharves, and ports; sewage and solid waste facilities; mass commuting facilities and facilities for the furnishing of water. While there had been last minute rumors that the price of retaining PABs might be the elimination of an issuer’s ability to carry forward PAB volume cap, no such provision was included in

the Final Bill. This is particularly good news for projects reliant on the coordination of multiple sources of financing – such as affordable housing developments – where the carry forward of volume cap is more common.

The lower corporate tax rate (discussed above) enacted under the Final Bill will decrease the value of tax-exempt interest to corporate investors, which will likely negatively affect issuers in the pricing of tax-exempt bonds. Potentially offsetting this bad news for PABs, however, is the repeal of the corporate AMT (also discussed above), which some have predicted will decrease the interest rate spread between governmental bonds and PABs.

Despite the favorable result for PABs in the Final Bill, now is not the time to rest easy. After the passage of the Final Bill, members of Congress have continued to question whether the scope of projects financeable by PABs should be reduced to include only projects that are related to “national infrastructure,” the intended scope of which is unclear. With the promise that infrastructure is the next big ticket item on the agenda, PABs may be in line for another roller coaster ride. Thus, those interested in the continued existence of PABs should continue to extol their benefits to decision-makers in Washington.

### **Advance Refundings Eliminated**

The Final Bill eliminates the ability of governmental issuers and issuers of qualified 501(c)(3) bonds to benefit from issuing advance refunding bonds (i.e. bonds issued more than 90 days before the redemption of the refunded bonds) on a tax-exempt basis. Unfortunately, the Final Bill does not reflect the robust efforts to lobby Congress to include transition rules. As a result, as of January 1, 2018, issuers are unable to issue tax-exempt advance refunding bonds.

The elimination of advance refundings significantly limits the flexibility of issuers and borrowers to lock-in debt service savings, restructure debt service, or to achieve relief from unfavorable financing terms. We anticipate that players in the municipal bond market will develop alternative synthetic financing arrangements to mimic the economics of an advance refundings. However, these alternative arrangements likely will not be as efficient for issuers as a simple advance refunding would have been.

### **Professional Stadium Financings Continue to Play Ball**

The Final Bill retains the ability to issue tax-exempt bonds for facilities to be used as stadiums or arenas for professional sports, which is undoubtedly welcome news for those involved in projects across the country that are in the works. Despite the favorable treatment in the Final Bill, however, it is worth noting that both Democrats and Republican legislators have questioned whether professional sports stadiums should be financeable with tax-exempt bonds. This apparent bipartisan support may cause some governmental issuers with potential stadium financings in the pipeline to accelerate the projects in order to ensure that bonds are issued before any future legislation eliminates this ability.

### **Tax Credit Bonds Eliminated**

The Final Bill eliminates future issuances of “qualified tax credit bonds,” including qualified school construction bonds, qualified zone academy bonds, and qualified energy conservation bonds, among others. Although interest on tax credit bonds is not tax-exempt, these types of bonds have nevertheless allowed issuers to achieve a lower cost of capital on infrastructure projects by entitling the holder to a federal tax credit or, in certain cases, the issuer to receive a subsidy payment directly from the federal government. Mitigating this otherwise negative aspect of the Final Bill is the fact

that many of these projects can still be financed on a tax-exempt basis with governmental bonds and/or PABs.

While no new tax credit bonds can be issued after December 31, 2017, holders and issuers of tax credit bonds issued before 2018 will continue to be eligible to receive the federal tax credit or federal subsidy payment, as applicable.

### **Low-income Housing Tax Credit (LIHTC) Intact**

The affordable housing industry need not worry about how to pronounce “AHTC” (i.e. the “affordable housing tax credit”), as no changes – including name changes – were made to the provisions in the Code relating to the LIHTC. Had provisions eliminating PABs been passed, it would have been a severe blow to what are known as “4% tax credits,” as they are required to be coupled with PABs issued for qualified residential rental housing. With PABs safe, affordable housing developers can rest assured that the 4% tax credits will live to see another syndication. However, the reduction in the corporate tax rate (discussed above), as well as the ability to only partially offset the new “base erosion and anti-abuse tax” with the LIHTC, will likely affect the value of the LIHTC to tax credit investors, in turn affecting the feasibility of certain projects.

### **Mortgage Credit Certificates (MCCs) Preserved**

In another win for affordable housing, the Final Bill retains MCCs, which allow qualifying homebuyers to claim a tax credit for a portion of the mortgage interest paid during a tax year, making home ownership more affordable for first time homebuyers of low and moderate incomes. Issuers that receive volume cap for single-family mortgage bonds can “trade in” volume cap for the ability to issue MCCs, allowing these issuers to provide an array of products to assist first-time homebuyers depending on the homebuyers’ needs and preferences.

### **PAYGO Problem Solved**

[As we previously reported](#), there was a concern that due to the projected estimated increase in the federal deficit caused by the Final Bill, the provisions of the “Pay-As-You-Go Act of 2010” (the “PAYGO Act”) would result in the “zeroing out” (i.e., a 100% reduction) in subsidy payments paid to issuers of tax credit bonds (including build America bonds, qualified school construction bonds, qualified zone academy bonds and qualified energy conservation bonds, among others). Despite initial threats by Democrats to withhold support for waiving the PAYGO Act, a short-term funding bill was eventually passed with enough votes to avoid the mandatory sequestration. As a result, issuers of direct pay tax credit bonds will continue to receive the associated federal subsidy payments, albeit in an amount reduced under the sequestration imposed by the Budget Control Act of 2011.

### **So, Now What?**

It is unlikely that the signing of the Final Bill will be the end of the ride. In fact, as was the case in 1986, there may very well be one or more pieces of legislation in the future that include technical corrections to address any unintended consequences of the Final Bill. It remains to be seen whether any of these corrections will relate to public finance (including whether the scope of projects financeable with tax-exempt PABs will be narrowed). In addition, the President’s long-awaited infrastructure plan could include various features that would incentivize public finance and public-private partnerships in new ways.

### **Bracewell LLP**

by Victoria N. Ozimek and Brian P. Teaff

USA January 3 2018

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## **Yearend Sales Boost 2017 U.S. Muni Bond Supply to \$410 bln.**

CHICAGO, Jan 2 (Reuters) – U.S. states, cities, schools and other issuers sold \$410 billion of debt in 2017, with 14.5 percent of the total hitting the municipal market in December ahead of federal tax changes, according to Thomson Reuters data on Tuesday.

The supply, which was 3.2 percent lower than in 2016, got a last-minute boost from issuers racing to the market in late November and in December to sell certain types of tax-exempt bonds at risk in federal tax legislation signed into law on Dec. 22 by President Donald Trump.

December's \$59.56 billion of long-term debt was a monthly record for the \$3.8 trillion market, beating the \$57 billion sold in December 1985 ahead of 1986 federal tax changes, Thomson Reuters data showed.

Bank of America Merrill Lynch was the top underwriter of municipal bonds last year with nearly \$63.2 billion in 547 deals. Citigroup followed with \$46.67 billion 518 deals.

California was 2017's biggest issuer with \$8.87 billion of debt sold, followed by New York State Dormitory Authority with \$7.43 billion, and New York City Transitional Finance Authority with \$6.5 billion. Illinois ranked fourth with \$6.25 billion. The state sold \$6 billion of general obligation bonds in October to raise money to shrink its enormous pile of unpaid bills from vendors and service providers.

(Reporting by Karen Pierog; Editing by Tom Brown and Richard Chang)

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## **Eckert Seamans Hires Municipal Bond Pros From Dissolving Rhoads & Sinon.**

***Rhoads & Sinon's public finance group has found a new home one floor down.***

The public finance group at rapidly-disintegrating Rhoads & Sinon has found a landing place in the Harrisburg office of Eckert Seamans Cherin & Mellott.

The four partners, an associate and two administrative assistants are set to join Pittsburgh-based Eckert Seamans on Jan. 8, the firm announced Wednesday.

Rhoads & Sinon's office was one floor above Eckert Seamans' office in the M&T Bank Building in Harrisburg, and the two firms' municipal finance practices have worked together often over the years, said Harold Balk, Eckert Seamans' chief development officer. With Rhoads & Sinon in the process of dissolving, Eckert Seamans saw an opportunity for them to combine.

"We've been interested in that group for quite some time," Balk said. "They bring different relationships to the firm, and they bring a local presence that adds to what we already have in Harrisburg."

The partners are Jens Damgaard, Jonathan Cox, Benjamin Ried and David Twaddell. Damgaard and Ried work with school districts and municipalities on tax-free bonds and other financing arrangements. Cox and Twaddell both serve as bond counsel and bank counsel for clients including school districts, hospitals and nonprofit entities.

The group ranks among the top municipal finance practices in Harrisburg, Balk said, and the new lawyers are expected to bring all of their clients with them.

“There were very few deals that Rhoads & Sinon wasn’t involved in,” he said.

Balk said the new lawyers will also be complementary to the employment practice in the Harrisburg office, which has more than 30 lawyers, as well as the office’s work with public sector clients. As a whole, Eckert Seamans has more than 355 lawyers in 15 offices.

Others from Rhoads & Sinon have landed at Barley Snyder, where a group of 10 lawyers is starting a Harrisburg office for that firm in Rhoads & Sinon’s former office space, and Stevens & Lee, which hired the firm’s three-lawyer banking practice.

LAW.COM

By Lizzy McLellan | Jan 03, 2018

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## **[Seven Key Changes the New Tax Law will Force Hospitals to Consider.](#)**

The end of the year is always a busy time for healthcare finance and tax professionals. But with the Dec. 20 passage of the Tax Cuts and Jobs Act—details of which were unveiled only several days earlier—it’s crazy busy.

Tax professionals are scrambling to understand the complex, often-confusing provisions of the hastily written law while trying to do tax planning for hospitals, medical groups and other healthcare clients. The law’s generous new break for pass-through entities is a particular head-scratcher.

“My former associates are working 16-hour days to understand the change and roll it out into their tax-planning scenario,” said Tina Hogeman, chief financial officer of the Medical Group Management Association. “I’m glad I’m not doing taxes this year.”

Not-for-profit hospital systems will have to grapple with a number of changes that make their tax-exempt status less advantageous, including new provisions on unrelated business taxable income and executive compensation.

In addition, borrowing rates on tax-exempt municipal bonds may rise because the new law’s big corporate tax cut may make tax-exempt interest income less attractive to institutional investors, said Richard Gundling, senior vice president of the Healthcare Financial Management Association.

“In the past, you’ve heard for-profit hospital companies complain they’re not on equal footing with tax-exempt hospitals,” said Monica Coakley, national tax leader for healthcare at KPMG. “This law in some respects turns the tables.”

But there is pain for for-profits, too. Hospital companies carrying significant debt will have less ability to deduct interest on that debt from their taxable income. They had hoped to preserve the

more generous deductions for existing debt, but lost that lobbying battle.

Moreover, because President Donald Trump signed the bill in December rather than waiting until after Jan. 1, publicly traded hospital companies will have to adjust their 2017 financial statements due to the sharp reduction in the corporate tax rate, dropping from 35% to 21%, and other changes in the tax law.

Like workers everywhere, employees of healthcare companies are likely to inundate human resources offices with questions when they receive their first paychecks in January about why they aren't seeing bigger net earnings resulting from the new law's tax cuts for individuals. But the HR offices will have to wait for the IRS to develop the new payroll tax withholding tables and issue guidance to employers.

Here are seven key takeaways about major considerations for hospitals in the new tax law, from an interview with KPMG's Coakley.

1. Tax-exempt hospitals no longer will be able to offset income from unrelated business activities such as cafeteria earnings with losses from other unrelated business activities. They may want to consider spinning off some entities as separate taxable corporations. That, however, could draw increased scrutiny from state and local officials who might question whether the hospital is still functioning as not-for-profit charitable organization and deserves tax-exempt status.
2. Tax-exempt hospital systems will be liable for a new 21% excise tax on compensation exceeding \$1 million paid to its five highest-paid employees. Some large systems with multiple tax-exempt legal entities could have to pay the tax on the highest-paid employees in each entity, totaling more than five across the entire organization. They may want to consider revising their legal entity structure to reduce the number of their tax-exempt entities subject to excise tax law.
3. The new excise tax on high-earning employees does not apply to compensation for the direct provision of medical services. Some physicians receiving compensation over \$1 million are paid for both management and medical provider roles. Not-for-profit hospitals will need to break out how much of the compensation is for medical services versus management in order to reduce or avoid paying the excise tax.
4. All hospital systems now have more limited ability to deduct False Claims Act settlements, which are common in healthcare. For a portion to be deductible, hospital attorneys have to write that specification into any settlements or court orders.
5. For-profit healthcare corporations' ability to deduct interest payments would be capped at 30% of adjusted taxable income starting in 2018. Existing debt is not grandfathered under the previous, more generous deduction rules, as the for-profit sector had requested. So companies may need to consider whether to take action to reduce their existing debt load.
6. Publicly traded hospital companies will have to take the tax law changes into account for their 2017 financial statements for changes such as a reduced value of deferred tax assets, such as net operating losses. That's due to the lower corporate tax rate going forward. The Securities and Exchange Commission recently said companies can make reasonable estimates in their statements of the impact of the new tax law, and will be given additional time to come up with final numbers.
7. Because the new law repeals the tax penalty for Americans who do not obtain health insurance, it's projected that millions more people will be uninsured, leading to an increase in uncompensated care. Hospitals may want to consider tightening their financial assistance policies to limit or exclude assistance for patients who qualify for subsidized Affordable Care Act, Medicaid or other coverage but choose to forgo it.

"Health systems prepared their financial assistance policies based on the understanding that most people who qualify for (subsidized) insurance would be obtaining it," Coakley said. "Now with the

mandate penalty being repealed, they may want to revisit those policies and trim back assistance.”

## **Modern Healthcare**

By Harris Meyer | January 2, 2018

*Harris Meyer is a senior reporter providing news and analysis on a broad range of healthcare topics. He served as managing editor of Modern Healthcare from 2013 to 2015. His more than three decades of journalism experience includes freelance reporting for Health Affairs, Kaiser Health News and other publications; law editor at the Daily Business Review in Miami; staff writer at the New Times alternative weekly in Fort Lauderdale, Fla.; senior writer at Hospitals & Health Networks; national correspondent at American Medical News; and health unit researcher at WMAQ-TV News in Chicago. A graduate of Northwestern University, Meyer won the 2000 Gerald Loeb Award for Distinguished Business and Financial Journalism.*

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## **Public Bank Movement Gains Ground in Cities and States across the US.**

A growing number of cities across the US are considering launching city-owned “public banks,” reports Deonna Anderson in Next City. Among these are Portland, Oregon; Seattle, Washington; Los Angeles, San Francisco, and Oakland, California; Philadelphia, Pennsylvania; Santa Fe, New Mexico; and Washington, DC. Nationally, the [Public Banking Institute](#), an advocacy nonprofit, has been supporting these and many other campaigns.

At the state level, Anderson notes that in New Jersey, the governor-elect “expressed interest in establishing a state public bank during his campaign.” Governor-Elect Phil Murphy’s endorsement of the concept of a public bank may be a watershed of sorts. Murphy spent 23 years at Goldman Sachs, so he knows a thing or two about finance.

Actually, Murphy’s rationale for supporting a public bank in New Jersey has a lot to do with what he learned on Wall Street. According to Katherine Landergan of Politico, on the campaign trail, Murphy noted that,

When New Jersey collects taxes or fees, it currently deposits those funds in private banks—spreading the state’s money across American and international institutions. Those banks, in turn, charge fees ... and they use the capital from New Jersey’s deposits to provide loans or finance projects.

“They’re not being obligated to come back and do anything in New Jersey, and they don’t.”

[Continue reading.](#)

## **NPQ**

By STEVE DUBB | January 2, 2018



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## **MSRB Reminds Dealers of Existing Guidance on Filtering of Bids and Offers.**

Washington, DC – In light of [developments in the use of alternative trading systems \(ATSs\) and the role of broker's brokers in the municipal securities market](#), the Municipal Securities Rulemaking Board (MSRB) today reminded municipal securities dealers about their regulatory responsibilities related to filtering out bids on an ATS and offers from certain dealers when they transact municipal securities. The MSRB recognizes that the practice of filtering, which may also occur when a selling dealer directs a broker's broker to limit the audience for a bid-wanted, may serve a legitimate purpose. However, as the [MSRB noted in a recent letter to the Securities and Exchange Commission's Investor Advocate](#), in some cases the practice of filtering could have a negative impact on retail investors, free competition and market efficiency.

"In support of our mission to protect investors, the MSRB monitors market practices such as filtering that may have an adverse impact on retail investors," said MSRB Executive Director Lynnette Kelly. "Certain credit, legal, regulatory and other legitimate issues can justify filtering by dealers. But since the practice has the potential to negatively affect prices received by retail investors, we think it's important to remind dealers of their regulatory obligations."

Today's regulatory reminder is intended to serve as a compliance resource to assist dealers in assessing their policies and procedures governing when and how to use, review and change filters to ensure compliance with existing regulatory obligations. This reminder does not create new legal or regulatory requirements, but rather summarizes existing guidance for dealers issued in 2012 on [MSRB Rule G-43](#), on broker's brokers, and [MSRB Rule G-30](#), on prices and commissions, as well as implementation guidance provided in 2015 about [MSRB Rule G-18](#), on best execution, that addressed filtering.

"Dealers have had almost two years to implement and comply with the best-execution rule, which has been an examination priority for enforcement agencies," Kelly said. "Given the developments in the use of ATSs, it makes sense to remind dealers of the guidance about the appropriate use of filters to help support their compliance with the best-ex rule."

[Read the regulatory reminder.](#)

Date: January 3, 2018

Contact: Jennifer A. Galloway, Chief Communications Officer  
202-838-1500  
[jgalloway@msrb.org](mailto:jgalloway@msrb.org)

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## **TAX - MAINE**

### **Town of Eddington v. Maine**

**Supreme Judicial Court of Maine - December 7, 2017 - A.3d - 2017 WL 6045048 - 2017 ME 225**

Electric power distributor submitted applications for tax abatement to the municipal officers of two towns for payment of property taxes on property that distributor did not own.

Both applications for the abatement were denied. Distributor appealed to the Board of Property Tax



Review, which granted distributor's abatement requests. Towns petitioned for review.

The Superior Court affirmed the Board's decisions, and towns appealed.

The Supreme Judicial Court of Maine held that distributor's error in including a transmission line it did not own as property subject to property tax to two towns was an error in assessment, not in valuation, and thus abatement claim filed by distributor to two towns for property tax abatement was not subject to a 185 day deadline; evidence showed that towns taxed line in question twice, once from distributor and once from line's proper owner.

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## **TAX - OHIO**

### **[Columbus City Schools Board of Education v. Franklin County Board of Revision](#)**

**Supreme Court of Ohio - December 7, 2017 - N.E.3d - 2017 WL 6048024 - 2017 -Ohio- 8844**

City schools board of education challenged county board of revision's reduction of county auditor's real-property valuation.

