Bond Case Briefs

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Connecticut Reduces Size of Bond Deal by 15 Percent to $526 Million.

NEW YORK (Reuters) – Connecticut, one of the lowest rated U.S. states, cut the size of its general obligation bond deal this week by 15 percent to $526.4 million, according to final pricing information on Thursday.

The Connecticut Treasurer's office did not immediately reply to a request for comment on why the deal shrank from $620 million.

Typically, a deal can be reduced because investors wanted more yield than the issuer could pay, or because demand for the bonds was lower than expected.

Final prices on the deal did not change from preliminary levels. The state's spread over top-rated municipal bonds widened since it last issued similar debt a year ago.

That means that the state, which has budget problems and high debt levels despite being one of the wealthiest in the country, had to pay more to borrow in part because of its credit woes.

by Hilary Russ

Reporting by Hilary Russ; editing by Diane Craft

MARCH 29, 2018

Cyberattacks Wakeup Call for Local Governments to Prepare.

ATLANTA — Atlanta police officers initially had to write reports by hand. Residents still can't pay water bills online. Municipal court dates are being reset. All are fallout from a ransomware attack last week that hobbled the city's invisible infrastructure.

Another ransomware attack hit Baltimore's 911 dispatch system over the weekend, prompting a roughly 17-hour shutdown of automated emergency dispatching. The Colorado Department of Transportation suffered two attacks just over a month ago. And the North Carolina county that's home to Charlotte totally rebuilt its system after a December attack.

For cash-strapped local governments, paying for robust protection against the invisible menace of a cyberattack can be a hard sell. But cyberattacks continue to proliferate, and experts say preparation and strong defensive measures are necessary to avoid the crippling effects.

"As elected officials, it's often quite easy for us to focus on the things that people see because, at the end of the day, our residents are our customers," Atlanta Mayor Keisha Lance Bottoms said at a news conference Monday. "But we have to really make sure that we continue to focus on the things that people can't see, and digital infrastructure is very important."

Although it’s vital to make sure systems are up to date and have the latest patches, malware evolves so quickly that experts also stress the importance of comprehensive backups and a quick response when an attack does happen.

“I don’t think any security is flawless,” said Craig McCullough, a vice president at security firm Commvault. “I always approach it from the standpoint of it’s not a matter of if but when, and when it happens, are you prepared? Are you going to be able to get your data back?”

Governments, public agencies and companies need to know what data they have and make sure it’s backed up. Software and hardware can be replaced, but data is much more difficult, McCullough said.

A quick response can help minimize the damage, said Dmitri Alperovitch, chief technology officer of security firm Crowdstrike. If a threat is detected immediately after it enters the network — for example, when someone clicks on a link in a phishing email or through a vulnerable server — it might be possible to stop before it spreads beyond the initially infected computer, he said.

Atlanta officials won’t say whether they’ll pay the $51,000 ransom, though Bottoms has said all options are on the table. Mike Cote, president of Secureworks, a security firm hired by Atlanta, has said they know who’s behind the attack but aren’t releasing that information.

Cybersecurity experts say the attack is consistent with the SamSam group, which is known as a sophisticated attacker and negotiator, said Jake Williams, founder of security firm Rendition Infosec.

Unlike other ransomware that might raise alarms upon infection, SamSam compromises machines without immediately locking up their files. That access is then used to spread through the network “before they press the encrypt button,” Williams said.

“They put you into an extreme pain point position where paying is actually an attractive option,” Williams said

He said he regularly tells clients they must make a business decision on whether to pay. He acknowledges that can be more difficult for governments, whose rules might block them from spending public funds on extortion.

Although Atlanta’s critical physical infrastructure — including the city’s airport, emergency response systems and water safety and treatment — were not directly affected, other departments are operating manually and some services have been suspended. Nuisances at first, issues caused by the outages could have compounded effects if they persist.

The mayor has been cautious, declining to give a timeline for when things might be up and running again after the cyberattack announced March 22. She has repeatedly said the investigation and recovery is “a marathon, not a sprint,” and her focus is on making sure the city’s network is safe moving forward.

But the road could be long.

The Colorado Department of Transportation was hit by a SamSam attack on Feb. 21 and again on March 1, and it was back to 80 percent functionality by Thursday said Deborah Blyth, the state’s chief information security officer. Luckily, they had strong backups so they didn’t even think about paying the ransom, she said.

In the weeks since the attack, they’ve implemented two-factor authentication for remote access and accelerated the implementation of other security measures that were already planned.

In Mecklenberg County, North Carolina, where Charlotte is located, it took a little more than 60 days for things to return to normal after a ransomware attack that began with a phishing email in December.

County officials didn't pay the ransom after consulting with federal authorities and realizing their data was backed up so they didn't need to pay to get it back, County Manager Dena Diorio said. But the process was still tedious as they had to essentially rebuild the system.

The county has taken steps to prevent another attack, including making its email system more secure and limiting employees' internet access. And they have more expensive plans — segmenting their data and moving to a cloud-based system — that will take about two years to implement, Diorio said.

Remembering the scary early days, Diorio had advice for her counterparts in Atlanta: "All I can say is: Don't panic and stay focused."

By THE ASSOCIATED PRESS

MARCH 30, 2018

Associated Press writer Matt O'Brien in Providence, Rhode Island, contributed to this report.

How Local Governments Can Prevent Cyberattacks.

The recent cyberattack on Atlanta, in which the municipal government's computers and related services were held hostage by a ransomware attack, is a reminder that local governments are particularly vulnerable to these and other cyberthreats.

Local governments of all sizes and locations now own and operate a wide and growing array of internet-connected technology systems: employee-issued laptops, motion sensors on light poles and under pavement, mapping and informational systems inside police cars, online citizen-engagement tools and much more.

Most local governments in the United States don't have a strong grasp of the policies and procedures they should implement to protect their technology systems from attacks. This is especially concerning because the threat of a cyberattack is the most important cybersecurity problem they face, according to a survey conducted by the organization I work for, the International City/County Management Association, and the University of Maryland, Baltimore County.

Forty-four percent of local governments report that they regularly face cyberattacks, on either an hourly or daily basis. More troubling is the high percentage of governments that do not know how often they are attacked (28 percent) or breached (41 percent). Further, a majority of local governments do not catalog or count attacks (54 percent).

This is not just an American problem. Last month, at a conference in Tel Aviv, Tamir Pardo, the former head of Mossad, Israel's national intelligence agency, said that most local government leaders around the world do not fully understand how serious a threat cyberattacks are and have not imaginatively assessed the consequences of inaction. He described cyberthreats as "soft nuclear weapons” that one day may be used to start and finish a war without firing a shot.

So what should local governments do to improve their cybersecurity apparatus to help prevent or mitigate damage from future attacks like the one experienced in Atlanta, or from those contemplated by Mr. Pardo?

First, local leaders must create a culture of cybersecurity that imagines worst-case scenarios and explores a range of solutions to mitigate threats to the ecosystem of local government technology. This should involve prioritizing funding for cybersecurity, establishing stronger cybersecurity policies and training employees in cybersecurity protocols. Success will require collaboration with local elected officials, internet-technology and cybersecurity staff members, department managers and end users.

Cybersecurity is more than just the I.T. department’s problem. It must now also be a top priority along the entire chain of elected and appointed officials in and around local governments. Preventing and mitigating the effects of future attacks will require intergovernmental cooperation, because localities work together across state lines and collaborate with the federal government on crucial tasks like running elections, managing transportation and sharing intelligence.

Most technological advances are transforming local governments for the better, moving them from inefficient and costly paper systems to digital systems that allow for better analysis and understanding of policy decisions. The science of analytics and big data promises even greater leaps for local governments in evidence-based policymaking. These exciting developments may one day radically alter the ways that traditional local government services are financed, operated and managed.

But we cannot get lost in the excitement. We must actively prepare for cyberthreats of the sort that have been demonstrated in places like Atlanta. If smart cities and communities are the brightly lit days of the increasingly connected world of local government technology, cyberattacks are the dark and stormy nights. We don’t need to halt technological deployments and evolution, but we do need to recognize that cybersecurity is an essential counterpart.

The New York Times

By Tad Mcgalliard

March 30, 2018

Tad McGalliard is the director of research and policy at the International City/County Management Association.

To Pay or Not to Pay Hackers? Ransomware Poses a Dilemma for Governments.

Baltimore’s 911 system and a range of city services in Atlanta were hijacked in the past week.

First it was Atlanta, then Baltimore.

In a matter of days, hackers launched cyberattacks in both cities, hobbling the 911 emergency response system in Baltimore and crippling a wide swath of city services in Atlanta, knocking out Wi-Fi at the nation's busiest airport and forcing city workers to keep records with pen and paper.

No evidence has emerged suggesting the attacks are connected. But in both cases the hackers used ransomware, which encrypts a victim's files and then sends a digital ransom note demanding money to decrypt them.

In Atlanta, hackers demanded $51,000 in the cryptocurrency bitcoin. City officials declined to say whether they made the payments. Baltimore officials didn't release details on the ransom amount.(One large private company, aircraft manufacturer Boeing, was also attacked on Wednesday, according to a report from Bloomberg News.)

The attacks are part of a fast-growing market in computer hacking. In a 2016, the FBI reported major uptick in ransomware attacks, with more than $200 million in payments to hackers in the first three months. That's almost 10 times the amount paid during the same period in 2015. Since the beginning of 2018, the SamSam ransomware — which was used in the recent Atlanta attack and shut down the Colorado Department of Transportation for several days last month — has raked in more than $1 million from 30 organizations.

Ransomware isn't expensive to design or purchase, and a person with even moderate coding experience can alter it to exploit leaks in a specific system's protective firewall. The odds are on the side of the hackers.

"They only have to be right once. Your anti-malware has to be right 100 times," says Tom Gilbert, chief technology officer at Blue Ridge Networks, a cybersecurity firm based in Northern Virginia.

Ransomware is a boom economy because organizations are often quick to pay.

"The economics of being a bad guy on the internet are just too good," says Oren Falkowitz, who spent seven years with the National Security Agency before co-founding Area 1 Security, a private firm.

But should they pay?

Public entities have sometimes been willing to pay the ransom demands since the hackers tend to ask for a relatively low amount of money. Madison County, Ind., for instance, paid $21,000 to regain access to its data, and the Los Angeles Community College District forked over $28,000 to hackers.

But the San Francisco Metropolitan Transit Authority refused to pay $73,000 to the hackers who froze the agency's computer system on Thanksgiving weekend — one of the busiest travel times — in 2016. By the following Monday, the agency had regained control of its system.

The FBI advises organizations hit by ransomware not to pay. There are no guarantees the hackers will return the hijacked data. And the agency argues that paying off hackers only encourages more attacks.

"Paying a ransom not only emboldens current cybercriminals to target more organizations, it also offers an incentive for other criminals to get involved in this type of illegal activity," former FBI Cyber Division Assistant Director James Trainor said in a statement in 2016.

Government agencies are vulnerable because they're often underprepared.

"What makes the cyberattack on Atlanta so pernicious is the lack of preparation. The facts are, this is a very common phenomenon," says Falkowitz, the cybersecurity expert.

Indeed, city computers in Atlanta were infected in last year's WannaCry outbreak, which also disabled systems across the globe, including the networks of FedEx, Honda and several state-level government agencies in India.

More than 90 percent of ransomware infections come from phishing attacks, in which unwitting users are enticed to open a file or click on a link containing the malware. Falkowitz says training users to fight that impulse is a losing battle, which is why organizations need to invest in better security.

"Humans are curious, and we are talking about organizations that have hundreds of thousands of people," he says. "Someone is going to click on a link."

A virus' impact can be felt along after the initial attack. Worms like SamSam are designed to hide in the system even after a security firm flushes the computer network and patches holes in the firewall. The same worm can mutate and begin to attack other still-unprotected portions of the network.

That's precisely what happened in Colorado: SamSam infected the system in late February and then again, in a mutated form, days later.

Government agencies, says Gilbert, need to do a better job of partitioning their networks. Not every piece of data needs to be shared and not every department needs to be open to the internet.

"The absolute critical aspects of an operation really have no business being directly connected to the internet," Gilbert says.

GOVERNING.COM

BY J. BRIAN CHARLES | MARCH 29, 2018

Fitch: N.J. Exec Budget; New Revenue & Spending; Legacy Costs Remain Driver.

Fitch Ratings-New York-22 March 2018: The New Jersey governor's executive budget delivers on policy goals outlined during his campaign; however, numerous new program and tax credit initiatives, combined with proposed extensive tax policy actions, cannot in the near term materially change the persistent underfunding of retiree liabilities and the elevated long-term liability burden that are the key drivers of the state's below-average 'A' Issuer Default Rating (IDR), according to Fitch Ratings.

The $2 billion, or 5.7%, proposed revenue growth from fiscal 2018 includes $1.5 billion from tax increases, supporting 4.2% growth in state appropriations. These increased revenues would go to new spending and leave the state with still slim reserves and reduced flexibility to respond to future economic downturns through revenue raising. Fitch notes that the state has significant spending pressures not only due to the demands of underfunded retiree benefit liabilities but also because natural revenue increases resulting from modest economic growth in recent years have gone primarily towards the phased-in growth in annual pension contributions. This dynamic has led to underfunding of other state needs.

GRADUAL PENSION RAMP UP CONTINUES

If implemented, the budget would continue the state on the path of a gradual 1/10th annual phase-in to the full actuarially determined contribution (ADC) for pensions in fiscal 2023. Despite the $691 million increase to the pension contribution, Fitch would expect further deterioration in the funded condition of the plans over the near term as the contribution remains well below the ADC. The $3.2 billion total pension contribution (9% of the budget) is a 28% increase from fiscal 2018 that accounts for 39% of proposed budget growth and funds 60% of the ADC. The contribution meets Fitch's rating expectations given the state's policies in recent years and hews the governor to the same path as his predecessor.

Employee and retiree medical expenses also continue to loom large, representing $3.4 billion (9%) of the governor's budget. As in most states, OPEB contributions remain well below actuarial recommendations, growing the accrued liability. Escalating pension and OPEB liabilities are expected to remain negative rating factors absent further policy action that reduces the liabilities, forestalling improvement in the state's IDR.

FISCALLY PRUDENT PROPOSALS

The governor's proposals for increased funding to New Jersey Transit (NJT), greater adherence to full education formula funding, reduced one-time budget balancing actions and an addition to state cash balances to provide greater financial cushion would either address critical state needs or support more sustainable financial operations, in Fitch's view. Further, the suggested return of the state sales tax rate to 7%, lowered as part of the transportation funding agreement in 2016, would provide $581 million in additional revenue. This is a positive step. At the time of that agreement, which lowered the sales tax rate in exchange for an increase in the gas tax, Fitch noted that the state had replaced a growing revenue source with one with more limited growth prospects and added to the pressure on operating funds.

NEW PROGRAM INITIATIVES

Excluding the operating budget's increased pension contribution, recommended program expense grows by a net $918 million. Significant increases include $933 million in additional K-12 education funding, including $283 million in added formula aid, $242 million in additional state subsidies for NJT, $120 million for state and teacher employee and retiree health benefits, $100 million for opioid addiction programs and $50 million for assistance to community college students. Medicaid grows by $244 million, boosting this program's draw on the operating budget to 12% of proposed expenditures although remaining far below the 46% of the budget dedicated to education (including higher education). Offsetting these increases are reductions to various line items, $46 million in expected state-wide salary and operational savings, and reductions in certain state aid categories and capital construction. In addition to programmatic adjustments, the governor has proposed tax policy changes that reduce revenue to the state, including increases in the earned-income tax credit ($27 million) and the state property tax deduction cap ($80 million).

EXTENSIVE NEW REVENUE MEASURES

To fund these initiatives, the governor has proposed a milestone 10.75% personal income tax (PIT) rate for taxpayers earning more than $1 million, which would provide an estimated $765 million in fiscal 2019, as well as numerous business tax changes for an additional $110 million; both in addition to the proposed sales tax changes. The governor's budget also includes the legalization and taxation of marijuana which is estimated to deliver $80 million in tax revenue. Fitch believes there is uncertain legislative interest in the PIT proposal, particularly given recent passage of federal tax changes in December 2017 that capped the deduction for state and local taxes (SALT) and is expected to increase residents' effective state tax burden. Should the measures fail to be approved, other revenue solutions or expenditure reductions will need to be identified to balance the fiscal 2019 budget.

The state's revenue forecast is premised on 2.4% growth in the sales tax base; 4% and 4.2% growth in personal income in 2018 and 2019, respectively; 4% growth in gross state product in both 2018 and 2019; and 1% and 0.8% growth in nonfarm employment in 2018 and 2019, respectively. Fitch believes these forecasts to be reasonable based on recent quarterly experience but somewhat robust when considering the state's recent annualized growth, while noting that future economic growth is expected to remain below that of the nation.

BALANCED FISCAL 2018 OPERATIONS

Updates to the state's fiscal 2018 financial operations are included in the executive budget and point to anticipated budgetary balance this fiscal year. Current forecast revenue is a 2.2% improvement over the forecast used to enact the budget; however, the improvement largely incorporates a shift of sales tax revenue from non-operating funds to operating funds in addition to expected PIT revenue that is above forecast, offset by shortfalls in other revenue sources. Over 40% of the increase in the PIT is attributable to $253 million in one-time revenue related to the repatriation of overseas hedge fund profits, a direct effect of Section 457A of the federal Internal Revenue Code passed in 2008. Unexpected growth in the PIT excludes $200 million collected in December from taxpayers seeking to take advantage of the higher SALT deduction as the state believes this revenue would have been collected in April 2018.

Final, estimated appropriations increase by $1.2 billion (3.6%) from the enacted budget, partly incorporating appropriations linked to the moved sales tax revenue. The state's estimated year-end budgetary fund balance, which the state views as its budgetary cushion, is projected to be $738 million (2% of operating fund appropriations) largely incorporating a larger beginning fund balance than anticipated when the budget was enacted.

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Puerto Rico Bondholders Finally See a Big Win.

- **New plan sees six-year surplus of $6 billion before debt**
- **Most-traded bond jumps by more than 20 percent Monday**

Puerto Rico and its creditors finally caught a break, at least for one day.

Bonds of the bankrupt U.S. territory soared more than 20 percent Monday after the government surprised investors by projecting that a flood of disaster-relief funds will do what officials for years couldn't: revive the moribund economy enough to replace chronic deficits with increasing surpluses, before any debt payments are made.

There's still a big question mark over whether Puerto Rico can actually deliver, given its history of fiscal folly and an exodus of residents. But the bond rally signals optimism that investors may not lose quite as much as initially feared from what has been the largest municipal bankruptcy in U.S. history, even as residents brace for a new era of fiscal austerity.

The government's latest financial turnaround plan marks the second time in as many months that it's offered a more sanguine outlook for its recovery. It projects that Puerto Rico will have a surplus, excluding bond payments, of $6 billion over the next six years after implementing plans to steady its finances. That's up from $3.4 billion projected last month. In January, while still gauging the toll of the storm, it estimated that it would have essentially no money for debts because of the devastation.

"The move is bigger than expected, but it is in reaction to the fiscal plan which has come out more positively than previous ones," said Daniel Solender, head of municipal investments at Lord Abbett & Co., which holds Puerto Rico securities among its $20 billion of state and local debt. "There still is a long way to go, but there is growing optimism that things have moved better than worst-case scenarios."

Puerto Rico general obligations were the most actively traded municipal bonds Monday. The price of those due in 2035 rose by 7 cents on the dollar to an average 43.8 cents, the highest since early October, after climbing to as much as 45 cents, according to data compiled by Bloomberg. The prices of the territory's sales-tax, electric-company and building-authority bonds also jumped in heavy volume.

The rally wiped out much of the losses that Puerto Rico bondholders suffered after the September hurricane. The bonds due in 2035 — which were sold to hedge funds and other investors for 93 cents on the dollar four years ago — had slipped to around 58 cents before the storm. They then tumbled to as little as 21 cents in December.

Governor Ricardo Rossello's administration's latest plan still needs approval from the federal board that's been installed to oversee the turnaround and requires him to implement steps to wrest savings from the government and increase revenue. The question of how much investors will recover will also be determined in court, where creditors with sometimes competing claims are fighting over the the island's cash — making the outcome highly uncertain.

The improved outlook in the latest road map reflects the federal aid and insurance claims that are coming into the island, promising to boost an economy that had been mired in a recession for years as residents left for jobs on the U.S. mainland. The stagnation culminated in Puerto Rico's fiscal collapse.

As a result of the storm, Puerto Rico is counting on $21 billion of insurance money and about $49.1 billion of federal aid, enough to have a major impact on growth. While the economy is projected to shrink about 10.6 percent in the current fiscal year, the government anticipates it will expand 7.3 percent next year and grow for the following four years. A year ago, the island was projecting continued contraction.

The latest plan was set to be considered by Puerto Rico's federal oversight board Monday until the meeting was delayed. If approved, it will be a blueprint for the board, Rossello's administration and creditors during negotiations over how much of the island's $74 billion of debt it can repay.

Bloomberg Markets

By Danielle Moran

March 26, 2018, 12:47 PM PDT

— With assistance by Jonathan Levin, and Tatiana Darie

[New Jersey to Refund Junk Tobacco Bonds for $3.2 billion of High-Grade Paper.]

NEW YORK (Reuters) – New Jersey will sell $3.2 billion of tobacco refunding bonds on April 4 in a deal that effectively strips the debt of its junk rating and elevates it to investment grade.

The deal, the largest of next week's $8 billion of U.S. municipal bond and note sales, will refinance what remains of $3.6 billion of bonds issued in 2007 by the state's Tobacco Settlement Financing Corporation.

S&P Global Ratings currently rates those bonds a B, in speculative territory. But the credit agency expects to assign various investment-grade ratings to the new bonds – from BBB to A depending on the seniority and maturity, according to bond documents.

In 1998, big tobacco companies agreed to make annual payments to most U.S. states to cover medical costs for sick smokers.

Many states opted to securitize that stream of money by selling municipal bonds backed by the expected payments from tobacco companies.

However, the payments are tied to smoking rates. Fewer shipments of cigarettes means less money to back the bonds, and smoking rates have been falling.

The New Jersey deal is part of a new generation of refinanced tobacco bonds and takes into account that more smokers are quitting, according to Alan Schankel, managing director at Janney Montgomery Scott.

Like most other tobacco bonds of an earlier era, New Jersey's 2007 bonds "were based on assumptions that cigarette smoking declines would not exceed 4 percent annually."

The new bonds being issued next week are designed around different expectations – that consumption will continue to decline as much as 8.72 percent by the time the 2046 senior term bonds mature.

The deal is “reflective of lower smoking rates and more realistic assumptions,” Schankel said.

The state expects to save $250 million immediately on the refinancing.

Ahead of New Jersey’s offering, debt from Ohio’s Buckeye Tobacco Settlement Financing Authority traded higher at $98.75, according to analyzed price data from Markit.

There were more than $30 million of trades this week in the 2046 maturity of Ohio’s 2007 tobacco bonds with a 5.875 percent coupon, according to trade data from the Municipal Securities Rulemaking Board.

Also in New Jersey next week, the fiscally stressed seaside resort Atlantic City plans to price $49.37 million of taxable bonds rated ‘BBB+’ through sole manager Morgan Stanley & Co. Inc.

Proceeds from the bonds, which are backed by a state program, will be used to pay pension and healthcare contribution with interest that the city deferred in 2015.

Reporting by Hilary Russ; Editing by James Dalgleish

MARCH 29, 2018

Ratings Downgrade: New York's MTA Debt is Getting Riskier.

New York’s Metropolitan Transportation Authority (MTA) is the largest public transport authority in the United States, but its budget deficit and lack of liquidity have become a growing crisis for the organization, state and local government and the city’s residents.

High leverage and poor operating results have translated to projections that MTA is $38 billion in debt and may be at risk of further downgrades – thus, bondholders should think twice before buying.

In this article, we will look at the MTA’s current situation, what happened to its credit rating and what these factors mean for municipal bond investors.

Continue reading.

municipalbonds.com

by Justin Kuepper

Mar 29, 2018

Connecticut Borrows at Higher Price as Credit Woes Weigh.

NEW YORK (Reuters) – Connecticut paid a price for its credit woes on Wednesday as it borrowed $620 million at wider spreads than when it last issued similar debt a year ago, despite strong overall demand in the U.S. municipal bond market.

Connecticut’s 10-year bonds priced at 3.39 percent – a spread of 93 basis points over top-rated paper, according to a preliminary pricing sheet.

The New England state is one of the wealthiest in the country. But its credit rating is among the very lowest because of budget problems, underfunded pensions, high debt levels and a dim economic outlook.

When the state last sold similar general obligation debt on March 29, 2017, its 10-year bonds with 5 percent coupons priced at 3.00 percent.

At the time, that level was 77 basis points above general market bonds carrying the highest rating of triple-A, according to Municipal Market Data, a Thomson Reuters company.

Since then, however, state lawmakers and Governor Dannel Malloy hit a budget impasse amid a huge revenue slump that led all three major credit rating agencies to downgrade Connecticut in May.

S&P Global Ratings rates the state A-plus with a negative outlook, leaving Connecticut tied with Kentucky as the third-worst rated state.

Connecticut's spread widened by 16 basis points in the last year, indicating that buyers demanded more yield to take on a slightly riskier investment.

The negotiated deal, led by Loop Capital Markets, consisted of $250 million in new money bonds with serial maturities from 2019 through 2038, and $367 million in refunding bonds maturing from 2019 through 2028.

Home to hedge fund billionaires alongside cities mired in poverty, Connecticut's debt load is the highest in the nation by several different measures.

It also has about $37 billion of unfunded liabilities spread across its teacher and state employee pension funds, with funded ratios of just 52 percent and 32 percent respectively, according to bond documents.

Connecticut has actually borrowed more recently but did so via a private placement. That deal, with just days left in its last fiscal year, came amid a budget stalemate that dragged on for nearly four months.

In late June, the state borrowed $300 million of new money variable-rate 7-year bonds through a direct placement with Barclays Capital Inc, with another $135 million of refunding bonds sold privately to JP Morgan Chase & Co.

by Hilary Russ, Reade Levinson

Reporting by Reade Levinson an Hilary Russ; Editing by Daniel Bases and Cynthia Osterman

MARCH 28, 2018

- Hawkins Advisory: Municipal Market Regulatory Update.
- Credit Enhancement For Charter School Facilities Program.
- How Puerto Rico's Bankruptcy is Roiling the Municipal Bond World.

- S&P: How Our U.S. Local Government Criteria Weather Climate Risk.
- Introduction to Environmental Impact Bonds.
- Infrastructure Series: Cost-Sharing with State and Local Governments.
- Public Finance Practices Saw a Huge Boom at the End of 2017.
- Despite New Rules to Disclose Corporate Tax Breaks, Just Half of Local Governments Are.
- Federal Income Tax Consequences of State Economic Development Incentives After Passage of Tax Cuts and Jobs Act.
- And finally, *Mississippi Department of Wildlife, Fisheries, and Parks v. Webb* this week brings us the charming story of a wheelchair-bound paraplegic – sporting a .25 BAC – who led two fish and game boats on a high-speed chase down the Tchoutacabouffa River that ended with a highly-foreseeable fiery crash. A police officer testified that, "an individual with a .25 BAC has severe impairment of all mental, physical and sensory function" and that "a person with such impairment "couldn't stand up, couldn't articulate, no hand or eye coordination." Or as we call it here at the BCB workplace, a "Tuesday afternoon."

ELECTIONS - ALABAMA

Ex parte Scrushy

Supreme Court of Alabama - March 9, 2018 - So.3d - 2018 WL 1224237

Electors moved to have the circuit court enforce its prior orders and declare invalid a special election for town council, which was held following a dispute about the results of the general election.

The Circuit Court declared the special election void. After a probate judge then entered an order purporting to void all the orders entered by the circuit court concerning the special election, the Circuit Court reaffirmed its previous order declaring the special election void. Town and apparently successful candidate in the special election sought a writ of mandamus.

The Supreme Court of Alabama held that the circuit court could void the special election for failure to be held in strict compliance with state's election laws, as required by one of the circuit court's previous orders.

Electors' motion for the circuit court to enforce its prior orders and declare invalid a special election for town council, which was held following a dispute about the results of the general election, was not an "election contest," and thus the circuit court could void the special election for failure to be held in strict compliance with state's election laws; electors did not challenge the special election's results, circuit court had expressly stated in two orders prior to the special election that it retained jurisdiction to enforce its orders concerning the disputed general election and the special election, and one of the circuit court orders at issue made clear that the town's governing body had a duty to conduct the special election in accordance with state's election laws.

ZONING & LAND USE - CALIFORNIA

Don't Cell Our Parks v. City of San Diego

Court of Appeal, Fourth District, Division 1, California - March 15, 2018 - 2018 WL 1324601

Residents' group brought declaratory judgment action and petition for writ of mandate, challenging city’s approval of project to construct wireless telecommunications facility in city park.

The Superior Court denied petition. Group appealed.

The Court of Appeal held that:

- Under city charter, city had discretion to determine whether a particular use would change the use or purpose of a dedicated park, as would trigger requirement of ratification by two-thirds vote for such a change;
- Project at issue did not change use or purpose of park; and
- Project consisted of the construction and location of a new small facility or structure, and thus project was exempt from California Environmental Quality Act (CEQA).

Under city charter, city had discretion to determine whether a particular use would change the use or purpose of a dedicated park, as would trigger requirement of ratification by two-thirds vote for such a change; this determination necessarily fell within city’s control and management authority.

Project for construction of wireless communications facility in city park did not change use or purpose of dedicated park and thus did not trigger requirement, under city charter, for two-thirds approval by voters; project’s footprint would only occupy .14 percent of total ground area of park, project equipment would be painted tan and surrounded by native shrubs, and project would benefit park visitors by providing enhanced wireless communication coverage.