The Board of Tax Appeals reduced the valuation for two additional tax years. Board of education appealed.

The Supreme Court of Ohio held that property owner failed to carry its burden of establishing that person who filed valuation complaint was authorized by statute to do so, as required to establish jurisdiction.

Property owner, a limited liability company (LLC), failed to carry its burden of establishing that person who filed real-estate-valuation complaint on owner's behalf was authorized by statute to do so, as required to establish jurisdiction; after board of education challenged jurisdictional sufficiency of complaint, owner failed to respond, and also failed to respond to board's discovery requests.

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## **TAX - RHODE ISLAND**

### **[Lehigh Cement Co. v. Quinn](#)**

**Supreme Court of Rhode Island - December 13, 2017 - A.3d - 2017 WL 6347976**

Taxpayer brought action for money damages against city, alleging that taxpayer leased 3.65 acres of land, that city taxed taxpayer on 16.8 acres of land, and that taxpayer paid nearly \$500,000 in taxes attributable to property it neither owned nor leased, and seeking refund of such allegedly illegal or erroneous assessments.

The Superior Court granted city's motion for summary judgment. Taxpayer appealed.

The Supreme Court of Rhode Island held that:

- The plain reading of the statute permitting municipalities to assess back taxes on real estate is that the statute provides municipalities with a six-year look-back period in which to assess or reassess real estate that may have escaped taxation, and that the statute does not provide a taxpayer with relief from allegedly erroneous or illegal assessments;

- Fair-distribution clause of Rhode Island Constitution did not entitle taxpayer to refund of allegedly erroneous or illegal real estate taxes assessed by city; and
- Taxpayer's reliance on city's "representations" that taxpayer would receive credit or refund was not reasonable, and thus such representations were not sufficient to toll three-month limitations period for taxpayer to file suit in equity directly in Superior Court.

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## **[The Biggest Issues for States to Watch in 2018.](#)**

***Even though it's an election year, these policies and problems are too important and timely for legislatures to ignore.***

Nothing big happens in election years. At least, that's the conventional wisdom on legislative action in many state capitols.

And in a year when 36 states will choose governors and 44 will elect state lawmakers, that feeling is understandable. Political paralysis in Congress is also keeping many states in a holding pattern, as their officials try to judge how best to react to potential changes from Washington.

But many state issues are simply too important or too timely to wait. Here are a few that will likely draw a lot of attention this year.

[Continue reading.](#)

GOVERNING.COM

BY NEWS STAFF | JANUARY 2018

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## **[Janney Municipal Comment: Tax Reform's Cost to Municipal Issuers.](#)**

[Read the Comment.](#)

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## **[Hatch Retirement Could Help Muni Market in 2019.](#)**

WASHINGTON - The outlook for the tax treatment of the municipal bond market could be brighter in 2019 when Senate Finance Committee will have a new chairman.

That's because one of the leading candidates for the position is Sen. Mike Crapo, R-Idaho, who "the bond community would welcome," said Chuck Samuels, a member of Mintz Levin who is counsel to the National Association of Health & Educational Facilities Finance Authorities.

"Crapo has been a stalwart supporter of municipal bonds both for private activity bonds and a supporter of liberalizing ... bank qualified" bonds, Samuels told The Bond Buyer Wednesday.

Bank-qualified bonds were created by the Tax Reform Act of 1986 to encourage banks to buy tax-exempt bonds from smaller, less frequent issuers. Banks can buy these bonds from governments that reasonably expect to issue a total of \$10 million or less of bonds in a calendar year and deduct a

portion of the interest cost of carrying the bonds.

The annual limit was raised to \$30 million from \$10 million during 2009 and 2010 under the American Recovery and Reinvestment Act of 2009.

Bob Labes, a partner at Squire Patton Boggs in Cleveland, said Crapo has a record of supporting legislation to strengthen municipal bonds.

The Senate Finance Committee's current chairman, Sen. Orrin Hatch, R-Utah, announced Tuesday that he will not seek re-election next November. Hatch is expected to remain chairman for the remainder of his term, which ends in January 2019.

Hatch led the successful Senate effort last year to preserve the tax exemption for private activity bonds in the new tax reform law.

Democrats could regain majority control in the Senate in the November election, which would enable the committee's ranking Democrat, Sen. Ron Wyden of Oregon, to regain the chairmanship he previously held.

The municipal bond community also would be comfortable with Wyden as chairman, Samuels said, adding. "I don't think he will give anybody a free pass. He and his staff want an understanding of why things are the way they are and how they may be changed."

Crapo, 66, is serving his sixth term in the Senate and currently serves as chairman of the Senate Banking, Housing and Urban Affairs Committee.

Seven-term Sen. Charles Grassley, 84, has more seniority on the Senate Finance Committee than Crapo, but the Iowa Republican could choose to remain as chairman of the Judiciary Committee. In that role earlier this year, he oversaw the nomination and confirmation of Neil Gorsuch to be an associate justice of the Supreme Court of the United States as well as 12 federal appeals court justices.

Micah Green, a partner at Steptoe & Johnson, gave Crapo and Grassley similar ratings on their support for the muni market. "I don't look at them as, by definition, opposed to the municipal marketplace," he said. "In the end the Senate in the showed great support for private activity bonds and I think Crapo and Grassley were both supportive these."

Crapo, for his part, 'is not speculating on any transitions as this time as there are many factors that affect all this, not the least of which is which party controls the Senate," his spokesman Robert Sumner said in an email.

If Grassley should choose to take the top spot on the Finance Committee, he would only have two years remaining in the six-year term limit Senate Republicans has set for committee chairmen.

"Grassley has done it already and the question is, how does he balance it out with the judiciary process," said Green. "There will be a new senior Republican on the committee who, unless something changes, will be chair."

Labes said Grassley has supported legislation to expand the use of student loan bonds.

"Grassley was a very active chairman during the time he was chairman," said Howard Gleckman, a senior fellow in the Tax Policy Center. "He maintained to some degree a sense of bipartisanship but that began to change even while he was there."

Grassley's record on municipal bond issues is mixed, according to Samuels. Although Grassley "has many concerns and skepticisms about municipal bonds, he also is a strong protector" of Iowa's small rural hospitals and small private colleges, he said.

By Brian Tumulty

BY SOURCEMEDIA | MUNICIPAL | 01/03/18 07:03 PM EST

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## **2018 Outlook: More Tax Legislation and Possible Supreme Court Ruling.**

WASHINGTON - Republicans in Congress expect the wide-ranging tax overhaul law just enacted will be followed by more tax legislation in 2018 that includes extensions for expired tax provisions such as one that would extend qualified zone academy bonds through 2017 and an excise tax on imported rum that benefits Puerto Rico and the Virgin Islands.

Senate Finance Committee Chairman Orrin Hatch, R-Utah, introduced the tax extenders bill the day after the Senate approved tax reform legislation.

The Senate extenders bill would continue for 24 months more than a dozen tax breaks that expired at the end of 2016, including a rum cover-over excise tax that produces revenue for Puerto Rico and the U.S. Virgin Islands to pay for local government operations. The QZAB extension only goes through 2017 because the new tax law terminates tax credit bonds after Dec. 31. Other extenders are energy-related, including a nuclear energy production tax credit.

Congress also will need to enact a technical corrections bill in the coming months to fix drafting errors and loopholes in the new tax law.

"It is inconceivable that Congress will not have to act early in the year on a technical reform bill," said Frank Shafroth, director of the Center for State and Local Leadership at George Mason University.

Shafroth said the "cataclysmic rush" to enact the legislation bore not even a remote comparison to the outreach and deliberations over the last tax reform bill in 1986.

"Because the legislation will have such a significant impact on increasing the federal deficit and debt, it seems certain that interest rates will rise, thereby increasing the cost of debt issuance for not just state and local governments but also for schools and universities," Shafroth said.

Meanwhile, the U.S. Supreme Court is expected to decide soon whether to consider a case involving South Dakota that would have nationwide impact on the ability of state and local governments to collect sale taxes on Internet purchases.

In addition, Congress may consider reforming the Internal Revenue Service to make it more customer friendly, according to House Ways and Means Committee Chairman Kevin Brady, R-Texas.

"My sense is that there could be broad bipartisan support for restructuring the IRS," Brady told reporters on Dec. 18.

Brady said the tax bill left out provisions that were dropped at the last minute because of the Senate's parliamentary Byrd rule as well as other proposals. Under that rule the Senate cannot

include non-germane provisions without revenue implications via the reconciliation process or measures that would add to the federal deficit after the 10th year.

"This is not our last tax reform," Brady said. "I'm going to recommend that we do have some form of tax reconciliation in future budgets because there are still areas of the tax code I think and we think can be improved whether it's retirement savings, education, streamlining and we had a number of good ideas from our members we weren't able to accommodate."

Further tax legislation could provide an opening for municipal bond market issuers who think Congress left them in the lurch by not giving them a transition period before the termination of advance refundings and tax credit bonds.

Congress also will get pushback in 2018 from state and local governments on its controversial decision to limit to \$10,000 per household the federal deduction for property and income or sales state and local taxes.

"Cities will continue to fight to fully restore SALT and the exemption for advance refunding bonds," said National League of Cities President Mark Stodola, mayor of Little Rock, Ark.

U.S. Conference of Mayors President Mitch Landrieu, the mayor of New Orleans, described the tax legislation as "a full-fledged assault on cities and the families who live in them."

"This bill will make our cities harder to live in and harder to run effectively -- all for the benefit of wealthy political donors," Landrieu said.

Because Congress repealed the individual mandate requiring taxpayers to purchase health insurance, "Republican and Democratic mayors, not Washington politicians, will contend with emergency rooms filling up with the sick and the uninsured," Landrieu said.

But repeal of the health insurance mandate won't expire until the end of 2018.

The impact of the repeal could be partially offset before then if Congress enacts legislation to establish high-risk insurance pools at the state level and renews federal subsidies for low-income people to purchase health insurance. Republican lawmakers such as Sens. Susan Collins of Maine and Lamar Alexander of Tennessee are hoping Congress will enact bipartisan legislation with those fixes in 2018.

Congress, however, is expected to continue resist calls by state and local governments to enable to them to collect sales tax on Internet purchases.

The obstacle has been House Judiciary Committee Chairman Robert Goodlatte, R-Va., who has refused to consider legislation on Internet sales taxes authored by Rep. Kristi Noem, R-S.D.

Goodlatte has announced he won't run for re-election in 2018, but relief could come sooner from the Supreme Court.

South Dakota Attorney General Marty Jackley announced Dec. 21 that the state filed its final reply in its request for consideration by the high court.

"Based upon the significant impact this issue has on every Main Street business, it remains my hope that our highest court will let us be heard," Jackley said. "We have received extraordinary support from the State Attorneys General, the National Governors Association, educational leaders, and the business community in the national fight to bring tax fairness for our local retailers and to help

support main street businesses.”

South Dakota is hoping the Supreme Court will decide whether to take the case by the end of January, setting up the possibility of a ruling by the end of the court’s term in late June.

The case is widely viewed as an opportunity for the Supreme Court to take into account technological advances since its 1992 ruling in *Quill Corp. v. North Dakota*, that sales tax collections for online sales can only be required if a retailer has a physical presence or “nexus” in a state.

South Dakota has no state income tax and is more reliant on sales taxes for its budget than most states.

A 2016 South Dakota law requires out-of-state retailers to collect and remit the sales tax similar to in-state retailers if the remote sellers have more than \$100,000 in sales or complete more than 200 sales transactions per year within South Dakota.

After the law was enacted, the state contacted large remote retailers asking them to comply. The state then sued three that refused, resulting in the lawsuit, *State of South Dakota v. Wayfair (W)*, *Overstock* and *Newegg*. South Dakota’s highest court overturned the law, setting the stage for the appeal.

States and local governments lost an estimated \$26 billion in potential sales tax revenue in 2015 because of online retail sales, according to the National Conference of State Legislatures and the International Council of Shopping Centers.

“I think the legislation, the way it is written, is actually a great opportunity for states and localities to address the collection of sales tax,” said Emily Brock, director of the Federal Liaison Center for the Government Finance Officer Association.

While online merchandise sales have exploded, much of the sales tax is uncollectible, Brock said. “Local tax systems address local needs and so does the imposition of a sales tax,” she said. “It’s utilized effectively across the country.”

By Brian Tumulty

BY SOURCEMEDIA | MUNICIPAL | 12/29/17 07:08 PM EST

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## **[Wildfires Burn Through Property Taxes Securing Calif. County Bonds.](#)**

WASHINGTON — The property taxes securing 40 Sonoma County, Calif., bond issues face an estimated shortfall of \$2.4 million because of the October California wildfires.

That estimate was recently released by Erick Roeser, auditor-controller-treasurer-tax collector for Sonoma County.

The 40 bond issues financed projects for two community colleges and various school districts that were hit by the Sonoma Complex wildfires.

Brooke Koop, Sonoma’s property tax manager, said all the issuers have sufficient reserves to make debt service payments through June 30, the end of their fiscal years.

Koop said tax adjustments will be made in the next fiscal year if they are needed to cover future shortfalls. "We project out for 18 to 24 months to ensure we have sufficient reserves," she said.

Gov. Jerry Brown is expected to propose the state backfill, or make up, any disaster-related property tax shortfalls when he releases his new state budget on Wednesday.

Roeser also estimated Sonoma's Proposition 13 property tax revenues will decline \$16.1 million from what they would have been during the current fiscal year.

The Sonoma County Office of Education recently posted a material event notice on the Municipal Securities Rulemaking Board's EMMA system that updated estimated revenues for every county school district based on Roeser's memo.

Federal disaster declarations were made for Butte, Lake, Mendocino, Napa, Nevada, Orange, Sonoma and Yuba counties in California as a result of the October wildfires.

"Approximately 5,300 parcels experienced some degree of fire damage, which will have an adverse impact on property tax revenues that support a wide range of services for citizens and visitors in Sonoma County," Roeser wrote in his Dec. 6 memo to Prop. 13 and ad valorem taxing agencies.

The memo described the estimated revenue losses as "preliminary" and based on a reassessment of 4,144 parcels that represented 78% of the damaged properties for the last nine months of the fiscal year.

The reassessments will stay in effect until the property is rebuilt or sold to another owner.

Roeser told The Bond Buyer in an interview that the Prop 13 revenue losses were smaller than an original estimate of about \$30 million.

"When you break it down on an agency by agency basis it turns out to be about 1.9% of what agencies expected to receive in the current year," Roeser said. "So when you put it in those terms it turns out not as significant as we thought it could be."

Even so, Roeser emphasized that the losses have been "absolutely devastating in California."

Because Prop. 13 puts a cap on property assessments, homes are not taxed at their full value. "The impact to property tax revenue is not necessarily representative of market value loss," Roeser said.

More recently the Thomas wildfire struck Ventura County and the Creek and Rye fires centered in Los Angeles County.

"At 281,893 acres (440 square miles), the Thomas Fire is the largest wildfire in California history," Ventura County spokesman Bill Nash said in an email. "It started at about 6:30 p.m. on December 4, 2017 and continues to burn. It is now 92% contained. The fire destroyed 1,063 structures, many of them homes. There have been two fatalities, one civilian, one firefighter."

Santa Barbara County spokeswoman Gina DePinto said there has been less damage from the Thomas fire in her county. "Our initial estimates are 52 residences damaged or destroyed," she said. "It's too early for us to know about property tax loss."

Roeser said he will be meeting with state officials in Sacramento on Jan. 10 about his county's request for state funding to make up the difference in lost property tax revenues.

California has covered lost property tax revenue in the past for federally declared disasters, most recently for Lake County following the 2015 Valley Fire.

By Brian Tumulty

BY SOURCEMEDIA | MUNICIPAL | 01/05/18 07:06 PM EST

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### **S&P U.S. Public Finance Year In Review.**

As we reflect on the key credit events of 2017, we think it will likely go down as one of the most significant years in the municipal market. Despite the mature economic recovery, credit pressures were evident across many sectors and the outlooks identified a range of risks that we felt could affect credit for the year.

[Continue Reading](#)

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### **U.S. Tax Reform: What Will The New Law Do To Municipal Credit Quality?**

The tax bill adopted this week in Congress has significant implications for the municipal market, although the final bill looked rather different from the original House and Senate versions. The broad-reaching bill results in many changes for the U.S.

[Continue Reading](#)

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### **S&P U.S. Charter Schools Sector Year In Review.**

While we believe the Tax Cuts and Jobs Act, which has now been signed into law, should have little to no direct impact on the credit quality of charter schools, it still has the biggest potential to do so of any singular event in 2017.

[Continue Reading](#)

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### **S&P U.S. Higher Education Sector Year In Review.**

The ultimate credit impact of the Tax Cuts and Jobs Act on the sector remains to be seen, but we believe its provisions could have long-term operational impacts on colleges and universities throughout the country.

[Continue Reading](#)



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## **S&P: Many Rocky Mountain Water And Wastewater Utilities With Strong Credit Profiles Face Growth-Related Infrastructure Needs.**

S&P Global Ratings maintains revenue debt ratings on 98 public water and wastewater utilities in Colorado, Montana, Utah, and Wyoming. This number includes multiple security types and issues but the same obligor (e.g., the city of Fort Collins, Colo. issues both water and wastewater revenue bonds that are separately secured by dedicated revenue streams).

[Continue Reading](#)

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## **S&P: Texas MUD Sector Stability Is Buoyed By Strong Economic Growth And Finances**

Overall, Texas' municipal utility districts (MUDs) have demonstrated favorable credit quality during the past eight years due to robust growth in the state's economy and a surging state population.

[Continue Reading](#)

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## **How the New Tax Bill will Cut Infrastructure Investment.**

By increasing the cost to finance infrastructure for states and local governments, the recently enacted Tax Cuts and Jobs Act (TCJA) will lower investment in our nation's infrastructure. This runs counter to President Trump's repeated desire to tackle the major problems associated with America's crumbling infrastructure through increased investment. The impact may be large and immediate enough to swamp the short-term impact of any infrastructure package Congress can put together in the immediate future.

[Continue reading.](#)

### **The Brookings Institute**

by Aaron Klein

December 26, 2017

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## **Fitch Credit Outlook Teleconferences.**

Fitch Ratings will host a series of teleconferences on its 2018 U.S. Public Finance Outlooks, including state & local governments, education & non-profits, transportation, healthcare, public power, and water & sewer. Senior Fitch analysts will share their 2018 Ratings Outlooks and provide an overview of the major trends for each sector followed by Q&A. [Click here](#) to access associated reports.

## **U.S. States and Local Governments 2018 Outlook**

January 10, 2018 | 2:00pm ET

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## **U.S. Public Power and Water & Sewer 2018 Outlook**

January 11, 2018 | 1:00pm ET

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## **U.S. Health Care 2018 Outlook**

January 11, 2018 | 2:00pm ET

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## **U.S. Municipal Transportation 2018 Outlook**

January 17, 2018 | 1:00pm ET

[REGISTER](#)

## **U.S. Education & Nonprofit Institutions 2018**

January 17, 2018 | 2:00pm ET

[REGISTER](#)

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## **MSRB Seeks Board of Directors Applicants.**

The Municipal Securities Rulemaking Board (MSRB), the self-regulatory organization that oversees the \$3.8 trillion municipal securities market, is accepting applications for its governing board. The [Board of Directors](#) sets the strategic direction of the organization, makes policy and regulatory decisions, authorizes market transparency initiatives and oversees MSRB operations. [Read the press release.](#) [Read the notice.](#)

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## **Muni Bonds May Not Be the Reliable Bet They Once Were.**

***Investors should make sure to better understand the risks, and perhaps adjust their strategy accordingly***

Municipal bonds offer investors interest that's tax-free at the federal level and at the state and local levels, if investors own bonds issued by any government entity within their state of residence.

When deciding whether to buy muni bonds, investors usually make a comparison between the yields of a muni bond and a U.S. Treasury note or bond of similar maturities. The "taxable yield equivalent" to a municipal bond is the municipal bond's yield adjusted for the investor's tax bracket.

So if an investor is hypothetically in a 50% bracket, including both federal and state taxes, a taxable yield twice that of a municipal yield—or a municipal yield half that of a taxable bond—would make two bonds equivalent. In that case, if a highly rated muni bond offered more than half the yield of a comparable U.S. Treasury, an investor could consider the muni bond the better choice in a taxable account.

### **A changed asset class**

For decades, that was a reasonable comparison, and largely all that investors had to consider about munis. The chance of losing an investment was not even an issue: The historical default rate of the roughly \$3.8 trillion market with more than 80,000 issuers has been low—0% for AAA-rated bonds and only 0.30% for AA- and A-rated bonds from 1970 through 2009, according to a Moody's study.

Unfortunately, municipal profligacy has begun to result in more high-profile distress and bankruptcy in recent years, including Jefferson City, Ala.; Detroit; Harrisburg, Pa.; Central Falls, R.I.; and Vallejo, San Bernardino and Stockton in California. Now the fate of more than \$70 billion that creditors have lent to Puerto Rico is in doubt, as Hurricane Maria battered the island already struggling with manufacturing and population loss.

An updated Moody's study from 2016 notes that the "sector has changed over the past decade and more profound changes may be in the offing. The once-comfortable aphorism that 'munis don't default' is no longer credible, although default rates remain low."

In some cases, investors betting on munis have gotten burned. Recently, Franklin Double Tax Free Income fund merged with Franklin High Yield Tax Free Income fund (FHYVX) after it inflicted significant losses on investors. The fund had more than half its assets in Puerto Rico bonds.

Some analysts warn that many bond issuers are heading into precarious financial situations. In a 2016 research report from PNC Capital Markets, Tom Kozlik argues that around 20% of issuers haven't adjusted their spending to reflect diminished revenue after the financial crisis.

Mr. Kozlik doesn't cite names, but other observers have pointed fingers at issuers at risk.

"Though I'm not warning of an industrywide municipal-bond crisis, I think investors have to think carefully about individual credits and what, exactly, they're investing in," says Nicole Gelinas of the Manhattan Institute think tank. In the case of Chicago, "it's difficult to see, 10 years from now or even sooner, how, exactly, Chicago figures out [its problems with underfunded pensions] without bondholders having to take some sort of hit, as well." (Chicago officials declined to respond to a request for comment.)

And when a municipality goes bankrupt, investors aren't always first in line to recover their money. Stockton and San Bernardino honored their obligations to state-employee pension funds at the expense of bondholders in their bankruptcies. "General obligation" bondholders, once thought to be above revenue bondholders in the case of defaults, aren't necessarily ahead of unions.

### **Munis aren't Treasuries**

Not all municipal-bond experts are pessimistic. Tracy Gordon, a senior fellow at the Urban Institute think tank, says investors shouldn't be alarmed about munis' safety, emphasizing their low historical default rates. "It's unfair to paint the whole sector with a broad brush," she says.

But if investors choose munis as a core holding, many analysts advise using a diversified fund to lessen the risk of issuers defaulting. What's more, investors shouldn't expect the bonds to rally during a stock-market decline, as U.S. Treasuries often do.

That's because munis have become closely tied to the health of state-employee pension funds. If stocks fall and pension funds lose money, the funds often turn to municipalities to make up losses—which makes muni bonds less attractive and hurts muni investors.

Indeed, the Bloomberg Barclays Municipal Index lost nearly 2.5% in 2008 during the stock crash—instead of providing municipal-bond investors with protection. That's hardly catastrophic, but it might not have represented the resilience that the bond investors were expecting. And results might be less benign during the stock market's next wipeout.

## **The Wall Street Journal**

By John Coumarianos

Jan. 7, 2018 10:08 p.m. ET

*Mr. Coumarianos, a former Morningstar analyst, is a writer in Laguna Niguel, Calif. He can be reached at [reports@wsj.com](mailto:reports@wsj.com).*

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### **Detroit Boosts Disclosure in Effort to Build Investor Confidence.**

As the city of Detroit works to rebuild its investor relationships, it got good credit news in the form of a one-notch upgrade from a second rating agency in as many months.

The ratings remain deep in junk-bond territory.

S&P Global Ratings upgraded the city's issuer credit rating to B-plus from B Dec. 21. The outlook is stable. Moody's Investors Service upgraded Detroit to B1 from B2 in October.

The S&P upgrade follows the city's soft launch of a new web portal to improve investor access to its financial data and bond offerings.

"The road to recovery is a long one and I think that Detroit is doing the right things," said Stephen Winterstein, managing director and chief municipal fixed income strategist at Wilmington Trust Investment Advisors, Inc. "I am really optimistic about what they have been doing in terms of disclosure and the investor website is definitely a move in the right direction."

Winterstein said that for municipal bond investors the notion of transparency and the ability of local governments to be quick to respond with timely disclosure has become increasingly important.

Government Finance Officers Association best practices recommend that governmental bond issuers consider developing an investor relations program. The centerpiece of such a program is a commitment to provide full and comprehensive disclosure of annual financial, operating, and other significant information in a timely manner consistent with federal, state and local laws.

Detroit's site is provided through BondLink, an investor relations and disclosure platform for municipal bond issuers.

"We were impressed with the platform and thought it was a good way to increase market understanding of the City's debt issues that are outstanding," said John Naglick, Detroit's chief deputy chief financial officer and finance director. "We did not do it with any particular bond issue in mind, just found that it fits with our desire to be more transparent."

The city has been slowly returned to the market, but only with paper carrying investment-grade state aid backing.

Since exiting bankruptcy in December 2014 Detroit has tapped the public bond market twice: in August 2015 with \$245 million of local government loan program revenue bonds and in August 2016 with a \$615 million general obligation/distributable state aid backed bond sale. Both deals were issued through the Michigan Finance Authority.

The 2015 debt was enhanced with a statutory lien and intercept feature on the city's income taxes, which landed an A rating from S&P Global Ratings. The city also privately placed \$125 million to pay for projects aimed at revitalizing the city's neighborhood commercial corridors.

Naglick said that the city is also close to deciding on the underwriting team for a request for proposals it launched in October to find banks to lead a tender offer and refunding of its unsecured financial recovery bonds with the aim of lowering its costs and easing a future escalation of debt service.

"Disclosure can be the canary in the coal mine," said Colin MacNaught, CEO & co-founder of BondLink. "If a credit gets distressed, often-times they stop disclosing, or their disclosure is stale. If you have an investor website, you can provide current information on a timely basis, in a very user-friendly format. I think what Detroit's doing is a big positive step as they rebuild market access."

Detroit's investor website lists financial team members, the latest financial reports on the city and district, ratings information, offering documents, and links to information on the Municipal Securities Rulemaking Board's EMMA website.

"The city is doing a very good job managing the things that are within their control," said Tom Schuette, co-head of investment research and strategy at Gurtin Municipal Bond Management. "The City's BondLink disclosure efforts coupled with the recent adoption of a formalized and realistic strategy to handle accelerating pension payments in future years are signs of a management team that appears committed to both prudent, forward-looking fiscal policies as well as going the extra mile in terms of transparency with the investor community. "

S&P, in its upgrade, cited positive momentum the city is building with regard to stabilizing its operations and being better prepared to address future significant increases in pension contributions.

"We believe the city's financial position is now more transparent compared with recent years, as is Detroit's long-term financial strategy, which relies on fairly conservative growth assumptions," S&P said. "We also believe that the city has a stronger capacity to service its debt obligations than in years past."

In its October upgrade, Moody's assigned a positive outlook to reflect the possibility of further upward movement if current economic and financial trends persist and enhance the city's capacity to fund long-term liabilities.

The city's ratings are the highest since March 2012, before its July 2013 bankruptcy filing. Schuette said the upgrades should help Detroit's market access and support the city's assertion that its credit quality is improving.

In December, Moody's also raised the city's assigned new Aa2 enhanced ratings to bonds issued by the Michigan Finance Authority and secured by various liens on distributable state aid to the city. All bonds secured by a pledge of the city's DSA fall under this program. The outlook on the program

rating is stable.

Previously, Moody's (MCO) assigned different underlying ratings to bonds secured by separate liens on Detroit's DSA. Bonds with a first lien on DSA were rated Aa2. Bonds with second, third and fourth liens were rated Aa3, A1 and A2, respectively. Moody's (MCO) has withdrawn these underlying ratings and assigned new Aa2 enhanced ratings to all bonds, regardless of lien.

Naglick said the upgrades further reward the purchase decision of holders of the City's bonds that were issued as part of the 2016 refunding in the summer of 2016.

Schuette said the DSA upgrade should not really change the market's view of the outstanding bonds.

"There are still different liens to the DSA backed bonds, and the state's support for some of the liens is still subject to appropriation risk," said Schuette. "This is why we believe investors need to make sure they understand what they are buying and what risks they are taking on as we do not believe that all of these bonds share the same risk characteristics. If you're not doing your homework and just relying on the ratings or an assumption that enhancement mechanics will work when you need them then you may be setting yourself up for surprises down the road."

Positive developments shouldn't obscure the fact that city's credit rating remains deep in junk territory and vulnerable to another recession, say market participants.

"We still believe Detroit faces a long path that will require years of prudent decision making from management and the avoidance of major economic shocks before its debt makes sense for investors looking for high-quality municipal exposure." Schuette said. "The city still has an abundance of extremely high-risk characteristics and speculative-grade qualities that investors should be very cognizant of and understand what they are taking on."

Detroit's post-bankruptcy finances have improved to the point where the city may be able to exit state oversight this year. The city has presented deficit-free budgets for two consecutive years and is on the path that would allow it to exit Financial Review Commission oversight. Although the city ended fiscal 2016 with a \$63 million surplus its general fund revenues came in lower than anticipated owing to lower than expected intergovernmental aid. The city's four-year forecast shows an annual growth rate of only about 1%.

The plan to address pension obligations is aimed at shoring up the city's long-term fiscal health. Detroit developed a long-term funding model with the help of actuarial consultant Cheiron, obtained City Council approval for changes to the pension funding ordinance that established the Retiree Protection Trust Fund, and deposited \$105 million into this IRS Section 115 Trust. This fund will grow to over \$335 million by 2024 and will provide a buffer to increased contributions beginning then.

Mayor Mike Duggan claimed during his 2016 State of the City speech that consultants who advised the city through bankruptcy had miscalculated the pension deficit by \$490 million.

By Nora Colomer

BY SOURCEMEDIA | CORPORATE | 01/02/18 07:05 PM EST

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## **[SIFMA Issues 2018 Municipal Issuance Survey.](#)**

Compiled from responses provided by seven municipal bond underwriters and dealers, SIFMA's Municipal Issuance Survey forecasts the type of activity that is expected in the municipal securities market in 2018. Highlights from the report include the forecast of total municipal issuance, both short- and long-term, to fall to \$362.5 billion, down from \$439.7 billion expected in 2017. The end of advance refundings (to expire December 31, 2017, based on the tax reform bill) is expected to have the greatest effect. While taxable municipal issuance is expected to rise by 54.7 percent to \$47.5 billion in 2018 from \$30.7 billion in 2017.

### **[Municipal Issuance Survey 2018](#)**

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## **[The Tax Cuts and Jobs Act: The Impact on the Municipal Bond Market.](#)**

### **The Tax Cuts and Jobs Act: The Impact on the Municipal Bond Market.**

**Jan. 10, 2018 | 1 PM ET/10 AM PT**

#### **A Bond Buyer / Orrick Webinar**

Different versions of the Tax Cuts and Jobs Act (the "Act") have been approved by the House and Senate, and the two chambers are conferencing to resolve the differences and send the final Act to the President by year end. Even if we do not have a final Act by year end, we expect to have a much better idea of the final product. The Act will make significant changes to tax rules that apply to tax-exempt bonds and related matters, likely including the elimination of tax exempt advance refunding bonds and potentially including changes to the ability to issue private activity bonds.

#### **Topics to be Discussed:**

- Status of Private Activity Bonds
- Status of Advance Refunding Bonds and alternatives thereto
- Other changes: tax credit bonds, stadium bonds
- Transition Rules
- 2018 and beyond - technical corrections and needed fixes
- Reduction in corporate tax rate, status of AMT
- Next Steps for Issuers and Borrowers

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(Speaker)

**Danielle Fugazy**  
Contributing Editor  
SourceMedia  
(Moderator)

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### **[MSRB January Monthly Update.](#)**

Read about the MSRB's focus on the year ahead, including tax reform and compliance support in the [January Monthly Update](#).

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### **[Bloomberg Brief Weekly Video - 1/4](#)**

Taylor Riggs, a contributor to Bloomberg Briefs, talks with Editor Joe Mysak about this week's municipal market news.

[Watch video.](#)

**Bloomberg**

January 4th, 2018

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### **TAX - SOUTH DAKOTA**

#### **[Valley Power Systems v. South Dakota Department of Revenue](#)**

**Supreme Court of South Dakota - December 13, 2017 - N.W.2d - 2017 WL 6380678 - 2017 S.D. 84**

Industrial-engine distributor sought review of the Department of Revenue's certificate of assessment that required distributor to pay alternate contractor's excise tax, use tax, interest, and a penalty in regards to new exhaust manifolds installed on mobile power units that a utility company used to provide supplemental power at one of its power plants.



The Sixth Judicial Circuit Court affirmed. Distributor appealed.

The Supreme Court of South Dakota held that:

- The mobile power units were “fixtures” so as to subject distributor to excise contractor’s tax, and
- Distributor was subject to use tax on the exhaust manifolds.

Power units that were used by utility company to generate supplemental electricity during peak-load-electrical usage and for which industrial-engine distributor provided and installed new exhaust manifolds with diesel oxidation catalysts were “fixtures,” and thus distributor was subject to excise contractor’s tax; each power unit weighed 110,000 pounds, each unit sat in a fenced enclosure where it was connected to a fuel source and the electrical transmission grid, units had not been moved in the last 20 years, and units’ actual use reflected utility company’s intention to constructively annex them to the land for purposes of providing supplemental power at its power plant.

Industrial-engine distributor was subject to use tax on the exhaust manifolds that it installed on utility company’s mobile power units; distributor was a contractor under statutes on realty improvements contractor’s excise tax, and the exhaust manifolds were tangible personal property used in the performance of distributor’s contract with utility company.

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## **[The Week in Public Finance: Tax Reform Hits Muni Market, California Plays Tax Games and Local Pensions Do Better Than State.](#)**

A [roundup](#) of money (and other) news governments can use.

GOVERNING.COM

BY LIZ FARMER | JANUARY 5, 2018

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## **[4 Ways States will Fund Infrastructure Projects in 2018.](#)**

While the construction industry awaits the big reveal of President Donald Trump’s long-anticipated infrastructure plan – promised to be introduced this month – state and local governments are likely wondering how the details will affect the way they finance repairs and construction of highways, bridges and other public projects. One thing that Trump made clear in his budget proposal – and most recently in his contention that the federal government is not obligated to pay for half of the near-\$13 billion NY-NJ Hudson River tunnel project – is that states and municipalities will have to dig deeper to finance projects that serve mainly local residents.

[Continue reading.](#)

### **Construction Dive**

by Kim Slowey

Jan. 4, 2018

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## **Paralegal - Public Finance**

**Ballard Spahr LLP**  
**Philadelphia, Pennsylvania**

[Apply to Ballard Spahr LLP on their website](#)

### **Job description**

Ballard Spahr LLP is seeking a paralegal in our Philadelphia office to support our nationally-recognized public finance lawyers who represent state and local governments and authorities, nonprofit organizations, investment banks, and banking institutions in virtually every type of municipal bond transaction. The successful candidate will undertake a range of tasks and responsibilities that include: preparation of documentation for closings including, organizing proofreading and assembling documents; conducting due-diligence; drafting bond documents, disclosure documents, closing certificates and opinions; coordinating closing logistics; preparing and filing of UCC Financing Statements; researching industry databases, publicly-available information from local governments and other sources, and applicable law.

This position requires someone who is energetic, detail-oriented, with the ability to manage multiple priorities and understands the cycle of a transaction. Candidates considered will be proactive self-starters with demonstrated experience maintaining high quality work products in a fast-paced environment and within time constraints. Strong writing and proofreading skills, oral communication skills, research, organizational and interpersonal skills are essential to be successful in this position.

Minimum requirements include prior experience as a paralegal in public finance, commercial lending transactions, or corporate law; demonstrated written and oral communication skills, intermediate level of technical proficiency in Microsoft Office applications (including Excel) and document management systems. Must be able to work overtime, as needed.

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- **BCB 2017 Year-In-Review:** Mostly sucked.
  - [GASB Issues Implementation Guide on Other Postemployment Benefits.](#)
  - [Moody's: Local Government Pension Liabilities Soar in Fiscal Year 2016.](#)
  - [2018 Outlook: IRS Implementing Data Driven Muni Bond Audits.](#)
  - [Muni Market's Trusted Buyers Could Disappear After Tax Cuts.](#)
  - [How the Tax Bill Will Change Governments' Borrowing Costs.](#)

- And finally, Oh, So *That's* What Those Things Are For is brought to us this week by [High v. Kuhn](#), in which we trained our bewildered gaze on none other than the Supreme Court of Mississippi in a desperate plea for clarification. And clarify they did, informing us that a property owner had sought the “establishment of a private road over neighbor’s property, *for purposes of ingress and egress*” [we wanted to emphasize that last bit, so we went ahead and did so]. Ingress and egress, you say? Not Civil War reenactments? The manufacture of weapons-grade plutonium? Five-day international cricket test matches? Nope. Good old-fashioned coming and going.
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## **IMMUNITY - CONNECTICUT**

### **[Williams v. Housing Authority of the City of Bridgeport](#)**

**Supreme Court of Connecticut - December 26, 2017 - A.3d - 327 Conn. 338 - 2017 WL 6459234**

Administratrix of estates of residents of public housing unit who died in fire brought action against fire department and city officials, alleging negligent and reckless failure to conduct fire safety inspection.

The Superior Court entered summary judgment dismissing administratrix’s claims on grounds of municipal immunity. Administratrix appealed. The Appellate Court reversed. Fire department and city officials petitioned for review.