Project for construction of wireless communications facility in city park consisted of the construction and location of a new small facility or structure, and thus project was exempt from California Environmental Quality Act (CEQA), where project entailed an unmanned cell tower disguised as a tree, plus an equipment enclosure, and project would be 534 square feet including above-ground branch diameter of faux tree.

INTERGOVERNMENTAL AGREEMENTS - GEORGIA

City of Union Point v. Greene County

Supreme Court of Georgia - March 15, 2018 - S.E.2d - 2018 WL 1324184

City brought action against county alleging that county had unilaterally discontinued police and fire dispatch and communications services to the city’s police and fire departments.

The trial court determined that portion of Service Delivery Strategy Act (SDS Act) was unconstitutional and that sovereign immunity barred remedies not specifically provided for in SDS Act. City appealed and county cross-appealed.

The Supreme Court of Georgia held that:

- Sovereign immunity did not bar city’s claims under SDS Act;
- City’s claims against county seeking specific performance of intergovernmental agreement concerning police and fire protection were not barred by sovereign immunity;
- Dispute resolution process prescribed by SDS Act did not violate separation of powers provision of state constitution;
- Funding of road and bridge maintenance was not at issue before mediator, such that trial court was not permitted to consider issue;
- Trial court was not authorized by SDS Act to enter permanent injunction; and

- Trial court was not authorized by SDS Act to enter declaratory and injunctive relief regarding funding of recreation and library services.

Service Delivery Strategy Act (SDS Act) waived sovereign immunity only to the extent of the Act, which extended no further than the remedies specifically authorized by Act, to allow city's action under Act against county alleging that county had breached intergovernmental agreement concerning police and fire protection.

City's claims against county seeking specific performance of intergovernmental agreement concerning police and fire protection were not barred by sovereign immunity; state constitution expressly waived sovereign immunity for breach of contract claims against state or its departments and agencies.

Dispute resolution process prescribed by Service Delivery Strategy Act (SDS Act) did not violate separation of powers provision of state constitution; Act did not authorize court to substitute its judgment for that of county and municipalities with regard to creation of service delivery agreement, nor to adopt one party's interpretation to exclusion of another, and enter that in the form of final agreement, rather, court was directed only to receive parties' evidence and resolve disputed issues of fact regarding services provided and funding of such services, and to determine whether such services and funding complied with the provisions of the law.

Funding of road and bridge maintenance was not at issue before mediator, and therefore trial court was not permitted to consider issue following mediation pursuant to Service Delivery Strategy Act (SDS Act) in dispute between city and county concerning intergovernmental agreement.

Trial court was not authorized by Service Delivery Strategy Act (SDS Act) to permanently enjoin county from imposing fees on city for emergency dispatch services and mandating use of particular technology for delivering those services in dispute between city and county concerning intergovernmental agreement; court was only permitted to employ those remedies provided for by Act, and Act did not permit issuance of permanent injunction as to funding or method of providing services.

Trial court was not authorized by Service Delivery Strategy Act (SDS Act) to enter declaratory and injunctive relief regarding funding of recreation and library services in dispute between city and county concerning intergovernmental agreement; court was only permitted to employ those remedies provided for by Act, and Act did not permit issuance of permanent injunction as to funding or method of providing services.

IMMUNITY - IOWA

Kellogg v. City of Albia

Supreme Court of Iowa - March 9, 2018 - N.W.2d - 2018 WL 1224514

Homeowner brought action against city, alleging that reoccurring flooding in the basement of her home due to the discharge of rainwater from storm sewer constituted a nuisance and that city was negligent in installing storm sewer pipe.

The District Court granted city's motion for summary judgment. Homeowner appealed. The Court of Appeals reversed. City applied for and was granted further review.

The Supreme Court of Iowa held that:

- City had to offer evidence that conduct immunized under statute was the conduct supporting nuisance claim, and
- City offered evidence that conduct immunized under statute was the conduct supporting nuisance claim.

When a claim against a municipality rests upon negligence in the maintenance of a utility, rather than negligence in the failure to upgrade a utility, neither the literal terms nor the purposes of the statutory immunity for municipalities for tort claims based on claims of negligent design and construction of public improvements and facilities or failure to upgrade public improvements and facilities are applicable.

If a plaintiff can only establish a nuisance claim against a municipality by evidence of immune conduct, the municipality need only raise statute granting immunity to municipalities for tort claims based on claims of negligent design and construction of public improvements and facilities or failure to upgrade public improvements and facilities as a defense; yet, when a plaintiff is not required to prove a claim by evidence of immune conduct, the municipality can still support an immunity defense by offering evidence that the conduct responsible for the condition supporting the nuisance claim is in fact conduct immunized under the statute.

City had to offer evidence that conduct immunized under statute granting immunity to municipalities for tort claims based on claims of negligent design and construction of public improvements and facilities or failure to upgrade public improvements and facilities was the conduct supporting homeowner's nuisance claim against city based on flooding of her basement due to the discharge of rainwater from storm sewer, where homeowner made no claim that city engaged in conduct outside statutory framework, such as a failure to properly maintain and repair the sewer pipe.

City offered evidence that conduct immunized under statute granting immunity to municipalities for tort claims based on claims of negligent design and construction of public improvements and facilities or failure to upgrade public improvements and facilities was the conduct supporting homeowner's nuisance claim against it based on flooding in the basement of her home due to the discharge of rainwater from storm sewer, as required to support city's immunity defense.

IMMUNITY - KANSAS

Patterson v. Cowley County

Supreme Court of Kansas - March 16, 2018 - P.3d - 2018 WL 1354224

Family members of driver and passenger brought wrongful death action against township, county, and Kansas Department of Wildlife, Parks, and Tourism (KDWPT), alleging failure to provide adequate warnings, signs, or barriers between end of road and river.

The District Court granted summary judgment in part to county, and in full to township. One family member and county took interlocutory appeals, and the appeals were consolidated. The Court of Appeals affirmed in part and reversed in part. Family member's petition and county's cross-petition for review were granted.

The Supreme Court of Kansas held that:

- Township did not owe duty to install barricade and sign at end of road;
- County did not owe duty to conduct engineering study regarding traffic-control devices; and
- Kansas Tort Claims Act (KTCA) shielded county from liability for discretionary function.

Township did not owe duty to driver and passenger who died in traffic accident to install barricade and “Dead End” sign at end of unpaved road in location where vehicle drove off road and flipped into a river; township was not located within one of five counties where townships were statutorily required to install traffic-control devices, and imposing such requirement on all townships would have rendered statute listing specific counties meaningless.

County did not owe duty to driver and passenger who died in traffic accident to conduct engineering study to determine whether additional traffic-control devices were necessary for county’s paved portion of roadway; even though federal Department of Transportation’s Manual on Uniform Traffic Control Devices required that warning signs be based on engineering study, Manual did not obligate county to conduct engineering study on every road within its territorial borders for purposes of considering placement of warning sign.

County had discretion not to consider whether to install advisory speed plaque, a “Dead End” sign, or a “No Outlet” sign on road, and therefore Kansas Tort Claims Act (KTCA) shielded county from liability on all claims resulting from fatal traffic accident; Manual on Uniform Traffic Control Devices did not mandate the signage or trigger need to seek out professional engineering judgment, and Manual did not contain detailed guidance for deciding when the signs were necessary.

IMMUNITY - MISSISSIPPI

Mississippi Department of Wildlife, Fisheries, and Parks v. Webb

Supreme Court of Mississippi - March 15, 2018 - So.3d - 2018 WL 1323824

Deceased boater’s survivors brought wrongful death action against Department of Wildlife, Fisheries, and Parks under the Mississippi Tort Claims Act, alleging that conservation officers acted with reckless disregard for the safety of boaters on the river when they failed to effect a stop of boater who was speeding and instead instructed him to move to an allegedly safer location, after which he fled and caused a boating collision.

Following a bench trial, the Circuit Court entered judgment for survivors. Department appealed. The Court of Appeals reversed and rendered. Survivor petitioned for writ of certiorari, which was granted.

The Supreme Court of Mississippi held that there was substantial evidence that conservation officers acted in “reckless disregard” for the safety of other boaters on the river, as required to defeat immunity relating to police protection under the Act.

There was substantial evidence that conservation officers acted in “reckless disregard” for the safety of other boaters on the river when they failed to effect a stop of boater who was speeding and instead instructed him to move to an allegedly safer location, after which he fled and caused a boating collision, and thus immunity relating to police protection under the Mississippi Tort Claims Act did not preclude the wrongful death action brought by survivors of the deceased boater; although officers testified that a “blind spot” existed in the bend of the river where they had detained boater, there was evidence that their testimony was not credible, boater’s blood alcohol content was .25 two hours and 15 minutes after the collision, which indicated severe impairment of all mental, physical, and sensory function, and there was evidence that officers, in violation of standard operating procedure, decided to direct boater to continue to operate his boat before determining why he was speeding or whether the use of alcohol could be ruled out.

DAMAGES - NORTH DAKOTA

Larimore Public School District No. 44 v. Aamodt

Supreme Court of North Dakota - March 19, 2018 - N.W.2d - 2018 WL 1371248 - 2018 ND 71

School district and governmental self-insurance pool brought interpleader action and deposited $500,000 with the district court to satisfy statutory damage cap for personal injury and wrongful death claims arising from an accident involving a collision between a school district bus and a train.

Parents and guardians counterclaimed asserting that the damage cap was unconstitutional. The District Court confirmed deposit and discharged school district and self-insurance pool from further liability. Parents and guardians appealed.

The Supreme Court of North Dakota held that:

- Statutory damage cap does not violate the open court and remedy provision of the State Constitution;
- Statutory damage cap does not violate the right to a jury trial under the State Constitution;
- Statutory damage cap was not facially unconstitutional under the equal protection clause of the State Constitution;
- Statutory cap was not unconstitutional as applied under the equal protection clause of the State Constitution; and
- Statutory cap does not violate the provision of the State Constitution prohibiting local or special laws.

REFERENDA - OHIO

State ex rel. Quinn v. Delaware County Board of Elections

Supreme Court of Ohio - March 15, 2018 - N.E.3d - 2018 WL 1325034 - 2018 -Ohio- 966

After county board of elections sustained a protest and decertified a zoning referendum for placement on ballot, petitioner filed a complaint for a writ of mandamus against board of elections. The matter was converted into an expedited election matter.

The Supreme Court of Ohio that:

- Zoning-amendment referendum petition satisfied the number and full-and-correct-title requirements;
- Petition included the name by which the amendment was known; and
- Issue of whether summary contained in petition met statutory requirements was not ripe for review.

Zoning-amendment referendum petition satisfied the number and full-and-correct-title requirements, despite fact that petition did not include exact title of township trustee's resolution and referred to the township case number of the original application instead of the case number of the revised application; zoning amendment had been initiated by application rather than by resolution, only difference between case numbers of original application and revised application was the addition of "(R)," evidence in the record established that the (R) designation was not a part of the application's official title, and it would unjustly interfere with the right of referendum to require petitioner to strictly adhere to a convention that the zoning board and the trustees did not themselves follow.

In referendum petition challenging township's amendment of a zoning plan, petitioner's use of designation by which township trustees referred to amendment in their minutes met the statutory requirement that the petition include the name by which the amendment is known.

Issue of whether brief summary contained in referendum petition challenging a township's amendment of a zoning plan met statutory requirements was not ripe for review; board of elections had disqualified referendum from ballot based on other issues and could not muster a majority to disqualify the referendum based on the summary, and secretary of state had declined to break the tie in writing.

EMINENT DOMAIN - PENNSYLVANIA

York OPA, LLC v. Commonwealth , Department of Transportation

Commonwealth Court of Pennsylvania - March 20, 2018 - A.3d - 2018 WL 1385848

Condemnee filed petition for appointment of board of viewers, asserting inverse condemnation claim against Department of Transportation (DOT).

The Court of Common Pleas overruled DOT's preliminary objections and entered judgment in favor of condemnee, finding de facto taking. DOT appealed.

The Commonwealth Court held that:

- Condemnee did not waive its right to bring inverse condemnation action, despite failing to file preliminary objection to declaration of taking;
- Genuine issue of material fact existed as to whether portion of land was owned by township or condemnee; and
- Trial court lacked subject matter jurisdiction to determine title of property.

Condemnee did not waive its right to bring inverse condemnation action against condemnor, despite failing to file preliminary objection to declaration of taking, where declaration misidentified portion of land as existing right-of-way already owned by condemnor rather than land owned by condemnee, resulting in alleged taking of such portion without compensation.

Genuine issue of material fact existed as to whether portion of land was owned by township or condemnee, precluding determination of whether condemnee had standing to bring de facto taking claim.

In inverse condemnation proceeding, trial court lacked subject matter jurisdiction to determine title of property to which Department of Transportation and condemnee claimed ownership, since Board of Property had exclusive jurisdiction over such issue.

MUNICIPAL ORDINANCE - WASHINGTON

Emerald Enterprises, LLC v. Clark County

Court of Appeals of Washington, Division 2 - March 13, 2018 - P.3d - 2018 WL 1280788

Applicant for retail license to sell marijuana within unincorporated county brought declaratory judgment action against county, alleging that state law legalizing recreational marijuana preempted a county ordinance that banned the retail sale of recreational marijuana.

The Superior Court entered summary judgment in favor of county. Applicant appealed and also filed appeal in a related land use case.

The Court of Appeals held that:

- Ordinance did not prohibit what state law permitted, as element in determining whether ordinance irreconcilably conflicted with state law and thus was preempted by it;
- Ordinance did not thwart the legislative purpose of state law, as element in determining whether ordinance irreconcilably conflicted with state law and thus was preempted by it;
- Ordinance did not exercise authority reserved by state law, as element in determining whether ordinance irreconcilably conflicted with state law and thus was preempted by it;
- State law did not expressly preempt ordinance; and
- State law did not impliedly preempt ordinance.

Credit Enhancement For Charter School Facilities Program.

What's New
On March 21, 2018, the U.S. Department of Education published in the Federal Register a notice inviting applications (NIA) for the Charter Schools Program (CSP): Expanding Opportunity through Quality Charter Schools Program–Grants for Credit Enhancement for Charter School Facilities (Credit Enhancement). The purpose of the Credit Enhancement program is to award grants to eligible entities that demonstrate innovative methods of helping charter schools address the cost of acquiring, constructing, and renovating facilities by enhancing the availability of loans and bond financing.

For more information about this awards, visit the Applicant Info and Eligibility page.

Program Description
This program provides grants to eligible entities to permit them to enhance the credit of charter schools so that the charter schools can access private-sector and other non-Federal capital in order to acquire, construct, and renovate facilities at a reasonable cost.

Objective
An eligible entity receiving a grant must use the funds deposited in the reserve account to assist one or more charter schools to access private-sector capital to accomplish one or more of the following objectives:

1. The acquisition (by purchase, lease, donation, or otherwise) of an interest (including an interest held by a third party for the benefit of a charter school) in improved or unimproved real property that is necessary to commence or continue the operation of a charter school.
2. The construction of new facilities, or the renovation, repair, or alteration of existing facilities, necessary to commence or continue the operation of a charter school.
3. The predevelopment costs required to assess sites and to commence or continue the operation of a charter school.

Permissible Uses of Reserve Account Funds

An eligible entity receiving a grant shall, in accordance with State and local law, directly or indirectly, alone or in collaboration with others, deposit the funds received, other than funds used for administrative costs, in a reserve account established and maintained by the eligible entity. Amounts deposited in such account shall be used by the eligible entity for one or more of the following purposes:

1. Guaranteeing, insuring, and reinsuring bonds, notes, evidences of debt, loans, and interests therein.
   Guaranteeing and insuring leases of personal and real property.
2. Facilitating financing by identifying potential lending sources, encouraging private lending, and other similar activities that directly promote lending to, or for the benefit of, charter schools.
3. Facilitating the issuance of bonds by charter schools, or by other public entities for the benefit of charter schools, by providing technical, administrative, and other appropriate assistance (including the recruitment of bond counsel, underwriters, and potential investors and the consolidation of multiple charter school projects within a single bond issue).

Funds received and deposited in the reserve account shall be invested in obligations issued or guaranteed by the United States or a State, or in other similarly low-risk securities. Any earnings on funds received shall be deposited in the reserve account and used in accordance with this program.

Impermissible Uses of Reserve Account Funds

Grantees may not use reserve account funds to:

1. Directly pay for a charter school's construction, renovation, repair, or acquisition.
2. Provide a down payment on facilities in order to secure loans for charter schools. A grantee may, however, use funds to guarantee a loan for the portion of the loan that would otherwise have to be funded with a down payment.

Omnibus Spending Bill Includes 12.5 Percent Boost for LIHTCs, Other Housing Provisions.

Congressional leaders reached agreement today on a fiscal year 2018 omnibus spending bill that includes a 12.5 percent increase in low-income housing tax credit (LIHTC) allocations for four years and a provision from the Affordable Housing Credit Improvement Act of 2017. The 12.5 percent boost applies to the 2018 LIHTC allocations and will be in effect for 2019, 2020 and 2021. Barring an extension, the LIHTC annual allocation would revert to the previous levels (adjusted for inflation) in 2022. Also included in the omnibus bill is a provision to allow income averaging for LIHTC properties on a permanent basis.

The Notes from Novogradac blog has a more in-depth explanation of the affordable housing provisions.

How Puerto Rico's Bankruptcy is Roiling the Municipal Bond World

Puerto Rico's debt crisis is taking a toll on the mainland municipal bond market.

Municipal participants say the ripple effects from the biggest municipal bankruptcy have shaken investor confidence in lower-rated states and cities, legal promises, and credit ratings in general. Of particular concern is a ruling by Title III judge Laura Taylor Swain that upset expectations regarding special revenue bonds, which had continued to generate payments in previous bankruptcies.

In her ruling on Jan. 30 in a case involving the bonds of the Puerto Rico Highways and Transportation Authority, Convention Center District Authority, and Infrastructure Finance Authority, Swain said the fact the bonds were special revenue bonds didn't require the issuers to continue paying in a Chapter 9 bankruptcy. Puerto Rico is in a Puerto Rico Oversight, Management, and Economic Stability Act Title III bankruptcy that incorporates the Chapter 9 bankruptcy provisions on these bonds.

"The fact that an automatic stay does not apply to special revenues and that payments should continue to bondholders has been accepted as common knowledge by the investing public," said Wells Fargo Securities managing director Natalie Cohen. Swain's decision has "cast doubt" on that.

Cohen pointed out that a federal website of the Administrative Office of the U.S. Courts summarizes a part of Chapter 9 saying, "Holders of special revenue bonds can expect to receive payment on such bonds during the Chapter 9 case if special revenues are available."

Bond insurers Assured Guaranty (AGO) and National Public Finance Guarantee are preparing an appeal of the Swain ruling and Cohen said this may clarify its impact. For the time being, the "decision has caused concern about the safety of special revenues of distressed borrowers."

Peter Block, head of municipal credit strategy at Ramirez, said if Swain's decision is upheld, market participants may not respect special revenue bonds in the future.

Fitch Ratings thought Swain's decision was important enough to put out a six-page "special report" on the topic, "What Investors Want to Know: The Impact of the Puerto Rico Ruling on Special Revenue Debt."

On March 9 Fitch said it would include a warning in its commentaries on credits that might be affected by a final court ruling on Swain's decision. Among other things, the warning comment says about special revenue bonds, "The outcome of the litigation could result in modifications to Fitch's approach."

Municipal bond participants have responded to Puerto Rico's bond meltdown in their U.S. dealings not just since Swain's January decision but also over the last several years. Some have become more cautious about purchasing bonds from distressed issuers.

On Feb. 13 one of the historically biggest holders of Puerto Rico debt, Franklin Templeton Investments, said it had learned its lessons from its experience of the islands' slide into multiple defaults. "As a result of lessons recently learned, the Franklin municipal bond group generally does not purchase general fund appropriation debt from cities, counties or states that in our view are facing unsustainable structural budget situations," two co-directors of the group wrote in "Fundamental Changes That No Muni Investor Should Ignore."

"As real examples, the Franklin municipal bond group has divested from – and currently won't invest in – obligations of the State of Illinois, the City of Chicago and Chicago Public Schools, no matter what they offer in terms of security," Co-Directors Sheila Amoroso and Rafael Costas wrote.

Franklin Templeton managed 24 municipal bond bonds as of November 2016 that held more than $1.5 billion of Puerto Rico bonds.

“As the financial picture there deteriorated, we began to reduce our exposure,” the authors wrote. “Unfortunately, by the time Puerto Rico made known its intentions to default on its debts we had not completely exited our position.”

The U.S. Virgin Islands, which has its own financial problems, has struggled with the shadow of Puerto Rico’s default. The latter’s default played a role in the Virgin Islands’ inability to sell bonds in the late summer of 2016 and January 2017 for operating expenses.

In August 2017 the Virgin Islands’ Water and Power Authority, also in extreme financial difficulties, had to offer 11% annual interest on a 35 month duration bond to gain a buyer.

In Detroit’s bankruptcy the judge treated general obligation bonds as unsecured debt, Block noted. In Puerto Rico the island has defaulted on its GO debt and now Swain is saying the special revenue bonds don’t have to be paid in bankruptcy either. “People have learned to look more carefully at what they own,” Block said.

On Feb. 5 S&P Global Ratings agreed, titling a commentary, “Puerto Rico Court Ruling Supports Our View That Credit Fundamentals Remain Key To Ratings.” The piece commented on recent Swain rulings on both GO and special revenue bonds.

“The continuing uncertainty surrounding outcomes for Puerto Rico bondholders reinforces that credit fundamentals matter even where legal protections appear strong,” S&P Analyst David Hitchcock wrote. “We have incorporated this approach into all of our GO and revenue bond ratings.”

The Puerto Rico crisis also undercut the market’s faith in credit ratings.

Block said that the market and institutional investors in particular have lost some confidence in ratings over the past 10 years and have bolstered credit staffs to monitor underlying credit quality of holdings. The confidence was shaken by ratings that eroded very quickly on some mortgage-backed bonds prior to the 2008 financial crisis and some ratings that went bad more recently, namely those for Detroit and Puerto Rico.

Block said in hindsight the agencies probably should have rated Puerto Rico speculative grade shortly after the island began to deficit finance the general fund (via COFINA) following the onset of the Puerto Rican recession in 2006.

Prior to the 2008 financial crisis, ratings had a 90% influence on where bonds traded, Block said. Now the influence is closer to 40% to 60%.

By Robert Slavin

BY SOURCEMEDIA | MUNICIPAL | 03/21/18 06:58 PM EDT

Private Activity Bonds: An Introduction.

Read the Congressional Research Service report.

Hawkins Advisory: Municipal Market Regulatory Update.

Read the Advisory.

CDFA Announces 2018 Policy Agenda.

Read the Agenda.

S&P: How Our U.S. Local Government Criteria Weather Climate Risk.

Extreme weather-related events and climate change place U.S. local governments on the front lines in preparing for acute weather risk events, working to prevent longer term damage and, if necessary, building or rebuilding critical infrastructure.

Continue Reading

Mar. 20, 2018

Congress' Last-Minute Budget Bill May Actually Prove Good for Cities.

In a midnight vote to avert another looming government shutdown, Congress overwhelmingly approved a $1.3 trillion spending bill that, for once, didn't shortchange cities.

President Trump threatened to veto the bill the next morning, but ultimately signed it.

While the dollars appropriated to housing, community development, and other urban priorities still fall far short of what's needed, in many cases the bill increased funding to key programs. The bill also included a key change to the low-income housing tax credit program, making it easier to finance units that are affordable for households at lower income levels than typical under the current program.

Continue reading.

NEXT CITY

BY OSCAR PERRY ABELLO | MARCH 23, 2018

Issuer Brief: The Continued Case for Resilience As a Credit Issue.

his Issuer Brief is brought to you by Court Street Group

The Continued Case for Resilience As a Credit Issue

The American Association for the Advancement of Science released a study of the San Francisco Bay Area which reflects the potential impacts of rising seas from climate change on the region. According to the study, major consequences of exacerbated inundation risk for coastal areas include saltwater contamination of surface and underground waters, accelerated coastal erosion, wetland losses, and increased flooding. The study estimates that by 2100, more than 480,000 people and $100 billion worth of property in the San Francisco Bay will be exposed to flood risk. It comes from a combination of rising sea levels but also from land subsidence. The study estimates that Portions of Treasure Island, San Francisco, San Francisco International Airport, and Foster City are subsiding as fast as 10 millimeters/year.

And it is not just these factors that are a concern. Storm intensity, associated rainfall, and storm surges affecting the coastal area are likely amplified by the elevated ocean temperature caused by ongoing global climate change. Higher volumes create greater amounts of water to be absorbed which results in higher water tables creating flooding. These create greater localized flood risk in those areas as well. An example is the flooding in sections of Miami due to a rising water table and reduced absorptive capacity.

The credit impact results from the need to install flood mitigation infrastructure, to raise roads or relocate them, and the potential need to relocate significant infrastructure such as airports – as well as the need to find additional revenue sources to support these additional facilities. Significant airport facilities located adjacent to or extended into the water include Logan in Boston, LaGuardia and JFK in New York, and San Francisco International, just to name a few.

Planning for these impacts at the state and local level will intensify more quickly and issuers will likely need to disclose potential credit implications when issuing new deals.

Airports Moving Forward with Rideshare Fees to Boost Revenues

Tampa International Airport (TIA) has begun collecting a per-trip fee on commercial ground transportation vehicles to be phased in over a three-year period. The Hillsborough County Aviation Authority voted to implement the new fee structure starting last August for transportation network companies (TNCs) — such as Uber and Lyft — through the approval of their use and permit agreements. All other ground transportation vehicles such as taxis, limousines and hotel courtesy buses began the new fee structure in February 2018, when a new tracking technology became available.

Taxis, limos, and TNCs would pay $3 the first year, $4 the second year, and $5 the third year. Rideshare vehicles, off-airport courtesy transport by rental car companies, off-airport parking courtesy vehicles, and hotel/motel courtesy vehicles would pay $2.50 the first year, $3.50 the second year, and $4.50 the third year. Fees would apply for picking up passengers only; customer drop-offs will continue to be allowed at no charge.

The charges were authorized under state legislation signed in May 2017. An automatic vehicle identification system will track taxis, limos, and hotel courtesy vehicles, using a transponder-like device on the windshield like a SunPass. TIA based the commercial vehicle user fees on a study showing use at 14 other airports. It concluded that that TIA's expenses for its operation and maintenance of its ground transportation facilities exceeded the revenue received under prior fee structure. TIA collected $420,000 from cab companies and another $87,000 from limos for using the airport. The new structure plus adding TNCs is expected to bring additional revenue to the airport.

Knoxville, along with Nashville and Memphis, have an operating agreement with Uber. When the Uber driver picks up a passenger and drives into the area covered by the airport's geofence, that will trip a $2.50 charge to Uber.

These sorts of arrangements will allow airport operators to generate revenues from the ride share services to offset lost revenues from decreased demand for parking for private vehicles. The evidence is not clear yet as to whether an equilibrium has been established between revenue gains from ride sharing versus lost revenues from decreased parking demand. The development and increasing implementation of such revenue-generation schemes gives us confidence that airports will adapt over the long run and sustain their ability to finance their operating costs and capital needs.

Most airports generally have certain monopolistic attributes that will enable them to significantly increase fees from passengers who transition from driving in and parking their own cars to using ride sharing, but at some level which may be below the net revenues from such fees, they may run into resistance. It will take considerable time for these patterns to play out, and airports will have to be vigilant and assertive in responding to these transitions.

An Update on the Gateway Project

One of the shortcomings of the Trump administration infrastructure plan is the low level of federal funding. The spotlight was directed on this when the Secretary of Transportation appeared before the House Transportation and Infrastructure Committee. Secretary Elaine Chao confirmed for members of a House committee that President Trump doesn’t want Congress to include any funding for the planned Gateway Tunnel in an omnibus spending bill. Trump’s concern, Chao said, is that the project would consume all of the available federal funding.

This position seems to be designed to stoke opposition to the tunnel in the House where members have expressed concerns that financing for the tunnel would compete with the needs of rural areas. New York and New Jersey want to obtain federal loans totaling $4.29 billion from the Railroad Rehabilitation and Improvement Financing program as well as a federal Capital Improvement Grant. The Railroad Rehabilitation and Improvement Financing (RRIF) Program provides direct federal loans and loan guarantees to finance the development of railroad infrastructure. Other projects seeking loans from the same program include the All Aboard Florida Brightline between Miami and Orlando; the Dallas Area Rapid Transit Cotton Belt line; the Port of Charleston, S.C. intermodal facility; the Port of Everett, Washington terminal upgrades; and the Merchant’s Rail Bridge in St. Louis.

New York and New Jersey could apply for loan funding under the federal Transportation Infrastructure Finance and Innovation Act (TIFIA) for the Gateway project. The website for TIFIA says local repayments of federal loans are treated as a state or local share of costs. Chao apparently has not read their own website as she contends that loan proceeds cannot be counted as equity contributions from the two states for the tunnel. Chao rejected suggestions that the federal government made any commitment to the Gateway project in the past contradicting the understanding of two governors and senators from each state.

Now with the government facing a shutdown deadline this coming weekend, funding for the Gateway Tunnel became a major stumbling block in the effort to adopt an omnibus spending bill to fund the government in lieu of a formal budget agreement. House leadership had been reluctant to include anything in a bill that would cause the President to veto the legislation. However, Amtrak will be able to contribute $388 million to Gateway using its Northeast Corridor Account, while New York and New Jersey will receive another $153 million from the Federal Transit Administration’s High-Density States and State of Good Repair grant programs. In addition, the bill will also provide $2.9 billion in discretionary grants to DOT that could be used to fund a portion of Gateway. The

Gateway builders, which include Amtrak and officials in New York and New Jersey, have already applied for some of those grants.The deadline for passage of the spending bill to avoid a government shutdown is 12 a.m. this Saturday the 24th. Both the House and Senate passed a $1.3 trillion spending bill and sent it to the President's desk. President Trump has threatened to veto the bill. As of press time, he had not acted.