The Supreme Court of Connecticut held that:

- A municipal actor may demonstrate reckless disregard for health or safety, waiving immunity from suit, when it is clear that failure to conduct a health and safety inspection may result in a catastrophic harm, albeit not a likely one;
  - When a municipality has adopted a policy of not carrying out any building inspections of a certain type, the municipal liability statute permits the finder of fact, in determining whether the municipality acted with reckless disregard for health and safety and thereby waived its immunity from suit, to assess the aggregate level of risk associated with that policy, and not only the limited risk posed to the specific premises at which the hazard happened to transpire;
  - Genuine issue of material fact existed as to whether fire department and city officials exhibited reckless disregard for public health or safety in failing to conduct inspection, precluding summary judgment.
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## **GOVERNMENTAL IMMUNITY ACT - COLORADO**

### **[C.K. v. People](#)**

**Supreme Court of Colorado - December 18, 2017 - P.3d - 2017 WL 6418851 - 2017 CO 111**

County moved to terminate father’s parental rights to dependent and neglected child. The District Court terminated father’s parental rights.

Father appealed and county filed cross-appeal, challenging trial court’s imposition of discovery sanctions. The Court of Appeals affirmed in part, and reversed in part, holding that award of attorney fees violated sovereign immunity. The Supreme Court granted certiorari.

The Supreme Court of Colorado held that Colorado Governmental Immunity Act (CGIA) did not

prohibit award of attorney's fees against county department of social services to father of child based on discovery violations in dependency and neglect proceeding; CGIA barred claims which lie in tort, and attorney's fees were a sanction rather than a tort.

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## **EMINENT DOMAIN - COLORADO**

### **[Sos v. Roaring Fork Transportation Authority](#)**

**Colorado Court of Appeals, Div. VII - November 16, 2017 - P.3d - 2017 WL 5493526 - 2017 COA 142**

Landowner brought an inverse condemnation claim against transportation authority after authority built a bus station on the property north of and adjacent to his property.

The District Court entered judgment in favor of landowner, awarding him \$75,000 in damages. Transportation authority appealed.

The Court of Appeals held that:

- Colorado Constitution grants relief to property owners who have been substantially damaged by public improvements abutting their lands, but whose land has not been physically taken by the government;
- Transportation authority damaged landowner's property within the meaning of takings provision of Colorado Constitution;
- Under takings provision of State Constitution, landowner is merely required to show a special injury to the property or its appurtenances;
- Landowner sufficiently demonstrated a special injury under takings provision of State Constitution;
- Restoration costs, rather than diminution of value, was the proper measure of damages for landowner;
- Evidence of landowner's personal and business uses for his property was admissible in order to properly calculate landowner's restoration cost damages; and
- Evidence of engineering expert's designs and expert's testimony regarding cost difference in excavating embankment before and after transportation authority's construction of bus station were admissible in order to properly calculate landowner's restoration cost damages.

By including the word "damaged" in its eminent domain provision, the Colorado Constitution grants relief to property owners who have been substantially damaged by public improvements abutting their lands, but whose land has not been physically taken by the government.

Transportation authority, which built a bus station on the property north of and adjacent to landowner's property, damaged landowner's property within the meaning of takings provision of Colorado Constitution; imposition of force on landowner's embankment was the natural consequence of authority's intentional construction of the bus station wall, and experts indicated that bus station wall imposed new force on landowner's embankment to such a degree that an engineered remedy was now required before the embankment could be excavated, and authority's bus station wall burdened landowner's property by imposing new lateral forces that made it dependent on the embankment area for structural support.

Under takings provision of State Constitution, landowner is merely required to show a special injury to the property or its appurtenances, or an injury affecting some right or interest which the owner enjoys in connection with the property and which is not shared with or enjoyed by the public

generally; the injury must be to some right or interest relating to the property, not a specifically non-personal or non-business use.

Landowner sufficiently demonstrated a special injury under takings provision of State Constitution; imposition of force on landowner's embankment was the natural consequence of transportation authority's intentional construction of the bus station wall, bus station wall burdened landowner's ability to excavate the embankment to facilitate his use of the northeast corner of his property and landowner's proffered uses related to his tire business and snow maintenance.

Restoration costs, rather than diminution of value, was the proper measure of damages for landowner, whose property was damaged, within meaning of takings provision of State Constitution, when transportation authority built bus station on land adjacent to landowner's property; diminution in value, if any, of landowner's property after bus station was built was de minimis, but bus station's construction substantially limited landowner's dominion over, and use and enjoyment of, the embankment area, measuring landowner's damages by the restoration cost, derived from engineering expert opinions, would allow him to excavate the embankment at a cost unaffected by the bus station wall's lateral forces, and landowner wished to excavate the embankment to facilitate use of property to meet his needs without paying increased costs resulting from new lateral forces imposed by bus station's construction, and fact that landowner had not yet excavated embankment did not prohibit the award of restoration costs to compensate him for his loss of the use and enjoyment of the embankment area.

In inverse condemnation case, evidence of landowner's personal and business uses for his property, which was damaged by transportation authority's construction of bus station adjacent to landowner's property, was admissible in order to properly calculate landowner's restoration cost damages; landowner's alleged injury concerned his dominion over, and ability to use and enjoy, his land for property access, equipment storage, and snow maintenance, and it did not concern lost profits or any other injury not independently compensable.

In inverse condemnation case, evidence of engineering expert's designs and expert's testimony regarding cost difference in excavating embankment before and after transportation authority's construction of bus station wall adjacent to landowner's property were admissible in order to properly calculate landowner's restoration cost damages; imposition of force on landowner's embankment was the natural consequence of transportation authority's construction of bus station wall, expert's designs and testimony were not inconsistent with the undisputed evidence, and record indicated that landowner could obtain the required easements.

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## **IMMUNITY - ILLINOIS**

### **[Cohen v. Chicago Park District](#)**

**Supreme Court of Illinois - December 29, 2017 - N.E.3d - 2017 IL 121800 - 2017 WL 6625219**

Bicyclist brought action against city park district, alleging that he was riding his bicycle on shared-use path when his front wheel got caught in a crack in the pavement and he fell, and that park district had acted willfully and wantonly in failing to maintain the path and was therefore responsible for the injuries that resulted from his fall.

The Circuit Court granted park district's motion for summary judgment.

Bicyclist appealed. The Appellate Court reversed. The Supreme Court granted park district's petition for leave to appeal.

The Supreme Court of Illinois held that:

- A "road" under the statute providing local public entities and public employees with blanket immunity from liability for injuries caused by the conditions of certain roads is a public way that permits travel by motorized vehicles such as motorcycles, cars, and trucks; and
- Shared-used path was not "road" within meaning of statute that provided park district with blanket immunity from liability for injuries caused by conditions of certain roads, and thus park district was not afforded blanket immunity from liability for injuries sustained by bicyclist; but
- Park district's conduct in repairing crack in pavement of shared-use path was not willful and wanton, and thus park district was entitled to statutory immunity from liability for injuries sustained by bicyclist.

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## **ZONING & LAND USE - MAINE**

### **[Bryant v. Town of Wiscasset](#)**

**Supreme Judicial Court of Maine - December 19, 2017 - A.3d - 2017 WL 6459673 - 2017 ME 234**

Property owners brought action for judicial review of decision of town planning board, which approved business owners' application to expand building used to store fireworks, and property owners additionally brought independent claims, alleging that planning board had violated their due process rights by denying them notice and an opportunity to be heard, and seeking declaratory judgment on claims regarding conflict of interest, procedural due process, and storage of fireworks on business owners' property.

The Superior Court affirmed planning board's decision, entered judgments in favor of planning board on due process claims, and dismissed claim for declaratory relief. Property owners appealed.

The Supreme Judicial Court of Maine held that:

- There was substantial evidence before planning board to support its conclusion that business owner's fireworks storage building and proposed extension complied with applicable fire code, and thus planning board's approval of proposed extension was proper;
- Planning board took adequate remedial measures to give property owners opportunity to be heard, and no prejudice resulted to property owners, and thus planning board did not violate property owners' procedural due process rights;
- Planning board's decision to approve site plan review application was not voidable under statute which provided that such decisions were voidable if board or its officials had conflict of interest; and
- Property owners' independent claims for due process violations and declaratory relief lost their controversial vitality and any further decision would not have provided any real or effective relief, and thus such claims would be dismissed as moot.

There was substantial evidence before town planning board to support its conclusion that business owner's fireworks storage building and proposed extension complied with applicable fire code, and thus planning board's approval of proposed extension was proper, where business owner asserted multiple times that he had approval from State Fire Marshal, which was by statute state agency that regulated fireworks, property had been approved for storage of fireworks prior to business owner's

application for proposed expansion, and town's attorney advised planning board that Inspection Supervisor of State Fire Marshal's Office informed her that no additional approval was necessary for proposed expansion.

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## **EMINENT DOMAIN - MISSISSIPPI**

### **[High v. Kuhn](#)**

**Supreme Court of Mississippi - December 14, 2017 - So.3d - 2017 WL 6379168**

Landlocked property owner filed petition for establishment of private road over neighbor's property, for purposes of ingress and egress.

The Special Court of Eminent Domain denied neighbor's motion to dismiss, and then granted petition. Neighbor appealed, and the Supreme Court reversed. Neighbor filed a motion for an award of attorney's fees. The Special Court of Eminent Domain denied neighbor's motion, and neighbor appealed.

The Supreme Court of Mississippi held that statute allowing a prevailing defendant to recover expenses in an eminent domain proceeding applied to neighbor who prevailed on appeal of action in which landlocked property owner sought establishment of private road over neighbor's property. Legislature's intent was that an action for a private condemnation, to the extent possible, would be just like an action for a public condemnation, and it was property owner who pursued the statutory remedy of eminent domain rather than common law remedies.

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## **MUNICIPAL ORDINANCE - NEBRASKA**

### **[In re Interest of Elainna R.](#)**

**Supreme Court of Nebraska - December 15, 2017 - N.W.2d - 298 Neb. 43620 - 17 WL 6395859**

Juvenile was adjudicated in the Juvenile Court for violating city ordinance prohibiting disturbing the peace. Juvenile appealed.

The Supreme Court of Nebraska held that:

- A school security officer could be found to be the victim of disturbing the peace, and
- Evidence was sufficient to support the juvenile court's adjudication of jurisdiction over juvenile.

A school security officer could be found to be the victim of disturbing the peace, for the purpose of city ordinance providing that "It shall be unlawful for any person to intentionally or knowingly disturb the peace and quiet of any person."

Evidence was sufficient to support the juvenile court's adjudication of jurisdiction over juvenile, who was charged with violating city ordinance prohibiting disturbing the peace; school security officer placed himself between two students, juvenile reached around officer, struck student, and grabbed her hair, officer continued to try and stop juvenile, and juvenile's grip on student's hair was so forceful it brought juvenile, student, and officer to the ground.



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## **IMMUNITY - NEBRASKA**

### **[Hedglin v. Esch](#)**

**Court of Appeals of Nebraska - November 21, 2017 - N.W.2d - 25 Neb.App. 306 - 2017 WL 5641190**

Plaintiff filed action against city and police officer alleging defamation.

The District Court granted city's and officer's motion to dismiss, and plaintiff appealed.

The Court of Appeals held that:

- PSTCA applied to plaintiff's claim, and
- Plaintiff prematurely withdrew her claim.

Political Subdivisions Tort Claims Act (PSTCA) applied to defamation claim brought by plaintiff against city and city police officer. Plaintiff's complaint sought money damages from a political subdivision for personal injury caused by the wrongful actions officer allegedly committed while in the scope of employment with city, specifically, claiming that defendants "misused personal information" and "published false and reckless statements" about her, placing her in a false light, which were tort claims that fell within the purview of the PSTCA.

Plaintiff, who filed defamation claim against city and city police officer, prematurely withdrew her claim under the Political Subdivisions Tort Claims Act (PSTCA), thus court's dismissal of plaintiff's claim was proper; plaintiff's withdrawing of her claim failed to satisfy a condition precedent to commencement of a lawsuit against city as a political subdivision of the State.

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## **BALLOT INITIATIVES - OREGON**

### **[Unger v. Rosenblum](#)**

**Supreme Court of Oregon, En Banc. - December 14, 2017 - P.3d - 362 Or. 210 - 2017 WL 6379646**

Prospective initiative measure petitioners brought action for judicial review of Secretary of State's refusal to issue certified ballot title or approve proposed initiative measure for circulation. The Circuit Court, Marion County, adjudicated that initiative measure satisfied all procedural requirements and issued a new identification number to be used in the subsequent election cycle.

While the Secretary of State's appeal of the Circuit Court's decision was pending, prospective initiative measure petitioners and commentators on draft ballot title petitioned for review regarding the legal sufficiency of the renumbered initiative measure.

The Supreme Court of Oregon held that proposed initiative measure did not satisfy all statutory prerequisites for obtaining ballot title.

Proposed initiative measure to amend state constitution, that was challenged in its original election cycle and subsequently resubmitted in the following election cycle, did not satisfy all statutory prerequisites for obtaining ballot title, and thus the Supreme Court lacked authority to consider ballot title challenge, although Attorney General issued certified ballot title, where initiative measure was assigned a new number without renewing the initiative measure process in the



subsequent election cycle, the renumbered initiative measure did not receive sponsoring signatures, and Attorney General's challenge to the original proposed initiative measure remained pending.

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## **PENSIONS - RHODE ISLAND**

### **[Retirement Board of Employees' Retirement System of City of Providence v. Corrente](#)**

**Supreme Court of Rhode Island - December 15, 2017 - A.3d - 2017 WL 6419144**

City retirement board brought action, pursuant to city's honorable service ordinance, to confirm its decision to reduce pension benefits of retired city employee who was convicted of multiple felonies, and mayor and city moved to intervene.

The Superior Court permitted mayor and city to intervene and confirmed retirement board's decision. City and mayor appealed, and retirement board cross-appealed. The Supreme Court vacated, finding that Superior Court lacked subject-matter jurisdiction to issue its decision, but remanded by reason of newly-enacted statute now vesting Superior Court with jurisdiction. The Superior Court re-entered its judgment and parties again cross-appealed.

The Supreme Court of Rhode Island held that:

- Mayor and city rebutted presumption that city retirement board adequately represented their interests, and thus they were entitled to intervene;
  - Standard of review for administrative appeals, as set forth in Administrative Procedures Act, applied to appeal of retirement board's decision;
  - Decision of retirement board to reduce employee's pension benefits was not arbitrary, capricious, or affected by other errors of law; and
  - Decision of retirement board to deny employee's request for tax credit was supported by legally competent evidence.
- 

## **EMINENT DOMAIN - SOUTH DAKOTA**

### **[Montana-Dakota Utilities Co. v. Parkshill Farms, LLC](#)**

**Supreme Court of South Dakota - December 13, 2017 - N.W.2d - 2017 WL 6380844 - 2017 S.D. 88**

Public utilities brought condemnation action to obtain permanent easements to construct a power line across four parcels of land.

The Judicial Circuit Court granted condemnation and, after a jury trial, awarded \$95,046 to landowners as compensation. Landowners appealed.

The Supreme Court of South Dakota held that:

- The nature of utilities' proposed use of desired easements was public;
- Utilities did not abuse their discretion in determining that desired easements were necessary; but
- A property owner is entitled to compensation for any right explicitly taken by a condemning authority, regardless of whether the condemning authority ever uses such right.

The nature of public utilities' proposed use of desired easements for a power line over four parcels of land was public, as required for utilities to obtain easements by eminent domain; as public utilities, they were required by law to furnish adequate, efficient, and reasonable service, utilities generally could not fail to provide service to a community without permission from the Public Utilities Commission, and federal regulations required utilities to provide open access to their transmission lines under nondiscriminatory rates to others in the market.

Utilities did not abuse their discretion in determining that permanent easements over four parcels of land were necessary for the purpose of construction, operation, and maintenance of an electrical transmission line, despite argument that utilities sought to take a variety of rights that they had no intention of using and that easements for the same power line project in a neighboring state were limited to 99 years; electricity was a commodity in widespread demand not only presently but for the foreseeable future, easements at issue simply accounted for changing circumstances and evolving technology, and objecting landowners necessarily retained some rights to the easement area.

A property owner is entitled to compensation for any right explicitly taken by a condemning authority, regardless of whether the condemning authority ever uses such right.

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## **TAX - OHIO**

### **[Warrensville Heights City School District Board of Education v. Cuyahoga County Board of Revision](#)**

**Supreme Court of Ohio - December 7, 2017 - N.E.3d - 2017 WL 6048471 - 2017 -Ohio- 8845**

Owner of property improved with a racetrack and supporting structures filed a complaint, seeking a reduction of the property's valuation.

The county board of revision lowered the property's value. City school district board of education appealed, and the Board of Tax Appeals affirmed the board's valuation.

The Supreme Court of Ohio held that:

- Full litigation in prior action of issue of whether sale of property was an arm's-length transaction collaterally estopped school board from raising same issue, and
- Reliance on appraisal report prepared by landowner's appraiser was reasonable and lawful.

Full litigation in prior action of issue of whether sale of property improved with a racetrack and related structures was an arm's-length transaction collaterally estopped school board from raising same issue with regard to valuation dispute for successive tax year, despite fact that each tax year presented a different ultimate issue of tax value.

Reliance on appraisal report prepared by landowner's appraiser to determine value for tax purposes of property improved with a racetrack and related structures was reasonable and lawful, as appraiser used two traditional approaches to valuation—the cost and sales-comparison approaches—to determine that the property's tax-year value.

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## **[2018 Outlook: IRS Implementing Data Driven Muni Bond Audits.](#)**

WASHINGTON – In 2018 the Internal Revenue Service will rely on a new data driven approach for auditing municipal bonds, while focusing on several regulatory issues.

That's the prediction from bond attorneys, muni market groups and the director of the recently consolidated IRS enforcement office that handles audits of both tax exempt bonds and Indian tribal governments.

The municipal bond market went through a roller coaster in 2017 that culminated in a new tax overhaul law that terminates advance refundings and tax credit bonds as of Dec. 31 without any transition rules to delay the effective date that had been sought by market participants.

"If you look at advance refundings all they have to do is strike through the code. It's done," said Emily Brock, director of the Federal Liaison Center of the Government Finance Officers Association. "Unfortunately I think there are a lot of technical points that weren't addressed in the final tax legislation that may need greater focus."

From an enforcement standpoint, terminating advance refundings and tax credit bonds means "there will be less for the IRS to look at" in 2018, Ed Oswald, a tax partner at Orrick Herrington & Sutcliffe in Washington, dryly observed.

On the regulatory front, the latest IRS priority guidance targets an update on regulations for bond reissuance, guidance on remedial actions and finalization of the long-awaited updated rules that the IRS and Treasury issued Sept. 28 on the notice and approval requirements for private activity bonds under the Tax Equity and Fiscal Responsibility Act.

Bond reissuance is a timely topic because reissuances will rise with the termination of advance refundings, several lawyers said.

"I suspect that we're going to need clarifications on what is needed or not needed to cause a reissuance," said Perry Israel, a bond attorney based in Sacramento, Calif. who is on the board of the National Association of Bond Lawyers. He foresees "a number of 'Cinderella bond' structures in which taxable bonds are changed into tax-exempt bonds as a method of replacing advance refundings.

"Also, there will be a lot of intentional reissuances as banks try to keep their customers. Many direct placements with banks have been written with 'gross up' language that would increase the rate on the bonds if the after tax value is reduced to the bank," Israel said. "This means that if the bank's tax rate reduces, the rate on the bonds would go up — with the reduction in corporate tax rates that could be very costly and banks are going to want to change those adjustments to keep those customers."

Rich Moore, a partner at Orrick Herrington & Sutcliffe in San Francisco who is also a NABL board member, said it isn't clear whether the IRS will break new ground on reissuance rules.

"I don't know whether this new guidance would go in a regulation or be in a notice that would supercede the others," Moore said. "At a minimum, what it is going to do is just take the existing guidance on reissuance rules for tax exempt bonds and put them in one place."

Bond attorneys also are uncertain whether the new TEFRA rules will remain in "proposed" status for the indefinite future or be finalized this year.

IRS spokesman Dean Patterson said his agency "generally does not discuss the timing of future guidance or regulations."

Moore said he's "optimistic they can be finalized because they got the proposed regulations under the Trump administration and they are user friendly."

The proposed rules take into account tax law changes that have expanded the kinds of private activity bonds that can be issued and technological changes that have occurred since 1983 such as the Internet and electronic communications.

TEFRA established the public notice and approval requirements for PABs in 1982 before the PAB categories were expanded. The tax reform legislation recently approved by Congress left PABs untouched so the need for the updated TEFRA rules remains.

The remedial action rules need an update, Oswald said. These are rules on actions that issuers can take to remediate certain tax law or rule violations for tax-advantaged bonds, which include tax-exempt, taxable direct-pay, and taxable tax-credit bonds.

"It's still difficult economically to get either privatizations or P3 transactions done under the current remedial action rules," Oswald said.

On the enforcement side, the IRS expects to close 577 audits in the tax exempt bond office in fiscal 2018, which began on Oct. 1, 2017 and ends on Sept. 30, 2018. That's significantly down from the 717 closed in fiscal 2017 but slightly higher than the 570 concluded in fiscal 2016 and the 569 in fiscal 2015.

The IRS does not offer projections for how many voluntary agreement program cases it will close in fiscal 2018, but the trend has been a decline from 122 in fiscal 2015 to 67 in 2016 and 44 in 2017.

The IRS 2018 work plan for Tax Exempt and Government Entities publicly released Sept. 28 lists "hedge terminations; economic life and weighted average maturity (WAM); safe harbors for guaranteed investment contracts; and rules for qualified hedges" as areas for examination for its new data-driven Knowledge Management unit.

The 2018 work plan lists five areas to focus on as part of its compliance strategy: arbitrage of tax-advantaged bonds with guaranteed investment contracts and/or qualified hedges as well as bonds with investments beyond a temporary period; acquisition financing involving private activity bonds to determine whether the rehabilitation requirement was satisfied; non-qualified use in the disposition of financed facilities and/or excessive private business use; bonds issued with a deep discount; and private activity bonds with excessive weighted average maturities.

Christie J. Jacobs, who took over the consolidated offices of Tax Exempt Bonds and Indian Tribal Affairs in May, told The Bond Buyer in a mid-December interview that she doesn't have any new compliance concerns for 2018.

Jacobs, who has worked for the IRS for more than 28 years, headed the ITG office since its creation in 2000. She started working at the IRS as an intern while attending the Columbus School of Law at Catholic University.

She received her undergraduate degree from Vassar College and is a Maine native who now lives in Colorado.

The reorganization to a combined ITG/TEB office came as an efficiency move against the backdrop of a continuing wave of retirements that has reduced the workforce and reduced funding from Congress.

The TEB operation is expected to have only 19 agents conducting exams by June of 2018, down from 23 at the Oct. 1 start of the fiscal year. In 2009 the office had 60 agents, six managers, five support staff, and technical adviser.

"Because there are fewer people, they will spend less time figuring out where to focus their work and they will be given cases electronically," Jacobs said. "There's going to be compliance strategies developed based on data and we will go take those compliance strategies and do audits on those."

Jacobs said the ITG/TEB office is using a data driven, centralized approach to deciding when to conduct examinations. "This is for all of our divisions, just to be clear, but it's also for the tax exempt bond work as well," she said.

One area not tracked by the IRS is states' compliance with their private activity bond volume caps. "I don't think that's generally our function," Jacobs said. "I know there have been industry concerns about keeping track of those volume caps and I know we've looked some at what the states do to keep track of their own volume caps and I don't think we found those approaches lacking."

Carol Lew, past president of NABL and a shareholder at Stradling Yocca Carlson & Rauth in Newport Beach, Calif., thinks the new muni audit process, which encourages communication between issuers, their lawyers and auditors as soon as possible after the IRS notifies the issuer of an audit, is "making headway."

The net effect the new approach, Lew said, is that if a municipal issuer is audited "it doesn't necessarily mean there's a problem with their deal." Instead, the transaction might come under an area the IRS has targeted for examinations.

One example is that the 2018 work plan is focusing on multifamily housing projects that involve existing housing to determine if deals complied with the rehabilitation restriction.

"The issuers may see be a more indepth audit instead of a summary," Lew said.

By Brian Tumulty

BY SOURCEMEDIA | CORPORATE | 12/28/17 07:11 PM EST

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## **[2018 Outlook: More Tax Legislation and Possible Supreme Court Ruling.](#)**

WASHINGTON - Republicans in Congress expect the wide-ranging tax overhaul law just enacted will be followed by more tax legislation in 2018 that includes extensions for expired tax provisions such as one that would extend qualified zone academy bonds through 2017 and an excise tax on imported rum that benefits Puerto Rico and the Virgin Islands.

Senate Finance Committee Chairman Orrin Hatch, R-Utah, introduced the tax extenders bill the day after the Senate approved tax reform legislation.

The Senate extenders bill would continue for 24 months more than a dozen tax breaks that expired at the end of 2016, including a rum cover-over excise tax that produces revenue for Puerto Rico and the U.S. Virgin Islands to pay for local government operations. The QZAB extension only goes through 2017 because the new tax law terminates tax credit bonds after Dec. 31. Other extenders are energy-related, including a nuclear energy production tax credit.

Congress also will need to enact a technical corrections bill in the coming months to fix drafting errors and loopholes in the new tax law.

"It is inconceivable that Congress will not have to act early in the year on a technical reform bill," said Frank Shafroth, director of the Center for State and Local Leadership at George Mason University.

Shafroth said the "cataclysmic rush" to enact the legislation bore not even a remote comparison to the outreach and deliberations over the last tax reform bill in 1986.

"Because the legislation will have such a significant impact on increasing the federal deficit and debt, it seems certain that interest rates will rise, thereby increasing the cost of debt issuance for not just state and local governments but also for schools and universities," Shafroth said.

Meanwhile, the U.S. Supreme Court is expected to decide soon whether to consider a case involving South Dakota that would have nationwide impact on the ability of state and local governments to collect sale taxes on Internet purchases.

In addition, Congress may consider reforming the Internal Revenue Service to make it more customer friendly, according to House Ways and Means Committee Chairman Kevin Brady, R-Texas.

"My sense is that there could be broad bipartisan support for restructuring the IRS," Brady told reporters on Dec. 18.

Brady said the tax bill left out provisions that were dropped at the last minute because of the Senate's parliamentary Byrd rule as well as other proposals. Under that rule the Senate cannot include non-germane provisions without revenue implications via the reconciliation process or measures that would add to the federal deficit after the 10th year.

"This is not our last tax reform," Brady said. "I'm going to recommend that we do have some form of tax reconciliation in future budgets because there are still areas of the tax code I think and we think can be improved whether it's retirement savings, education, streamlining and we had a number of good ideas from our members we weren't able to accommodate."

Further tax legislation could provide an opening for municipal bond market issuers who think Congress left them in the lurch by not giving them a transition period before the termination of advance refundings and tax credit bonds.

Congress also will get pushback in 2018 from state and local governments on its controversial decision to limit to \$10,000 per household the federal deduction for property and income or sales state and local taxes.

"Cities will continue to fight to fully restore SALT and the exemption for advance refunding bonds," said National League of Cities President Mark Stodola, mayor of Little Rock, Ark.

U.S. Conference of Mayors President Mitch Landrieu, the mayor of New Orleans, described the tax legislation as "a full-fledged assault on cities and the families who live in them."

"This bill will make our cities harder to live in and harder to run effectively -- all for the benefit of wealthy political donors," Landrieu said.

Because Congress repealed the individual mandate requiring taxpayers to purchase health insurance, "Republican and Democratic mayors, not Washington politicians, will contend with

emergency rooms filling up with the sick and the uninsured,” Landrieu said.

But repeal of the health insurance mandate won’t expire until the end of 2018.

The impact of the repeal could be partially offset before then if Congress enacts legislation to establish high-risk insurance pools at the state level and renews federal subsidies for low-income people to purchase health insurance. Republican lawmakers such as Sens. Susan Collins of Maine and Lamar Alexander of Tennessee are hoping Congress will enact bipartisan legislation with those fixes in 2018.

Congress, however, is expected to continue resist calls by state and local governments to enable to them to collect sales tax on Internet purchases.

The obstacle has been House Judiciary Committee Chairman Robert Goodlatte, R-Va., who has refused to consider legislation on Internet sales taxes authored by Rep. Kristi Noem, R-S.D.

Goodlatte has announced he won’t run for re-election in 2018, but relief could come sooner from the Supreme Court.

South Dakota Attorney General Marty Jackley announced Dec. 21 that the state filed its final reply in its request for consideration by the high court.

“Based upon the significant impact this issue has on every Main Street business, it remains my hope that our highest court will let us be heard,” Jackley said. “We have received extraordinary support from the State Attorneys General, the National Governors Association, educational leaders, and the business community in the national fight to bring tax fairness for our local retailers and to help support main street businesses.”

South Dakota is hoping the Supreme Court will decide whether to take the case by the end of January, setting up the possibility of a ruling by the end of the court’s term in late June.

The case is widely viewed as an opportunity for the Supreme Court to take into account technological advances since its 1992 ruling in *Quill Corp. v. North Dakota*, that sales tax collections for online sales can only be required if a retailer has a physical presence or “nexus” in a state.

South Dakota has no state income tax and is more reliant on sales taxes for its budget than most states.

A 2016 South Dakota law requires out-of-state retailers to collect and remit the sales tax similar to in-state retailers if the remote sellers have more than \$100,000 in sales or complete more than 200 sales transactions per year within South Dakota.

After the law was enacted, the state contacted large remote retailers asking them to comply. The state then sued three that refused, resulting in the lawsuit, *State of South Dakota v. Wayfair (W), Overstock and Newegg*. South Dakota’s highest court overturned the law, setting the stage for the appeal.

States and local governments lost an estimated \$26 billion in potential sales tax revenue in 2015 because of online retail sales, according to the National Conference of State Legislatures and the International Council of Shopping Centers.

“I think the legislation, the way it is written, is actually a great opportunity for states and localities to address the collection of sales tax,” said Emily Brock, director of the Federal Liaison Center for

the Government Finance Officer Association.

While online merchandise sales have exploded, much of the sales tax is uncollectible, Brock said. "Local tax systems address local needs and so does the imposition of a sales tax," she said. "It's utilized effectively across the country."

By Brian Tumulty

BY SOURCEMEDIA | MUNICIPAL | 12/29/17 07:08 PM EST

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## **Tax Bill Jolts Municipal-Bond Market.**

***December is typically a sleepy month in the already sedate municipal-bond world—but not this year***

December is typically the sleepest month in an already sedate municipal-bond world. But this year the prospect of a new tax bill roused the market to records.

Municipalities issued \$43 billion in new bonds through the first 15 days of December, the largest amount of government borrowing during that same period since 1990, according to Thomson Reuters. The total includes \$8 billion of new bonds on Friday.

The flurry of new debt triggered a series of price swings that don't normally occur in such a placid market. Within an eight-day period in late November and early December, municipal-debt values hit their low and high points for the fourth quarter, according to the S&P Municipal Bond Index.

"It's been kind of raining munis," said James Iselin, head of the municipal fixed-income team at money manager Neuberger Berman.

The price volatility unfolded as Congress debated whether to do away with long-held tax exemptions on certain types of municipal bonds. Investors don't demand as much interest on these bonds because they don't have to pay taxes on their earnings. That lowers borrowing costs for cities and states as well as charter schools, museums, private universities, hospitals and nursing homes.

A final bill hammered out last week by House and Senate negotiators eliminates the exemption on so-called advance refunding bonds, which cities and states use to refinance their old debt. The nonpartisan Joint Committee on Taxation estimates that move would mean an additional \$17.3 billion in revenue to the federal government over the next decade.

Legislators decided to keep the exemption on private-activity bonds, which allow nonprofits and some for-profit firms to raise money for development projects perceived to have a public benefit. A prior House bill proposed eliminating that benefit altogether.

The full House and Senate are expected to vote on the final bill this week, and President Donald Trump is expected to sign the final version if it passes.

Borrowers and bond buyers began their scramble in November when Congress unveiled its first tax proposals. As issuance skyrocketed at the end of last month, municipal bonds reached their cheapest levels relative to 10-year Treasuries since 2015, according to Thomson Reuters Municipal Market Data.



Prices then rebounded as investors competed to buy up the new, cheap bonds. Thus far this month an average of \$45 million in municipal-bond exchange-traded funds has changed hands a day, compared with \$26 million in December of last year, according to a CreditSights analysis of Bloomberg data.

Even an announcement last Wednesday that the Federal Reserve would raise its benchmark federal-funds rate by a quarter percentage point didn't slacken demand. Rising interest rates tend to lower the price of outstanding municipal bonds that were issued in a lower rate environment.

"This may easily be the biggest December that we've ever seen when all is said and done in terms of new issue volume," said Peter Hayes, head of the municipal group at BlackRock Inc. and a buyer of these bonds. "Usually we're known for more straight line performance."

One reason for the demand is that many market participants expect municipal bonds to become more valuable in 2018 if governments pull back on new advance refunding bonds. Even private-activity bonds, which will retain their tax-exempt benefit under the current bill, are likely to be scarce for the first few months of the year because so many borrowers rushed to market over the past six weeks.

One borrower whipsawed by the market movements was Forsyth County, Georgia. After Congress began its tax debates, county officials decided they would issue about \$70 million in advance refunding bonds used to refinance prior borrowings on parks and roads.

But when the county's documents were ready at the end of November, bond prices were lower and interest rates were higher. The county would gain little in savings, said Chief Financial Officer David Gruen, and decided to hold off.

When prices rose again this month, the county, its lawyers and underwriters changed their minds again. Mr. Gruen now expects to do the deal Wednesday if rates remain favorable.

"It is really been quite a roller-coaster ride," Mr. Gruen said.

Borrowing costs jumped as municipalities rushed to issue new bonds ahead of a potential change in tax rules.

One city, Portland, Ore., wasn't able to move fast enough. It wanted to move up an issuance of about \$100 million in advance refunding sewer bonds planned for April 2018, said debt manager Eric Johansen. But officials concluded they would not be able to bring the borrowing measure before the city council and get ratings reports on the proposed bond issue from debt-ratings firms in time.

"If we had a little more time, we would," Mr. Johansen said. He said he remains hopeful that Congress will give governments a grace period. "Any kind of extension of the effective date would be enormously helpful," he said.

Plenty of other borrowers were able to take advantage of the mayhem. The state of Florida this month sold \$410 million in advance refunding bonds planned for 2018, said Florida bond finance director Ben Watkins.

Another state official asked Mr. Watkins "What are you going to do for the next six months?" he said.

"I said 'I guess I'm going to take time off.'"

## The New York Times

By Heather Gillers

Updated Dec. 18, 2017 11:22 a.m. ET

Write to Heather Gillers at [heather.gillers@wsj.com](mailto:heather.gillers@wsj.com)

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### **Bipartisan U.S. Conference of Mayors Criticizes Congress for Passing Tax Reform Bill; Call it an 'Assault on Cities'**

WASHINGTON, DC - New Orleans Mayor Mitch Landrieu, President of The United States Conference of Mayors (USCM), today released the following statement on Congress' tax bill on behalf of Democratic, Republican and Independent mayors:

"When Congress began its efforts to reform our nation's tax code, it had a unique chance to create jobs, protect middle class families, and build stronger communities. It has squandered that opportunity.

"The bill being sent to President Trump's desk is a full-fledged assault on cities and the families who live in them. Mayors raised their voices to protect essential tools for cities like the Low Income Housing Tax Credit and the Historic Tax Credit, while averting a full elimination of the State and Local Tax (SALT) deduction. There's no mistaking, however, that this bill will make our cities harder to live in and harder to run effectively - all for the benefit of wealthy political donors.

"Mayors of both parties fought tooth and nail to preserve the individual mandate, without which 13 million Americans could lose their insurance. Republican and Democratic mayors, not Washington politicians, will contend with emergency rooms filling up with the sick and the uninsured.

"But make no mistake: our cities will find a way forward. Mayors were elected to put their constituents first, and all of us - Democrat, Republican, or Independent - honor that commitment every day.

"No matter how much of a lurch we've been left in, mayors will meet this challenge."

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### **Fitch: Other Connecticut Cities Not Likely to Follow Hartford's Path.**

**Fitch Ratings-New York-18 December 2017:** The city of Hartford's prolonged financial troubles have drawn questions from some investors as to whether other Connecticut cities with comparable demographics could experience a similar fate, though a new Fitch Ratings report sees that scenario as unlikely.

Once viewed as a challenged but relatively stable credit, Hartford's financial standing has become more precarious in recent years to the point where bankruptcy was once considered a serious possibility. Many of Connecticut's local governments do not have the same practical revenue constraints as Hartford due to their stronger demographics, less reliance on state assistance, and lower property tax rates. That said, Fitch recently conducted an analysis of the Connecticut cities it

rates that share some similar weaknesses with Hartford, namely New Haven (A-), New Britain (A-), Bridgeport (A), and Waterbury (AA-).

One major differentiating factor revolves around employee benefit concessions, according to Director Kevin Dolan: “Unlike Hartford, the ability of these other cities to secure employee benefit concessions has helped curb costs for both pensions and health insurance,” said Dolan. “While debt levels are generally high for these other cities, their future debt service structure is not as burdensome as it is for Hartford and they all rely on an above-average level of state assistance similar to Hartford.”

Like Hartford, the level of available reserves for cities such as New Haven and Bridgeport to withstand future economic downturns is low. A notable difference, however, is that both New Haven and Bridgeport have seen revenue growth associated with new development. Additionally, New Haven and Bridgeport both have flexibility to further increase revenues and make expenditure cuts if necessary. Sound reserve levels also distinguish such cities as Waterbury and New Britain from Hartford along with an adequate ability to manage expenditures.