Issues like this contribute to the pessimism about the timing of Congressional funding for any infrastructure program before year-end.

Neighborly

by Joseph Krist

Posted 03/23/2018

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Examining the Local Value of Economic Development Incentives: Evidence From Four US Cities.

Every year local and state governments in the United States expend tens of billions of dollars on economic development incentives. Under intense pressure to deliver economic opportunity, policymakers utilize incentives to encourage private sector firms to create jobs, invest in communities, and strengthen local industries. Drawing on a detailed literature review and a unique analysis of economic development transactions in four U.S. cities (**Cincinnati**, **Indianapolis**, **Salt Lake County**, and **San Diego**), this report advances a framework for inclusive economic development to help leaders analyze and evolve their incentive policies.

Executive Summary

Full Report

The Brookings Institute

by Joseph Parilla and Sifan Liu

March, 2018

NAST Writes HQLA Letter to Congressional Leadership.

Read the Letter.

National Association of State Treasurers

March 22, 2018

Introduction to Environmental Impact Bonds.

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

The new wave of green municipal debt instruments has many investors talking and potentially looking to make them part of their portfolio. Green munis can be either general obligation or revenue-backed debt instruments that are essentially issued to fund any "green initiative" or project by local and state governments. Many local governments have been focused on reducing carbon emissions in their infrastructure projects or conserving run-off rainwater – all of which could potentially constitute as a green project.

Furthermore, an important branch of green bonds are known as Environmental Impact Bonds (EIBs), which are starting to gain momentum with muni investors. In this article, we'll take a closer look at EIBs and whether the increased use of these bonds will give muni investors an opportunity to earn higher returns with a risk profile similar to that of current munis.

Continue reading.

municipalbonds.com

by Jayden Sangha

Mar 22, 2018

The New Federal Spending Bill Is Flush With Money for Waterworks.

"The new initiatives and funding increases actually make this legislation a new national water infrastructure program," says a representative for the National Rural Water Association.

WASHINGTON — The massive $1.3 trillion federal spending bill lawmakers in Congress are racing to pass this week would open the spigot for greater federal grants, loans and other assistance to flow to water and wastewater utilities around the U.S.

Programs within the Environmental Protection Agency and the U.S. Department of Agriculture that support water and sewer utilities would see funding levels boosted by hundreds of millions of dollars.

"The new initiatives and funding increases actually make this legislation a new national water infrastructure program," said Mike Keegan, a legislative affairs staffer at the National Rural Water Association. "If the president signs it, he and Congress can claim that."

[Continue reading.](#)

Route Fifty

By Bill Lucia,
Senior Reporter

March 22, 2018

[Counties Enmeshed With Federal Lands Score Wins in Spending Bill.](#)

The legislation will rekindle the Secure Rural Schools program and beef-up Payments in Lieu of Taxes.

WASHINGTON — For counties with large tracts of tax-exempt public land and those affected by diminished timber harvest revenues from logging in federal forests, the $1.3 trillion spending bill President Trump signed on Friday is noteworthy.

The fiscal year 2018 package will up funding for Payments in Lieu of Taxes, or PILT, to $530 million. That's $65 million higher than the last budget cycle. It also authorizes the Secure Rural Schools program for two years. For many rural county governments, particularly those in the west, the programs can be an important source of funding.

"A broad coalition of county commissioners, teachers and school administrators got the message across," Karen Skoog, a commissioner in Pend Oreille County, Washington, said in a statement.

"Without SRS and PILT payments, many schools in rural America would not be able to keep their doors open," she added.

Under the PILT program, the feds makes payments to local governments encompassing non-taxable federal lands.

These lands comprise more than 90 percent of the area in some counties, limiting opportunities for generating local property tax revenue. At the same time, public lands can create costs. For instance, a county might be stuck paying the snowplowing and maintenance tab for a road that provides access to a federal area.

Secure Rural Schools was designed to help offset declines in federal timber harvest revenues in jurisdictions located near national forests.

It was enacted in 2000 and in prior years it has funneled money to hundreds of counties. Money from the program goes not only to schools, but also to county governments who use it to pay for roadwork and other basic costs. The program expired in 2015.

"The last payments went out in the spring of 2016," Jonathan Shuffield, associate legislative director for public lands for the National Association of Counties, said by phone Friday.

NACo and other groups have pushed in recent years to get Secure Rural Schools reauthorized.

Finding a budget offset that would allow for the program's reauthorization proved to be a sticking point as the spending bill came together in Congress. But in the run-up to the bill's release, lawmakers solved the problem, offsetting the expense of SRS with oil sales from the nation's Strategic Petroleum Reserve, according to a person familiar with how the legislation took shape.

The spending legislation will provide Secure Rural Schools payments for fiscal years 2017 and 2018. The fiscal 2017 payments are due to go out within 45 days from the time the bill is enacted. Shuffield said that fiscal 2018 payments will likely go out sometime early next year. Counties are not slated to get any SRS payments for fiscal 2016.

For fiscal 2015, Secure Rural Schools provided $278 million to over 700 rural counties and other jurisdictions, according to NACo.

Shuffield explained that one likely reason for the sizable uptick in PILT funding is that SRS payments have not gone out for two years and there's interplay between the two programs.

Route Fifty

By Bill Lucia,
Senior Reporter

March 24, 2018

Puerto Rico Bondholders Finally See a Big Win.

- **New plan sees six-year surplus of $6 billion before debt**
- **Most-traded bond jumps by more than 20 percent Monday**

Puerto Rico and its creditors finally caught a break, at least for one day.

Bonds of the bankrupt U.S. territory soared more than 20 percent Monday after the government surprised investors by projecting that a flood of disaster-relief funds will do what officials for years couldn't: revive the moribund economy enough to replace chronic deficits with increasing surpluses, before any debt payments are made.

There's still a big question mark over whether Puerto Rico can actually deliver, given its history of fiscal folly and an exodus of residents. But the bond rally signals optimism that investors may not lose quite as much as initially feared from what has been the largest municipal bankruptcy in U.S. history, even as residents brace for a new era of fiscal austerity.

The government's latest financial turnaround plan marks the second time in as many months that it's offered a more sanguine outlook for its recovery. It projects that Puerto Rico will have a surplus, excluding bond payments, of $6 billion over the next six years after implementing plans to steady its finances. That's up from $3.4 billion projected last month. In January, while still gauging the toll of the storm, it estimated that it would have essentially no money for debts because of the devastation.

"The move is bigger than expected, but it is in reaction to the fiscal plan which has come out more positively than previous ones," said Daniel Solender, head of municipal investments at Lord Abbett & Co., which holds Puerto Rico securities among its $20 billion of state and local debt. "There still is a long way to go, but there is growing optimism that things have moved better than worst-case scenarios."

Puerto Rico general obligations were the most actively traded municipal bonds Monday. The price of those due in 2035 rose by 7 cents on the dollar to an average 43.8 cents, the highest since early October, after climbing to as much as 45 cents, according to data compiled by Bloomberg. The prices of the territory's sales-tax, electric-company and building-authority bonds also jumped in heavy volume.

The rally wiped out much of the losses that Puerto Rico bondholders suffered after the September hurricane. The bonds due in 2035 — which were sold to hedge funds and other investors for 93 cents on the dollar four years ago — had slipped to around 58 cents before the storm. They then tumbled to as little as 21 cents in December.

Governor Ricardo Rossello's administration's latest plan still needs approval from the federal board that's been installed to oversee the turnaround and requires him to implement steps to wrest savings from the government and increase revenue. The question of how much investors will recover will also be determined in court, where creditors with sometimes competing claims are fighting over the the island's cash — making the outcome highly uncertain.

The improved outlook in the latest road map reflects the federal aid and insurance claims that are coming into the island, promising to boost an economy that had been mired in a recession for years as residents left for jobs on the U.S. mainland. The stagnation culminated in Puerto Rico's fiscal collapse.

As a result of the storm, Puerto Rico is counting on $21 billion of insurance money and about $49.1 billion of federal aid, enough to have a major impact on growth. While the economy is projected to shrink about 10.6 percent in the current fiscal year, the government anticipates it will expand 7.3 percent next year and grow for the following four years. A year ago, the island was projecting continued contraction.

The latest plan was set to be considered by Puerto Rico's federal oversight board Monday until the meeting was delayed. If approved, it will be a blueprint for the board, Rossello's administration and creditors during negotiations over how much of the island's $74 billion of debt it can repay.

Bloomberg Markets

By Danielle Moran

March 26, 2018, 12:47 PM PDT

— With assistance by Jonathan Levin, and Tatiana Darie

TAX - MASSACHUSETTS

Caplan v. Town of Acton

Supreme Judicial Court of Massachusetts, Middlesex - March 9, 2018 - 479 Mass. 69 - 92 N.E.3d 691

Taxpayers brought action against town, seeking injunctive relief and a declaration that town's grants of funds to church under the Community Preservation Act violated the state constitution's anti-aid provision.

The Superior Court denied taxpayers' motion for a preliminary injunction. Taxpayers' application for direct appellate review was granted.

The Supreme Judicial Court held that:

- As a matter of first impression, the anti-aid amendment does not categorically ban the grant of public funds to a church;
- Constitutionality of grants, rather than constitutionality of Act, was at issue;
- Record was insufficient to determine whether town had hidden, improper purpose of aiding church;
- Effects of grants was to substantially aid church;
- Grants risked infringing on liberty of conscience, entangling government with religion, and threatening civic harmony; and
- Taxpayers were likely to succeed on merits of claim with regard to stained glass window grant, but not master plan grant.

The state constitution's anti-aid amendment does not impose a categorical ban on the grant of public funds to a church solely because it is a church; rather, under the three-factor test, whether a church can receive such a grant depends on the grant's purpose, effect, and the risk that its award might trigger the risks that prompted the passage of the anti-aid amendment.

Constitutionality of town's grants to church was at issue in taxpayers' action against town for a violation of state constitution's anti-aid provision, rather than constitutionality of statutes establishing procedure for municipalities to make discretionary grants for historic resource projects, and thus principle of statutory construction that affords a statute presumption of constitutionality validity did not apply; statutes did not authorize appropriation of public funds to church or other private institution within scope of anti-aid amendment, and taxpayers challenged specific discretionary grants made pursuant to statutes.

Record was insufficient to determine whether town had hidden, improper purpose of aiding church, as element of determining whether town violated state constitution's anti-aid provision by granting funds to church for historic preservation; trial court denied reasonable discovery, including deposition of person designated by town and oral and written communications regarding decision-making process, to ascertain whether there was hidden purpose.

Effect of town's grants of funds to church was to substantially aid church, as element of determining whether town violated state constitution's anti-aid provision by granting funds allegedly for historic preservation; grants were neither minimal nor insignificant in amount, contributing 90% of $111,930 in costs, and grants would have helped defray costs that church would otherwise have had to shoulder on its own, allowing money saved to be used to support its core religious activities and, in effect, underwriting its function as active house of worship.

Town's grants of funds to church risked infringing on taxpayers' liberty of conscience, entangling government with religion, and threatening civic harmony, as element of determining whether town violated state constitution's anti-aid provision by granting funds allegedly for historic preservation; grants were to be used to renovate main church building where church conducted worship services and stained glass windows featuring explicit religious imagery, and grants limited church's ability to make future alterations without town's approval.

Taxpayers were likely to succeed on merits of claim that town's grant of funds for historic preservation of church's stained glass windows violated state constitution's anti-aid provision, and thus taxpayers were entitled to preliminary injunction; even though there may have been no other motivating purpose besides historic preservation, grants substantially aided church in its essential function, and, in light of explicit religious imagery of stained glass, grants risked dangers anti-aid provision was enacted to avoid.

Further discovery was required before one could determine whether taxpayers were likely to succeed on merits of claim that town's master plan grant to church, allegedly for historic preservation, violated state constitution's anti-aid provision, and thus taxpayers were not yet entitled to preliminary injunction; even though taxpayers were likely to succeed on claim regarding grant for church's stained glass windows, master plan grant was broader in scope and included renovation of two private residences, and restoration of main church building implicated risks different from those arising from restoration of residences.

TAX - SOUTH CAROLINA

[Richland County v. South Carolina Department of Revenue]

Supreme Court of South Carolina - March 7, 2018 - S.E.2d - 2018 WL 1177700

County brought action against Department of Revenue (DOR), seeking declaratory, injunctive, and mandamus relief after DOR stopped remitting transportation penny tax funds, and DOR counterclaimed for an injunction and a declaration that county's expenditures of funds were unlawful, or the appointment of a receiver.

The Circuit Court issued a writ of mandamus, denied injunctive relief, and refused to appoint a receiver. County and DOR appealed, and the appeal was certified to the Supreme Court.

The Supreme Court of South Carolina held that:

- DOR had standing to pursue affirmative defenses and raise counterclaims;
- DOR had ministerial duty to remit tax revenues, as required to entitle county to mandamus relief;
- County would not suffer irreparable harm, and thus county was not entitled to injunction;
- DOR was entitled to injunction forbidding county from making further expenditures; and
- DOR was not entitled to appointment of receiver.

Department of Revenue (DOR) had standing to pursue affirmative defenses and raise counterclaims regarding county's alleged misuse of transportation penny tax funds, in county's action challenging DOR's withholding of tax funds; DOR was agency statutorily tasked with administering penny tax program, and expenditure of millions of dollars of tax revenues was issue of wide concern both to DOR and to residents and taxpayers of county.

Department of Revenue (DOR) had ministerial duty to remit transportation penny tax revenues to State Treasurer for disbursement to county, as required to entitle county to mandamus relief, despite DOR's concerns that county was misusing tax funds; even though DOR had broad investigative and enforcement powers, statute indicated that DOR "must" remit revenues.

County would not suffer irreparable harm, and thus county was not entitled to injunction prohibiting Department of Revenue (DOR) from issuing directives, demands, or orders that county adopt and implement appropriate safeguards to ensure that expenditures of transportation penny tax funds were proper; county did not suffer any negative financial consequences in light of writ of mandamus directing DOR's continued remittance of tax revenues, and DOR's actions in auditing county were squarely within DOR's statutory duties.

Department of Revenue (DOR) was entitled to injunction forbidding county from making further expenditures of transportation penny tax revenues until county adopted and implemented appropriate compliance safeguards; Transportation Act required nexus between expenditures and transportation-related capital project, and county had many suspect expenditures of tax funds.

Trial court was not required to grant Department of Revenue's (DOR) request for appointment of receiver over county, even though county made many suspect expenditures of transportation penny tax revenues; trial court could order repayment of any improper expenditures from county's general fund, and county was expected to abide by injunction imposed to prevent improper expenditures.

Opportunity Zones: Maximizing Return on Public Investment.

Background

The Tax Cuts and Jobs Act included a new federal incentive—Opportunity Zones—to spur investment in undercapitalized communities. Local areas (defined by census tracts) are eligible for selection as Opportunity Zones if they are Low Income Communities (LICs) under the high poverty or low median income definitions established for the New Markets Tax Credit program. Also eligible for selection are census tracts contiguous to LICs if median family income does not exceed 125 percent of the qualifying tract. Roughly 56 percent of tracts in the US are eligible for selection as Opportunity Zones.

Governors of the 50 states and 5 territories, and the mayor of the District of Columbia ("governors") are charged with selecting 25 percent of the eligible tracts (or at least 25 tracts for states and territories with fewer than 100 eligible tracts) as Opportunity Zones. Non-LICs can represent no more than 5 percent of tracts selected. Governors have until March 21 to make selections and can take an additional 30 days if they request an extension. Once selected, Opportunity Zones keep the designation for 10 years. There is no provision in the statute to change which communities are classified as Opportunity Zones.

Apart from the exclusion of a few "sin" businesses, the activities and projects Opportunity Funds can finance are broad. Funds can finance commercial and industrial real estate, housing, infrastructure, and existing or start-up businesses. For real estate projects to qualify, the investment has to result in properties being "substantially improved."

Given the breadth of eligible investment types, Opportunity Zones must be carefully selected to ensure the return on the public investment is maximized and will lead to gains for low- and moderate-income residents. To guide selection, we prepared a dataset, for all eligible tracts, ranking them in terms of the investment flows they are already receiving and the social and economic change they have experienced.

Continue reading.

The Urban Institute

by Brett Theodos, Carl Hedman, Brady Meixell & Eric Hangen

The Public Startup Charting Bold New Waters.

Water utilities are struggling to lower their operation costs and simultaneously meet stricter environmental rules. Blue Drop, the brainchild of DC Water's former leader, wants to help.

Most startups fail. Within the first four years, anywhere from 50 to 90 percent of firms go belly up. Investing in them is risky. It's easy for things to go wrong.

But Blue Drop LLC isn't a typical startup. To begin with, there isn't a hoodie or open-loft office to be found in its modest headquarters in downtown Washington, D.C. And the company's lone investor, the public utility DC Water, hails from an extremely risk-averse sector.

There's something else unique about Blue Drop: A healthy portion of its revenue plan relies on selling truckloads of what used to be human poop.

Launched in late 2016 with a nearly $3 million investment in cash and resources from DC Water, which provides water and sewage services to residents of the nation's capital, Blue Drop is the brainchild of George Hawkins, the utility's former CEO and general manager. Hawkins, who stepped down only recently after a nine-year tenure, is credited with not just restoring public trust in the utility but with making it one of the most cutting-edge water enterprises in the country. (Governing named him a Public Official of the Year in 2014.) Now, he and others think the innovative and creative solutions that have emerged from DC Water over the past decade can be repackaged and marketed to others. Blue Drop, a nonprofit consulting enterprise, will do that by connecting potential public utility clients with the experience and know-how of DC Water. The company has two full-time employees — for now — plus five part-timers on loan from the utility.

Continue reading.

GOVERNING.COM

BY LIZ FARMER | MARCH 2018

Despite New Rules to Disclose Corporate Tax Breaks, Just Half of Local Governments Are.

The regulations that took effect this year let governments decide what's worth reporting, leading many to not report anything at all.

Transparency advocates predicted that new rules for governments would result in a treasure trove of data on tax breaks for corporations. But so far, just half of reporting municipalities have disclosed that information.

Of the local government data collected by the tax break transparency group Good Jobs First and analyzed by *Governing*, a little more than 600 of 1,222 governments did not disclose any revenue lost to tax incentives on their annual financial report. Many of them made no mention of the new accounting rule at all. And while others did, they said their losses were "immaterial" and therefore were not reported. (States are subject to the new rule, too. While most have followed disclosures, their data was not included in the analysis.)

Many of these non-reporting governments are major jurisdictions with populations above 1 million, such as Los Angeles County, Calif.; Montgomery County, Md.; and Pima County, Ariz.

The new requirement, called the Governmental Accounting Standards Board (GASB) Statement 77, mandates that governments report their annual lost revenue due to tax abatement agreements. However, the rule allows governments to decide what's "material" to their bottom lines. That, says Good Jobs First's Scott Klinger, is a problem because it's led to a wide variance in what governments report.

For example, Pima County's total tax abatements amounted to $340,000, or less than 0.1 percent of the county's $450 million in revenue, according to Finance Director Keith Dommer. Nearly all of it is due to economic development incentive deals struck by the city of Tucson.

"Pima County doesn't abate taxes as part of economic development or any other programs," he says. "And that's really what the [rule] is about — a lot of governments are using tax abatements as an economic development program, and GASB felt that if you're impairing your ability to generate revenues, someone should know about that."

Unlike Pima, Montgomery County makes its own tax incentive deals, including some well-known ones to keep the headquarters of the hotel giant Marriott International and television company Discovery Inc. Still, its financial report says tax abatement didn't have a "significant impact" on the county's more than $5 billion operating budget.

To be fair, the county does release that information — just not in its annual financial report. It separately produces a tax expenditures report that addresses business enterprise zones — geographic areas in which companies can qualify for a variety of subsidies — and other programs that promote economic development, as well as tax breaks for residents. According to its most recent expenditure report, the county gave up more than $2 million in tax revenue in 2015 as a result of its enterprise zones and job tax credit programs.

The Government Finance Officers Association suggests the enterprise zones are subject to reporting requirements, and indeed other governments have reported them. But Montgomery County spokesman Patrick Lacefield says county officials conducted an internal analysis and consulted with the state and determined that those types of tax incentives don't meet the criteria for financial reporting.

Other governments have a much lower disclosure threshold. The smallest reported loss for any locality — other than the 79 so far reporting zero lostes — was from Austin, Nev. Thanks in large part to the state controller's effort to promote tax abatement disclosures, Austin reported it lost $4 last year from a state renewable energy program.

Meanwhile, some governments cherry pick what they'll report. Washington state, for instance, disclosed more than $333 million in abated tax revenue last year. But those figures are only for incentive programs that topped $10 million in lost revenue. That, says Good Jobs First's Klinger, means a lot of abatements in that state did not get reported.

All this variance in reporting isn't unexpected. After all, it's a new requirement. For its part, GASB has issued guidance clarifying the approach for governments since the new rule went into effect. The guidance includes what types of expenditures — such as certain kinds of tax increment finance districts — count as abatements. But it has been silent on what is material for reporting.

In Klinger's opinion, though, more governments should be like Nevada's Austin. "This is public money," he says. "All of it should be accounted for."

GOVERNING.COM

BY LIZ FARMER | MARCH 21, 2018

Additional reporting by Mike Maciag.

[The Week in Public Finance: What's in the Congressional Spending Bill for States and Localities.]

Several major programs — some that the White House aimed to eliminate — will get a significant funding boost. President Trump signed the bill hours after threatening to veto it.

In the federal spending bill that President Trump signed on Friday, several government programs are getting funding boosts, including two that the White House sought to eliminate a year ago.

Community Development Block Grants, which help fund an array of local government projects spanning from affordable housing assistance to small business loan programs, are set to see a $300 million increase in funding. That puts total federal funding at $3.3 billion for a program that Trump's 2017 budget proposal had targeted for elimination. It's also the first meaningful increase for the program since the early 1990s.

"Every year, it costs more to build roads and homes and to rehab facilities," says the Urban Institute's Brett Theodos. "So a program that's the same dollar value every year is actually a shrinking program in terms of what it can produce on the ground."

Continue reading.

GOVERNING.COM

BY LIZ FARMER | MARCH 23, 2018

[Illinois Candidates Vie to Lead State With Nation's Worst Credit Rating.]

- **Gubernatorial primary comes amid budget deficit, unpaid bills**
- **Investors want winner to resolve growing pension crisis**

Up for grabs in Illinois's gubernatorial primary on Tuesday: A chance to compete in a general election that will decide who will lead the worst-rated state — one whose massive financial problems aren't going away anytime soon.

Illinois is contending with $9 billion of unpaid bills, chronic budget deficits and $129 billion of unfunded pension liabilities. Its credit rating is only one level above junk, making its borrowing costs the highest of any U.S. state as bond buyers punish Illinois for its fiscal woes. Plus the Land of Lincoln is losing population, dropping to the sixth-most-populous state last year from number 5, U.S.

Census data show.

“This is a pivotal election for Illinois, which has been struggling for almost a decade to stabilize its finances,” said Laurence Msall, president of the non-partisan Civic Federation, which tracks the state’s finances. “With only one notch separating Illinois from non-investment grade credit, the stakes are enormously high for whoever wins the primary and election to identify the financial path forward for the state.”

Republican Governor Bruce Rauner, who has repeatedly clashed with the Democrat-controlled legislature during his first term, is seeking re-election, though he’s facing a primary challenger, conservative Illinois House Representative Jeanne Ives.

Billionaire J.B. Pritzker, an heir to the Hyatt hotel empire, has invested at least $69.5 million of his own money so far to take a lead in the Democratic race. State Senator Daniel Biss and Chris Kennedy, son of late liberal icon Robert F. Kennedy, are also vying for the chance to defeat Rauner in November.

If Rauner, a former private-equity executive who’s already put $50 million of his own fortune into his campaign, and Pritzker win their respective primaries as expected, the Illinois general election could be the most expensive governor’s race in the nation’s history.

Bondholders are closely watching the race. The yields on the state’s 30-year general-obligation bonds have widened to the most over benchmark debt since July. Illinois yields are the highest among all 20 states tracked by Bloomberg. The spread is widening amid concerns that the financial problems facing Illinois, especially the growth in unfunded pension liabilities, won’t go away, no matter who is elected, according to Richard Ciccarone, president of Chicago-based Merritt Research Services.

“There’s anxiety that we’re not going to accomplish much by just having an election here,” said Ciccarone of Merritt, which analyzes muni finance. “The market really wants to see action and they want to see progress.”

Little headway has been made in addressing what investors agree is the state’s biggest challenge: unfunded pension liabilities. After years of skipping payments or not putting enough into the funds, the retirement system is only about 40 percent funded even as more and more of the state’s dollars get eaten up by this expense. Pension costs are expected to make up about 22.9 percent of all general-fund spending in the current fiscal year, up from 6.8 percent a decade ago, according to the Civic Federation.

The election comes eight months after the end of an unprecedented two-year budget impasse that drove the state’s rating to the edge of junk because of a showdown between Rauner, the first Republican to lead the state since 2003, and the Democrat-controlled legislature. Illinois avoided becoming the first U.S. state to lose its investment-grade rating after lawmakers on both sides overrode Rauner’s veto of an income-tax hike in July, enacting a budget and easing the immediate financial threat.

Despite the end of the standoff, whoever wins the governorship will still have to contend with a precarious credit rating. All three rating companies consider Illinois to be in the lowest tier of investment-grade ratings. Moody’s Investors Service and Fitch Ratings have a negative outlook on the state, signaling another downgrade is possible, while S&P has a stable view because of the budget passed in July.

“Any drop in their rating would have a big impact on their financing costs,” said Dan Solender, head of municipal investments at Lord Abbett & Co., which manages $20 billion of state and local debt, including Illinois. He pointed out that the state’s yields are already trading at a lower rating. “Already the number of buyers is more limited but it would shrink further.”

No matter the outcome, municipal investors will be monitoring the election results Tuesday.

“The municipal investor increasingly needs to watch elections because there are ramifications as an investor,” said Gabe Diederich, portfolio manager for Wells Fargo Asset Management, which oversees about $40 billion of state and local debt. “Politics, not necessarily whether a person votes Republican or Democrat, but how different parties working together and those policies are going to impact finances.”

By Elizabeth Campbell

March 20, 2018, 8:14 AM PDT

Bloomberg Politics

— With assistance by John McCormick

Baltimore to Use New Form of Financing for Green Infrastructure Projects to fight water pollution.

Baltimore officials will announce a plan Monday to use a new form of financing to help pay for $10 million in green infrastructure projects designed to reduce water pollution from stormwater runoff.

The Department of Public Works plans to take out $6 million in environmental impact bonds to pay for the projects, which use trees, plants and other forms of greenery to absorb rainwater so it doesn’t flow into streams and eventually into the Chesapeake Bay, collecting pollutants along the way.

The rest of the money will come from state funds and fees the city charges on water bills.

The public works department already promotes green infrastructure projects, such as rain gardens and green roofs, but was seeking ways to pay for more to meet federal guidelines to decrease stormwater runoff.

“We are always looking for funding options, but also wanted to get a social and economic benefit for it,” said Troy Brogden, the department’s chief financial officer. “We like to think outside of the box and go with nontraditional funding mechanisms, and this is one that is good for the city of Baltimore and our citizens.”

The bonds are different from typical municipal bonds because investors will pay money back to the city if the infrastructure projects do not meet certain metrics. For instance, they could measure if the Chesapeake Bay water is cleaner because of the projects.

Environmental bonds are meant to give cities more incentive to try new innovations by putting some of the risk on investors.

These types of bonds were issued for the first time for green infrastructure projects last year in the District of Columbia. Under the five-year agreement there, stormwater runoff reduction will be measured twice. If runoff flow is reduced, the city will pay full principal to investors at maturity. If runoff is reduced more than expected, DC Water will pay investors a bonus, and if reduction is less than expected, investors will give the city a risk-sharing payment.

Baltimore public works officials have gotten approval from the city finance department to use the funding mechanism, Brogden said, but will still have to get individual contracts approved by the finance board.

The city is working with the Chesapeake Bay Foundation, which has hired the investment firm Quantified Ventures to structure the deals and help find investors for the projects. Quantified Ventures also worked on the financing on the environmental impact bonds in Washington.

“There are investors who care about environmental and social issues,” said Eric Letsinger, CEO of Quantified Ventures. “They want to make money. But they want to invest in things that make us better.”

Municipalities are looking at ways to curb stormwater and sewage runoff to meet federal standards. The old methods of water drainage, including concrete gutters and drains, have led to more pollutants pouring into the water systems. Green infrastructure absorbs the water, but municipalities have been reluctant to invest because it is new and some perceive the results as uncertain.

“They have to do this stormwater work and it is expensive to do,” said Lee Epstein, lands program director and special counsel for the Chesapeake Bay Foundation. “You have to lift up pavement and the nature projects have to engineered. Now along comes this new idea, this new financing mechanism, that might be beneficial to these local governments.”

Epstein believes the financing could be used in other areas of the Chesapeake Bay region as well.

Bethesda-based Calvert Impact Capital was one of the investors in the Washington project. Beth Bafford, the company’s vice president of syndications and strategy, said they would be interested in investing in environmental impact bonds in Baltimore, but they don’t know details about how the city plans to have its bonds structured.

“All the investments we make have some kind of social-environmental impact as well as a financial incentive,” Bafford said. “We are hardwired to like this kind of investment.”

Bafford said the company will know in 2021 if the Washington investment pays a good return, but said it seems to be on the right track.

The city plans green infrastructure initiatives in neighborhoods throughout the city, including Sandtown-Winchester, Dickeyville, Pigtown, Belair-Edison, Cedonia, Westport and Mt. Winans. Workers are scheduled to plant greenery in the 1200 block of Edmondson Ave. Monday.

by Andrea K. McDaniels

The Baltimore Sun

Federal Income Tax Consequences of State Economic Development Incentives After Passage of Tax Cuts and Jobs Act.

Read the Article.

By Burnet R. Maybank III, Lindsay N. Richardson and Sam Johnson

March 18, 2018

Nexsen Pruet

Infrastructure Series: Cost-Sharing with State and Local Governments.

This is the fifth issue of WilmerHale's 10-in-10 Infrastructure Series. In this series, our attorneys share insights on current and emerging issues affecting infrastructure project developers in the United States. Attorneys from various practice groups at the firm offer their take on issues ranging from permitting reform to financing to litigation, and share their insights from working with clients in a variety of infrastructure sectors, from water infrastructure to energy development to infrastructure development on tribal lands. Read all issues in this series and our other recent publications.

As discussed in previous issues of WilmerHale's Infrastructure Series, the Trump Administration proposes several initiatives to seek and secure long-term changes in the government's approach to funding infrastructure projects. One significant proposal to help support the Administration's ambitious $1.5 trillion infrastructure initiative is to encourage cost-sharing arrangements among federal, state and local entities.

Continue reading.

March 22 2018

Wilmer Cutler Pickering Hale and Dorr LLP

UMBC Retrievers Tout Publicly-Financed Arena After NCAA Win.

- **University system opened up new $85 million arena in February**
- **Men's basketball won upset victory over top-seeded Virginia**

The University of Maryland at Baltimore County has a message for the legions of people who became instant fans Friday night with its stunning victory over No. 1 seed University of Virginia in the NCAA basketball tournament: Come to our new municipal-bond financed events center.

"BTW guys, we have a brand new $85 million Event Center we opened up last month that still doesn't have a corporate sponsor name…" @UMBCAthletics, the social media account for the college's athletic department, tweeted on Sunday.

The new multi-purpose facility was financed through borrowing well before the Retrievers became a household name with their Cinderella victory. In fact, the school is one of many — including Clemson

University, the University of South Carolina, and the University of Connecticut — that have taken advantage of the $3.9 trillion municipal-bond market to build top-of-the-line athletics centers.

The UMBC facility, at 172,000 square feet, will include a practice court, a "state-of-the-art" strength and conditioning gym, and the UMBC Athletics Hall of Fame. It's meant, in part, to help the school recruit and retain student-athletes and will also host concerts, speakers and banquets.

The University System of Maryland listed the event center as one of $1 billion in facility projects it's authorized financing for as part of four separate bond resolutions, according to offering documents from a bond sale in February. Moody's Investors Service issued its second-highest rating on that sale of auxiliary bonds by the university system, citing strong demand for the system's 11 schools.

While the 16-seeded Retrievers upset Virginia 74 to 54, they went on to lose to Kansas State two days later. Still that hasn't stopped officials from boasting about the Retrievers short-lived March Madness run. The athletic department took to Twitter on Sunday to again tout the new arena with a link for high school students to apply for admission.

"We hope to see all of you at our brand new $85 Million Event Center in November for the season opener. Congrats @KStateMBB, good luck the rest of the way!….and for those of you in HS, you can apply right here –> undergraduate.umbc.edu/"

Bloomberg

By Amanda Albright

March 19, 2018, 10:19 AM PDT

Bloomberg Brief Weekly Video - 3/22

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

Watch video.

March 22nd, 2018

Bloomberg

Fitch: Florida Underscores State Commitment to Toll Projects.

Fitch Ratings-New York-19 March 2018: A bill which would have authorized the Florida Department of Transportation (FDOT) to acquire Garcon Point Bridge (the bridge) did not pass the Florida senate, says Fitch Ratings. The bill would have provided the FDOT with the authorization to purchase the bridge, repay itself for operations and maintenance (O&M) and capital costs previously expended and to purchase the authority's $135 million in defaulted bonds at a discounted price. Such proposed reimbursement of O&M and capital costs would have been inconsistent with the terms of the original transaction. The lease purchase agreement (LPA) between FDOT and the authority along with the bond resolution had structurally subordinated reimbursements of these costs to payments to senior bondholders, prior to and following any payment default.

The legislature's failure to advance the proposed bill indicates continued institutional support for the arrangement, which is a material rating factor for projects which have LPAs with FDOT (including Mid-Bay Bridge Authority and Florida Turnpike Enterprise, described in detail below).

The authority's revenue bonds, series 1996 (the bonds) are supported by a gross pledge of system toll revenues, entitling bondholders to be paid full principal and interest prior to satisfaction of any other claims on revenues. Pursuant to the LPA with the authority, FDOT is obligated to and has paid bridge O&M and major maintenance costs since inception. To date, FDOT has always stood by its commitment to fund O&M and capital costs, and such support along with the toll facilities' revolving trust fund loans have served as a significant credit enhancement for debt issued by a number of tolling authorities in the state.

While the LPA calls for annual reimbursement of such costs on a subordinated basis to senior debt service, in the case of the Santa Rosa Bay Bridge Authority toll revenues have been insufficient to pay debt service on the bonds, resulting in payment defaults since July 2011. Consequently, there also have been no funds available to reimburse FDOT for O&M expenses paid. The authority's liability to FDOT has accumulated to approximately $25 million since opening in 1999 for operating and maintaining the bridge. The authority also owes the state nearly $8 million from non-interes--bearing subordinate toll facility revolving trust fund loans for initial bridge design costs. The proposed legislation would have authorized the state to deduct from the discounted purchase price the sum of all subordinate loans ($33 million) effectively making the state obligations senior to bondholders. The net payment to bondholders would have been 50% of $102 million, or $51 million. The bill was inconsistent with the feasibility report produced by FDOT and Division of Bond Finance suggesting a solution for the defaulted bonds through the issuance of Florida turnpike revenue bonds to acquire the bridge at a negotiated price.

A point to note is that while the proposed legislation sought to provide authority to FDOT, it would have been up to bondholders to agree to the terms put forward. It is Fitch's view that law strictly limits the ability of a state to amend the legal structure and related contracts legislatively and extinguish bondholder claims without consent of each bondholder. If the bill is reintroduced, ultimately, Fitch expects the purchase price would have to be agreed upon through a negotiation with the bondholders. A non-consensual outcome would raise substantial questions about bondholder rights more generally and would need to be considered even in the context of performing transactions.

Practically, this would be most relevant to Fitch-rated projects with similar lease purchase agreements such as the Mid-Bay Bridge Authority (senior/junior liens rated BBB+/BBB/Stable). The current ratings of other facilities with a gross revenue pledge, like Florida Turnpike Enterprise (rated AA/Stable), which is a division of FDOT and a large and mature enterprise with considerable positive cash flow available for reinvestment, are less driven by the state support. However, in a crisis that support will remain a material credit factor boosting credit quality.

FDOT's commitment over many decades has helped toll agencies achieve and maintain investment-grade ratings, as the gross revenue pledge provides for an additional level or protection particularly during early operating periods, economic downturns and heavy investment cycles.

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Fitch: N.J. Exec Budget; New Revenue & Spending; Legacy Costs Remain Driver.

Fitch Ratings-New York-22 March 2018: The New Jersey governor's executive budget delivers on policy goals outlined during his campaign; however, numerous new program and tax credit initiatives, combined with proposed extensive tax policy actions, cannot in the near term materially change the persistent underfunding of retiree liabilities and the elevated long-term liability burden that are the key drivers of the state's below-average 'A' Issuer Default Rating (IDR), according to Fitch Ratings.

The $2 billion, or 5.7%, proposed revenue growth from fiscal 2018 includes $1.5 billion from tax increases, supporting 4.2% growth in state appropriations. These increased revenues would go to new spending and leave the state with still slim reserves and reduced flexibility to respond to future economic downturns through revenue raising. Fitch notes that the state has significant spending pressures not only due to the demands of underfunded retiree benefit liabilities but also because natural revenue increases resulting from modest economic growth in recent years have gone primarily towards the phased-in growth in annual pension contributions. This dynamic has led to underfunding of other state needs.

GRADUAL PENSION RAMP UP CONTINUES

If implemented, the budget would continue the state on the path of a gradual 1/10th annual phase-in to the full actuarially determined contribution (ADC) for pensions in fiscal 2023. Despite the $691 million increase to the pension contribution, Fitch would expect further deterioration in the funded condition of the plans over the near term as the contribution remains well below the ADC. The $3.2 billion total pension contribution (9% of the budget) is a 28% increase from fiscal 2018 that accounts for 39% of proposed budget growth and funds 60% of the ADC. The contribution meets Fitch's rating expectations given the state's policies in recent years and hews the governor to the same path as his predecessor.

Employee and retiree medical expenses also continue to loom large, representing $3.4 billion (9%) of the governor's budget. As in most states, OPEB contributions remain well below actuarial recommendations, growing the accrued liability. Escalating pension and OPEB liabilities are expected to remain negative rating factors absent further policy action that reduces the liabilities, forestalling improvement in the state's IDR.

FISCALLY PRUDENT PROPOSALS

The governor's proposals for increased funding to New Jersey Transit (NJT), greater adherence to full education formula funding, reduced one-time budget balancing actions and an addition to state cash balances to provide greater financial cushion would either address critical state needs or support more sustainable financial operations, in Fitch's view. Further, the suggested return of the state sales tax rate to 7%, lowered as part of the transportation funding agreement in 2016, would provide $581 million in additional revenue. This is a positive step. At the time of that agreement, which lowered the sales tax rate in exchange for an increase in the gas tax, Fitch noted that the state had replaced a growing revenue source with one with more limited growth prospects and added to the pressure on operating funds.

NEW PROGRAM INITIATIVES

Excluding the operating budget's increased pension contribution, recommended program expense grows by a net $918 million. Significant increases include $933 million in additional K-12 education funding, including $283 million in added formula aid, $242 million in additional state subsidies for NJT, $120 million for state and teacher employee and retiree health benefits, $100 million for opioid addiction programs and $50 million for assistance to community college students. Medicaid grows by $244 million, boosting this program's draw on the operating budget to 12% of proposed expenditures although remaining far below the 46% of the budget dedicated to education (including higher education). Offsetting these increases are reductions to various line items, $46 million in expected state-wide salary and operational savings, and reductions in certain state aid categories and capital construction. In addition to programmatic adjustments, the governor has proposed tax policy changes that reduce revenue to the state, including increases in the earned-income tax credit ($27 million) and the state property tax deduction cap ($80 million).

EXTENSIVE NEW REVENUE MEASURES

To fund these initiatives, the governor has proposed a milestone 10.75% personal income tax (PIT) rate for taxpayers earning more than $1 million, which would provide an estimated $765 million in fiscal 2019, as well as numerous business tax changes for an additional $110 million; both in addition to the proposed sales tax changes. The governor's budget also includes the legalization and taxation of marijuana which is estimated to deliver $80 million in tax revenue. Fitch believes there is uncertain legislative interest in the PIT proposal, particularly given recent passage of federal tax changes in December 2017 that capped the deduction for state and local taxes (SALT) and is expected to increase residents' effective state tax burden. Should the measures fail to be approved, other revenue solutions or expenditure reductions will need to be identified to balance the fiscal 2019 budget.

The state's revenue forecast is premised on 2.4% growth in the sales tax base; 4% and 4.2% growth in personal income in 2018 and 2019, respectively; 4% growth in gross state product in both 2018 and 2019; and 1% and 0.8% growth in nonfarm employment in 2018 and 2019, respectively. Fitch believes these forecasts to be reasonable based on recent quarterly experience but somewhat robust when considering the state's recent annualized growth, while noting that future economic growth is expected to remain below that of the nation.

BALANCED FISCAL 2018 OPERATIONS

Updates to the state's fiscal 2018 financial operations are included in the executive budget and point to anticipated budgetary balance this fiscal year. Current forecast revenue is a 2.2% improvement over the forecast used to enact the budget; however, the improvement largely incorporates a shift of sales tax revenue from non-operating funds to operating funds in addition to expected PIT revenue that is above forecast, offset by shortfalls in other revenue sources. Over 40% of the increase in the PIT is attributable to $253 million in one-time revenue related to the repatriation of overseas hedge fund profits, a direct effect of Section 457A of the federal Internal Revenue Code passed in 2008. Unexpected growth in the PIT excludes $200 million collected in December from taxpayers seeking to take advantage of the higher SALT deduction as the state believes this revenue would have been collected in April 2018.

Final, estimated appropriations increase by $1.2 billion (3.6%) from the enacted budget, partly incorporating appropriations linked to the moved sales tax revenue. The state's estimated year-end budgetary fund balance, which the state views as its budgetary cushion, is projected to be $738 million (2% of operating fund appropriations) largely incorporating a larger beginning fund balance than anticipated when the budget was enacted.

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[When California Cities Blur the Line Between Tax Education and Tax Advocacy.]

After Stanton residents voted to increase their own sales tax in 2016, the city's finance director crowed to his fellow municipal finance directors about his city's successful campaign. According to his article, the only thing that "went wrong" was that Stanton "didn't suppress the opposition with one-on-one meetings early."

Cities throughout our state have been using Orwellian tactics to "suppress" opposition to tax increases through coordinated and premeditated "education campaigns." These campaigns operate in a grey legal area because each campaign uses public resources to accomplish its goals.

The California Supreme Court in Stanson v. Mott stated resolutely that "a fundamental precept of this nation's democratic electoral process is that the government may not 'take sides' in election contests or bestow an unfair advantage on one of several competing factions." The Supreme Court in Vargas v. City of Salinas then created its own grey area exception by allowing governmental entities to express publicly an opinion on the merits of a ballot measure so long as the governmental entity "does not expend public funds to mount a campaign on the measure."

Cities undeterred by the Stanson prohibition or blinded by their own fiscal desperation of their own making have driven Mack trucks through the Vargas limited exception. Cities throughout our state are hiring political campaign consultants or public relations firms to “educate” the public on the cities’ opinion. At what point, though, do campaigns move from education to advocacy?

In 2010, for example, the city of Tracy hired political campaign consultant Lew Edwards in connection with a sales tax increase. According to the consultant’s presentation, the consultant conducted a poll to determine “campaign messaging,” draft the “ballot arguments,” and create the “ballot question wording.” The city then sent “education materials” to voters through broadcast television and city-created newsletters, presentations, emails, and even sent the materials through utility bill inserts.

Campaign consultants respond to cities’ requests for proposal by touting their “wins” or “successes,” which they define by whether a tax measure passes. One consultant bragged that it has “enacted more than $30 billion in California revenue measures with a success rate of 94 percent.” Another consultant bragged that its “competitive strength” is that “we WIN.” Where the objective is supposedly public education, though, winning and losing or success and failure cannot be measured by ballot box results.

Enough is enough. Cities must stop using tax dollars to advocate under the thinly veiled guise of education.

The city of Newport Beach recently passed a resolution prohibiting public expenditure on these “education” campaigns. We invite other city leaders to use our resolution as a model. We also invite residents throughout the state to demand that their leaders stop hiring campaign consultants who view tax increases as “wins.”

THE ORANGE COUNTY REGISTER

By WILL O’NEILL | March 19, 2018

Will O’Neill is mayor pro tem of the City of Newport Beach. He will gladly provide anyone a copy of the city’s Resolution and can be contacted at woneill@newportbeachca.gov.

Public Finance Practices Saw a Huge Boom at the End of 2017.

One public finance practice leader said deal work was triple the normal amount in the fourth quarter.

The end of 2017 came with a short-lived, but sweet surprise for law firms with public finance practices.

Those practice groups saw business explode in the fourth quarter, particularly in the last two months of the year, as legislators in Washington, D.C., debated a tax bill that had big implications for the tax-exempt market. The last such boom was more than 30 years ago, public finance lawyers said.

“It all was in a very compact period of time,” said Emilie Ninan, who chairs Ballard Spahr‘s public finance department. “There was this concern that as of the first of the year, we’re not going to be able to do these deals anymore.”

The tax bill put an end to advance refunds for tax-exempt bonds, which was a way for public finance clients to take advantage of lower interest rates and save money. Marc Feller, chair of Dilworth Paxson's public finance group, said clients were "finding every conceivable bond that could generate savings" at the end of 2017, in anticipation of the tax bill prohibiting that activity in 2018.

Continue reading.

By Lizzy McLellan | Mar 23, 2018

The Legal Intelligencer

Connecticut to Lead Light Week in U.S. Municipal Bond Issuance.

March 23 (Reuters) – Connecticut and California will supply roughly one-third of a light, $3.6 billion U.S. municipal bond load in a holiday-shortened week next week, going to market with a pair of deals worth about $1.2 billion.

Connecticut will issue $617 million in two series of general obligation bonds on Wednesday in a deal led by Loop Capital. Across the country, California's Health Facilities Financing Authority will price $606 million in revenue bonds led by Morgan Stanley.

Connecticut's GO issuance received an A1 rating from Moody's Investors Service, which the agency said reflected the state's high income levels and adequate liquidity, while also accounting for high fixed costs for debt service and ballooning pension and debt.

Connecticut's financial crisis reached a crescendo last year when Governor Dannel Malloy slashed spending after he and lawmakers failed to reach a budget deal by a June 30 deadline.

While sides reached a budget deal four months later, the state general fund has a shortfall of nearly $193 million.

California's Health Financing Authority, meanwhile, will issue $606 million in revenue bonds to help construct and expand facilities at its Sutter Health system, part of a $1.29 billion financing plan that is also slated to feature $684 million in taxable fixed-rate bonds.

Next week's load, which totals $3.87 billion when accounting for $184 million in notes, is well below the 2017 weekly average of $7.3 billion, continuing a trend of light muni issuance in the wake of President Donald Trump's tax reform measures.

Also hampering issuance is next week's early close on Thursday, and full close on Friday, in observance of Good Friday.

Puerto Rico will be back in the news next week, as the bankrupt U.S. territory's federally-appointed oversight board will meet on Monday. It is expected to sign off on the island's fiscal turnaround plan, a financial blueprint that will serve as the basis for restructuring talks with creditors holding more than $70 billion in debt.

Already bankrupt when Hurricane Maria hit in September, the island is struggling to recover from its most devastating storm in 90 years. [reut.rs/2G5EB2m]

Reuters Graphic

Maria sent Puerto Rico's benchmark general obligation bonds plummeting, from around 60 cents on the dollar before the storm, to as low as 20 cents after.

The bonds have begun to recover as the forecast for Puerto Rico's economic recovery has brightened, though they remain down dramatically from pre-storm levels, closing on Thursday at 35.75 cents on the dollar.

Reporting by Nick Brown Editing by Tom Brown

City Priorities Shine Through in FY18 Omnibus Spending Bill.

Funding proposal reflects strong federal-city partnership

WASHINGTON — March 22, 2018 — The House and Senate have reached a deal on the omnibus appropriations bill (H.R. 1625), a $1.3 trillion spending proposal that maintains or increases funding for key programs that cities use to fund infrastructure, economic development and public safety, among others. The bill comes after more than 1,000 city leaders lobbied Congress over the past year to save Community Development Block Grants (CDBG), TIGER grants, workforce development and education programs, and energy efficiency and renewable energy programs.

"The spending bill before Congress shows that our federal partners have heard the thousands of city leaders urging them to reject the severe budget cuts proposed by the administration and that were required under sequestration," said NLC President Mark Stodola, mayor of Little Rock, Arkansas. "This bill makes clear that city leaders are part of the solution to our country's greatest challenges. It's a victory not only for America's 19,000 cities, towns and villages, but for the more than 250 million residents that rely on safe and reliable infrastructure and strong local economies that contribute 91 percent of the nation's GDP."

The bill also includes additional funding for water infrastructure through the U.S. Environmental Protection Agency, including for lead testing and lead reduction in schools, which NLC has been calling for in its Rebuild With Us infrastructure campaign. NLC also supports the bill's reauthorization of the brownfields redevelopment program, which helps cities clean up contaminated properties, the expansion of Low-Income Housing Tax Credits to make up for losses in affordable housing stemming from tax reform, and the extension of the National Flood Insurance Program until July 31, 2018.

Continue reading.

National League of Cities

GASB Outlook E-Newsletter, Q1 2018

Read the Newsletter.

Educators, Finance Officers Team Up to Build a Better Budget.

Having a plan to tackle your school district's critical problems doesn't mean you have the money to pay for it, and many districts find their best-laid improvement plans can fall apart with just one state budget cut or failed local bond issue.

That's why a growing number of districts nationwide are working to bring together educators and budget officers early and often, to make sure budgets support the most critical priorities.

"One of the hardest things is when you talk about academic [return on investment], educators are not used to putting a dollar sign on students; they look at quality education and what's best for the kids," said Claire Hertz the Beaverton, Ore., district's chief financial officer. "And I look at dollar signs, but I don't necessarily know what's most important instructionally," she said. "We each bring a strength and a source of data to each other."

Continue reading.

Education Week

By Sarah D. Sparks

March 20, 2018

CUSIP Request Volume Signals Strong Pace of U.S. Corporate Equity & Debt Issuance in Q1.

NEW YORK, NY, February 22, 2018 – CUSIP Global Services (CGS) ttoday announced the release of its CUSIP Issuance Trends Report for January 2018. The report, which tracks the issuance of new security identifiers as an early indicator of debt and capital markets activity, found an increase in CUSIP request volume for new U.S. corporate equities and debt, but sharp decreases in the municipal bond market. This is suggestive of as strong pace of new corporate issuance and a slowdown in new muni issuance in the early weeks of 2018.

Read the Report.

CUSIP: Municipal Volumes Trending Down Following Tax Reform.

"We're still seeing fallout from the Tax Cuts & Jobs Act in our muni request volumes," said Gerard Faulkner, Director of Operations for CUSIP Global Services. "While lawmakers are currently reviewing a new bill that would restore the tax exemption for advance refunding bonds, for now, the marketplace is reacting to the tax reform by dramatically curtailing their pre-trade activity."

Read the Press Release.

- MSRB Publishes Issue Brief on Minimum Denominations of Municipal Securities.
- S&P: New GASB Statements 74 And 75 Provide Transparency For Assessing Budgetary Stress On U.S. State & Local Government OPEBs.
- Compliance Workshop on MSRB Rule G-17: Making Disclosures to Issuers.
- Blockchain Basics for Government Finance and Audit Professionals: Webinar
- *In re February 14, 2017, Special Election on Moses Lake School District #161 Proposition 1* – Court of Appeals holds that the 10-day period in which to file election challenge petition seeking to invalidate school district bond election commenced when county canvassing board recertified election result after recount, rather than when board initially certified result.
- *Kingman Airport Authority v. City of Kingman* – District Court holds – as a matter of apparent first impression – that the reserved powers doctrine applies to federal Contracts Clause claims between two political subdivisions, both of which possess the power of eminent domain.
- And finally, Better Than a Sharp Stick In the Eye? is brought to us this week by DeKalb-Cherokee Counties Gas District v. Raughton, in which a sanitation worker's plan to seek shelter in the leeward side of a dump truck "because the truck shielded him from the wind, which had been blowing dust in his eyes" went just a tad sideways when the sidewall of the truck dislodged, disgorging its payload of bricks and concrete blocks. He arrived at the Pearly Gates just a bit worse for wear, sporting bewildered (yet dust-free!) eyes.

LIABILITY - ALABAMA

DeKalb-Cherokee Counties Gas District v. Raughton

Supreme Court of Alabama - February 23, 2018 - So.3d - 2018 WL 1024710

City employee brought action against county gas district, alleging negligence relating to injuries city employee sustained when district employee was dumping refuse at city landfill.

After a jury trial, the Circuit Court entered a verdict in favor of city employee, and denied district's motion for judgment as a matter of law. District appealed.

The Supreme Court of Alabama held that, absent evidence of foreseeability, the district could not be held liable for negligence after side wall fell from dump truck and injured city employee.

Absent evidence that it was foreseeable that a side wall of a dump truck could become detached as a result of performing a clutch-release maneuver, truck operator's employer could not be held liable for negligence after employee performed that maneuver and the side wall fell and injured city employee; evidence showed that the maneuver was a common method of dislodging and dumping the contents of dump trucks and that performing the maneuver did not violate any formal safety standards, and there was no evidence indicating that side wall had become detached in the past, that operator's agents knew it might become detached, or that an inspection would have revealed that it might become detached.

EMINENT DOMAIN - ARIZONA

Kingman Airport Authority v. City of Kingman

United States District Court, D. Arizona - January 16, 2018 - Slip Copy - 2018 WL 418011

The City of Kingman leased its Airport to the Kingman Airport Authority (KAA) – a political subdivision. The lease provided for compensation to be paid in the event the Airport was “condemned, taken or acquired by a body having superior power of eminent domain.”

Kingman subsequently passed a resolution authorizing it to acquire the Airport via the state’s condemnation statutes.

KAA brought a Federal Court claim against Kingman, alleging violations of the State and Federal Contracts Clauses. Kingman moved to dismiss, arguing that KAA failed to state a Federal Contracts Clause claim under the reserved powers doctrine, which holds that a state may not enter a contract that surrenders an essential attribute of its sovereignty, including its power of eminent domain.

KAA argued that here the contract is between two state actors whose eminent domain powers are set forth in Arizona statutes. As a result, the lease was not a surrender of eminent domain power and the reserved powers doctrine did not apply.

“The question before the Court is whether one state actor surrenders its eminent domain power by entering into a Lease with another state actor, where the state’s statutes define the actors’ eminent domain powers and the Lease itself provides the terms of compensation when a state actor ‘having superior power of eminent domain’ condemns the leasehold interest.” “Put another way, the question is this: Does a state relinquish its ‘power of self-government and self-preservation’ when one of its subdivisions leases property to another?”

The court noted that the lease is a contract between two state actors that contemplates condemnation by referring the parties to state law for a determination of which party has the superior power of eminent domain and what compensation should be paid in the event of condemnation. It is thus possible to interpret the lease as a bargained-for procedure by which condemnation is to take place, more than a surrender of state eminent domain power. But, in the Complaint, KAA sought to invoke the Contracts Clause to obtain injunctive relief preventing Kingman from condemning KAA’s leasehold interest in any manner, whether through a resolution or otherwise. Thus, regardless of the fact that both parties to the Lease are state actors here, the Federal Contracts Clause cannot be used to enforce a contract that prevents a state actor from exercising its eminent domain power. The court thus opted to apply the reserved powers doctrine and find that Kingman’s condemnation of KAA’s leasehold did not contravene the Contracts Clause.

Because KAA failed stated a claim against Kingman under the Federal Contracts Clause, and that federal question was the sole basis of the court’s subject matter jurisdiction, the court dismissed the action. The court noted that KAA may still raise its defenses to condemnation under Arizona law in state court, including that Kingman does not have superior eminent domain power over KAA and that the public use associated with Kingman’s operation of the airport is not more necessary than the public use associated with KAA’s operation of the airport.

PUBLIC UTILITIES - CONNECTICUT

Town of Glastonbury v. Metropolitan District Commission

Supreme Court of Connecticut - March 6, 2018 - A.3d - 328 Conn. 326 - 2018 WL 1145947

Non-member town brought action against quasi-municipal corporation formed to provide potable water to member and non-member towns, seeking declaratory judgment to establish that surcharge imposed by the corporation on the town and other non-member towns for water usage was illegal.

The Superior Court denied corporation’s motion for summary judgment and granted town’s motion for summary judgment. Corporation appealed.

The Supreme Court of Connecticut held that:

- Practical relief was available to non-member town, and thus, action was justiciable;
- Prior to enactment of legislation specifically authorizing surcharges for water usage, corporation lacked statutory authority to impose upon non-member town surcharge for water usage that encompassed corporation's costs in maintaining entire water utility infrastructure; and
- Non-member town's delay in challenging surcharge was not unreasonable, and thus, special defense of laches did not bar town's summary judgment motion.

COLLECTIVE BARGAINING - MAINE

SAD 3 Education Association v. RSU 3 Board of Directors

Supreme Judicial Court of Maine - March 1, 2018 - A.3d - 2018 WL 1095782 - 2018 ME 29

Bargaining agent for classroom teachers appealed decision of the Maine Labor Relations Board (MLRB) determining that agent failed to provide school board with notice required by Municipal Public Employees Labor Relations Law (MPELRL) of its intention to negotiate matters involving the appropriation of money during impact bargaining sessions.

The Superior Court affirmed MLRB's decision. Agent appealed.

The Supreme Judicial Court of Maine held that:

- MPELRL's 120-day notice requirement applied to bargaining agent's request to school board to enter into impact bargaining, and
- Bargaining agent's request did not satisfy MPELRL's 120–day notice requirement.

Municipal Public Employees Labor Relations Law's (MPELRL) 120-day notice requirement applied to bargaining agent's request to school board to enter into impact bargaining regarding the change in classroom teachers' working conditions due to transition to system of single bus runs, where subject of the bargaining involved the appropriation of money by school board.

Bargaining agent for classroom teachers did not notify school board in writing of its intention to bargain over matters requiring the appropriation of money, and thus, agent's impact bargaining request, regarding change in teachers' working conditions due to transition to system of single bus runs, did not satisfy Municipal Public Employees Labor Relations Law's (MPELRL) 120-day notice requirement; agent's written notice did not include reference to matters involving appropriation of money, notice only pertained to length of teacher workday, and compensation was not raised until two parties met in person to impact bargain.

PUBLIC RECORDS - MONTANA

Nelson v. City of Billings

Supreme Court of Montana - February 28, 2018 - P.3d - 2018 WL 1078964 - 2018 MT 36

Records requester filed petition against city and Montana Municipal Interlocal Authority (MMIA) for the release of documents relating to a civil judgment MMIA paid on behalf of city.

The District Court granted summary judgment to city and MMIA. Requester appealed.