‘Hartford Weaknesses Not Common versus Fitch-Rated Cities in Connecticut’ is available at [www.fitchratings.com](http://www.fitchratings.com)

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### **Fitch: US Tax Bill Adds Pressure to States, Locals and Higher Ed.**

**Fitch Ratings-New York-20 December 2017:** The final version of the US tax bill may affect some states’ and locals’ revenues and could add pressure to colleges and universities, says Fitch Ratings. However, the long term effect is uncertain due to the complicated interrelationships of the law changes and since many of the provisions will expire in the next decade.

The federal tax changes could limit tax raising flexibility for state and local governments, particularly for states that charge higher taxes, as the bill will cap the federal tax deduction for state and local taxes at \$10,000. This will cause an increase in the impact of state and local taxes. Residents in states with comparatively high taxes, including California, Connecticut, New Jersey and New York, will be more affected and may have less tolerance for higher state and local taxes in the future. Less revenue-raising flexibility could limit growth in state and local spending and have negative implications for entities that rely on government support including school districts, public higher education institutions and healthcare providers with high Medicaid exposure.

The proposed tax rate reductions for higher-income taxpayers and changes to the individual Alternative Minimum Tax are most likely to affect tax payers that benefit from the current deduction for state and local taxes and could somewhat offset the immediate impact. Most states are not in a position to lower taxes in response to the change due to tepid revenue growth and ongoing spending pressures.

If the lowered caps on the deductions related to mortgage interest, property taxes and home equity loans reduce the incentive to buy houses, property values in areas with high average home prices could see lowered growth or even decline, reducing the amount of property tax local governments collect. This change could result in lower revenue growth prospects for local governments absent tax rate increases.

Fitch notes taxpayer action to minimize aggregate tax payments in advance of the federal tax changes, such as managing the timing of discretionary income and/or prepaying taxes, is likely to

skew revenue results in the current and coming fiscal years. States will also need to consider the implications of the federal changes on state revenue streams given existing linkages to the federal tax code, and may choose to make modifications in upcoming legislative sessions.

More broadly, the elimination of tax-exempt advance refunding bonds will modestly limit financial flexibility but is not expected to have a significant effect on municipal issuers' credit quality.

The 1.4% excise tax on net income from the largest private colleges' endowments would be an incremental financial stress but would likely not have significant near-term credit effects on Fitch-rated colleges or universities. The impact under the final law is narrow. The Chronicle of Higher Education, using data from 2014 and 2015, estimates fewer than 30 private colleges and universities meet the enrollment and endowment per student levels in the bill that would trigger the tax. However, it could lower the incentives for donors to fund endowments and raise the possibility of higher and more onerous taxes on endowments in the future. The incentives for donors could also be pressured by the rise in the standard deduction if it lowers the number of taxpayers who itemize charitable deductions.

The long term effects of these provisions of the tax bill, and the federal changes overall, is uncertain. Many provisions are set to expire in 2025 and will likely be up for political debate in the interim. On the spending side, future federal action to close projected deficits could affect areas such as Medicaid, a key area of vulnerability for states.

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### **Fitch: Expiration of Public Safety Arbitration Cap Could Pressure New Jersey Local Finances.**

**Fitch Ratings-New York-20 December 2017:** A New Jersey law that establishes a 2% cap on the base salary arbitration award for affected police and fire labor organizations is set to expire on Dec. 31 and could pressure N.J. local government finances, according to Fitch Ratings.

The public safety arbitration cap has been in effect since Jan. 1, 2011 (it was extended for a subsequent three-year period in 2014). The arbitration cap will likely expire on Dec. 31, at least temporarily, as the state legislature, the governor, and the governor-elect await a final report (also due on Dec. 31) of the Police and Fire Public Interest Arbitration Impact Task Force (the task force), which was charged with studying the impact of the arbitration cap on property taxes, government spending, collective negotiation agreements, personnel, and crime.

Fitch believes the arbitration cap is beneficial to local government credit quality as it helps to align revenue and spending measures and supports structural balance in the context of statutory caps on property tax growth. Property taxes, which are the dominant source of funding for local governments, are subject to a permanent 2% cap on annual growth enacted in 2010, albeit with exemptions for debt service and certain increases in pension and health care costs. Without the cap arbitration awards would remain subject to a reasonable determination of the issues, including the financial impact on the local government and taxpayers, and the ability of the local government to maintain or expand its programs or services.

However, bargaining groups may become more emboldened to pursue arbitration as opposed to voluntary settlement if the arbitration cap expires. Arbitration awards were significantly higher prior to the cap, ranging from 2.50% to 5.65% from 1993-2010, according to a report of the New Jersey Public Employment Relations Commission (PERC). Voluntary settlements, which are not subject to

the arbitration cap, were also higher in years preceding the arbitration cap according to data reported by the task force in a preliminary report released in September.

The majority of Fitch-rated New Jersey local governments exhibit a high level of fundamental financial flexibility. As such we do not expect immediate degradation of credit quality if the arbitration cap is not extended. However, elimination of the arbitration cap could force local governments to reduce governmental services and/or rely on one-time resources to accommodate higher wage expenses. Furthermore, elimination of the arbitration cap could also have an impact on pension liabilities and contribution levels, as plan benefits are based on employee wages, among other factors. Over time these risk factors may weaken some of the long-term credit fundamentals that underpin Fitch's Issuer Default Ratings assigned to New Jersey local governments. Fitch will continue to monitor the situation and comment as information warrants.

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## **[Fitch: Southern California Wildfires Unlikely to Affect U.S. Public Finance Credit Quality.](#)**

**Fitch Ratings-San Francisco-20 December 2017:** As with the October 2017 wildfires in northern California, Fitch Ratings sees no immediate credit impact on U.S. public finance credits from the Southern California wildfires which continue to rage in Ventura and Santa Barbara Counties. However, Fitch believes there could be short-term budgetary pressure for the most impacted governments.

Fires this month have impacted communities in Los Angeles, San Diego, Santa Barbara and Ventura counties. All except the Thomas Fire in Ventura and Santa Barbara counties are under control. The Thomas Fire started on Dec. 4 near the city of Ventura but has moved northwest into Santa Barbara County. As of Dec. 20, the blaze has burned over 272,000 acres.

The Thomas fire appears to be largely in the Los Padres National Forest and, as a result, about 1000 structures have been destroyed compared to over 3,000 structures, mostly homes, in the Napa, Sonoma and Mendocino county fires which destroyed over 200,000 acres in aggregate. Nevertheless, with 55% contained and possibility for continued dry and windy conditions, the final outcome could be different. Full containment is not expected until Jan. 8, over two weeks from now.

As with most natural disasters, Fitch believes the fiscal impact of the fires on rated entities in Ventura and Los Angeles counties will be largely mitigated by their financial flexibility and support from federal and state governments and private insurance policies. The local governments affected by the fires are likely to use a combination of federal relief funds, state support and insurance claims to pay for most fire-related damage. The Dec. 5 federal disaster declaration for the State of California enables individuals and local governments to seek individual assistance from the federal government. According to FEMA's website, the declaration applies only to the Thomas fire in Ventura and Santa Barbara counties.

Fitch maintains an 'AA+' Issuer Default Rating (IDR) on Ventura County (population of 849,000), which incorporates an 'aaa' financial performance assessment based in part on its substantial available liquidity. Fitch expects near-term budgetary fire-related impacts due to assessed valuation (AV) declines and the added cost of fire-fighting and clean-up. However, the county is part of a very large and diverse regional economy that Fitch believes should begin to recover promptly once the fires have been put out. Overall, we expect most damaged property in affected communities to be rebuilt, which will maintain tax bases, rather than residents and businesses leaving the areas. While we expect recovery efforts to follow historical patterns of disaster recovery, we will analyze any significant developments that might affect credit quality.

In addition to damage to residential properties, the fires have reportedly damaged avocado and lemon groves, but it is too soon to estimate the extent of the damage. According to the county's most recent crop report (2015), the total value of agricultural production in the county was \$1.36 billion, with avocados and lemons combined representing about one third. Damaged trees could affect future years' output, though they would be eligible for crop insurance. However, the county's revenues are concentrated in property taxes (about 33% of general fund revenues) and intergovernmental sources (43%), so any material impact of the fires on the county's financial operations would be due to lower AV. This is likely to be temporary as owners rebuild damaged property, although it could be more extended for agricultural property. The breakdown of AV by land use was not immediately available.

No Fitch-rated public schools were reported as damaged due to the fires. However, a number of local school districts have been forced to temporarily close due either to fire damage or very poor air quality, including Hueneme Elementary School District (IDR 'AA-/Stable Outlook) State law provides for school districts to be held harmless for impacts to attendance (on which state funding is based) due to natural disasters, including air quality.

Smaller fires broke out at the same time but have been largely contained: the Lilac fire in San Diego County (population of 3.3 million) burned 4,100 acres and damaged 157 structures, including a number of mobile homes. The Skirball fire in Bel-Air (Los Angeles County, population over 10 million) burned 422 acres and damaged or destroyed 18 acres. The Sylmar Fire (Los Angeles County) burned about 15,600 acres, and damaged or destroyed about 200 structures. The Rye fire near Santa Clarita (Los Angeles County) burned over 6,000 acres and six structures.

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## **Bloomberg Brief Weekly Video - 12/22**

Amanda Albright, a reporter for Bloomberg Briefs, talks with Joe Mysak about this week's municipal market news.

[Watch video.](#)

### **Bloomberg**

December 21st, 2017

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## **Muni Market's Trusted Buyers Could Disappear After Tax Cuts.**

- **Could leave 'demand hole' for debt maturing in 10 to 17 years**
- **Tax rate drop to 21% from 35% makes munis less attractive**

Banks and insurance companies could once be trusted to scoop up state and local government debt. Now, they could start looking elsewhere to invest.

By cutting the corporate tax rate to 21 percent, tax-exempt municipal bonds could lose their allure to corporate buyers. That could have a major impact on the pricing of the longer-dated bonds these institutions tend to buy, analysts say.

"On a 35 percent tax rate, muni bonds look attractive to a corporation," said Jonathan Mondillo, portfolio manager and head of municipal trading for Alpine Funds, which oversees about \$1.3 billion in municipals. "At a 21 percent tax rate, I'm not quite sure they do."

Banking institutions' holdings of municipal securities stood at \$584.2 billion in the third quarter of 2017, up from \$128.6 billion in 2000, according to Federal Reserve data. Property and casualty and life insurance companies have increasingly added to their muni investments as well, holding \$530.2 billion at the end of the third quarter, the data show.

Together, banks and insurance companies held 29 percent of the \$3.8 trillion in outstanding municipals in the third quarter, according to the Federal Reserve data.

Less consistent demand from banks could cause increased market volatility and less liquidity, according to a Dec. 17 note by George Friedlander, managing partner at Court Street Group.

While separately managed accounts prefer bonds maturing in less than 10 years and municipal bond

funds prefer longer-dated paper, there could be a “demand hole” for securities maturing in 10 to 17 years due to the tax cut, he wrote in the report. In order to entice corporate buyers, yields may need to rise to taxable levels, he added.

To be sure, banks and insurance companies may still be attracted to the diversification and stable credit quality that municipals offer, said Gabriel Diederich, portfolio manager for Wells Fargo Asset Management, which oversees about \$41 billion of state and local debt.

And while Congress’ tax overhaul has the potential to hurt demand from banks, regulatory changes by lawmakers could offset some of the impact.

Bills in the House and Senate would treat municipal debt as high-quality liquid assets, thereby helping banks meet liquidity rules and providing a potential boon to muni demand, according to Bloomberg Intelligence senior government analyst Nathan Dean.

Sean Carney, head of municipal strategy at BlackRock, said the “psychology” of corporate buyers is still uncertain. It could take months or years to figure out their buying behavior as a result of the tax change, he said.

“We don’t see outright selling, but down the road it will be interesting to see what market corrections it may take to entice them to add,” he said. “That’s the question.”

## **Bloomberg Markets**

By Amanda Albright

December 20, 2017, 12:00 PM PST

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### **[Municipal Bonds May Get a Boost From Congress's Final Tax Bill.](#)**

- **Curb on advance refundings could cut issuance by one-quarter**
- **Corporations may still be buyers, even with big tax cuts**

The final tax bill hashed out by Congress promises to provide a boost to the U.S. state and local government bond market by reducing sales of new tax-exempt debt beginning next year. It could also increase demand for the securities from investors in high-tax states such as California, New York and New Jersey, where residents would be hardest hit by limits on the ability to deduct state and local taxes on their federal returns.

Bond prices were little changed Monday, with the bill largely shaping up as analysts and investors had anticipated. Here’s the major impacts:

#### **Fewer Bonds**

The final bill will take less of a bite out of issuance than the version passed earlier by the House because it preserves the ability of businesses such as hospitals and airports to issue so-called private activity bonds.

But it will still have a considerable impact by banning sales of tax-exempt debt for advance refundings, a refinancing technique that accounts for tens of billions of dollars of sales each year. If the curb on advance refundings is enacted, supply next year will be about \$270 billion, compared



with \$380 billion to \$400 billion if the deals were left intact, according to Barclays Plc.

“The big story next year is just simply the technical picture — supply and demand,” said Duane McAllister, senior portfolio manager at Baird Advisors, who expects the change to advance refundings to cut supply by a quarter next year.

The risk posed by the legislation also spurred a rush to borrow by the end of the year that will contribute to a dearth of bonds early next year. Municipalities have sold \$46.5 billion in bonds so far this month, a nearly 147 percent increase compared to the same month a year ago, according to data compiled by Bloomberg.

## **More Demand Seen**

The drop-off in supply, paired with steady demand, will make municipals more valuable relative to U.S. Treasuries, McAllister said. He expects the 10-year muni-Treasury ratio — which measures the yield of municipal bonds against Treasury bonds — to decline to 75 percent next year, compared to 85 percent now.

The new conference bill would cut the top marginal personal income tax rate to 37 percent from 39.6 percent. That is likely too small a change to affect demand from individual investors who are the biggest buyers of municipal bonds, said Gabriel Diederich, portfolio manager for Wells Fargo Asset Management, which oversees about \$41 billion of state and local debt.

“With this plan, the retail muni investor should look at the market and say, ‘Wow, this is a pretty tax-efficient security type for me,’” he said.

The revised tax bill would limit taxpayers’ ability to deduct state and local taxes at \$10,000. That could heighten demand for municipals from investors living in higher-tax states, analysts say. In seven, including California, New York, Connecticut and New Jersey, the maximum effective tax rate could increase as a result of the changes, according to a Dec. 17 note by CreditSights analyst Pat Luby.

Still, demand from banks and insurance companies could decrease as a result of the revised tax bill, which proposes cutting the corporate tax rate to 21 percent. But Longer-dated municipal bonds may still lure corporate buyers, John Mousseau, director of fixed income at Cumberland Advisors, said in a Dec. 18 report.

“Most companies have paid lower taxes than the stated 35 percent in any case, so the fallout here may not be as great as pundits think,” he wrote.

## **Bloomberg Markets**

By Amanda Albright and Martin Z Braun

December 18, 2017, 10:18 AM PST

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## **[Puerto Rico Bond Buyers Wait for ‘Teens’ Price Before Jumping In.](#)**

- **Investors wait for benchmark G.O. bond to fall below 20 cents**
- **Lower price could bring back tax-exempt mutual funds who sold**

How low will it go? That's what investors are wondering as they contemplate at what price Puerto Rico's most actively-traded security becomes a buy.

The price of the 8 percent general obligation bond due 2035 dropped nearly 60 percent since Hurricane Maria struck the island. It traded Thursday at an average price of 23 cents, down from 56.7 cents before the storm hit. Some investors are waiting for a price in the teens before buying.

While that may seem cheap, the commonwealth has yet to restructure its \$74 billion of debt and faces continued economic decline and persistent population loss. The bonds were sold in March 2014, the government's last long-term debt sale, and hedge funds bought most of the \$3.5 billion issue at 93 cents on the dollar.

A lower price on the G.O. bonds would help offset the island's financial challenges, said David Tawil, president and co-founder of Maglan Capital LP, who bought commonwealth bonds in 2013 and has since sold them. If the debt drops below 20 cents, he's back in, Tawil said.

"Once it goes below 20, I think people will see that as a threshold for capitulation," Tawil said. "And at that point it becomes investible."

A lower price could bring back tax-exempt mutual funds after most of those investors reduced their exposure over the past few years as the island inched closer to bankruptcy. Pacific Investment Management Co. last month said the commonwealth's general obligations were looking more favorable as prices declined. The lower the price, the more the municipal market is eyeing the debt, said Peter Hayes, head of municipal bonds at BlackRock Inc.

"As they continue to fall, it certainly gets more interesting and you have less downside," said Hayes, who helps manage \$124 billion of municipals. "The risk, reward — that changes the lower the prices go and I think it's certainly getting toward that point even for muni bondholders."

Puerto Rico has defaulted on most of its debt. The value of its securities has fallen since former Governor Alejandro Garcia Padilla in 2015 said the commonwealth was unable to repay all of its obligations. The island's bankruptcy filing in May and Hurricane Maria pushed prices down even more.

The storm's devastation has changed anticipated bondholder recoveries. Before Maria, Puerto Rico said it could direct \$8 billion for principal and interest payments through 2026, far short of the \$33.4 billion of debt service owed during that time. Island officials have said the commonwealth can no longer afford to pay even the \$8 billion amount. Puerto Rico may need to suspend debt payments for five years, a lawyer for Puerto Rico's federal oversight board said in court last month.

That has left investors wondering how much they'll get repaid and when. It's difficult for mutual funds to wait years for repayment while they allocate investment income to their clients. "It means you have a bond that doesn't accrue," Hayes said. "It's not additive to the income to your shareholders."

Puerto Rico Governor Ricardo Rossello is set to submit to Puerto Rico's federal oversight board a revised fiscal plan by Jan. 10 that will include how much the commonwealth estimates it can repay. Investors are eager to see how much lower those numbers are and which type of security will get more money for repayment, general obligations or debt backed by sales-tax receipts. Bad news for general obligation debt could push prices lower.

"If the prices get low enough, it might look attractive for the portfolios that can accept that type of risk," said Rob Amodeo, who manages \$25 billion as head of municipals at Western Asset

Management.

While other Puerto Rico securities, including general obligations, trade below 20 cents, investors focus on the 8 percent G.O. because it's the most actively traded. It's easier to get in and out of that bond compared with the island's other securities.

Some general obligations have been trading in the teens for the past month, data compiled by Bloomberg show. Junior sales-tax bonds, which get repaid after senior bondholders, have been trading below 10 cents on the dollar in the past few weeks.

It's not just an additional potential price drop on the 8 percent G.O. that keeps investors poised for a possible opening on Puerto Rico's debt. At some point the island's economy and finances will improve, Tawil said.

"There will be some turning of the corner in terms of the fundamental story," Tawil said.