The Supreme Court of Montana held that:

- As a matter of first impression, documents subject to attorney-client or work-product privileges need not be disclosed under state constitution's right-to-know, and
- Documents that city and MMIA claimed were protected by privileges were not subject to release.

Documents that city and Montana Municipal Interlocal Authority (MMIA) claimed were protected by attorney-client and attorney-work-product privileges were not subject to release under state constitution's right to know, where records requester presented blanket challenge, insisting that no documents could be withheld on privilege grounds, and requester did not object to claims of privilege on legal grounds that privileges should not have applied to protect particular documents.

EMINENT DOMAIN - NORTH CAROLINA

Wilkie v. City of Boiling Spring Lakes

Supreme Court of North Carolina - March 2, 2018 - S.E.2d - 2018 WL 1124845

Property owners brought statutory inverse condemnation action after city raised lake level that flooded their properties.

The Superior Court concluded that property owners were entitled to damages from city's taking, and city appealed. The Court of Appeals reversed and remanded due to lack of public use. Property owners sought discretionary review.

The Supreme Court of North Dakota held that inverse condemnation remedy is not dependent upon takings as being for public use.

EMINENT DOMAIN - NORTH DAKOTA

Owego Township v. Pfingsten

Supreme Court of North Dakota - March 8, 2018 - N.W.2d - 2018 WL 1191414 - 2018 ND 68

Property owner appealed from township's determination authorizing the taking of two acres for relocation of township road, and township's $9,000 award of damage.

The District Court granted township's motion to dismiss, and property owner appealed.

The Supreme Court of North Dakota held that:

- The 30-day period for period for property owner to appeal from township's determination and property damage award began to run on the date township filed the determination and statement of damages with the township clerk;
- Statutory provision governing quick take procedures by a county seeking acquisition of a right of way through eminent domain proceedings did not apply to extend the 30-day period for appealing the township's determination; and
- State constitution's Taking Clause did not operate to extend the 30-day period for appealing the township's determination.

PUBLIC RECORDS - PENNSYLVANIA

Township of Neshannock v. Kirila Contractors, Inc.

Commonwealth Court of Pennsylvania - March 5, 2018 - A.3d - 2018 WL 1144897

In breach of contract dispute between township and contractor, the Court of Common Pleas denied in part township's motion in limine to exclude privileged documents. Parties appealed.

The Commonwealth Court held that:

- Commonwealth Court could not, by stipulation, consider on appeal deposition transcript excerpts and exhibits that were not part of certified record, and
- Township waived its attorney-client privilege and attorney work product claims.

Township waived its attorney-client privilege and attorney work product claims to allegedly privileged documents when it acceded in master delivering documents to contractor involved in action with township for breach of contract; township was aware that master intended to deliver documents to contractor but township voiced no opposition to disclosure and acquiesced in disclosure, and township did not appeal master's decision.

PUBLIC UTILITIES - RHODE ISLAND

Warfel v. Town of New Shoreham

Supreme Court of Rhode Island - March 2, 2018 - A.3d - 2018 WL 1124158

Residents, taxpayers, and power company ratepayers brought action against town, seeking to enjoin the closing of town's purchase of majority share of stock in power company.

The Superior Court granted town's motion to dismiss. Residents, taxpayers, and ratepayers appealed.

The Supreme Court of Rhode Island held that residents, taxpayers, and ratepayers lacked standing to seek review of town's decision to purchase majority share of stock in power company.

Residents, taxpayers, and power company ratepayers did not suffer particularized injury, and thus lacked standing to seek review of town's decision to purchase majority share of stock in power company; residents, taxpayers, and ratepayers vaguely asserted that they could be held responsible for costs of any contamination remediation, which gave town's purchase only the potential to be extraordinarily harmful to residents, taxpayers, and ratepayers.

SPECIAL DISTRICTS - SOUTH CAROLINA

County of Florence v. West Florence Fire District

Supreme Court of South Carolina - March 7, 2018 - S.E.2d - 2018 WL 1177701

County filed a declaratory judgment action, alleging act creating a fire district was unconstitutional.

The Circuit Court ruled in favor of county. Fire district appealed.

The Supreme Court of South Carolina held that fire district was not truly a multicounty district, and thus violated home-rule provision of state constitution.

Fire district was not truly a multicounty district, and therefore, legislation creating the district violated home rule provision of state constitution; only three parcels—totaling one-tenth of a square mile—were in neighboring county, home rule precluded legislation enacting fire protection services specific to a county, and General Assembly could not indirectly accomplish the same goal merely by adding a small amount of acreage of another county.

BOND ELECTION - WASHINGTON

In re February 14, 2017, Special Election on Moses Lake School District #161 Proposition 1

Court of Appeals of Washington, Division 3 - March 8, 2018 - P.3d - 2018 WL 1191913

Voters brought action seeking to invalidate results of school district bond election.

The Superior Court granted county auditor's motion to dismiss. Voters appealed.

The Court of Appeals held that:

- 10-day period in which to file election challenge petition commenced when county canvassing board recertified election result after recount, and
- County auditor's failure to telephone voters who failed to sign ballots did not invalidate election.

The 10-day period in which to file election challenge petition commenced when county canvassing board recertified election result after recount, rather than when board initially certified result.

County auditor's failure to telephone voters who failed to respond to mailed notice informing them that they failed to sign their ballots or that their signatures did not match signatures on file with auditor did not void result of school district bond election; although auditor was statutorily required to telephone such voters, statute did not state that election was void if calls were not made, and auditor did mail notice to affected voters, such that they were provided actual notice of defect and opportunity to correct it.

Public Debt Upgrades Top Downgrades in 2017: Moody's

NEW YORK (Reuters) – In the U.S. public finance market, debt rating upgrades topped downgrades for the third year in a row in 2017 as the U.S. economy continued to improve, according to a report by Moody's Investors Service released on Monday.

The ratings agency said the upgrades indicated continued improvement in credit quality across the public finance sector but warned of "pockets of weakness," particularly in the healthcare and higher education sectors.

"While the number of upgrades continued to grow, the amount of upgraded debt declined for the fourth year in a row," the report said.

Despite the economic upswing, the dollar value of downgraded debt was $201.8 billion last year, double the $100.3 billion of upgraded debt. This was driven primarily by the downgrade of Puerto Rico and related issuers in the aftermath of Hurricane Maria, which devastated an already fragile economy.

California led in upgraded debt in 2017, helped by an upgrade of Los Angeles County's $1.6 billion worth of debt.

Nearly 35 percent of upgrades and 14 percent of upgraded debt in 2017 stemmed from a change in Moody's U.S. Local Government General Obligation Debt methodology, which revised the agency's approach to rating general obligation limited tax (GOLT) debt.

The change drove less than one percent of downgraded debt, and upgrades still topped downgrades when stripping out the effects of the change, Moody's said.

In general, housing and infrastructure bonds performed strongly in 2017. Annual toll increases contributed to a $2.8 billion upgrade of Central Florida Expressway Authority revenue bonds, and the California Housing Finance Agency's mortgage revenue bonds accounted for $1.2 billion of upgraded debt in 2017.

Performance was weak in the higher education and healthcare sectors.

Illinois, which accounted for the most credit downgrades last year as the state and local governments continued to face pension challenges, also had a number of downgrades to its public universities

The State of New Jersey marked the largest downgrade last year at $37 billion, followed by downgrades of over $20 billion each in Illinois, Puerto Rico, and Connecticut. These four entities accounted for almost 70 percent of downgraded debt in 2017.

Puerto Rico Electric Power Authority (PREPA) accounted for more than half of downgraded debt in the infrastructure space, which overall saw $9.4 billion worth of credit ratings lowered versus $19.8 billion of upgrades, Moody's said.

Reporting by Reade Levinson; Editing by Daniel Bases and Diane Craft

March 13, 2018

[New School in Brandon to be Built Using Public Funds, Not P3 model.]

The Manitoba government will not build a new school in Brandon using the public-private partnership model and will instead use public funds to see the long-awaited project come to fruition.

During its 2018 budget announcement on Monday, the government announced it would set aside more than $100 million to see five schools built —one more than was previously announced — through the Public Schools Finance Board.

By combining certain phases from each project, such as their design and build, the province says it will be able to build multiple schools at once, reduce duplication, accelerate the process and save at least $18 million.

“At the end of the day, we’re taking an evidence-based approach and we’re saying we care about the evidence,” Finance Minister Cameron Friesen told reporters via teleconference.

“In this case, the evidence points us to a conventional build.”

Last year, the government said it would explore the possibility of building four new schools, including one in Brandon, using the P3 model, a system where the private sector works with government to build and manage projects.

KPMG was commissioned back in August to develop a business case and Friesen said the firm recommended that government pursue other opportunities.

“We did a study on the P3 methodology, we learned valuable lessons from that investment, we took away new thinking about how to approach the projects, but I assure you, the decision to proceed with this enhanced conventional school construction model is our own,” Friesen said.

While the P3 model is still a “good option,” Friesen said the approach taken by government was thought to be the best in this case.

With tendering set to begin by the end of the year, he said the schools could take form within a year.

“What we told Manitobans is were not ideological about the methodology, what we were is interested to know if savings could be gotten at.”

The announcement was well received by Brandon School Division chair Linda Ross, who, while against the idea of a P3 school, said she gave the government “kudos” for looking at the data and listening to what people had to say.

“This is a very, very welcome announcement today, so we’re just thrilled by it.”

The BSD was not consulted by KPMG and Ross said she hopes the board will get to see a copy of the report.

A provincial spokesperson said the KPMG report will be released at the conclusion of the tendering process in order to avoid any potential effect on competitive bids.

Ross applauded the government for not being stuck in an “ideological mode” and said if the school can be built more efficiently, that is a good thing.

“We’ve got 400 kids who would like to go to school in their own neighbourhood,” she said.

The P3 model was heavily criticized by CUPE Local 737, which pointed to cost overruns and poor planning in other provinces that have used the approach for their schools.

The union even put up a billboard on 18th Street to express its opposition to the idea.

“I think the taxpayers of Brandon are lucky the government has changed their mind and going in the right direction,” said CUPE Local 737 president Jamie Rose.

Brandon Teachers’ Association president Peter Buehler said all things considered, the government’s approach looks like a better one than a P3 school.

“Well our first thought is that P3 projects elsewhere have been fraught with difficulty and unexpected expense, or unreported expense,” he said, “and if the government hasn’t come up with a

P3 proposal yet that anybody can look at, then this looks like a better decision."

The school in Brandon will be a K-8 building, located in the southeast corner of the city at Ninth Street and Maryland Avenue, with a capacity for 450 students — 675 upon future expansion — and 74 child-care spaces.

The other projects include a K-5 school in Precinct E of the Seven Oaks School Division, a K-8 school in Waterford Green within the Winnipeg School Division, and both a K-8 and 9-12 school in Waverley West in the Pembina Trails School Division.

Brandon has been in need of a new school for years due to its growing student population as a result of more families moving to the city for work at Maple Leaf Foods.

The former NDP government promised to build a new school in November 2015, but little was heard about the project following the provincial election in 2016.

The Brandon Sun

By: Michael Lee

Posted: 03/13/2018 3:00 AM

[MSRB Publishes Issue Brief on Minimum Denominations of Municipal Securities.]

Washington, DC – The Municipal Securities Rulemaking Board (MSRB) today [published an issue brief about historical policy issues and additional considerations related to the use of minimum denominations in the sale of municipal securities.] The report, intended as a resource for municipal market stakeholders and others, details information drawn from the MSRB's outreach to diverse market stakeholders on minimum denominations.

Minimum denominations for municipal securities are established at issuance to help target their sale to an appropriate category of investors or reduce administrative costs, among other reasons. The MSRB has no rulemaking authority over issuers, including with respect to the use of minimum denominations. However, to help to ensure that municipal securities dealers observe established minimum denominations, MSRB has since 2002 generally prohibited dealers from effecting a municipal securities transaction with a customer in an amount below the minimum denomination of the issue.

In recent years, industry concerns emerged about the limited nature of two exceptions to [MSRB Rule G-15(f)], on minimum denominations, that were intended to protect customers who hold positions in securities that are below the minimum denomination of an issue. In 2015, the MSRB began to explore possible revisions to the rule that would have created additional exceptions, but in response to strong commenter opposition and an absence of comments from issuers or their representatives, the MSRB in May 2017 decided not to pursue any amendments. Instead, it engaged in formal outreach with bond issuers, their advisors and counsel, dealers in municipal securities and other market participants to more fully understand their perspectives and policy issues raised in the rulemaking process.

The issue brief includes considerations that may merit further discussion among issuers, dealers and other market participants. While the MSRB does not plan to propose changes to its minimum denomination rule, it is providing this resource to support any efforts by market stakeholders to evaluate market practices regarding the use of minimum denominations, particularly in light of developments in technology, a growing interest in small-denomination municipal bonds and the allocation practices of investment advisers.

Date: March 12, 2018

Contact: Jennifer A. Galloway, Chief Communications Officer
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Improving Public Decisionmaking: Local Governments and Data Intermediaries.

Abstract

Local governments should engage with data intermediary organizations, such as the members of the National Neighborhood Indicators Partnership, to more effectively identify priority issues, find new allies, and devise data-driven policies and programs. In addition to their topical, analytic, and community engagement expertise, these organizations bring an understanding of local context, a reputation for impartial analysis, and a set of relationships that spans sectors. Their services build local capacity, including within governments, to use data for better decisionmaking. All local governments should join with area data intermediaries to raise the whole community's ability to regularly share and use data to improve decisionmaking, both inside and outside of government.

Download PDF.

The Urban Institute

Kathryn L.S. Pettit and G. Thomas Kingsley

March 9, 2018

In addition to this overview brief, three case studies for Baltimore, Columbus, and Oakland demonstrate the range of ways that data intermediaries and their services benefit city and county governments. To read the full series, click here.

BDA Advocacy 1st Quarter – 2018

Federal Regulatory and Legislative Priorities

FINRA Rule 4210
In 2016, the BDA was successful in getting FINRA and SEC to file a last-minute amendment to the rule that significantly expanded the "gross open position" exception from $2.5 million to $10 million. BDA had advocated for a more expansive gross open position limit throughout the rulemaking and the $10 million level expands the universe of counterparties and trades where the transfer of margin

will typically not apply.

More recently, the BDA was supportive of a delayed effective date and lobbied FINRA directly for the delay. In September 2017, the rule was delayed to June 2018.

In 2018, the BDA has met with SEC Chair Clayton and each SEC Commissioner in addition to FINRA CEO Cook and senior counsel advocating for excluding from the rule transactions from the "Covered Agency Securities" definition that do not pose systemic risk, such as specified pools and CMOs; transactions from the "Covered Agency Securities" definition that settle on the next or first good settlement date; and/or allowing dealers to take a capital charge instead of requiring them to enter into margining agreements with customers.

The BDA believes that FINRA should revise the amendments to allow dealers to either charge margin to counterparties or to take a regulatory capital charge to cover any mark-to-market deficiency in excess of the de minimis threshold. This would allow dealers to remain competitive with money manager accounts, prevent non-FINRA regulated banks from marketing their status as a non-FINRA regulated entity, and still manage any systemic risk. This idea was discussed with Robert Cook and senior FINRA staff in December 2017, and in February 2018, the BDA received word that FINRA is considering this proposal. FINRA has discussed this idea in-depth with BDA member firms, and an update is expected shortly.

Retail Confirmation Disclosure Rules
In the fall of 2017, at the request of Robert Cook of FINRA, a BDA working group submitted an amendment recommendation for the retail confirmation disclosure rules to both FINRA and MSRB. The BDA policy recommendation introduced the concept of "general market liquidity provider" to allow dealers that provide liquidity and offer bonds in support of their network of financial advisors to rebut the presumption that their cost is the best measure of prevailing market price for the purposes of the disclosure. The BDA also continued to advocate for a delay of the rules.

Throughout December 2017, BDA staff continued conversations with FINRA staff, and also reached out to SEC commissioners' staffs to discuss our concerns in-depth after hearing that SEC commissioners were balking on a delay of the rules.

In January 2018, BDA members met with SEC Chairman Jay Clayton, SEC Commissioner Kara Stein, and senior staff to SEC Commissioner Mike Piwowar in support of a delay of the rule and to make clear to the SEC the numerous compliance problems small firms are facing with vendors, etc. The BDA also explained to the commissioners the "general market liquidity provider" amendment.

The SEC commissioners held their position that the rules should not be delayed. However, the BDA felt that they did leave the door open for an extended timeline without enforcement. During the meeting with Chairman Clayton, he prompted the BDA to draft a "business plan" laying out the framework of steps to be taken if a delay of enforcement were to be granted. The plan BDA presented includes a "conformance period," in which the regulations would not be enforced if broker-dealers acted in good faith and worked to come into full compliance with the rules by December 31, 2018.

As a follow-up, in March 2018, BDA members met with the two new SEC commissioners, Hester Peirce and Robert Jackson, Jr., regarding the markup rules.

In March 2018, the BDA was notified that regulators are seriously considering the BDA's conformance period proposal. Currently, the BDA is in communication with member firms, industry groups and regulators to ensure a positive outcome. More information on this issue will be distributed soon.

Municipal Advance Refundings
The BDA is leading the advocacy push for H.R. 5003, legislation that would fully reinstate municipal advance refundings. While disappointed in the elimination of advance refundings in the Tax Cuts and Jobs Act of 2017, the BDA continues to work simultaneously with Capitol Hill, MBFA and the full issuer community and the U.S. Treasury to find a market-based, regulatory no cost solution for municipal bond issuers.

Grassroots lobbying efforts are ongoing with BDA membership contacting their representatives in Washington. Municipal Bond Division Leadership has provided the BDA with advance refunding project data for Ways and Means comments on "expired tax provisions" in March, showing a wide variety of cost savings lost for state and local governments of all sizes. The BDA also plans to host a member fly-in surrounding "Infrastructure Week 2018" to help raise awareness for municipal advance refundings on Capitol Hill this May.

Private-Activity Bonds
In early 2018, the Trump Administration released an infrastructure guideline that would eliminate the AMT provision, provide change-of-use provisions to preserve the tax-exempt status and allow for the advance refunding of PABs. The BDA continues to work with its partners on Capitol Hill to promote these fundamental pillars in any infrastructure package.

The BDA plans to incorporate PABs into the "Infrastructure Week" fly-in this May.

MSRB Rule G-15 Minimum Denomination Rule
As a result of direct lobbying efforts of the BDA, the MSRB withdrew a proposed rule to amend MSRB Rule G-15 for minimum denominations (Proposed and withdrawn MSRB Rule G-49). The withdrawal of the rule took place after a BDA conversation with MSRB Counsel Mike Post that was supported by Dan Deaton from Nixon Peabody. During that call, BDA highlighted that the rule proposal and the existing G-15 framework was harming the marketplace, especially retail investors. After withdrawing the rule, the MSRB sought additional input from the BDA on a conference call with BDA members. The accomplishment is that BDA advocacy resulted in the rule being withdrawn. The BDA educated the MSRB and they appear committed to updating G-15 in a way that would focus the minimum denomination rule on issuances with minimum authorized denominations of $100,000 and above, removing a significant burden on the retail municipal market. Pending regulatory discussions will continue in 2018.

DOL Fiduciary Duty / SEC Best Interest Standard
While the DOL fiduciary rule and exemptions are extremely burdensome, the BDA and dealer firms were successful in getting significant changes included in the final rule. Initially the Best Interest Contract Exemption (BIC) and the Principal Trading Exemption (PTE) excluded a series of assets including municipal bonds, UITs, CDs, and mortgage securities.

At present, the DOL fiduciary rule has been partially implemented; but several sections of the rule have also been delayed by the Trump Administration to examine if DOL or the SEC is best suited to take the lead on this issue. In June 2017, SEC Chairman Jay Clayton requested public comments on how the SEC might best approach a "fiduciary" standard. The BDA met with the Chairman Clayton, Commissioner Stein, and senior staff to Commissioner Piwowar in January 2018 and let them know that BDA will submit comments to the SEC soon.

The BDA supports a "best interest standard" and strongly believes that the standard should fit within the existing broker-dealer regulatory regime.

Review and Withdrawal of IRS Political Subdivision Rule
The IRS political subdivision rule was proposed in 2016. The BDA opposed the proposal. Due to market participant feedback the rule was not approved during the Obama Presidency. The Trump Administration reviewed IRS rule proposals and identified the political subdivision rule as a particularly burdensome rule.

The BDA and MBFA wrote to the IRS confirming that the rule was burdensome, unnecessary, and harmful for economic growth. The IRS repeatedly identified the comments of market participants as a reason why it identified this rule as particularly burdensome. The proposal was withdrawn on October 20, 2017.

SEC Proposes Amendment to 15c2-12 for Bank Loan Disclosure
The BDA supports the disclosure of bank loans and the most effective way to require the disclosure of bank loans would be for the SEC to amend 15c2-12. In 2017, the SEC released a proposed rule to amend 15c2-12 to require the disclosure of bank loans. This proposal is a BDA accomplishment. While the rule is not yet final, the BDA has engaged in direct advocacy with the SEC prior to and after the rule proposal on the subject of bank loans. Discussions are ongoing in 2018.

High Quality Liquid Asset (HQLA) Legislation/Regulation
Working in tandem with state, local and issuer groups, the BDA has supported the introduction and re-introduction in the House and Senate and passage through the House of legislation to define municipal bonds as HQLA under banking liquidity rules.

In early 2018, municipal securities were classified as level 2B HQLA in 2155, the Economic Growth, Regulatory Relief, and Consumer Protection Act, which also is expected to pass the Senate soon.

SEC Fixed Income Market Structure Committee
In 2017, the BDA recommended four candidates (Craig Noble, Brad Winges, Horace Carter, Mike Marz) for the SEC’s Fixed Income Market Structure Advisory Committee (FIMSAC). The BDA is pleased that Horace Carter (Raymond James) was selected for the committee, as were BDA members Amar Kuchinad, (Trumid Financial) and Richard McVey (MarketAxess). The BDA continues to monitor FIMSAC activities and will look for ways to actively engage the SEC on these topics.

Additional BDA Priorities 2018

PCAOB Exemption Legislation
The BDA is working with other industry participants and trade groups on potential legislation that would exempt privately-held, non-custodial brokers and dealers from the requirement to have a Public Company Accounting Oversight Board (PCAOB)- registered audit.

The PCAOB requirements do not make sense for privately-held, non-custodial firms. The one-siz--fits-all PCAOB audit standards that were designed for public companies, and are priced accordingly, have inflicted substantial harm on small businesses around the country.

Currently, the BDA is waiting to see final bill text, and once the legislation is introduced, the BDA plans to actively advocate for it on Capitol Hill.

MSRB Seeks to Establish Rule for Municipal Advisors/Update Dealer Standards on Advertising
The BDA has been active in submitting comments in opposition to the MSRB’s 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.

Most recently, the BDA submitted comments in February 2018 to the SEC in response to the MSRB’s proposed new rule. While the rule is not yet final, the BDA continues to be active in direct advocacy with the SEC prior to the implementation of new advertising standards.

Bank Qualified Debt

The BDA continues to support the reintroduction of the Municipal Bond Market Support Act or inclusion or this Act in an infrastructure package. Bank-qualified debt legislation would increase the annual volume limit for bank-qualified bonds from $10 million to $30 million and index for inflation. Past legislation has also allowed for the use of pooled financings and calculates the volume cap at the issuer, rather than issuance, level. The BDA has lobbied Congress extensively on the bank-qualified issue during the past seven years and we will continue to do so in 2018.

FINRA Government Securities Initiative

In February 2018, FINRA issued a request for comment (Notice 18-05) on the application of various FINRA rules to government securities including U.S. Treasury securities and debt securities. The BDA believes that the application of FINRA rules to government securities will place undue compliance burdens and staffing challenges and opposes the proposal. The BDA is working with its various committees to draft comments in response to FINRA 18-05.

Debt Research

The BDA submitted comments to FINRA in mid-2017 concerning the proposed limited safe harbor from FINRA debt research rules for desk commentary. The letter outlined the belief that the best solution to help facilitate the timely flow of commentary to investment managers would be a clear interpretation of “research report” that demonstrates that the vast majority of desk commentary is not fundamental research. The BDA also asked that if and when FINRA proposes rule text for the safe harbor, it should provide clarity on desk commentary content. The BDA continues to monitor this proposed rule.

Update: Municipal Bonds for America coalition (MBFA)

In February 2017, 385 organizations and individuals signed an advocacy letter, representing nearly all-50 states, to House and Senate leaders urging them to retain the current law status of municipal bonds as they began deliberation on comprehensive tax reform. The MBFA Coalition was extremely active in its advocacy efforts to preserve all tax-exempt financing options for municipal bonds, including PABs and advance refundings, in the Tax Cuts and Jobs Act. In 2018, MBFA Executive Chair Steve Benjamin will become the president of the

U.S. Conference of Mayors, and will further advocate for the tax-exemption in this highly-visible position. The Coalition will continue to educate Congressional leaders and staff members through its Muni Bonds 101 seminars on Capitol Hill, meetings with staff members of influence at the White House, and developing and maintaining its relationship with members of Congress to preserve the tax- exempt status of municipal bonds.

Bond Dealers of America

March 15, 2018

BDA Legislative Update: Senate Approves Financial Regulatory Reform Bill.

After weeks of debate and discussion over 100 amendments, yesterday the Senate passed a financial reform bill by a vote of 67-31. *The Economic Growth, Regulatory Relief, and Consumer Protection Act* (S. 2155) makes bipartisan changes to the Dodd-Frank Act that will right-size post-crisis rules that were imposed on small and regional lenders after the global financial crisis.

***Important to BDA members*, S. 2155 includes a provision that directs the FDIC, the Federal Reserve, and the OCC to classify qualifying investment-grade, liquid and readily-marketable municipal securities as level 2B liquid assets under the agencies' liquidity coverage ratio rules. BDA has long supported "high-quality liquid asset" (HQLA) provisions like this one.**

BDA will send a thank you letter to all the Senators thanking them for the HQLA provision and passage of the bill.

The House passed its version of financial reform legislation, the *Financial CHOICE Act* (H.R. 10), last June. Both H.R.10 and S. 2155 have a variety of similar provisions, including a type of regulatory off-ramp, however S. 2155 does not roll back Dodd-Frank regulations to the same degree as the CHOICE Act. Because of these differences, it will be challenging for both the House and Senate to conference a bill together and the future of a financial regulatory bill getting signed into law is uncertain.

BDA will continue to keep you updated as financial regulatory reform proposals advance through Congress.

Bloomberg Brief Weekly Video - 03/15

Amanda Albright, a reporter for Bloomberg Briefs, talks with Joe Mysak about this week's municipal market news.

Watch video.

Bloomberg

March 15th, 2018

Fitch: Florida Ballot Measure to Limit Tax Increases Could Reduce Future Flexibility.

Fitch Ratings-New York-16 March 2018: A proposed amendment to the Florida Constitution that would raise legislative voting requirements to increase state taxes and fees could reduce the state's flexibility to address future economic volatility, says Fitch Ratings. The amendment, which has been approved by both the state Senate and House in joint resolution HJR 7001, would require future legislatures to reach a two-thirds vote to increase state taxes and fees. There is currently a simple majority requirement for such increases. The amendment would apply to broad based taxes such as the sales tax as well as to the various fees and charges by the state for services, including highway user fees and university tuition and fees. Voters will decide the question on Nov. 6, 2018, with a 60% vote necessary to amend the state constitution.

This amendment would not have an immediate impact on state credit quality (Florida's Issuer Default Rating [IDR] is AAA), although over time, the more stringent requirement for raising revenues could lead to erosion in the state’s financial resilience. Fitch assesses the state’s revenue framework at the ‘aa’ level, reflecting in part the economic sensitivity of its largest revenue source, the sales tax. Fitch expects Florida’s revenues to grow on a real basis with continued economic expansion, but notes that revenues are likely to exhibit greater weakness during economic downturns. The rating also incorporates the virtually unlimited legal ability the state maintains to raise revenues, despite constitutional restrictions on levying a personal income tax or a state-wide property tax.

The addition of a super-majority requirement to raise taxes would not in and of itself imply a weakened legal ability to raise taxes since the power to do so would remain within the legislature. However, the higher bar for raising taxes would make it more difficult to utilize one of the key tools that states have to manage financial operations during periods of economic and revenue weakness, potentially lowering the state’s resiliency through the economic cycle. Fitch’s expectations related to financial resilience through a moderate downturn is a key rating driver, one that has been a credit strength for Florida. While the state has typically first turned to expenditure reductions when faced with budget gaps, it did ultimately raise various fees during the Great Recession when other measures proved insufficient to maintain fiscal balance.

Other states have seen financial operations narrow and credit quality decline at least in part because super-majority voting requirements limited the practical use of revenue-raising as a budget balancing tool. For example, the state of Oklahoma, which has a 75% voting requirement, has struggled to close recent structural budget gaps, relying on deep spending cuts, one-time actions and reserve draws. While it is Fitch’s expectation that Florida will continue to exhibit the strong financial management that is one of the underpinnings of its ‘AAA’ IDR, we will assess the extent to which obstacles to revenue raising affect longer term fiscal balance for the state and the various entities that rely on legislative control over revenues to support credit quality. This would include, for example, transportation infrastructure projects that are supported by gas taxes and tuition and fees charged by public universities. Any impact on fiscal operations would likely only become apparent over time, potentially as the state addresses a future downturn.

The language of the amendment indicates that the super-majority voting requirement would apply to new taxes and fees, as well as to raising existing taxes and fees, but only when there is a requirement for a vote of the legislature. Increases that are incorporated into existing legislation would not be subject to further vote. For example, emergency assessments that can be levied by the Florida Hurricane Catastrophe Fund and Florida Citizens Property Insurance Corp. are incorporated in existing legislation and would not require an additional vote. Further, the amendment specifically does not apply to any tax or fee imposed by a county, municipality, school board or special district.

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Additional information is available on www.fitchratings.com

Fitch: West Virginia Employee Wage Dispute Highlights Fiscal Pressures.

Fitch Ratings-New York-09 March 2018: Fitch Ratings believes the recent wage dispute in West Virginia, which ended with approved salary increases for the state's teachers, service personnel and state employees, is further evidence of the fiscal pressures that underpin our Negative Outlook on the state's 'AA' Issuer Default Rating (IDR).

The state's financial challenges, which have increased with the need to fund the higher salaries, are likely to continue despite recent revenue improvement. The multi-year weakness in the state's key state revenue sources has reflected its struggle with a long-term decline in coal production and related economic turmoil, despite some improvement in fiscal 2018.

The salary increases provide for a fixed-dollar-amount, average 5% raise for all employees effective July 1, 2018. The increases have a $100 million impact on the $4.8 billion (General Revenue, Lottery and Excess Lottery) executive budget for fiscal 2019; $80 million above the 1% average salary increase initially proposed by the governor. The state expects to adjust the governor's recommended budget and apply cash balances in its Medicaid program in fiscal 2019 to accommodate the increases. Fitch believes this additional cost may prove challenging to accommodate in future budgets given vacillating severance, income and sales taxes; prior use of reserves to fund operations; and the cuts the state has already made through a period of revenue weakness. As in most states, education and health and human services spending are the state's largest operating expenses, and the strong employee push for wage increases and health care plan improvement speak to the challenges of cost control efforts in these areas.

Revenues in fiscal 2018 are meeting expectations through February 2018, and the governor has identified an additional $58 million in resources to fund the fiscal 2019 budget beyond what was incorporated into his budget proposal. The legislative budget that is currently moving through both the House and the Senate does not apply the additional forecast revenue to funding the fiscal 2019 budget.

Revenue growth is forecast in personal income and sales taxes as the state anticipates economic momentum from road construction projects, increased consumer spending related to federal tax cuts and stability in the energy sector. Given fiscal performance prior to 2018, Fitch remains cautious that the state will achieve these targets. Additional resources do not include any direct windfall revenue from the federal Tax Cuts and Jobs Act as the state subsequently decoupled its personal income tax exemption policies from those of the federal government, relinquishing $140 million in estimated potential tax benefit in fiscal 2019.

The state's 'AA' IDR incorporates the state's economic concentration in natural resource development, strong ability to control revenue and spending policy, and commitment to addressing its liability profile. The rating is supported by a still sizable level of reserves at the state's disposal, and the governor's budget proposal does not appropriate from the rainy day fund for operations. The Negative Outlook reflects the risks associated with the state's cyclical natural resource markets, particularly the longer term decline in coal production, and Fitch's concern that the state will be challenged in providing a durable response to its long-term economic and financial challenges.

For more information on the state, see “Fitch Rates West Virginia’s $44MM School Building Bonds ‘AA-‘; Outlook Remains Negative” dated Sept. 7, 2017 and available at www.fitchratings.com.

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Fitch Updates Criteria for US SHFA Single Family Mortgage Program Bond Ratings.

Link to Fitch Ratings’ Report(s): U.S. State Housing Finance Agencies: Single-Family Mortgage Program Rating Criteria

Fitch Ratings-New York-15 March 2018: Fitch Ratings has published an updated criteria report titled ‘U.S. State Housing Finance Agencies: Single Family Mortgage Program Rating Criteria.’ The report replaces the existing criteria of the same title published on June 28, 2017.

The changes to the criteria mainly relate to the reordering and clarification of key rating drivers and the incorporation of a flow chart to describe the credit review process. In addition, the criteria revisions provide clarity to the FHA-insured loan loss assumption.

No changes to the ratings of existing transactions are expected as a result of the application of the updated rating criteria.

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America's Cities Are Exporting Bonds.

- **Foreign investors have increased holdings steadily since 2012**
- **It may provide lift for taxable debt, Citigroup's Rai says**

America's states and cities have hit on a popular export product: their bonds.

Foreign buyers have expanded their investments in U.S. municipal securities every quarter for more than five years as low — or even negative — interest rates prod European and Japanese investors to hunt for higher yields than can be found in their home countries. That continued during the last three months of 2017, when they boosted their holdings by a record $4.5 billion to $104.6 billion, according to Federal Reserve Board statistics.

The steady buying is a welcome development for the $3.9 trillion municipal market, where demand from banks and some insurance companies may be curbed by the corporate tax cuts that took effect in January. This year, municipal bond prices have slid amid concern about rising interest rates, pushing up yields on top-rated 30-year debt by about half a percentage point to 3.12 percent, the highest in a year.

The overall impact from the overseas spending spree may be limited. Such buyers tend to focus on taxable bonds, which pay higher yields than traditional municipal securities. Tax-exempt municipals aren't as attractive, given that they have no use for the income-tax breaks typical state and local bonds provide.

"Foreign investor demand will drive the richening of taxable munis, but it provides no safety net for tax-exempts," said Vikram Rai, a municipal-bond analyst for Citigroup Inc., the second-biggest underwriter of the securities. "That's not where they choose to invest."

Bloomberg Markets

Amanda Albright

March 12, 2018, 10:04 AM PDT

— With assistance by Zachary Hansen

Michigan Reveals Post-Detroit Pension Woes.

- **Over 110 of the 490 reporting so far have underfunded plans**
- **Reports required by new state law aimed at bolstering pensions**

Five years after Detroit became the biggest U.S. city to go bankrupt, leading to cuts in the pension benefits of its retirees, Michigan is learning that the retirement promises made by dozens of other municipalities are far from secure.

Under a new state law, cities, towns and authorities were required this year to submit financial details on the status of their pension and health care plans. The results, so far, are grim: the Michigan Treasury Department found that over 110 — or more than one fifth — have underfunded pension or retiree health-care plans.

The figures underscore the financial pressures facing governments in Michigan, a labor union stronghold that was hit hard by the loss of manufacturing jobs.

A pension was deemed underfunded if it had less than 60 percent of what's needed to cover the benefits that have been promised and the government's annual required contribution consumed more than 10 percent of its revenues. Collectively, the nearly 500 local governments that have reported so far had a $6.4 billion shortfall in their pensions, the data show.

Flint, a financially distressed city known for cost-cutting decisions that left residents without access to safe drinking water, reported a $345.7 million unfunded liability and said required payments totaled 20 percent of revenue. Highland Park, a Wayne County city, reported that the retirement benefits of its general employees were just 2.1 percent funded.

Those with pensions or health care plans identified as underfunded can apply for a waiver that shows the problem has been addressed, state Treasury spokesman Ron Leix said in an email. If the locality isn't given a waiver, it must complete a "corrective action plan" with ideas for addressing the debt. Those plans — which could include changes like reducing benefits granted in the future — will be reviewed by a newly-created state board.

Jordan Stanchina, city manager of Iron Mountain, Michigan, said it's hard to trace the pension shortfall to just one cause, but cited under-performing investments as a factor.

The city owes $7.7 million to the Municipal Employees' Retirement System of Michigan, making its liability just 38 percent funded, according to the treasury department data. He said it is hard for the city to devote more revenue to pensions thanks to state restrictions on property tax hikes.

"There's not any excess funds to do anything with," he said.

Bloomberg

By Amanda Albright

March 14, 2018, 6:31 AM PDT

Protons Beams Zap Cancer With Muni-Bonds as Market Strains.

- **Bond sales for the new cancer centers swelled in 2017**
- **'Investors are going to be caught asleep at the wheel'**

Hospitals and health-care centers borrowed more in the municipal-bond market last year for cancer treatment facilities known as proton clinics than they did over the previous decade after private lenders balked following a string of financial failures brought about by the industry's aggressive expansion.

Local government agencies — which sometimes lend tax-exempt bond proceeds to businesses — issued $418 million of debt last year for such clinics, up from the $239 million in the prior 10 years, according to data compiled by Bloomberg. The surge is helping to bring new clinics on line, with 18 set to finish construction by 2021, according to the National Association for Proton Therapy. None of the bonds sold last year carried credit ratings, a step that borrowers take to avoid the potential stigma of being labeled junk.

The rapid expansion has concerned some analysts and health-care experts, who say the market for such clinics is already near saturation and wider expansion of proton treatment overextends the clinical use of the technology. Debt sold by rural hospitals and other types of medical clinics are one of the biggest sources of defaults in the municipal market, a haven for individual investors seeking steady, tax-exempt returns.

Continue reading.

Bloomberg Markets

By Zachary Hansen

March 13, 2018

Connecticut Won't Default on Pension Bonds, Budget Director Says.

- **Treasurer warned governor's plan would cause technical default**
- **Governor's aide says he won't back plan that would affect debt**

Connecticut bondholders, rest easy.

Whatever plan Governor Dannel P. Malloy proposes to avoid skyrocketing payments to the state's teachers pension, it won't trigger a technical default on Connecticut's pension bonds, his budget director said in an interview.

"We're looking at a whole series of options right now, but none that we pick, unless they carry me out feet first, are going to involve the state defaulting or not honoring its bond covenants," said Benjamin Barnes, Secretary of the Office of Policy and Management.

Connecticut Treasurer Denise Nappier warned that Malloy's proposal to stretch out payments on the teachers' pension's unfunded liability beyond 2032 to sidestep a potential $5 billion payment increase would trigger a technical default. Municipal Market Analytics, an independent research firm, said last week that such a breach would be a "clear credit negative" and investors should demand higher yields on Connecticut bonds to compensate for the risk.

A covenant in a $2.1 billion pension bond issue from 2008 requires the state to appropriate the full annual contribution to the pension and amortize its unfunded liability through 2032, the year the bonds mature.

The governor's office has said the legislature can authorize the board overseeing the teachers' pension to change the assumed rate of return and extend the amortization period, meaning the state would continue to make full annual contributions, just over a longer period. But he's also considering alternative proposals.

“We would be better off with a longer amortization period and lower investment return assumption,” Barnes said. “We would like to get there, if there’s a way to do so, without defaulting on the covenant.”

A series of proposals to shore up the teachers’ pensions could be released as soon as Wednesday. “I’m certain bondholders won’t be harmed by what we’re proposing,” Barnes said.

The governor, who is set to leave office in 2019 and isn’t seeking re-election, is acting because Connecticut’s annual contribution to the teachers’ pension is estimated to rise to $6 billion in 2032 from $1 billion in 2014 if investments return an annualized 5.5 percent, according to a Nov. 2015 study by the Center for Retirement Research at Boston College commissioned by the state. The teachers’ pension had 10-year annualized returns of 5.3 percent as of June 30, 2016.

To make the required payments to the pension, Connecticut’s governor has said residents would have to choose between deep cuts to local aid or large tax increases if investment returns didn’t meet their benchmark.

Nappier argues that Malloy’s “doomsday scenario” won’t happen because it was calculated using “inconsistent and inflammatory assumptions.”

Last year, the state extended the amortization period for the state employee pension to 2046. The deal, which also reduced the assumed return on the pensions’ investments to 6.9 percent from 8 percent, avoided an increase of annual payments to the pension ranging from $4 billion to $6 billion annually. Connecticut’s general fund budget is currently about $19 billion.

The move reduced the risk that the pension would consume a growing share of the budget, Barnes said.

“We would like to do the same thing for the teachers’ system,” he said. “Nobody had done any of this work for 30 to 40 years before us. We’re trying to finish this up and put theses funds in good order during our tenure.”

Bloomberg Markets

By Martin Z Braun

March 13, 2018, 10:50 AM PDT

A Better Way to Revive America’s Rust Belt.

The government should spend money on research, not life support.

Harvard economists Benjamin Austin, Ed Glaeser and Larry Summers think the U.S. government should do more to help the country’s struggling regions. It’s a great idea, but their specific policies could use some work.

Many economists believe in focusing policies on people, rather than places — essentially, having the government help the poor and disadvantaged, but letting the market sort out where people live and where economic activity is concentrated. There are several arguments for this approach. First, even if aid is aimed at a struggling area, it might benefit some richer individuals — few people want to see their taxes being spent on millionaires, even if those millionaires live in Detroit.

Second, many worry that it’s foolish to fight the vast, unstoppable forces of economic geography. Monkeying with the highly complex web of trade, clustering and specialization could prop up cities that have no business existing, causing continued struggle for the people living there, and costing taxpayers a bundle as well. According to this conventional wisdom, if a place is in decline, the best thing the government can do is help people move away. I myself have advocated pro-mobility policies. But those policies can also come with a big downside.

When huge numbers of people flee a region, the people who are left behind suffer. Neighborhoods dotted with empty houses become centers of drugs and crime. A dearth of taxpayers makes it impossible to pay for upkeep on roads, water pipes and other essential local infrastructure. Inadequate tax revenue also makes it hard to pay the pensions of city workers, police and firefighters, requiring painful municipal bankruptcies. Shopping centers without a critical mass of customers become wasting assets. Life in a declining region is not the best, but life in a half-depopulated declining region is far worse.

Thus, more economists are starting to think about place-based policies. The election of Donald Trump was a startling wake-up call: Even though identity issues were a bigger factor explaining why Michigan, Ohio, Pennsylvania and Wisconsin flipped to Trump in 2016, the long-term economic decline of the Rust Belt probably contributed substantially to an overall climate of discontent.

In a paper presented at the Brookings Institution this past weekend, Austin, Glaeser and Summers don’t single out the Rust Belt. Instead, they identify the struggling region as the “eastern heartland,” meaning non-coastal states admitted before 1840. The authors show that by a number of measures — employment rates, per capita GDP, mortality rates, and self-reported life satisfaction — the eastern heartland has done somewhat worse than either the coasts or the interior west over the last two to four decades.

This regional breakdown is too arbitrary and broad. There’s no reason we need to think about the country in terms of three vast regions when focusing on declining places, when we can pick out specific cities and states that are struggling. But the general principle is correct — helping lagging regions is a good and important idea.

The next question, though, is what kind of help to provide. The authors discuss an array of ideas. One that they zero in on, unsurprisingly, is infrastructure investment. Another is the relocation of government offices from coastal enclaves to interior regions. They suggest an array of federal tax credits and wage subsidies for people living in distressed areas. And they call for the strengthening of community colleges to provide targeted training.

These are all ideas worth thinking about. With the exception of relocating government offices, however, most of these would impose large costs on the American taxpayer. This is true even of infrastructure — a road in an economically growing, thriving place will often pay for itself, but a road in a depopulated region with no one to drive on it is a white elephant project. As for tax credits and employment subsidies, these could end up keeping whole regions of the country on permanent fiscal life support.

Committing to long-term expenditures on economically unproductive regions can have dramatic fiscal consequences. Few nations know this better than Japan, where the central government in Tokyo has long pandered to outlying regions with lavish redistribution. Partly as a result, Japan now has the world’s highest public debt, which forces it to keep interest rates permanently at zero.

Using direct fiscal lifelines to support struggling places should therefore be a last resort. Instead, governments should focus on trying to make these places as economically productive as possible.

The best approach is to spend more money on research at universities. Evidence shows that such spending boosts local economies. Top institutions like Carnegie Mellon in Pittsburgh are widely credited with industrial revivals in previously hard-hit Rust Belt areas. A flood of research dollars from the federal government, targeted at universities in struggling areas, has the potential to turn the region around. This should be matched with encouragement of immigration to declining areas, which will help shore up local tax bases and keep city services running.

There may come a time when some U.S. regions are doing so badly that they need to be kept on life support. But that time has not yet come. There is still a chance to make struggling American towns productive again.

By Noah Smith

March 13, 2018

Bloomberg View

Noah Smith is a Bloomberg View columnist. He was an assistant professor of finance at Stony Brook University, and he blogs at Noahpinion.

This column does not necessarily reflect the opinion of the editorial board or Bloomberg LP and its owners.

The Week in Public Finance: 3 Things State and Local Governments Should Know About the Banking Deregulation Bill.

The first major bipartisan banking bill since Dodd-Frank has some potential pluses and minuses for states and localities.

This week, the U.S. Senate passed the first major banking bill since the Dodd-Frank financial overhaul in 2010. If successful, it would roll back and loosen regulations on banking institutions prompted by the 2008 financial market meltdown.

The new bill is the result of a bipartisan effort. More than a dozen Democrats joined the Republicans to pass it. But passage in the House, where it heads next, is not guaranteed as Republican lawmakers there want an even bigger rollback of regulations.

The measure, supporters say, will provide regulatory relief for small banks. Meanwhile, critics argue that it benefits larger institutions more by loosening important consumer protection requirements for lending.

Continue reading.

GOVERNING.COM

BY LIZ FARMER | MARCH 16, 2018

[S&P U.S. And Canadian Not-For-Profit Transportation Infrastructure Enterprises: Methodologies And Assumptions.]

S&P Global Ratings is publishing its methodology for assigning ratings and related credit products to U.S. and Canadian not-for-profit airports, ports, toll facilities, or parking systems (transportation infrastructure enterprises, enterprises, or entities), and for debt secured by specific revenue streams tied to special facility projects or by demand tied to transportation infrastructure.

Continue Reading

Mar. 12, 2018

Kansas Lawmakers Giving STAR Bonds, Economic Incentives, A Hard Look.

Kansas lawmakers, increasingly skeptical that tax breaks deliver economic wins, looked closely this week at economic incentive programs.

Senators on the Commerce Committee spent several days discussing bills that would add new requirements to sales tax revenue bonds, known as STAR bonds.

STAR bonds allow local governments to borrow money for a building project, and tax collections created by the development are diverted to pay off the loans.

The Topeka Capital-Journal reported last year that more than $500 million in tax revenue had been used to pay back the bonds since 2001.

One bill would create a panel to study the proposals, including the state's return on the investment, before approving the projects.

The secretary of commerce currently approves STAR bonds. Republican Sen. Julia Lynn, who heads the Senate Commerce Committee, wants more oversight.

"To make a decision on whether to use millions of dollars in taxpayer funds to go to a development project," Lynn said, "there's just nothing in place."

Another bill before senators would restrict the types of projects eligible for STAR bonds. It would allow tourist attractions but put new restrictions on retail developments. Some lawmakers have said shopping centers should be financed by private developers, not state incentives.

Olathe City Manager Michael Wilkes urged lawmakers not to block retail developments.

"From a practical application, (that) really kills your project," he said. "Those kind of things are the only things that generate enough revenue that really make the project worthwhile."

He said large stores such as Cabela's or Nebraska Furniture Mart in Wyandotte County can be critical to an overall development package that works.

Johnson County resident Clint Anderson is a financial advisor with experience in commercial banking and real estate. He told senators that he's opposed to projects, including a soccer stadium and training facility in Kansas City, Kansas, being subsidized with public bonds.

He said there's no shortage of private funding available.

"If there's a good idea that's operationally and economically feasible, there's capital for it," Anderson said. "It shouldn't be paid for by the taxpayers."

Trey Cocking, deputy director of the Kansas League of Municipalities, said that won't always be the case. He used the example of a project being developed in Atchison that would include an aviation museum and updates to the city farmer's market.

"These aren't projects that the private market's going to do, because there are public components to these projects," he said. "There are public goods to these projects."

Amanda Stanley, general counsel for the municipal league, said it's easy to look back at successful STAR bond projects and assume they would have attracted private investment. Bu she said that's not a guarantee.

"At what point would it have developed? How long is the state willing to wait?" she asked. "There are sometimes projects that just need that push start."

House members also dove into the issue of state tax incentives, advancing a bill Thursday that would make more information publicly available on local and state incentives, including STAR bonds.

It would require state officials to compile and publish information about tax incentives and whether each of the incentive programs is producing a positive return on investment.

Democratic Rep. John Carmichael said the bill will help lawmakers next session as they evaluate whether incentive programs need to be modified.

"We need to know how much these tax benefits are costing the state of Kansas," he said. "Our constituents not only need to know it, they want to know it."

KCUR.ORG

By STEPHEN KORANDA • MAR 8, 2018

Stephen Koranda is Statehouse reporter for Kansas Public Radio, a partner in the Kansas News Service. Follow him on Twitter @kprkoranda. Kansas News Service stories and photos may be republished at no cost with proper attribution and a link back to the original post.

In the Land of OZ (Opportunity Zones) Who Will Benefit?

Proposed Guiding Principles for Opportunity Zones to Fuel an Inclusive Economy and Drive Social Impact

What if economic tax incentives designed to improve the place you call home don't consider your needs? What if tax benefits, instead, focus on high-end projects that don't require a federal tax subsidy to be successful, creating a new economic reality that feels far from the home you know. Opportunity Zones are a brand-new mechanism established by Congress, designed to drive private capital into distressed areas through deferred taxes on capital gains in the United States. How can these Zones and the Opportunity Funds which will invest in them be carefully constructed with the people who are living in underserved communities at the heart of decisions?

Place based strategies are commonly employed by community development practitioners and policymakers to achieve social impact. Opportunity Zones have the potential to enhance and bolster existing place based strategies that currently benefit low-income communities, including Promise Zones, New Markets Tax Credits and Choice Neighborhoods. Opportunity Zones also have the potential to do harm, as Ada Looney contends in his recent Brookings post. And Opportunity Zones, as emphasized in the recent article by Rachel M. Cohen in the Intercept, can sometimes have unintended consequences.

Consistent with our belief that economic policies should be implemented in a way that considers and serves the people in the communities affected, the Beeck Center for Social Impact at Georgetown University, in partnership with the Kresge Foundation, convened an expert group of community development practitioners to explore how Opportunity Zones can drive capital to communities in a way that truly benefits the individuals and families that currently live and work there. We asked ourselves a simple question: How can Opportunity Zones be used as a tool for community development and not solely a tool for financial gains.

In response to this question, we drafted proposed guiding principles for the designation of Opportunity Zones. The principles are intended to serve as a starting place to help guide the designation process and, ultimately, the creation of Opportunity Funds that can best serve the people currently living and working in these areas, which by definition in the statute, must be low-income census tracts. The following principles are presented as a straw-person for discussion. These principles are not meant to be prescriptive; but rather to engage conversation and embrace the opportunity for social impact. We invite feedback by sending an e-mail to me at lisa.hall@georgetown.edu. Comments will be collected and shared with the working group.

Proposed Guiding Principles for Opportunity Zones to Fuel an Inclusive Economy and Drive Social Impact

1. Recognizing that Opportunity Zones will deliver publicly funded tax incentives and subsidy to communities across the US, the state selection process should include as a key objective, the goal of delivering public benefit to a range of stakeholders, not limited solely to private investors, but also benefitting current residents of low-income communities, community development organizations, community service organizations, and social enterprises.

2. Where possible, Opportunity Zones, should be selected in combination with state tax incentives and allocations by states for other government programs that directly benefit low-income households and communities, such as the Low-Income Housing Tax Credits and New Market Tax Credits. Benefits generated in Opportunity Zones should be additive to existing efforts and not cannibalize existing or prospective community development investments like those motivated by the Community Reinvestment Act.

3. Impact objectives for Opportunity Zones should be established and tracked, including but not limited to goals for raising the standard of living for current residents. Examples include output goals like number of new businesses created, living wage jobs created and affordable housing units. Outcome goals, like increased median household income and improvement in health statistics should also be considered.

4. States should adopt methodologies for selecting Opportunity Zones that are consistent with effective evaluation standards and best practices for research design to facilitate ongoing

monitoring of zones, leveraging evaluation resources available from academic institutions.

5. The selection process for Opportunity Zones should consider the capacity of neighborhoods to absorb private capital and existing infrastructure needed to enable investments in businesses as well as real estate. States should seek to integrate investments generated by the tax benefit to complement and leverage existing and prospective economic activities in designated Opportunity Zones.

6. Opportunity Zones should be selected with consideration given to environmental issues. States should encourage or mandate that businesses located in Opportunity Zones adhere to environmental best practices.

7. Efforts should be made to ensure that current residents of Opportunity Zones are able to remain in neighborhoods or can benefit from rising property values. Examples include state and local tax abatements for low-income homeowners.

8. A balance of rural and urban neighborhoods should be selected to diversify investment activity and to ensure that rural areas are eligible for investment. Opportunity Zones should be selected in a geographically targeted manner so there can be a sufficient investment of resources in each Opportunity Zones.

9. States should identify and support community development intermediaries, like CDFIs and community banks, that can provide debt financing to support businesses and real estate that will benefit from equity investments from Opportunity Funds.

10. In addition to prohibited business activities like gambling and liquor stores, states should discourage the creation of new businesses in Opportunity Zones which disadvantage low-income communities like payday lenders.

Speed is of the essence to put these principles into practice. Several groups including the Economic Innovation Group and The US Impact Investing Alliance have been advocating for and helping to craft what was originally known as the Investing in Opportunity Act. And many in the community development field and impact investing world have embraced the concept of Opportunity Zones and Opportunity Funds, successfully incorporated with bi-partisan support into the Tax Cuts and Job Acts passed at the end of 2017. State governments and territories have also embraced the new legislation and are already selecting Opportunity Zones, to comply with the legislative requirement that Governors designate low-income census tracts prior to a March 21, 2018 deadline. Some states have hit the ground running, launching websites to solicit input and comments on the designation process. Local and national non profit organizations including Enterprise Community Partners, Council on Development Finance Agencies, and LISC are supporting efforts to raise awareness about the program, providing resources and analysis of the legislation, and by engaging community development organizations in the state by state designation processes.

We believe this new tax benefit creates an opportunity to improve low-income communities in underserved rural and urban areas by attracting more private capital to finance small businesses, community services and social enterprises. But, if Opportunity Zones and Opportunity Funds are designed in ways that solely benefit activities and projects that do not need subsidy to succeed, including high end, real estate based projects, then the legislation will not meet its potential for delivering meaningful impact. Opportunity Zones can and should create living wage jobs, improve community assets, and help build wealth for people in places that have not yet recovered from the global recession.

BeekCenter

March 13, 2018 | By Lisa Hall, Senior Fellow

Lisa Hall is a Senior Fellow at the Beeck Center for Social Impact + Innovation at Georgetown University, which engages global leaders to drive social change at scale. She has dedicated her 25-year career to economic and social justice, impact investing and community development. Lisa has served in executive roles across multiple sectors in the United States and abroad, including time as CEO at Calvert Impact Capital and Managing Director at Anthos Asset Management. Her area of focus at the Beeck Center is the inclusive economy, exploring how social innovation and access to opportunity can drive prosperity for all communities. She is active on Twitter @lisagreenhall

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S&P: New GASB Statements 74 And 75 Provide Transparency For Assessing Budgetary Stress On U.S. State & Local Government OPEBs.

In June 2015, the Governmental Accounting Standards Board (GASB) adopted Statement No. 74 (GASB 74), related to financial reporting for postemployment benefit plans with irrevocable trusts (other than pension plans), and Statement No. 75 (GASB 75), related to accounting and financial reporting for postemployment benefits.

Continue Reading

Mar. 14, 2018

Insights: How Steel and Aluminum Tariffs Might Impact State Economies; More Negative News on Infrastructure.

How Steel and Aluminum Tariffs Might Impact State Economies

The Brookings Institution released some very interesting state-specific details on the potential impact of steel and aluminum tariffs. Here is some of what they had to say.

When measured by total volume, the nation's largest states dominate steel and aluminum imports — Texas, California, Illinois, Michigan, Louisiana, Pennsylvania, Ohio, and New York all import more than $2 billion annually in steel and aluminum products, together accounting for 60% of the nation's total.

Louisiana presents a particularly notable example. Oil and gas drillers, and petrochemical producers in that state, rely on imported steel and aluminum to support their operations. The Port of New Orleans imported 2.48 million tons of steel in 2017, accounting for 30% of its tonnage. Maryland's imports are also disproportionately weighted toward aluminum and steel. As the Baltimore Sun reported, Maryland manufacturers of steel products are concerned that they will be put at a disadvantage, both due to higher input costs and by potentially limiting their access to important export markets should retaliatory measures be put in place.

Continue reading.

Posted 03/16/2018 by Joseph Krist

Neighborly Insights

Insights is brought to you by Court Street Group.

[Philadelphia Schools Deal Tops $3.1 bln U.S. Muni Bond Sales Next Week.]

NEW YORK, March 16 (Reuters) – The Philadelphia School District plans to price $251.8 million of tax-exempt general obligation bonds on Thursday, the first time the fiscally strained district in Pennsylvania will issue debt since a decision to return it to mayoral control.

The deal is the largest negotiated offering of the $3.1 billion of U.S. municipal bond and note sales planned for next week.

The state-formed oversight commission that ran the district for the past 16 years began dissolving at the end of last year. Mayor Jim Kenney is selecting a nine-member school board to be in place by July 1.

Financially, the shift could benefit the district but hurt the city. Moody's Investors Service said in December that its negative outlook on the city, rated A2, in part reflects possible challenges in fiscal 2019 in funding the district.

Moody's assigned to the district's forthcoming bonds an underlying rating of Ba2 with a positive outlook and an enhanced rating of A2 with a stable outlook.

Kenney's recent city budget proposals would allocate permanent tax increases to schools, Moody's noted. A Pennsylvania intercept program that funnels state aid to bondholders if the district cannot meet debt service payments lifted the enhanced rating.

Proceeds of the sale will fund capital projects, with the district returning to invest in classrooms "after years of austerity operations," Moody's said.

For the past few years, the district has been trying to stem its fiscal crisis, leading to protests by teachers who were tired of seeing their schools shuttered, colleagues laid off and supplies cut.

But the district has also secured at least $58 million from the state annually from a cigarette tax that was made permanent and $2 million of new revenues from ridesharing fees, according to a presentation for prospective bondholders.

It has also refunded more than $1 billion of high-interest debt to save $100 million over the next 20 years, leading to Moody's upgrade by one notch to Ba2 in September.

The bonds have serial maturities through 2038 and term bonds due 2043. The lead manager is Bank of America Merrill Lynch.