## **Bloomberg Markets**

By Michelle Kaske

December 21, 2017, 9:00 AM PST

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### **TAX - CALIFORNIA**

#### **[Gonzalez v. City of Norwalk](#)**

**Court of Appeal, Second District, Division 3, California - December 4, 2017 - Cal.Rptr.3d - 2017 WL 5988844 - 17 Cal. Daily Op. Serv. 11, 577**

City residents brought declaratory judgment action against city challenging ordinance deleting exemption to telephone user tax for cellular telephone services.

The Superior Court sustained city's demurrer and dismissed action. Residents appealed.

The Court of Appeal held that change in interpretation of federal utility tax statute, to exempt certain cellular telephone plans from user tax, did not retroactively change meaning of municipal code provision imposing particular percent tax on all telephone service billed to city residents but incorporating federal exemption statute, and therefore subsequent ordinance's elimination of municipal code's reference to federal statute did not constitute an imposition, extension, or increase of taxes and thus did not require voter approval.

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### **TAX - ILLINOIS**

#### **[Village of Bedford Park v. Expedia, Inc.](#)**

**United States Court of Appeals, Seventh Circuit - November 22, 2017 - 876 F.3d 296**

Illinois municipalities, that had enacted one or more ordinances imposing taxes on rental of hotel rooms within their borders, brought putative class action in state court against online travel agencies, through which travelers could purchase hotel room reservations, alleging that travel agencies failed to remit taxes owed under ordinances.

Following removal, the United States District Court granted summary judgment in favor of travel agencies with respect to all but one municipal ordinance, and granted summary judgment in favor of remaining municipality. Municipalities and travel agencies appealed.

The Court of Appeals sitting by designation, held that:

- Certification to Illinois Supreme Court of questions concerning interpretation of Illinois municipal ordinances was not warranted;
- Travel agencies were not subject to municipal ordinances that required owners, operators, and managers of hotels or hotel rooms to collect tax and remit to respective municipality; and
- Travel agencies were not subject to municipal ordinances that imposed tax on those engaged in renting hotel rooms or engaged in business of renting hotel rooms.

Certification to Illinois Supreme Court of questions concerning interpretation of Illinois municipal ordinances that imposed taxes on rental of hotel rooms was not warranted, in action by Illinois municipalities alleging that online travel agencies failed to remit taxes owed under ordinances, even though Illinois Supreme Court had not yet ruled on such issues, since issues involved routine questions of statutory interpretation, and once ordinances were interpreted, question of whether ordinances applied to travel agencies merely required Court of Appeals to exercise judgment.

Under Illinois law, as predicted by Court of Appeals, online travel agencies, through which travelers could purchase hotel room reservations, were not “owners” of hotels or hotel rooms within meaning of municipal ordinances that required owners, operators, and managers of hotels or hotel rooms to collect hotel room occupancy tax from traveler and remit to respective municipality, since travel agencies, despite contracting with hotels for ability to make room reservations for travelers, did not have right to possess, use, or convey to others hotels or hotel rooms.

Under Illinois law, as predicted by Court of Appeals, online travel agencies, through which travelers could purchase hotel room reservations, were not “managers” of hotels or hotel rooms within meaning of municipal ordinance that required owners, operators, and managers of hotels or hotel rooms to collect hotel room occupancy tax from traveler and remit to municipality, since travel agencies did not supervise affairs of hotels or hotel rooms.

Under Illinois law, as predicted by Court of Appeals, online travel agencies, through which travelers could purchase hotel room reservations, were not “operators” of hotels or hotel rooms within meaning of municipal ordinance that required owners, operators, and managers of hotels or hotel rooms to collect hotel room occupancy tax from traveler and remit to municipality, since travel agencies did not perform function of running hotel, rather they performed one set of functions of hotel by making room reservations.

Under Illinois law, as predicted by Court of Appeals, online travel agencies, through which travelers could purchase hotel room reservations, were not “engaged in renting” hotel rooms within meaning of municipal ordinances that imposed hotel room occupancy tax on those engaged in renting hotel rooms or engaged in business of renting hotel rooms, since renting implied ownership and granting possession of property, and travel agencies did not own hotels or hotel rooms, nor could they independently grant travelers access to hotel rooms.

Under Illinois law, as predicted by Court of Appeals, online travel agencies, through which travelers could purchase hotel room reservations, were not “engaged in the business of renting” hotel rooms within meaning of municipal ordinance that imposed hotel room occupancy tax on those engaged in renting hotel rooms or engaged in business of renting hotel rooms, since travel agencies were not engaged in business of renting hotel rooms routinely or commercially, given that travel agencies did

not rent hotel rooms.

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## **Months After Federal Warnings About Russian Software, Local Governments Respond.**

***President Trump signed a bill last week that bans Kaspersky Lab software on federal computers. Local governments were initially hesitant to stop using it, but most are now following the feds' lead.***

Last week, due to fears about potential cyberespionage, President Donald Trump [signed a bill](#) banning the federal government's use of a Russia-based antivirus software.

The legislation comes three months after a federal directive advised civilian agencies to remove Kaspersky Lab within 90 days and nearly six months after the federal government [revoked](#) Kaspersky Lab from its list of approved vendors.

Neither last week's bill nor the September directive apply to state and local governments, several of which were still using Kaspersky software in July. *The Washington Post* [revealed](#) that month that Portland, Ore.; Fayetteville, Ga.; San Marcos, Texas; Picayune, Miss.; and the Connecticut Division of Public Defender Services were all using the software despite federal concerns about cyberespionage.

[Continue reading.](#)

GOVERNING

BY NATALIE DELGADILLO | DECEMBER 18, 2017

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## **How the Tax Bill Will Change Governments' Borrowing Costs.**

***Key provisions will likely increase states and localities' current debt load and make it more expensive for them to borrow in the future. The bill's impact on supply and demand in the municipal bond market, however, is unclear.***

For the first time in more than 30 years, Congress has passed a major overhaul of the tax code. The Senate and House have approved the GOP compromise bill, and President Trump is expected to sign it before the end of the year.

The final bill is better than initially expected for state and local governments, but key provisions are still likely to force big changes to their cost of borrowing.

The cause of these changes is indirect: The bill's big break for corporations on their income tax rate will force some state and local governments into higher debt payments on money they have already borrowed directly from banks, thanks to triggers placed in those loan contracts. George Smith, a municipal bond attorney, says it's not unusual for these contracts to have language that allows banks to increase the loans' interest rates in the event of a corporate tax cut.

But Smith, who specializes in municipal borrowing at the Bryant Miller Olive law firm, says there's

no way to tell how many existing loan agreements have such a clause since that information is often redacted in public notices. Additionally, while some banks have an automatic trigger in their agreements, other contracts may leave it to the bank to decide whether to hike the initial interest rate. In the latter cases, says Smith, governments can try to negotiate a rate with banks or refinance out of the initial loan.

“But if they don’t have that ability,” he says, “they’re stuck paying the rate.”

One recent deal Smith closed for a Florida city had a trigger. Under the contract, the city refinanced \$23.6 million with a tax-exempt rate of 2.99 percent over 10 years. If the bank’s corporate tax rate is cut, the loan interest rate will shoot up, meaning the city would pay an additional \$711,000 in interest costs over the life of the loan.

Going forward, the lower corporate tax rate could also potentially make it more expensive for governments to issue bonds in the municipal market.

Here’s why: Banks and insurance companies buy a lot of municipal bonds, making up 28 percent of the market. Banks also lend money directly to state and local governments. The interest rate governments pay in these deals is typically lower than other types of loans because banks don’t have to pay taxes on the income they earn from the loan. The same is true for bonds issued in the muni market — the rates tend to be lower because they are tax-free.

But with the GOP tax bill, the corporate income tax rate is slashed from 35 percent to 21 percent. That means that banks and other corporations will start earning more money off other types of investments because their tax rate is a lot lower. It could even mean that, after taxes, those other investments are more lucrative than the low interest rate muni bonds and loans. The result is that muni rates may have to go up in order to be competitive.

Less clear is how all the changes in the bill will impact supply and demand in the muni bond market.

Thanks to the elimination of certain types of tax-free municipal bonds, there has been a mad rush to issue bonds before the end of the year. This has likely shifted some of next year’s supply into the current year and has analysts predicting a significant decrease in the municipal bond supply in 2018. Most experts peg the drop around 25 percent, a more than \$100 billion drop compared with this year.

With less supply, that could put governments in the driver’s seat and help keep interest rates favorable to them. “It’s a balancing act,” says Todd Ely, director of the Center for Local Government Research and Training at the University of Colorado Denver. “Does the reduced supply counteract the likely reduced buying from corporate entities because munis aren’t as great a deal as they used to be?”

There are other indirect circumstances that could also play a role in the cost of borrowing next year.

For one, the caps on state and local tax deductions in tax reform may also encourage taxpayers in high-tax states to shelter more income in municipal bonds.

The market also may get a boost from foreign investors, who of course aren’t getting a corporate tax rate cut. While they don’t benefit from the tax-exempt status of municipal bonds, slightly higher rates may mean that munis will be a better deal for them than other taxable bonds.

## **Western States Poised to Lose More Than \$1 Billion Under Tax Bill.**

As Congress speeds toward a vote on its massive tax overhaul, the lack of funding to cover the costs of the package means Western states are poised to lose nearly \$1.3 billion in oil, gas and coal royalties.

Neither the House nor Senate versions of the bill are completely funded — Republicans argued economic growth spurred by the cuts would offset their cost. That lack of funding could ignite a 2010 federal law that requires across-the-board budget cuts, including withholding from states their portion of the money that oil, gas and coal companies pay to operate on federal land, when Congress approves a deficit-increasing measure. One prominent Western GOP senator insists that it's unlikely Congress would allow that to happen, but fears in state capitals remain.

Western states rich in coal, oil and natural gas — among them Wyoming, New Mexico and Montana — already rely heavily on those industries and have had their budgets hit hard in recent years by falling energy prices. Several have been struggling to find millions needed to plug budget holes, and losing the 48 percent cut of the federal government's royalty payments would be devastating, said officials across several states. The states' congressional delegations cast their votes along party lines, with Republicans voting for the bill and Democrats against.

Furthermore, the cuts would hit schools and other social services particularly hard, as many resource-rich states use royalty payments to fund those systems. This comes as states fear the impacts of the tax overhaul's other provisions, such as a cut in local and state income tax deductions.

"Triggering these cuts will put state budgets in the red and critical public services on the chopping block," U.S. Sen. Jon Tester, a Montana Democrat, said in a statement. "On the heels of a catastrophic wildfire season that burned a hole in Montana's budget, the last thing we need to be doing is handing out sweetheart deals to corporations that cost our state tens of millions of dollars."

Governors' offices did not respond to questions about how they would deal with the drop in revenue.

Montana is poised to lose \$24 million in royalty payments if the tax bill goes through. That comes on the heels of a November special session that was called just five months into the state's two-year budget cycle to address a \$227 million hole. The state's revenue department projected that in all, the state would lose \$122 million under the Senate version of the tax bill.

Mike Kadas, the state's revenue director, said the royalty payments go into the state's general fund, about half of which goes toward education. Other large portions are directed to the university system, public health and human services, and the state's correction system.

### **'A Big Hit'**

"Montana has been struggling to balance this budget for the last year or more, so \$24 million is a big hit," he said. "We're all in the process of reducing services right now, so it just means more of that."

Kadas said there is already talk about raising state taxes, and resource-producing counties, which

get 25 percent of the state's payout, would have to choose whether to reduce services or raise property taxes.

Chad Fenner, a county commissioner in coal-rich Big Horn County, Montana, which received \$2 million in mineral royalties last year, said the predominantly Native American county already has had to raise taxes because of a lagging coal market. He said losing the payments would mean cuts to the ambulance service, senior center and fire protection, all of which were paid for with royalty money.

"I hate even thinking about it if that would happen," Fenner said. "It wouldn't be good for our county."

The law that would trigger the cuts, the Statutory Pay-As-You-Go Act, also known as PAYGO, requires across-the-board cuts to certain programs if legislation passed by Congress increases projected deficits. An analysis from the nonpartisan Office of Management and Budget determines the amount of the cuts. Congress can, however, vote to waive the effects of PAYGO, which is exactly what some Republicans are suggesting.

Max D'Onofrio, a spokesman for U.S. Sen. Michael Enzi, a Wyoming Republican, said there has yet to be a sequester under PAYGO because lawmakers have voted 16 times to waive the required cuts.

"Senate Republicans will work to prevent cuts," he said. "Congress made the PAYGO law and Congress can also waive its requirements, and they have done so before on a bipartisan basis."

But not all are convinced it would be so simple.

"We've been told, 'Don't worry, Congress will fix this part of the deal,' but I'll believe it when I see it," Kadas said.

Enzi's home state of Wyoming would be perhaps the hardest-hit by withheld payments. The state got north of \$664 million last year in royalty payments — the most of any state. It also faces a \$770 million two-year deficit.

Mark Gordon, the state's treasurer and a Republican, said the education system would be hit hard by the loss of mineral royalties. The money funds education first before flowing to other priorities.

Royalty payments aren't just returned to the states to compensate for natural resources — the government has an obligation to offset the costs of development by funding schools, roads and other needs in impacted areas, Gordon said. "There was a recognition that where development occurs, the proper goal for the government was to use those royalties to take care of some of those impacts."

## **New Mexico's Woes**

New Mexico expects to receive about \$455 million for this fiscal year, according to Democratic U.S. Sen. Tom Udall's office, and like other Western states, it has had budget problems due to falling energy prices. The state went through nearly all of its reserves over the past two years and is working to rebuild them.

Udall said the bill sets New Mexico "on a collision course for a huge budget cut." Both U.S. senators from New Mexico sponsored an amendment to the Senate bill to exclude mineral payments from the cuts, but it did not pass.

"New Mexico can't afford a \$450 million budget cut, especially one that would slash the budget for



public schools,” Udall said in a statement. “And New Mexico’s schoolchildren shouldn’t have to pay for tax cuts for the top 1 percent.”

New Mexico state Sen. John Arthur Smith, the Democratic chairman of the Senate Finance Committee, recently penned a letter with his counterpart in the House to New Mexico’s congressional delegation warning of the impact of losing the mineral royalty payments.

The cuts would “go right to the heart of education,” he said. Republican Gov. Susana Martinez’s pledge to not raise taxes leaves the state with few other options, but Smith said increasing taxes is what the state needs to do to untie itself from the volatility of the oil market.

“You get labeled politically that you just want tax increases, but I just want reliable revenues,” Smith said. “This roller coaster thing is not a lot of fun.”

The Western Governors’ Association, which represents the governors of 19 states, said in a policy resolution that the federal government has no discretion over this money and that payment to the states is the only authorized use for the revenue.

“There’s no question whenever you have to deal with giving something away and taking something back, whoever is on the short end of that stick is going to feel it,” said Gordon in Wyoming. “And PAYGO rules, if they apply to royalty payments to states, are going to be pretty devastating to us.”

#### MINERAL ROYALTY PAYMENTS TO STATES, 2016

The lack of sufficient funding for the tax bill being considered by Congress would trigger a law known as PAYGO, which stops mineral royalty payments to states, among other things.

Alaska \$12,195,000

Arizona \$55,000

California \$35,317,000

Colorado \$83,887,000

Idaho \$5,485,000

Montana \$23,008,000

Nevada \$5,522,000

New Mexico \$368,604,000

North Dakota \$32,521,000

Oregon \$107,000

South Dakota \$307,000

Utah \$67,901,000

Washington \$4,000

Wyoming \$664,312,000

Source: U.S. Department of the Interior

By Rebecca Beitsch

STATELINE | DECEMBER 20, 2017

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## **The Federal Tax Overhaul May Boost States' Bottom Lines, But Some Governors Don't Want the Money.**

***Any new windfall for states is certain to set off a battle in legislatures about how to spend it.***

States may soon see an unexpected windfall of tax revenue as a byproduct of the federal tax law, but several governors have said they don't want the money.

Several governors have said they anticipate their state will take in more money because of the changes in the Republican tax overhaul, which President Donald Trump signed into law on Friday. The extra money could set off battles in state legislatures over how to spend the unexpected windfall, or whether they should even collect it in the first place.

"It is very clear that due to the loss of several longstanding federal tax deductions and exemptions, Maryland state revenue will likely increase by hundreds of millions of dollars," Maryland Gov. Larry Hogan, a Republican, said in a statement earlier this week. "Our goal will be to leave that money in the pockets of hardworking Marylanders."

[Continue reading.](#)

GOVERNING.COM

BY DANIEL C. VOCK | DECEMBER 22, 2017

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## **How GOP Tax Overhaul Makes it Harder to Pay for Infrastructure in U.S.**

President Donald Trump promised during the presidential campaign and after his election to lead an upgrade in our nation's infrastructure, announcing in February 2017, for instance, that he would ask Congress to approve programs designed to stimulate \$1 trillion in infrastructure investment across the country.

At least up to this point, the President's promises with respect to infrastructure remain unfulfilled. Furthermore, the recently passed tax bill that he signed last week may create some challenges for the municipal bond market and the infrastructure sector.

[Continue reading.](#)

By DANIEL BERGSTRESSER / ECONOFACT MONEYWATCH

December 28, 2017, 5:15 AM

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## **Why Infrastructure is a Revenue Challenge for Cities.**

***Guest columnist Jen Mayer shares insights on revenue generation for infrastructure projects gleaned from city-led best practices and cutting-edge investment strategies.***

Now that tax reform is over, Capitol Hill is likely to turn to the challenge of financing our nation's crumbling infrastructure. The trouble is, it's not really a financing challenge.

There are plenty of capital sources, domestic and foreign, eager to lend to infrastructure projects, including the U.S. municipal bond market, which emerged largely unscathed from tax reform. While the bill prohibited advance refunding of municipal bonds, the tax-exempt status of private activity bonds important for higher education, hospital and industrial developments was preserved.

Yet whatever happens next in Washington, DC., it's not likely to resolve the decades-long need to raise the Federal gas tax or find another new source of revenue for infrastructure. Congress may well change how existing funding is allocated, expand Federal credit programs and facilitate public-private partnerships. But local governments will have to find the revenue to pay back any financing. That task may be exacerbated by the limits placed on State and Local Tax Deduction (SALT) deductions that could make raising local taxes even more difficult.

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December 22, 2017

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## **The Battle to Save Private Activity Bonds May Not Be Over.**

WASHINGTON - The Trump administration is expected to finally unveil its long-awaited infrastructure plan in January, but some muni market participants worry any legislation for federal funding might cut private activity bonds for revenue.

"The federal cash register is empty after tax reform," said Chris Hamel, managing director and head of municipal finance at RBC Capital Markets, pointing to the fact that the tax bill is expected to add almost \$1.5 trillion to the federal deficit over 10 years.

"I worry that, given that the federal cash register is empty, will the issue of some limits on PABs be revisited as a pay-for in any expected infrastructure investment legislation?" he asked.

"I've heard that concern too," said Michael Decker, managing director and co-head of municipal securities at the Securities Industry and Financial Markets Association. "Once a revenue raiser gets floated or ends up on a list, then it's there forever."

The House tax bill had initially proposed to terminate tax-exempt private activity bonds by Dec. 31.