Next week's largest muni deals are both competitive. Maryland's Anne Arundel County is expected to sell $263.7 million of bonds for general improvements and water and sewer projects, and the city and county of San Francisco, California will price $251.3 million of debt for parks and road projects.

(Reporting by Hilary Russ in New York; Editing by Richard Chang)

Long-Awaited Decision Sets New Jersey Methodology for Municipal Affordable Housing Obligations.

On March 8, Judge Mary Jacobson issued her long-awaited affordable housing decision in Mercer County on the methodology for calculating statewide and municipal affordable housing obligations. The decision also set the numbers for the Mercer County towns that did not settle their litigation, Princeton and West Windsor (Municipalities). The 217-page decision meticulously went through the various (approximately two dozen) components of calculating affordable housing need and the expert testimony on each component on behalf of the Municipalities, Fair Share Housing Center (FSHC), the New Jersey Builders Association (NJBA) and the court-appointed special master, Richard Reading. In general, the decision is a positive result for developers that are intervenor-defendants or interested parties in other affordable housing litigation throughout the state. However, it will take some time to analyze this decision and its application to other towns in calculating municipal affordable housing obligations.

If nothing else, the decision is positive, as it should shake loose the affordable housing litigation in other counties that have stalled while towns, special masters and the courts waited for the Mercer County decision. With respect to the substance of the decision, the court determined that the overall statewide affordable housing need is 159,630 units. That is more than double the number the Municipalities projected (63,070 units) and about half of what FSHC projected (339,673 units). The court's statewide need projection is also higher than the approximately 115,000 units projected by Reading, the special master. As anticipated on this polarizing issue, neither side "won," and the court found a happy medium. As for Princeton and West Windsor, the court determined their new-construction affordable housing obligation to be 753 units and 1,500 units, respectively. This includes the obligation from the "gap period" (1999 to 2015) and prospective need obligation. Though not referenced in the decision, the below chart compares the court's municipal projection with the projections made by the Municipalities and FSHC in prior reports submitted to the court.

Continue reading.

by Craig M. Gianetti

March 13, 2018

Day Pitney, LLP

New Jersey in Trouble: Is Phil Murphy Their Savior.

Whether it was political scandals like 'Bridgegate' under Gov. Chris Christie or the near financial insolvency of Atlantic City due to sharp decline in revenues, New Jersey has had its fair share of financial and political turmoil in recent years.

The newly elected Democratic 56th Governor of New Jersey, Phil Murphy, has had a long career with Goldman Sachs before bringing himself into government and eventually running for governor. During his campaign, Mr. Murphy had made some great promises to the citizens of New Jersey to fix the balance sheet and take the financial strain off with newly revived revenues by introducing new income tax measures for the wealthiest. Retrospectively, under the previous administration of Chris Christie, the state faced over ten credit downgrades, and pension costs have been at higher than normal levels. It is projected that in the next five years the state's pension liabilities will almost double.

In this article, we will take a closer look at the state of New Jersey's financial picture and whether Phil Murphy's guidance and policies will help create a brighter financial outlook for the state.

Continue reading.

by Jayden Sangha

Mar 15, 2018

municipalbonds.com

Commentary: How Pension Costs Clobbered One Small California City.

When Santa Cruz, a picturesque and funky coastal city, first started to feel the pinch of rising retirement costs for city workers, it took several steps to limit the fiscal pain.

As recommended by the League of Cities and other authorities, Santa Cruz issued a bond to pay down its rising pension liabilities, set aside funds to cover increasing demands from the California Public Employees Retirement System (CalPERS), shifted some employees into lower-benefit pension plans and made sure that its workers paid significant portions of pension costs.

Nevertheless, the impact on the small city's budget continued to grow, leading City Manager Martin Bernal to tell the city council in his 2016 budget message that "our biggest challenge is the skyrocketing increases in health and retirement costs. These costs have gone from 28 percent of general fund salary in 2004 to 43 percent of salary in 2015, to an anticipated 58 percent of salary in 2020."

With operating costs, particularly for pensions, continuing to outpace revenues, even during a generally upbeat economy, city officials projected budget deficits growing to more than $20 million a year by 2021.

Santa Cruz is not alone. Throughout California, city governments are facing budget shortfalls as CalPERS cranks up mandatory contributions in a somewhat desperate effort to make the gigantic trust fund healthy enough to cover pension promises to millions of state and local government workers.

It has only about 70 percent of the money it says is needed to cover pension obligations – and that assumes that its investments will return profits that many experts believe are unrealistic. CalPERS lost about $100 billion during the Great Recession a decade ago and has not fully recovered, while payouts to retirees grow due to demographic factors.

City officials have repeatedly appeared before the CalPERS board to seek relief, contending that some cities will be driven to insolvency. But for the most part, CalPERS officials have taken the attitude that making the fund actuarially healthy is their highest priority.

In February, the Santa Cruz City Council unanimously declared a fiscal emergency, preparatory to placing a quarter-cent sales tax increase on the June ballot.

Santa Cruz isn't alone on that approach either. Throughout California, cities have taken, or are planning, sales tax increases.

However, cities rarely cite pension costs as the specific reason for the tax increases, because doing so might generate more opposition. Typically, they just say the money is needed for "police and fire services," which is a half-truth since police and fire pensions are the biggest drivers of rising retirement costs.

Also, a general sales tax increase ballot measure requires only a simple majority vote, while one dedicated to a specific purpose, such as pension costs, would require a two-thirds vote.

"We're in a brave new world of public finance and our community values its municipal services and we do want to be able to fulfill those expectations," Santa Cruz Councilwoman Cynthia Mathews said as the state of fiscal emergency was declared.

Whether those expectations can, in fact, be fulfilled is questionable even if Santa Cruz's voters endorse the sales tax hike.

The $3 million a year it would generate is just a fraction of the extra $9-11 million that the city calculates it's paying to cover CalPERS shortfalls and even a smaller slice of the $20 million annual deficit city officials are projecting.

California's municipal finance crisis is likely to get worse before it gets better – if it ever does.

calmatters.org

By Dan Walters | March 18, 2018

TAX - NEVADA

Pawlik v. Shyang-Fenn Deng

Supreme Court of Nevada - March 1, 2018 - P.3d - 2018 WL 1121396

Certificate of sale holder brought quiet title action and petition for writ of mandamus. The Eighth Judicial District Court dismissed certificate of sale holder's actions, and he appealed.

The Supreme Court of Nevada held that:

- The 60-day notice and redemption period outlined in statute governing redemption of property sold for default on city tax assessments, under which certificate of sale holder was required to provide notice of intent to demand a deed for the property, ran concurrent to the end of the initial 24 month redemption period, and
- Statute contained mandatory provisions that required strict compliance.

How Santa Cruz is Going Under, Like Many California Cities.

In February, the Santa Cruz City Council unanimously declared a fiscal emergency, preparatory to placing a quarter-cent sales tax increase on the June ballot.

When Santa Cruz, a picturesque and funky coastal city, first started to feel the pinch of rising retirement costs for city workers, it took several steps to limit the fiscal pain.

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Continue reading.

Solicitor General Asserts that States Can Require Online Vendors to Collect and Remit Sales/Use Tax on Online Retail Sales.

In January, the Supreme Court granted a writ of certiorari in the case of *South Dakota v. Wayfair* (discussed here). *Wayfair*, which will be argued before the Court on April 17, is a direct challenge to *Quill Corp. v. North Dakota*, in which the Supreme Court held that a vendor does not have to collect and remit the sales/use tax owed on sales made to customers who reside in a given state unless the vendor has a physical presence in that state (we have discussed this issue here and here).

Continue Reading

By Joel Swearingen on March 19, 2018

Squire Patton Boggs

Compliance Workshop on MSRB Rule G-17: Making Disclosures to Issuers.

June 22, 2018
12:30 PM – 1:30 PM ET

As the third of a series of free virtual compliance workshops, MSRB staff will conduct an in-depth discussion about key provisions of MSRB Rule G-17 on Conduct of Municipal Securities and Municipal Advisory Activities related to making disclosures to issuers. This workshop will follow a question-and-answer format based on questions and suggestions from regulated entities and other stakeholders.

Register

MSRB Chicago Town Hall.

May 17, 2018
4:00 PM – 6:00 PM CT

Join the MSRB, in coordination with Municipal Bond Club of Chicago, for a Town Hall meeting in Chicago, IL. The Town Hall meeting will provide municipal market stakeholders the opportunity to discuss municipal market self-regulation, the MSRB's compliance support initiative and the future of the MSRB. The Town Hall meeting is intended to support the municipal market community by creating a forum to communicate regulatory concerns and capture ideas to inform the MSRB's future activity. The event will be exclusively in-person.

View the agenda.

Register

Compliance Workshop on MSRB Rule G-44: Small Firm Municipal Advisor Supervision.

May 24, 2018
3:00 PM – 4:00 PM ET

During this free webinar, staff from the MSRB and the Securities and Exchange Commission (SEC) will discuss considerations for small municipal advisors in tailoring supervisory procedures based on the nature and scope of the firm's municipal advisory activities, and methods of documenting that supervisory controls were implemented and enforced consistent with the regulatory obligations under MSRB Rule G-44. SEC staff will highlight some of their observations from municipal advisor examinations.

Register.

Blockchain Basics for Government Finance and Audit Professionals: Webinar

Start Date: 4/12/2018 2:00 PM EST
End Date: 4/12/2018 3:50 PM EST

Organization Name: NASACT

Contact:
Pat Hackney
Email: phackney@nasact.org
Phone: (859) 276-1147

OVERVIEW

While many government leaders are actively involved with blockchain prototypes, live pilots, and active use case development, there is still is a limited view of what it comprises and how it will impact state organizations. Blockchain's influence in the public sector will evolve over the next several years, but the technology has the potential to bring efficiency and speed to a wide range of services and processes.

By joining this webinar, government finance and audit professionals can gain insights into blockchain dynamics, hear examples of how organizations are using the technology, and understand the potential for ROI around new revenue streams and cost savings.

By reducing dependence on existing intermediary institutions and their accompanying layers and costs, blockchain can potentially eliminate significant resource burdens. And by accelerating transactions and simultaneously lowering their costs, blockchain can help to eliminate layers of redundancy, ease regulatory compliance burdens, introduce recordkeeping efficiency, and generally smooth government operations across a number of areas.

Join us to learn blockchain fundamentals and how this technology may impact your role and organization.

Click HERE for full webinar details.

REGISTER

Murphy's Promises Meet Budget Reality as New Jersey Pension Hole Looms.

- **Democratic lawmakers who would be allies stick to own script**
- **Eagerness to undo Christie agenda, and little money to do so**

Governor Phil Murphy's campaign pledges are about to collide with New Jersey politics, Wall Street skeptics and a massive budget deficit.

Since his term started in January, Murphy has pleased his progressive base with moves on women's wages, health care, climate change, immigration and offshore drilling. On tough fiscal matters, though, he and fellow Democrats who control the legislature — all eager to undo Republican Chris Christie's policies — are following their own agendas.

Murphy's first state spending plan, which he'll introduce Tuesday, will include a millionaire's tax to help generate $1.3 billion for New Jersey's underfunded schools, transportation and pension systems. That initiative lacks support from Senate President Stephen Sweeney, who says residents are being penalized enough by President Donald Trump's U.S. tax changes, which limit deductions for individuals' state and local taxes.

Continue reading.

by Elise Young and Michelle Kaske

March 12, 2018

Bloomberg Politics

[S&P: Pension Assumption Delay Makes Near-Term New Jersey Budgets More Manageable, But Doesn't Address Long-Term Pension Issue.]

NEW YORK (S&P Global Ratings) March 5, 2018–S&P Global Ratings today said that it believes a delay in implementing changes to pension return assumptions, recently announced by New Jersey's acting treasurer, should allow the state more near-term budget flexibility, but does not address the state's long-term pension problems.

Continue Reading

CIB – Market Risk Coverage – Public Finance – Assoc – NY Job In New York

JPMorgan Chase & Co. (NYSE: JPM) is a leading global financial services firm with assets of $2.4 trillion and operations worldwide. The Firm is a leader in investment banking, financial services for consumers and small businesses, commercial banking, financial transaction processing, asset management and private equity. A component of the Dow Jones Industrial Average, JPMorgan Chase & Co. serves millions of consumers in the United States and many of the world's most prominent corporate, institutional and government clients under its J.P. Morgan and Chase brands. www.jpmorganchase.com .

Group Description

CIB Market Risk Management is an independent risk group, reporting to the firm's Chief Risk Officer (CRO), which identifies, measures, monitors and controls market risk. The group forms the key interface for discussing risk issues with the trading desks but retains independent reporting lines through the Risk management chain.

CIB Market Risk performs the following primary functions:

- Independent ongoing identification, monitoring and control of business unit market risk
- Performance of stress testing and qualitative risk assessments
- Analysis of aggregated risks and tail risk exposure
- Facilitation of efficient risk-return decisions
- Regular dialogue with the trading businesses with respect to risk appetite, risk limits and individual large and complex transactions.

Job Description

CIB Risk is seeking a Senior Associate level professional for the CIB Market Risk Public Finance Coverage team, based in New York. The role will be a part of a trading floor based team covering the Public Finance Municipal business which includes Syndicate, Long Term and Short Term Trading desks.

Responsibilities include:

- Act as a key point person for the analysis and integrity of the risk sensitivities that measure the risks taken by the trading desks.
- Liaise with the groups that produce the sensitivities including Risk Reporting, Product Control, and Operations, as necessary.
- Attend meetings with other groups involved with markets to include Research, Finance, and the

Trading Desk heads

- Communicate effectively with Senior Management regarding the risk appetite of the Trading Desk Heads
- Escalate concerns when deemed necessary based on independent judgment and/or market scenarios
- Assess the appropriateness of business risk and reward profiles and working with the desk on new large or complex transactions
- Provide in depth analyses for trade approvals, deep dives, and objective assessment on risk appetite
- Understand and lead improvements in VAR and Stress Testing methodologies on the positions taken by the Municipal Trading desks
- Assist in the development of new tools or projects to enhance our risk management capabilities
- Coordinate and prioritize deliverables relating to VaR & Stress enhancements with colleagues in VaR methodology, quantitative research, model review, Risk and technology
  Work with technologists in the business and Risk around strategic and tactical initiatives

A successful candidate will combine strong project management and excellent communication skills, with an understanding of the Municipal markets, risks and technology infrastructure to improve controls, efficiency and consistency across the business.

Qualifications:
Skills/Qualifications

- Market Risk or other risk management experience preferred.
- Knowledge of Municipal products and interest rate markets required. Experience with Credit products a plus.
- Understand Public Finance related headlines and regulatory rules as they are released and ability to synthesize key takeaways for Market Risk.
- Strong project management skills, ability to gain consensus among staff and drive initiatives to completion effectively absolutely critical.
- Ability to multi-task, work well under pressure with commitment to deliver under tight deadlines.
- Ability to work independently, as well as coordinate across a global team.
- Strong analytical & quantitative skills are required.
- Clear oral and written communication in English is required.
- Proficiency in Excel is required. Knowledge of VBA is preferred.
- Experience working with MaRRS, WOPR, Kapital and/or Athena a plus.
- Bachelor’s degree required. Advanced degree a plus.

Apply.

Berkeley To Use Blockchain For Tokenized Bonds.

The City of Berkeley, California will be the first U.S. city to explore blockchain-based financing to tackle social issues such as affordable housing. Mayor Jesse Arreguin and Councilmember Ben Bartlett are collaborating with the UC Berkeley Blockchain Lab and San Francisco-based financial startup Neighborly for the Berkeley Blockchain Initiative (“BBI”) to develop a tokenized municipal bond. According to Forbes, Berkeley had a similar idea twenty years ago with a local currency called “Berkeley Bucks.” This time, Neighborly explains, “[t]he initiative will explore how to harness the power of blockchain and cryptocurrencies to democratize access to public finance and improve social outcomes."[1]

Termed an "initial community offering" rather than an initial coin offering ("ICO"), municipal bonds will be divided into micro-bonds and sold as a token as a new source of capital that will enable more Berkeley residents to invest directly in their community through various projects at low denominations. According to Coindesk, Councilmember Bartlett claims the offering will be less risky than an ICO because the tokens will be backed by an underlying bond. Residents will be able to choose specific social impact projects of interest compared to the traditional nature of a single bond that may be raising funds for multiple municipal projects. Councilmember Bartlett believes "[b]lockchain's benefits, such as security, efficiency, transparency and speed, are not only applicable, but much needed at the government level to deliver better and more streamlined services to the people who need it most."

Details on what this new token will be named and whether it will be issued on a private or public blockchain are up in the air, but the plan is to keep the initiative local to Berkeley. Issuing tokenized micro-bonds through blockchain will fund smaller ventures like purchasing an ambulance at first, but the City of Berkeley envisions the model will eventually fund affordable housing projects and could potentially give the homeless population access to other goods and services in the future.

This project may be a signal that tokenized public finance models could become mainstream in the near future. Local investors may like the flexibility that these municipal tokens allow in investing in smaller investments in specific projects the investors support. Bonds issued by states, cities, and municipalities are exempt from the registration requirements and certain of the reporting requirements under the federal securities laws. Nevertheless, these products are subject to the Securities and Exchange Commission's ("SEC") antifraud rules and therefore it is important that issuers make appropriate risk disclosures with respect to the crypto market and nature of the tokens to investors.

Issuers also should carefully weigh the risk of special treatment by the SEC. The agency may more carefully scrutinize bonds issued as crypto tokens out of concern that the issuer chose to issue crypto token bonds rather than traditional bonds to garner attention or to capitalize on the euphoria associated with crypto investments. This offering will test the waters for new security token issuances amid an environment where the SEC is scrutinizing a broad swath of so-called "utility" tokens for being unregistered securities.

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[1] The statement can be found at neighborly.com/.

Last Updated: March 15 2018

Article by Herbert F. Kozlov, Kari S. Larsen, Michael Selig and Kelley Chittenden

Reed Smith

Berkeley Is Turning to the Blockchain for City Funding.

In an effort to reduce their reliance on federal and state funding, the City of Berkeley is turning to a surprising source: cryptocurrency. The idea is to leverage the blockchain — the technology that makes bitcoin and other cryptocurrencies possible — to spur private, crowdfunded investment in affordable housing and other local projects.

Led by Berkeley Mayor Jesse Arreguín and City Councilmember Ben Bartlett, the city is partnering with University of California Berkeley's Blockchain Lab and finance technology company Neighborly to create an initial coin offering. The offering will allow individuals to buy Berkeley's cryptocurrency to fund city-issued municipal bonds. The money raised will pay for things such as affordable housing, homeless shelters, ambulances, street trees, even a community theater. Coin owners will potentially be able to spend the cryptocurrency at some Berkeley businesses. As with any municipal bond, investors who get in on the offering will earn a small return on their investment over time as the city pays them back with interest.

The idea grew out of concern over the impact corporate tax cuts (not to mention threats to cut funding to sanctuary cities) would have on their ability to address their affordable housing and homelessness crises. With lower corporate tax rates, corporations have less incentive to buy low income housing tax credits, a key source of affordable housing funding. In addition, big banks raised interest rates on loans to local governments in the wake of the tax cuts.

"We have over a thousand homeless people in Berkeley and expect that to grow by a factor of five," says Bartlett. "We knew we needed to find a way to fund these things. This need is going to grow and it's already a disaster that's affecting our moral and physical integrity as a city."

Beyond that, Bartlett says conventional municipal bonds are expensive, slow and have lots of red tape for investors, making it hard for individuals to invest in them at all, let alone in the small denominations most people might have to invest. With their idea, bonds could be smaller and be issued more quickly.

Neighborly was launched to do just that — to allow individuals to crowdfund municipal bonds. Austin issued a bond on the platform to pay for historic preservation. Cambridge, Mass., used it to fund schools and utility infrastructure.

Berkeley's idea operates on a similar principle, but will use the blockchain technology to improve security and transparency, factors they hope will help spur investment (and provides a bit of flashy tech-factor that Bay Area residents might find appealing).

"You conceive of an idea, get the costs ready, push it out to the community, they can buy it right away," Bartlett explains. "It's more flexible. It doesn't have to be a $100 million bond for a sewer. It could be smaller projects and with the lower denomination ability…It's projected to be 50 percent less expensive to the issuer [than conventional municipal bonds]."

In simplified terms, a blockchain is a database stored concurrently on a peer-to-peer network of computers, making it less vulnerable than storing everything on a central server. Each copy of the database serves as a permanently available public record of every transaction on the blockchain. The technology keeps every copy of the database updated as people buy and exchange each "coin."

"It's immutable. It's transparent. There might be fewer concerns about misappropriation of funds," explains Stacie Olivares-Castain, who recently became state of California's first ever senior advisor for impact investments and blockchain.

Olivares-Castain says she is encouraged by Berkeley's experiment. "It's very, very early, but what we're starting to see is the blockchain can be used to improve a sense of individual agency and create more opportunity. The Neighborly model is a very interesting partnership. I think it could be used by other communities, too…Through the blockchain, there's more democratization of access to capital."

There are plenty of criticisms of cryptocurrency — coin wallets getting hacked, the wild fluctuation of currency value, the absurd amount of energy bitcoin "miners" consume to run their computers as they continually search for new bitcoin tokens produced somewhat randomly by digital algorithm. Bartlett says none of those issues apply to Berkeley's project. There will be no coin "mining" for Berkeley's coins, so the city's coins "won't be a tool for speculation. It has a set rate of return at darn near public rates," he explains.

There are still plenty of details to work out in the plan, but the city is aiming to launch its initial coin offering in May. Bartlett says he's already fielding calls about it from cities in the U.S. and abroad and is confident that there's a future for their approach to city funding.

"Digitization, crowdfunding—these are just social impact bonds for the next generation," he says. "For cities to survive this escalating disinvestment in the public trust, we're going to have to start thinking outside the box and creating our own resources."

NEXT CITY

BY JOSH COHEN | MARCH 15, 2018

Citi Analyst / Associate - Public Finance

New York | Full Time
Reference: 18015658

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- Assist in the execution of transactions.
- Present documentation and pricing to investors and rating agencies
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- Excellent oral and written communication skills
- Success working on a team

Depending on relevant experience, we will consider the appropriate title to offer qualified candidates (either Analyst or Associate)

APPLY

Investing in Water Infrastructure and Workers: Examining the Bay Area's Regional Approach.

Investing in water infrastructure represents a major challenge and opportunity across the United States. As pipes, plants, and other facilities reach a breaking point, utilities and local leaders must plan and pay for increasingly costly repairs. However, many places have responded with innovative approaches, using new management techniques and modern technologies to deliver water infrastructure that is more cost-efficient, durable, and resilient.

Crucially, these challenges and opportunities do not simply end with the infrastructure itself.

The country's water workforce is also undergoing change. Similar to millions of other workers involved in infrastructure nationwide, the water workforce is aging, experiencing rapid turnover, and facing a huge gap to fill in terms of hiring, training, and retention—from operators and engineers to accountants and office clerks. At the same time, these jobs offer competitive wages, have lower educational barriers to entry, and consequently provide a pathway to greater economic opportunity for all types of workers across all skill levels.

Continue reading

by Joseph Kane
Senior Research Associate and Associate Fellow – Metropolitan Policy Program

March 7, 2018

The Brookings Institute

Infrastructure Series: Paying for and Permitting Water Infrastructure.

This is the fourth issue of WilmerHale's 10-in-10 Infrastructure Series. In this series, our attorneys share insights on current and emerging issues affecting infrastructure project developers in the United States. Attorneys from various practice groups at the firm offer their take on issues ranging from permitting reform to financing to litigation, and share their insights from working with clients in a variety of infrastructure sectors, from water infrastructure to energy development to infrastructure development on tribal lands. Read all issues in this series and our other recent publications.

President Trump's February 12, 2018, Infrastructure Plan highlighted the need for investment in the nation's water infrastructure. The Plan included general provisions that could support water infrastructure, and specific provisions intended to increase federal, state, local and private resources for water infrastructure. Implementation of the Plan will depend on whether Congress acts on proposed legislative reforms, which will be challenging in an election year. Nevertheless, there are opportunities and resources available now to assist in developing water infrastructure projects, including streamlined permitting under Title 41 of the Fixing America's Surface Transportation Act (FAST-41), expanded credit assistance programs and state programs.

Continue reading.

by H. David Gold and Andrew L. Spielman

USA March 15 2018

Wilmer Cutler Pickering Hale and Dorr LLP

Puerto Rico Could Cut Spending to the Bone - and Still Never Recover.

- **Federal oversight board to consider governor's ideas March 30**
- **A hurricane, a recession and then a regimen of deep cuts**

Puerto Rico's hard times are about to get harder.

Almost six months after Hurricane Maria, Governor Ricardo Rossello is proposing what, for many, might seem unthinkable after a decade of recession: austerity.

His plan to consolidate government departments and reduce municipal and university aid underscores just how bad things have gotten since the September storm. The sober reality: The government was kept afloat by borrowed money for years, and now the spigot is shut off. The U.S. territory is bankrupt, running a deficit and creditors are fighting in bankruptcy court for the $74 billion they're owed.

If the federal panel that oversees Puerto Rico's finances approves the governor's plan by March 30, self-imposed discipline is bound to increase the pain, much as it did in Greece. For bondholders and the 3.3 million residents, the question is whether the move will do more harm than good, or help Puerto Rico overhaul its economic engine and repay more of its debt.

"It's not like things will magically get better," said Jason Bram, a New York Fed research economist. "Hard decisions are made. People are upset."

Enfeebled Island

Investors, bond-insurance companies, the oversight board and island officials have been discussing how to write down the burden through mediation that's part of the island's bankruptcy. Rossello's fiscal plan estimates the central government may be able to repay almost half the $41 billion of principal it owes, an amount that has left creditors unsatisfied.

But Puerto Rico's economy has been feeble for years despite the rich diet of debt that, absent vigorous private investment, maintained the island in a recessionary torpor. The bankruptcy and storm brought it to a crisis, but Rossello's cure is no sure thing.

Greece's economy shrank by a quarter after the government slashed spending in 2010, reformed pensions and hiked taxes after the financial crisis. That wasn't enough to prevent the biggest sovereign debt restructuring in history in 2012 — as well as two further bailouts. The last came after Prime Minister Alexis Tsipras swept to power on an anti-austerity wave in 2015, only to agree to more cuts.

Civic Unrest

There were protests and riots as unemployment rose as high as 27 percent in 2013, and more than one in five workers remain jobless. In Puerto Rico, unemployment in January was 10.9 percent, but about a quarter of the commonwealth's workers are employed by governments and agencies that stand to be slashed.

Rossello believes his plan will inspire businesses to invest. It aims to cut and simplify tax rates and structure, and speed sluggish permitting and registration. The governor also wants to lower electricity costs and build a more reliable power grid through private investment.

“It’s transformational, based on structural reforms that we’re proposing,” Rossello said in an interview.

Unspeakable Word

Rossello may not like to call it austerity — “Austerity will never get us out of this situation,” he said — but his plan also imposes deep spending cuts.

The goal is to whittle 118 executive-branch departments to 35 and 35 school districts to seven. The central government plans to reduce allocations to municipalities and the University of Puerto Rico by $1.4 billion through 2023. In all, there would be $3.4 billion of savings by fiscal 2023, according to the plan.

“It would make sense if they could get back on their feet in the wake of the hurricane and then engage in the necessary steps to address their fiscal problems,” said Mark Zandi, chief economist at Moody’s Analytics Inc.

Rossello’s proposed savings are more than 3 percent of the projected gross national product, which could create an economic drag of more than 4 percent, according to Brad Setser, a former Treasury Department official who worked on a Puerto Rico rescue law enacted in 2016.

“The fiscal plan doesn’t just assume a near-term rebound, it assumes a sort of almost permanent change in Puerto Rico’s growth trajectory, which seems overly optimistic,” said Setser, a senior fellow at the Council on Foreign Relations.

Driven Away

Puerto Rico stopped repaying bondholders in 2016 to free cash for other operating expenses. Rossello’s plan doesn’t include principal and interest payments until 2020. In the past few years, the commonwealth has consolidated schools, boosted the retirement age, increased workers’ pension contributions and raised taxes.

“There have been cuts in health care and education, in all kinds of social services,” said Mark Weisbrot, co-director of the liberal Center for Economic and Policy Research in Washington, and an austerity opponent. “They lost a lot, and that’s why so many people have left the island as well.”

“The recession and the hurricane together have destroyed a great deal of the economy’s productive capacity, so the priority has to be actually returning to growth first,” Weisbrot said.

The commonwealth’s economy has been a shambles for years. It fell into recession in 2007 after federal tax breaks for pharmaceutical and other manufacturers ended, prompting companies to leave or reduce operations. It’s posted only one year of growth since. More than 400,000 residents left even before Hurricane Maria struck on Sept. 20, and the exodus has only grown.

While Puerto Rico needs to stop spending money it doesn’t have, reducing that sharply now will hurt, Zandi said. “It will be a negative for the economy, at least when the cuts are taking effect,” he said.

Half Measure

But Rossello’s plans may not go far enough, said Natalie Jaresko, executive director of the federal oversight board. The board will seek a 10 percent cut in pension costs by reducing payments in the face of a $49 billion unfunded liability, she said. The panel also wants Puerto Rico to transfer teachers and judicial workers into a 401(k)-like retirement plan.

The system, she said, must be “affordable, but predictable and transparent.” It also could mean less support for the economy at large.

Puerto Rico has requested $94.4 billion of federal assistance that would restore homes, rebuild infrastructure, provide services — and help offset Rossello’s cuts. Washington has approved about $50 billion, although Congress doles out the relief in portions and the U.S. Treasury has yet to extend disaster loans.

“Without help, it’s hard to see Puerto Rico finding a bottom at least anytime soon without just tremendous pain and without the island’s population being hollowed out,” Zandi said.