"It's good for the [municipal securities] industry to understand that the fight over PABs is not necessarily over," said Hamel.

But Hamel, echoing other infrastructure experts, said, "I think the prospects for meaningful

infrastructure policy reform are slim.”

Trump administration officials have been meeting with infrastructure and transportation groups over the last two weeks about the infrastructure plan the president is supposed to unveil in January, possibly around the time of his State of the Union address on Tuesday, Jan. 30.

“They’re serious this time, I think,” said Jeff Davis, senior fellow and editor of a weekly news report at the Eno Center for Transportation. Transportation Department Secretary Elaine Chao has repeatedly promised the plan would be released every few months this year.

The centerpiece of the plan is expected to be \$200 billion of direct federal funding that would be used to leverage another \$800 billion for infrastructure projects over a 10-year period.

Half of that money would be used for 20% federal share of incentive grants to states. Another 25% of the money would be used for grants for infrastructure projects in rural states and the final 25% would be for the big, high-profile, so called “transformative projects” picked by the Commerce Department.

“Apparently they’re going to prioritize projects where a state or local government has created or identified a revenue stream that can support a project over its life cycle,” added Michael Decker, managing director at co-head of municipal securities at the Securities Industry and Financial Markets Association. “They’re really going to encourage state and local governments to take on some of the responsibility themselves.”

## **Federal Funding**

Right off the bat, infrastructure advocates are bashing the \$200 billion of direct federal funding over 10 years as way too low.

“The president is whistling past the graveyard if he thinks \$20 billion a year additional investment in American infrastructure by the federal government is going to do anything,” said Ed Rendell, the former Pennsylvania governor who co-founded Building America’s Future, a bipartisan coalition of elected officials dedicated to promoting infrastructure investment.

“It is far too little of an investment,” said Rendell. The American Society of Civil Engineers gives America’s infrastructure a national grade of D+ and says it will take \$2 trillion over 10 years to move that grade to fair from poor, he said.

It would take \$100 to \$120 billion to build a high speed rail line between Washington, D.C. and Boston, he said. Yet the president is proposing federal spending of only \$5 billion per year over 10 years for big projects.

“Who is he kidding?” asked Rendell.

Rendell and others said Trump and Congress should have included infrastructure initiatives in the tax bill to raise the federal gas tax, which hasn’t changed since 1993, and index it to inflation to stabilize the Highway Trust Fund. They also should have used funds from the repatriation of companies’ overseas earnings to pay for infrastructure rather than to pay for the tax bill itself.

“I think the tax bill was a missed opportunity,” said Jack Schenendorf, of counsel at Covington & Burling.

“The other thing they blew [in the tax bill] was not fixing the Highway Trust Fund when they had a

chance,” said Casey Dinges, a senior managing director at the ASCE.

The HTF, which helps fund transportation projects, has been dwindling as cars have become more fuel efficient. Right now it’s spending about \$10 billion more than its taking in in federal gas tax revenues and it will be “running on fumes” by 2020, said Davis.

As for PABs, Rendell said the administration and Congress “can’t cut them because if the president is contemplating any private involvement in infrastructure there has to be private activity bonds.”

## **80% State Matches**

Another concern is that the plan will ask states to provide 80% matches for 20% federal incentive grants.

“I don’t think the states are looking for this kind of arrangement,” said Dinges.

He and others said its ironic the administration wants to ask states to put up 80% matches for 20% federal funding after Congress took away some of the tools states had for infrastructure funding in the tax bill.

“There were some pretty significant tools for infrastructure that were thrown out by the tax bill, like advance refundings,” said Emily Brock, director of the Government Finance Officer Association’s Federal Liaison Center. “Unfortunately [tax-exempt advance refundings provided] the opportunity to save money to make infrastructure investments and now that tool is gone.”

The big question on the incentive grants, said Davis, is whether 20% is that total amount of direct federal funding an issuer can get for an infrastructure project or whether the 20% can be combined with funds from other federal programs, such as the Federal-Aid Highway Program.

He said trying to convince states to accept federal funding that totals 20% and requires an 80% match “will really be a hard sell.”

“Most of the state departments of transportation, the Chamber of Commerce and the construction industry have had a consistent message all along,” said Davis. “They say: ‘New infrastructure programs are nice but the top priority should be to make sure existing programs don’t run out of money in 2020 and put them on a solvent basis permanently.’ The administration’s proposals to date have dodged that issue.”

Davis said that the last major transportation bill – Fixing America’s Surface Transportation (FAST) Act, which was enacted in December 2015 — authorized \$305 billion over fiscal years 2016 through 2020 for highway, rail, and other programs.

Sources transportation experts said they think public-private partnerships (P3s) will be in the administration’s infrastructure plan, even though Trump, who once saw them as a major part of the plan initially has since seemed to turn against them.

“I still think P3s and finding a way to bring the private sector into the fold is going to be a piece of the plan,” said Jim Tymon, chief operating officer of the American Association of State Highway and Transportation Officials.

Schenendorf agreed. “I think P3s will be an important part of the overall proposal.” But he added that he thinks administration officials have learned from talking to folks that P3s don’t work in some parts of the country such as rural areas.

## **Slim Hope for Legislation**

Many infrastructure experts, pleased that Trump is preparing to release his infrastructure plan, are not optimistic about his being able to get it through Congress.

RBC Capital's Hamel said there are two major reasons to doubt there will be legislation.

"The till is empty," he said, referring to the tax bill's increase to the deficit.

"My fear is they used all of their dry powder to make tax reform work," he said, explaining he thinks the administration is going to be "hard pressed" to find \$200 billion to pay for federal funding for infrastructure.

Davis agreed, saying, "I think the 'going to the well on let's not pay for it' may have run out."

Another reason for skepticism, Hamel said, is that "anything that is going to be passed will need 60 votes in the Senate."

The only way the Republicans were able to pass the tax bill was to go through a reconciliation process that required only a majority, rather than two-thirds vote in the Senate.

Also, House and Senate Democrats are still smarting from the fact that they were left out of the process of debating or adding any input to the tax overhaul bill.

Even though Democrats and Republicans seemed to have some common interest on infrastructure at the start of last year, there is a great deal of "political toxicity" right now, said Dinges.

"The Democrats, even though they love infrastructure, are they going to want to dance to help the administration?" he asked.

Also, "it seems the Democrats and the administration are starting from way different perspectives" on infrastructure, said Dinges.

Senate Minority Leader Sen. Chuck Schumer, D-N.Y. introduced a bill last January on behalf of Democrats that would have provided \$1 trillion in direct federal spending on infrastructure, rather than just \$200 billion.

If the Democrats are still bitter about tax reform, Dinges said, they could try to delay any infrastructure legislation, hoping to win seats in the mid-term elections and take over the majority of either or both the House or Senate to ensure that this time they can play a major role.

## **The Bond Buyer**

By Lynn Hume

December 21 2017, 4:37pm EST

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## **[Tax Bill Will Lead to Radical Transformation of Muni Market.](#)**

WASHINGTON - The municipal bond market will undergo a radical transformation after the expected enactment of the tax bill, with far less volume next year, much lower demand for munis

from banks and property and casualty insurance companies, and more costly and complex alternative structures for advance refundings.

This is picture painted by George Friedlander, managing partner of Court Street Group Research, in a weekly perspectives paper the group released Monday.

He said there will be more volatility in the market, a greater challenge placing bonds with lower than 5% coupon bonds with the institutional market, as well as more difficulty for small issuers selling longer serial maturities.

Friedlander said potentially there will be a greater role for exchange-traded funds and electronic trading platforms providing liquidity as well as for foreign investors and “crossover” buyers.

These are some of the impacts Friedlander and others sees from the expected passage this week of the first sweeping tax overhaul bill in three decades. The bill was released Friday evening after negotiations and agreement between House and Senate Republicans. The two chambers are expected to vote on it this week and send the bill to President Trump before Christmas.

The biggest holiday good news is that the final bill allows for the continuation of tax-exempt private activity bonds, which the House had initially proposed halting after the end of the year.

This is in line with the Senate bill, which also would have retained PABs, and it is a victory for the municipal bond market, especially since Republican conferees had discussed, but did not include, elimination of the three year carry-forward in volume cap.

The retention of PABs came after a lobbying campaign by proponents. Reps. Sam Graves, R-Mo., and Randy Hultgren, R-Ill., and 36 other colleagues urged House and Senate Republican leaders and tax-writers earlier this week to retain PABs in the tax bill because they are issued to finance infrastructure and nonprofit hospitals.

Sources say House Ways and Means Committee chair Rep. Kevin Brady, R-Texas, was a key opponent of PABs. He and other lawmakers are upset that PABs are used for projects involving corporations and other private parties, sources said. They claim there are abuses. Brady heard stories of PABs used to help finance a vineyard in California and felt that was a misuse of these bonds, the sources said.

But muni market participants claim that abuses – PABs used for massage parlors, golf courses, and McDonald’s — were shut down by the Tax Reform Act of 1986. The majority of PABs currently issued are 501(c)(3) bonds, which are used by nonprofit organizations such as hospitals and universities.

Proponents point out that PABs are a critical financing tool for multifamily and single-family housing and are used for airports, water and sewer projects, and local electric and gas facilities.

Treasury Secretary Steven Mnuchin and other administration officials in past months had proposed expanding the use of PABs so they could be used along with public-private partnerships to finance infrastructure projects. The Treasury Department had put PABs on its priority guidance plan for 2017-2018.

Muni market participants are hopeful that the administration and Congress will call for the expansion and enhancement of PABs next year as part of President Trump’s infrastructure plan, which he has promised to introduce in January.

Muni market proponents of PABs were elated at the final bill.

Tim Fisher, legislative and federal affairs coordinator for the Council of Development Finance Agencies, said, "We are thrilled that we were able to convince Congress to do something good for communities and economic development all around the country. We couldn't have done it without our members, our partners, and everyone else who had a stake in this."

"I'm relieved and gratified," said Chuck Samuels, a member of Mintz Levin who is counsel to the National Association of Health & Higher Education Facilities Authorities. Usually "tax bills are like Russian novels: they're long, boring and at the end everybody dies," he said, "But we escaped" death.

Samuels said his group told lawmakers that if 501(c)(3) bonds were terminated, "thousands of nonprofits would either have lost access to capital or found it only at a prohibitive cost. We made it clear that some small, rural hospitals wouldn't survive without tax-exempt financing."

Bond Dealers of America said it "commends both House and Senate leadership for preserving the tax-exempt status of private-activity bonds in the conference report, and of governmental municipal bonds during tax reform."

Surprisingly, the bill will also continue to allow tax-exempt bonds to be used for professional sports stadiums and arenas, which the House had wanted to eliminate as of Nov. 2 when its bill was introduced. That's good news for stadium projects underway in Las Vegas and San Diego.

The highest-profile project is the \$1.9 billion, 65,000-seat Las Vegas National Football League stadium for which Clark County, Nev. has promised \$750 million of support. The venue is to host the Raiders, relocating from their longtime home in Oakland, Calif.

Also, San Diego State University is seeking to redevelop 166 acres of land surrounding the stadium formerly occupied by the NFL's Chargers, who relocated to Los Angeles this year. While the stadium would initially be built primarily for the SDSU football team, documents released by the university add that it would "accommodate professional soccer," and also hinted that "the stadium is also expandable should the NFL ever return to San Diego."

The biggest disappointment for muni issuers and other market participants is that advance refundings will be terminated at the end of the year, along with tax credit bonds.

Friedlander said the huge rush to market that has occurred with advance refundings and some private activity bond transactions will result in very slow issuance during the first quarter of 2018.

"Total supply in 2018 could easily drop 25% to the \$300 billion range, as issuers who rushed to market move to the sidelines and refundings drop by close to the \$100 billion range," he said.

The halt to tax-exempt advance refundings was not a surprise because both bills had proposed that. Under current law, issuers of governmental and 501(c)(3) bonds can do one advance refunding. PABs cannot be advance refunded.

Terminating advance refundings will eliminate the flexibility that muni issuers have had to take advantage of lower interest rates and free up funds for other projects. It will raise costs for issuers.

Ben Watkins, Florida's bond finance director, said recently that his state saved \$3 billion over the past 10 years by being able to advance refund its bonds.

"Obviously the advance refunding elimination is a blow," said Samuels. "That's significant and issuers will have to deal with that. They'll have to restructure their financings."



"This is a misguided attack on state and local governments that diminishes moneys for infrastructure investments, usurps local decision-making and disrespects the federal/state partnership for building America's infrastructure, all in an effort to control the 'cost' of tax cuts," Watkins said over the weekend.

BDA said, "It is disappointing ... to see the repeal of municipal advance refundings retained in the conference report. The repeal of issuers' ability to advance refund outstanding debt will result in higher borrowing costs and less flexibility when managing debt for vital capital improvement projects."

Issuers have some alternatives to advance refundings such as shorter or more frequent calls in bond documents, taxable refundings and tax-exempt current refundings. But those alternatives also include derivative products such as forwards, options and forward-starting interest rate swaps, which would increase issuers' their risk as well as their costs.

Muni market groups, particularly issuer groups, have been pushing lawmakers for transition rules that would delay the effective date by six months to a year, but the bill does not provide that.

National Association of Bond Lawyers president Sandy MacLennan said, "NABL is pleased that the importance of preserving private activity bonds was recognized in the final bill, however, the immediate loss of advance refundings is a disappointment."

She added, "We will continue our collaborative efforts with other organizations to convince Congress of the value of advance refundings as an important financing tool for state and local governments, as well as non-profit organizations."

The Government Finance Officers Association was troubled by both the advance refunding halt and the compromise on the federal deduction for state and local taxes.

"The conference report signals that Congress does not recognize certain tools, such as advanced refunding of municipal bonds, as a critical method by which issuers achieve cost savings on public infrastructure," GFOA said. "We will continue to communicate with our federal elected officials the value these tools bring to our state and local government finance and how they ultimately serve to provide savings for taxpayers until the final vote."

The bill offered a compromise on the federal deduction for state and local taxes. It included more a flexible, if more stringent, provision on the federal deduction of state and local taxes. It allows a deduction of up to \$10,000 for state and local property taxes as well as income or sales taxes.

This was a nod to states with high income taxes like California as well as those with high sales taxes. The House bill had allowed for a deduction of up to \$10,000 of property taxes. But Brady had promised California Republicans he would give them some relief from that provision. The deduction would have been eliminated altogether under the Senate bill.

"We are relieved to see that the conference committee provided \$10,000 toward individuals' ability to deduct state and local taxes," said GFOA. "But by mapping the provision to its current use (allowing property and income or sales taxes) this signals an important byline - local tax policies are designed to satisfy the needs of local economies. The cap is a finger on the scale and is unfortunate."

Perhaps the biggest harm to the muni market, according to Friedlander and other tax experts, will come from the 40% or 14 percentage point drop in the corporate tax rate to 21%, tax experts said.

The lower corporate rate, which is higher than the 20% rate in the House and Senate bills, will make

munis unattractive to banks, property and casualty insurance companies and life insurance companies

"It's a big deal," said Friedlander in a recent interview. "It means the effective net benefit of owning municipals drops," he said.

"It means a shift in the demand curve," he added. "Munis will have to yield more relative to taxables for corporate buyers [like banks] to be willing to add them to their portfolios."

Muni market participants will see far fewer bank loans and private placements, which have been increasingly popular in recent years, Friedlander and other sources said. That will especially hurt smaller, less frequent issuers that place bonds with banks so they don't have to worry about credit issues and attracting the big underwriters, they said.

State and local governments are likely to see higher interest rates on their bank loans if their loan documents have corporate tax gross-up provisions that give the banks the right to increase the interest rates on the tax-exempt bonds they've purchased if corporate rates go down and the bonds are aren't worth as much to them.

The individual alternative minimum tax would be retained in the tax bill but would not apply to individuals with taxable income under \$500,000 and families under \$1 million. The AMT applies to PABs and makes them less attractive, thereby raising their yields.

The corporate AMT would be repealed, as was included in the Senate bill. This would require corporations to pay tax on certain income not paid under the income tax such as tax-exempt bonds. All tax-exempt interest is subject to the corporate AMT, unlike the individual AMT, which just applies to PABs other than 501(c)(3) bonds.

The top individual tax rate will be set at 37%, down from the 39.6% rate in the House bill and from the 38.5% rate in the Senate bill. Brady said this would help offset the loss of state and local tax deductions for high income households.

The mortgage interest deduction would be capped at \$750,000, up from \$500,000 in the House bill but less than \$1 million in the Senate bill.

The bill continues to treat Puerto Rico as a foreign country and is otherwise silent as far as providing relief to it. Brady said he would consider creating opportunity zones for Puerto Rico in an emergency supplemental bill. It was left out of the tax bill because it would not have complied with the Senate's Byrd Rule, which prohibits adding to the deficit after 10 years.

Republicans have said the bill will pay for itself by increasing economic growth to 3% of gross domestic product, creating jobs, and cutting taxes for the middle class.

Democrats, however, who are incensed at having been left out of the process, including the so-called "conference committee," complain the bill was railroaded through Congress and is a give-away to corporations. They say it will mostly benefit the wealthy, hurt the middle class, and increase the federal deficit. The bill is expected to add about \$1.5 trillion to the deficit over 10 years according to the Joint Committee on Taxation.

The bill is to be voted on along party lines, with most Republicans expected to vote yes and most Democrats no. The goal of the GOP is to give the bill to President Trump to sign before Christmas.

The votes have been lined up in the Senate. Sens. Marco Rubio, R-Fla., and Mike Lee, R-Utah, who

had threatened to oppose the bill unless the child tax credit was expanded, obtained additional benefits for working families on Friday and said they would support the bill.

Even Sen. Bob Corker, R-Tenn., who had been expected to vote against the bill over deficit concerns, has said he will support it. Sen. Thad Cochran, R-Miss. who was recently hospitalized, is expected to be available to vote for the bill. Sen. John McCain R-Ariz., who was also hospitalized has returned home but has said he will return here if his vote is needed.

## **The Bond Buyer**

By Lynn Hume

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### **[Is the Tax Fight Over the SALT Deduction a Sign of Waning State and Local Influence on Capitol Hill?](#)**

***“Do we have the clout we once had?” said the executive director of the U.S. Conference of Mayors. “That’s a very difficult question.”***

WASHINGTON — The sweeping tax bill Republicans in Congress sent to President Trump this week marks a year-end defeat for groups that fought unsuccessfully on behalf of governors, mayors, cities and counties to fully preserve a federal deduction for state and local taxes.

There are straightforward explanations for why tax-writers chose to cap the deduction for the state and local property, income and sales taxes households pay at \$10,000 in the final legislation. One is that doing so provided a huge sum to help offset rate reductions and other changes GOP members of Congress wanted to make to the tax code.

“We were just a number on a spreadsheet,” said Matthew Chase, the executive director of the National Association of Counties.

But the battle over the SALT deduction, and other aspects of the tax bill, also offers a look at how dynamics have changed during recent years when it comes to state and local government groups lobbying for their priorities on Capitol Hill.

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ROUTE FIFTY

By Bill LUCIA

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