Jaresko said pain strengthens. With the right plan, the commonwealth will emerge “with a different ground for businesses to operate in, with a different set of conditions. If we do not do the structure reforms, you can’t come out of this.”

Bloomberg

By Michelle Kaske

March 15, 2018, 5:00 AM PDT

— With assistance by Marcus Bensasson, and Yalixa Rivera

Why Puerto Rico Is Proving to Be 2018’s Top Bond Investment.

Rally prompted by data showing earlier estimates of hurricane’s financial impact were too pessimistic

Debt from Puerto Rico is the top-performing bond investment of 2018, reflecting an unexpected improvement in the island’s economy and budding hopes for a settlement with creditors to resolve its continuing bankruptcy.

Most U.S. bonds have lost value this year because of rising interest rates, but an index of Puerto Rico municipal bonds has returned 14% year to date, the top performer out of 323 bond indexes maintained by S&P Dow Jones Indices. Prices of certain Puerto Rico bonds have more than doubled since the end of December.

The rally began in January, when Puerto Rico’s government revealed economic data showing previous estimates of the financial impact of Hurricane Maria were overly pessimistic. More recently, investors have been buying bonds in anticipation of substantive talks with bondholders to reach a consensual restructuring, bondholders and people involved in the negotiations said.

Despite signs of progress, living conditions remain difficult in Puerto Rico. The U.S. territory was contending with economic decay, government mismanagement and excessive debt even before two hurricanes struck the island last year. About 60% of children on the island lived below the poverty line in 2015, according to data from the Pew Research Center.

The bond rebound this year rewards fund managers who stuck with Puerto Rico even when prices fell as much as 60% after the September storms damaged much of the island’s infrastructure and real estate.

With roughly $70 billion of debt outstanding, Puerto Rico is one of only a few large trades available to hedge funds seeking investments that don't move in lockstep with the broader markets.

GoldenTree Asset Management owns nearly $600 million in face amount of Puerto Rico's subordinated bonds backed by sales-tax receipts, some of which jumped about 133% in value this year, according to data from the Municipal Securities Rulemaking Board.

That windfall comes as Treasury bonds have lost 1.8% since Jan. 1 and the below-investment-grade loans GoldenTree specializes in have returned about 1.3%, according to S&P Dow Jones Indices.

Not all Puerto Rico bondholders benefited equally from the reversal. Some bond prices rose more than others as traders bet that the island's various debt categories would recover different amounts in the restructuring. Senior bonds backed by Puerto Rico's sales-tax collections rose by about 63% this year to 57 cents on the dollar, while bonds issued through the commonwealth's general account climbed about 40% to around 31 cents on the dollar.

Hedge funds Baupost Group LLC, GoldenTree and Tilden Park Capital Management LP own about $3 billion in face value of the sales-tax bonds and are arguing in bankruptcy court that their bond documents give them repayment priority in the restructuring. Hedge funds Autonomy Capital, Aurelius Capital Management LP and Fundamental Advisors own about $2 billion of the general obligation debt combined and are suing to establish their own primacy. A crucial hearing in these factions' legal battle is scheduled for April 10.

The recovery in Puerto Rico bonds contrasts with an even sharper decline last fall, when Hurricane Maria struck and President Donald Trump suggested the island's debts should be wiped out to help it rebuild. Baupost's owner, Seth Klarman, publicly opposed Mr. Trump's idea, drawing criticism from nonprofit groups that support debt forgiveness for Puerto Rico and have pushed Baupost clients to divest from the firm.

Investor sentiment started to improve in late December, when Puerto Rico announced $6.8 billion in previously undisclosed government bank accounts. Sentiment strengthened further as economic activity recovered more quickly than expected and Congress in February approved $12.8 billion in federal rescue funds. In February, the island's government revised its maximum debt capacity forecast to $27 billion from about $14.5 billion.

"The construction boom after the hurricane is fueling an increase in bond prices, but that's going to be short lived," said Eric LeCompte, executive director of Jubilee USA Network, one of the activist groups seeking debt forgiveness for Puerto Rico. "We should be focused on long-term economic growth for Puerto Rico and that includes debt relief."

Bondholders say Puerto Rico is still being too conservative in its economic forecasts in order to maximize debt forgiveness in upcoming restructuring talks.

"The reality diverged greatly from the cataclysmic economic contraction that was being projected by the commonwealth," said Hector Negroni, co-founder of Fundamental Advisors.

A spokesperson for the Puerto Rico Fiscal Agency and Financial Advisory Authority didn't immediately return a call seeking comment.

Puerto Rico and the federal oversight board supervising it held mediation talks with creditors in New York this month, people involved in the process said. Formal restructuring negotiations are expected to start in April after the board certifies the Commonwealth's long-awaited fiscal plan for the next five years, the people said. A crucial hearing is also scheduled to start April 10 in the lawsuit between general obligation bondholders and sales-tax bondholders, possibly spurring the parties toward settlement. The oversight board hopes to reach a restructuring plan in less than a year, one of the people said.

Some remain pessimistic about the likelihood of a rapidly negotiated resolution, in part because of the many different types of bonds Puerto Rico must reach deals on, ranging from highway and electric utility-related debt to the sales-tax and general obligation bonds.

"We think the litigation will go on and on," says Joe Rosenblum, head of municipal bond research at AllianceBernstein Holding LP.

The Wall Street Journal

By Matt Wirz

March 15, 2018 8:00 a.m. ET

Write to Matt Wirz at matthieu.wirz@wsj.com

- Fitch to Include Disclosure on PR Special Rev Ruling in Related Issuer Research.
- GASB Invitation to Comment on Revenue and Expense Recognition.
- California Shows Bond Buyers Willing to Jettison Industry Staple.
- S&P Global Trade At A Crossroads: U.S. States And Localities May Take Another Look At Budget Forecasts.
- First Municipal Bond ICO Is in the Works.
- Combining Tax-Exempt Bonds with Public-Private Partnerships under Current Law: Squire Patton Boggs
- And finally, Dare to Dream is brought to us this week by *Cormier v. City of Lynn*, in which the Supreme Judicial Court of Massachusetts held that the injuries to a student who had been pushed down a flight of stairs were the result of the "failure of school district and its employees to act, rather than from an affirmative act." The affirmative act of pushing an elementary school student down the stairs? We're gonna go out on the proverbial limb here and suggest that that just ain't cool. Yet what teacher hasn't at some point fantasized…. Might make one hell of a fundraiser, no? Kinda like that carnival dunk tank thing. But with more paralysis.

IMMUNITY - ALABAMA

Ex parte City of Muscle Shoals

Supreme Court of Alabama - February 23, 2018 - So.3d - 2018 WL 1025039

Worker for contractor brought action against city, alleging city was negligent in failing to safeguard worker from defective grate in park, and asserting a claim for workers' compensation.

City filed a motion for summary judgment. The Circuit Court granted the motion with regard to the workers' compensation claim, but denied the motion with respect to the negligence claim. City filed a petition for writ of mandamus.

The Supreme Court of Alabama held that:

- City was entitled to challenge trial court's ruling by petitioning for a writ of mandamus, and
- City was entitled to municipal immunity.

City was entitled to challenge trial court's denial of its motion for summary judgment in negligence action by petitioning for a writ of mandamus, as city had asserted it was entitled to municipal immunity.

City was entitled to municipal immunity in negligence action brought by contractor's worker for injuries he suffered after falling through broken drain grate in park, even if city had a duty to keep the park in a safe condition for invitees; worker did not present substantial evidence of neglect, carelessness, or unskillfulness by city personnel, and there was no evidence that city had any notice that the grate was, in fact, defective.

EMINENT DOMAIN - CALIFORNIA

Weiss v. People ex rel. Department of Transportation

Court of Appeal, Fourth District, Division 3, California - March 1, 2018 - Cal.Rptr.3d - 2018 WL 1100944

Property owners brought inverse condemnation and nuisance action against Department of Transportation and county transportation authority, alleging that a freeway sound wall built directly across the freeway from their homes increased noise and dust, interfered with enjoyment of homes, and diminished property values.

The Superior Court granted defendants' motions to dismiss. Property owners appealed.

The Court of Appeal held that procedure for pretrial resolution of issues affecting the determination of compensation in eminent domain cases does not apply to inverse condemnation actions.

Statutory procedure for pretrial resolution of issues affecting the determination of compensation in eminent domain cases does not allow a trial court to adjudicate any companion causes of action in an inverse condemnation complaint.

IMMUNITY - CALIFORNIA

Area 51 Productions, Inc. v. City of Alameda

Court of Appeal, First District, Division 4, California - February 20, 2018 - 2018 WL 948499 - 18 Cal. Daily Op. Serv. 1641 - 2018 Daily Journal D.A.R. 1612

Licensee of event space on city property brought action against city, city officials, and employees of city's licensing manager arising out of city's decision to cease doing business with licensee.

Defendants filed general demurrer and moved to dismiss under law prohibiting strategic lawsuits against public participation (anti-SLAPP law). The Superior Court granted demurrer but denied motion under anti-SLAPP law. Defendants appealed.

The Court of Appeal held that:

- Licensee’s claims against city for breach of contract, interference with contracts and economic relations, and unfair competition did not arise from protected activity and thus were not subject to dismissal under anti-SLAPP law;
- Licensee’s claims against city officials and the employees of licensing manager arose from protected activity; and
- Licensee failed to show probability of prevailing on those claims.

Claims by licensee of city property event space against city, alleging breach of contract, interference with contracts and economic relations, and unfair competition based on city’s termination of licensing arrangement, did not arise from protected activity and thus were not subject to dismissal under law prohibiting strategic lawsuits against public participation (anti-SLAPP law); claims arose from alleged act of reneging on a commitment to license certain property, and communication conveying refusal to license was merely incidental to asserted claims.

Claims by licensee of city property event space against city officials and employees of license manager, alleging breach of contract, interference with contracts and economic relations, and unfair competition based on termination of licensing arrangement between licensee and city, arose from statements made in connection with an issue under consideration or review by a legislative, executive, or judicial body, or any other official proceeding authorized by law, as could support dismissal under law prohibiting strategic lawsuits against public participation (anti-SLAPP law), where licensee did not allege that defendants were themselves contracting parties to the license, and conduct providing sole basis for alleged liability was expressive in nature, including e-mail statements announcing end of licensee’s contract with city.

Claim by licensee of city property event space against city officials and employees of license manager, alleging negligent misrepresentation based on termination of licensing arrangement between licensee and city, arose from statements made in connection with an issue under consideration or review by a legislative, executive, or judicial body, or any other official proceeding authorized by law, as could support dismissal under law prohibiting strategic lawsuits against public participation (anti-SLAPP law), where claim was based on e-mail statements by defendants as to whether or not confirmed event reservations for licensed property would be honored.

Licensee of city event space property failed to show probability of prevailing on its claims against city officials and employees of license manager, alleging breach of contract, interference with contracts and economic relations, and unfair competition based on termination of licensing arrangement between licensee and city, supporting dismissal of claims under law prohibiting strategic lawsuits against public participation (anti-SLAPP law); defendants were not parties to contract between city and licensee, there was no basis for an agency theory, defendants all asserted immunity on various grounds, and licensee merely offered conclusory assertion that defendants were not immune.

INVERSE CONDEMNATION - CALIFORNIA

Rio Linda Elverta Community Water District v. United States

United States Court of Federal Claims - January 31, 2018 - Fed.Cl. - 2018 WL 651659

Community water district sued United States, claiming $289,535,380 in damages for alleged inverse condemnation resulting from manufacturing activities on Air Force base that purportedly caused chromium contamination of aquifer from which district supplied public drinking water.

Government moved to dismiss for lack of subject matter jurisdiction.

The Court of Federal Claims held that claim was not ripe for adjudication.

Community water district's inverse condemnation claim seeking $289,535,380 in damages, for expenses incurred in shutting down two wells and installing pollution equipment on other wells to safeguard public drinking water from chromium contamination of aquifer allegedly caused by manufacturing activities on Air Force base, did not present case or controversy, and thus, claim was not ripe for adjudication, since state regulations limiting amount of chromium contamination in district's water source were not currently in effect and would only become effective, if at all, two years later, so any possibility that district's water source could be damaged in future was speculative, and district's expenses were voluntarily incurred.

EMINENT DOMAIN - MAINE

Bayberry Cove Children's Land Trust v. Town of Steuben

Supreme Judicial Court of Maine - February 27, 2018 - A.3d - 2018 WL 1056204 - 2018 ME 28

Land trust brought eminent domain action challenging town's taking of road.

The Superior Court entered judgment in town's favor. Trust appealed.

The Supreme Judicial Court held that:

- Taking arose from public exigency, and
- Taking was for public use.

Town's taking of road arose from public exigency in eminent domain action, and thus taking was not result of bad faith or abuse of power, where eminent domain process began in response to legal challenges concerning use and ownership of road, town issued public notice of meeting to address taking, no argument was made that taking exceeded what was necessary to align road's record description with its physical location, and road was suitable for current use as public way.

Town's taking of road was for public use in eminent domain action, although private party stood to benefit from taking, where public had used road for nearly 190 years, and town maintained road during that time.

ZONING & LAND USE - MAINE

Olson v. Town of Yarmouth

Supreme Judicial Court of Maine - February 22, 2018 - A.3d - 2018 WL 10043022018 ME 27

Residents sought review of town planning board's approval of a site-plan application for the installation of wireless-communication equipment on a tower and site owned by town water district. The Superior Court affirmed. Residents appealed.

The Supreme Judicial Court of Maine held that:

- Presumption of unsuitability under town ordinance on wireless-communications towers did not

attach to proposal, and
- Sufficient evidence supported planning board's determination that application met ordinance standards.

Presumption of unsuitability under town ordinance on wireless-communications towers did not attach to proposal to place wireless-communication equipment on tower and site owned by town water district; one purpose of ordinance was to permit the construction of new towers only where all other opportunities had been exhausted, no language in ordinance stated that its provisions applied to co-location applicants, and interpreting the ordinance to have the presumption of unsuitability attach to the proposal would have produced the illogical result of decreasing the number of sites available to co-location applicants and ultimately would have resulted in the construction of more new towers.

Sufficient evidence supported town planning board's determination that application to place wireless-communication equipment on tower and site owned by town water district met ordinance standards, despite argument that applicant did not investigate other technically feasible sites as required by ordinance; although applicant's written submissions to the planning board did not contain information about alternative sites that it had considered, application included detailed information about applicant's site-selection process, and planning board twice asked applicant's representative about alternative sites.

IMMUNITY - MASSACHUSETTS

Cormier v. City of Lynn

Supreme Judicial Court of Massachusetts, Essex - February 27, 2018 - 91 N.E.3d 662

Parents of student who was permanently injured when he was pushed down stairs by another student brought action against school district and district employees.

The Superior Court Department dismissed all claims. Parents appealed. The Appeals Court affirmed. Parents sought further appellate review.

The Supreme Judicial Court of Massachusetts held that injuries to student originated from failure of school district and its employees to act, rather than from affirmative act.

Injuries to student who was pushed down stairs by another student originated from failure of school district and its employees to act, rather than from affirmative act, and thus they were exempt from liability under provision of Tort Claims Act eliminating government liability for a public employer's act or failure to act to prevent harm from the wrongful conduct of a third party unless the condition or situation was originally caused by the public employer; alleged policy of school's staff to have students line up in particular order outside school each morning without guidance or supervision was not an affirmative act that caused injuries.

ATTORNEYS' FEES - MONTANA

Davis v. Jefferson County Election Office

Supreme Court of Montana - February 27, 2018 - P.3d - 2018 WL 1064237 - 2018 MT 32

Mayor and town council members filed application for injunctive relief seeking to prevent recall election.

The District Court granted injunctive and declaratory relief but denied request of mayor and council members for attorney fees and costs. Mayor and council members appealed.

The Supreme Court of Montana held that:

- Award of attorney fees to mayor and council members pursuant to Uniform Declaratory Judgments Act (UDJA) was not warranted;
- County's defense was not frivolous or pursued in bad faith; and
- Award of attorney fees to mayor and council members was not warranted pursuant to statute that permitted award of fees to prevailing party in action for injunction.

Award of attorney fees to mayor and town council members, as prevailing parties, was not warranted pursuant to the Uniform Declaratory Judgments Act (UDJA), in action that sought injunctive and declaratory relief to prevent recall election; mayor and council members could have sought the same relief under the Montana Recall Act and, since the Recall Act did not allow for an award of attorney fees in the case, it would have been inequitable to permit an award under the UDJA.

County's defense was not frivolous or pursued in bad faith, and therefore award of attorney fees to mayor and town council members, as prevailing parties, was not warranted pursuant to statute that allowed recovery of fees in certain circumstances in actions against political subdivisions in action that sought injunctive and declaratory relief to prevent recall election; county official relied on counsel's certification that recall petitions were statutorily sufficient when she permitted their filing.

Award of attorney fees to mayor and town council members, as prevailing parties in action seeking injunctive and declaratory relief against county and resident who filed recall petitions to prevent recall elections, was not warranted pursuant to statute that permitted award of fees to prevailing parties in actions seeking injunctive relief; injunction was never sought or granted against resident who filed recall petitions, rather mayor and council members only sought injunctive relief against county.

PUBLIC UTILITIES - NEBRASKA

Aksamit Resource Management LLC v. Nebraska Public Power District

Supreme Court of Nebraska - February 23, 2018 - N.W.2d - 299 Neb. 114 - 2018 WL 1023653

Public-records requesters, two limited-liability companies (LLCs) that were potential competitors with a public power district, petitioned for a writ of mandamus to compel the district to fulfill their requests for particular records as to the district's costs and revenues.

The District Court dismissed petition. Requesters appealed.

The Supreme Court of Nebraska held that the district was not entitled to withhold the records at issue absent evidence that the information would serve no public purpose.

PUBLIC UTILITIES - NEW YORK

[Connolly v. Long Island Power Authority]

Court of Appeals of New York - February 20, 2018 - N.E.3d - 2018 WL 942321 - 2018 N.Y. Slip Op. 01148

Property owners brought separate actions against public power authority and its operator, seeking to recover damages for negligence arising out of damage to their properties that allegedly occurred as result of negligent preparation for and reaction to a hurricane.

The Supreme Court, Queens County, separately denied defendants' motion to dismiss for failure to state a cause of action. Defendants appealed. The Supreme Court, Appellate Division, affirmed, and certified consolidated appeal to the Court of Appeals.

The Court of Appeals held that owners sufficiently alleged that operator was acting in a proprietary, rather than a governmental capacity, in failing to preemptively de-energize electrical grid.

Allegations in property owners' negligence action against public power authority and its operator, that operator failed to preemptively de-energize or otherwise suspend the provision of electricity before arrival of a hurricane, that operator received repeated warnings that the hurricane would cause a massive surge creating a risk of fire when salt water came into contact with electrical equipment, and that storm surge caused fires that damaged owners' property, sufficiently alleged that operator was acting in a proprietary, rather than a governmental capacity, as would preclude governmental function immunity, where the provision of electricity had traditionally been a private enterprise.

MUNICIPAL CORPORATIONS - TEXAS

[C. Borunda Holdings, Inc. v. Lake Proctor Irrigation Authority of Comanche County]

Supreme Court of Texas - February 23, 2018 - S.W.3d - 2018 WL 1021394 - 61 Tex. Sup. Ct. J. 432

Following pecan orchard's payment to governmental irrigation authority to remove irrigation authority's lien and lis pendens on orchard's realty, irrigation authority nonsuited its claims, and the District Court granted summary judgment in favor of irrigation authority regarding orchard's counterclaims for offset. Orchard appealed, and the Eastland Court of Appeals affirmed. Orchard petitioned for review.

As matter of first impression, the Supreme Court held that nonsuit did not negate orchard's right to pursue counterclaims.

Governmental irrigation authority's nonsuit of its claims did not negate defending pecan orchard's right to pursue offset counterclaims regarding amount irrigation authority recovered from orchard to remove lien and lis pendens; orchard paid amounts to irrigation authority without further litigation specifically to remove the lis pendens, and it would have been fundamentally unfair to preclude orchard's opportunity to seek offset damages after allowing irrigation authority to recover on its affirmative claims.

COLLECTIVE BARGAINING - VERMONT

[Negotiations Committee of Caledonia Central Supervisory Union v. Caledonia Central Education Association]

Supreme Court of Vermont - February 23, 2018 - A.3d - 2018 WL 1026170 - 210 L.R.R.M. (BNA) 3453 - 2018 VT 18

School board negotiations committee brought declaratory judgment action against labor union chapter, alleging that under Open Meeting Law, committee was required to hold collective bargaining negotiation meetings in public, rather than in executive sessions.

The Superior Court granted labor union chapter's motion to dismiss for lack of subject matter jurisdiction, and committee appealed.

The Supreme Court of Vermont held that:

- The trial court had jurisdiction to hear the parties' claims, and
- Collective bargaining negotiations between school board negotiations committee and labor union were not "meetings" under the Open Meeting Law.

Trial court had jurisdiction to hear declaratory judgment action brought by school board negotiations committee against labor union, arguing that labor negotiations were meetings under the Open Meeting Law that had to be held in open session, because the issue was ripe, in that the parties' positions were concrete, clear, and adverse, and squarely raised the applicability of the Law, which was within the purview of the court.

Collective bargaining negotiations between school board negotiations committee and labor union were not "meetings" under the Open Meeting Law, and thus, were not required to be open to the public; while school board was a public body, and as such, committee meetings were subject to the Open Meeting Law and negotiations between a school board committee and a labor union were not expressly listed in the Open Meeting Law exemption, labor negotiations require joint participation from parties in equal bargaining positions, and if negotiations were construed as "meetings" the committee would have unilateral authority to determine when and if executive sessions would occur and who could attend, upending any intended parity of bilateral negotiation.

[Patience Is Not A Virtue When Reviewing Municipal Bond Credit.]

Municipal bond market innovation continues to lag most other major financial markets – the sector is arguably light years behind the equity market in transparency, timely reporting, electronic trading and analytics. The sector's history of low default rates against corporate bonds is likely one of the reasons why investors are somewhat blasé about lagged financial reporting, thin disclosures, and the reluctance to include alternative data in the investment process.

It is safe to say that corporations with publically traded debt and/or equity provide more transparency to their investors than municipal bond issuers, albeit not necessarily by choice. Indeed, there are several reliable vendors that aggregate historical corporate financial data, versus relatively few for municipal bonds.

The municipal bond market should consider leveraging some of the same innovation that equity markets have already adapted, including technology that rapidly identifies sound investments, analyzes credit and monitors positions in a cost effective manner. As the hedge fund sector demonstrated in the past, some investors will turn a blind eye to higher management fees, if a money manager produces above average returns over peers or pertinent index benchmarks.

Many of those outperformers in the equity market have successfully deployed a "quantamental" approach – which takes the sector expertise of an analyst and improves investment decisions through a combination of machine learning and alternative data which identifies "diamonds in the rough" and avoids "landmines". That same approach can be applied to high yield and unrated municipal bonds to potentially enhance a portfolio's performance and accurately price risk.

In the case of more plain vanilla strategies and certain SMAs, investors will bargain shop based on fees, which has been driving down fees and profitability across the wealth management industry. This drive to more of a low cost asset accumulation model will require AI based tools and not the hiring of more analysts to rapidly analyze new issue and secondary credits, create accurate and comprehensive marketing material for pitching bonds to their clients, and automated surveillance tools to identify local or regional economic/financial distress using financial statement and public/alternative data sources.

The holy grail of municipal bond analytics will likely mimic that of an industrial supply chain, where every source of revenue and expenses will be identified or estimated through a non-traditional data proxy. These metrics can then be compared to changes in liabilities and the tax paying population (citizens and corporations).

An investor would begin with an aggregate view of every potential bond offered by the dealer community – coupled with MSRB trade price history and government bond yields – and supplemented with accurate evaluated bond prices/yields to fill in the days where a round lot did not trade.

The next layer will use natural language processing (NLP)-driven news-to-CUSIP mapping applications, and alternative datasets – such as US port ship traffic and US Customs bill of lading data – to proxy revenue through the flow of goods in and out of a state, while mining through publicly available bespoke data from data.gov to enhance standard economic data releases.

The biggest leap will be made when the performance of the largest private employers for the issuer is added to the credit picture, enabling the identification of a growing or shrinking tax base. Lastly, all of the aforementioned elements will be combined with financial statement data to model which factors drive the issuer's assets and liabilities the most – with the end goal of determining its performance outlook.

The successful implementation of AI and alternative data in the investment process will benefit asset managers and issuers by modernizing investment and due diligence processes. The investment community has the resources and expertise to discover an issuer's tax revenue base shift through advanced data, with those same findings having the potential to help guide municipalities' financial and policy decisions.

Machine learning has been used by credit card companies for fraud detection for decades, and can potentially be used to identify discrepancies and errors in financial statements, when compared with data sourced outside of the issuer.

Deploying these types of technologies may eventually be a matter of pure survival for money managers, because clients will likely gravitate towards money managers that successfully combine alternative datasets, AI, and sector expertise to identify real-time shifts in credit.

Those who are patient enough to wait until the issuer's next quarterly or annual report is released will not fare as well.

Seeking Alpha

Mar. 6, 2018

California's $83 Billion of Bond Debt Isn't Enough for Some.

- **Golden State is selling $2.1 billion of bonds this week**
- **California has $31 billion of unissued bonds still pending**

California's sale of $2.1 billion in bonds this week isn't enough for some buyers and interest groups.

The state is sitting on $31 billion of unsold bonds, about a fifth of the $149 billion approved by voters over the decades, according to a financial report by the state treasurer. And the state hasn't matched recent voter enthusiasm for billion-dollar measures with immediate sales: most of the $17 billion added to the authorized pool since 2014 haven't been issued.

Proponents of initiatives approved by voters, such as school construction and water infrastructure, would like to see California sell those bonds sooner. State officials, on the other hand, have focused on paying down outstanding debt and timing sales more closely to when those projects get started.

The subdued pace demonstrates the fiscal restraint that along with the state's economic rebound has helped boost California bond prices. But California isn't seizing the opportunity to tackle its significant capital needs such as water projects at low costs, said Dora Lee, vice president at Belle Haven Investments, which manages about $7 billion of municipal bonds.

"They're not only missing out in terms of lower interest rates, they're missing out on future economic growth and they're limiting their choices down the road," she said.

Sitting Idle

California has about $83 billion in outstanding general obligation and lease revenue debt, down by $3 billion from 2016, according to state treasurer reports.

Governor Jerry Brown's administration doesn't want to sell bonds before the proceeds are needed for different stages of construction, said H.D. Palmer, a spokesman for the finance department. Otherwise, "you start racking up debt service costs for cash that's sitting idle," he said.

Indeed, a large increase in outstanding bonds could pressure California's rating, which at AA- from S&P Global Ratings is lower than the company's average AA rating for states but is at the highest in almost two decades.

"They could afford to issue a bit more debt than they're currently amortizing and maintain their current credit profile but not a significant amount," said Bernhard Fischer, senior fixed-income analyst at Principal Global Investors, which oversees about $8 billion in munis. Fischer said the state could probably sell about $1 billion more than it is now.

Those chafing at the pace include the California School Boards Association, which wants quicker sales of $7 billion on bonds for construction projects at elementary and high schools and $2 billion for community colleges. Brown, who opposed the measure, had wanted tighter accountability requirements before selling the debt.

So far about $433 million have been sold for the schools and about $17 million for community colleges, excluding what will be allotted from the proceeds of this week's deal. If the current pace continues, it would take more than a decade to sell the bonds, said Nancy Chaires Espinoza, a lobbyist for the association.

"The bond sales aren't keeping pace with demand," she said.

Bloomberg Markets

By Romy Varghese

March 6, 2018, 6:55 AM PST

U.S. Stands Ready to Extend Loans to Puerto Rico, Mnuchin Says.

- **Treasury Dept. will 'make sure they have the necessary funds'**
- **Puerto Rico governor has criticized disaster loan delays**

The U.S. Treasury Secretary Steven Mnuchin said the federal government is prepared to extend Puerto Rico the loans approved by Congress to help it recover from Hurricane Maria, disputing assertions from island officials that the funds have been needlessly delayed.

"We have a team that stands ready to help them," Mnuchin told lawmakers during a hearing convened by a House of Representatives subcommittee. "We are ready to lend and we are monitoring their cash flows to make sure they have the necessary funds."

The comments came after Puerto Rico Governor Ricardo Rossello said the Treasury was acting "recklessly" by delaying the territory's access to a share of a $4.9 billion loan package that Congress passed in October. The storm exaggerated the financial crisis that had already tipped the territory into a record-setting bankruptcy after a decade of economic decline, population loss and years of borrowing to keep the government afloat.

Puerto Rico, an island of 3.4 million American citizens without a vote in Congress, in November said it will need $94.4 billion from the federal government to deal with the storm damage.

The community disaster loans are aimed at covering only a small share of the toll by helping Puerto Rico make up for tax and utility revenue lost since the storm. Treasury has estimated that amount at about $2 billion for the 180 days after the hurricane.

In January, the Treasury told Puerto Rico it has too much cash to qualify for a loan, given the amounts that the island government had in various bank accounts. The Treasury has said that a loan will be quickly available if Puerto Rico's cash balance drops below $800 million. Puerto Rico had $1.7 billion of available funds in mid February and has since extended a loan to the Puerto Rico electric company to keep it running.

Mnuchin has said little about Puerto Rico, except when prodded during Congressional testimony. Treasury and the White House's budget office declined to name who in the respective agencies is in charge of the Puerto Rico issue, and the January letter to Puerto Rico was signed by deputy assistant secretary for public finance Gary Grippo, a career staffer, instead of one of the top political appointees.

Mnuchin said there’s been no decision on whether Puerto Rico’s loans will be forgiven, as is common for those extended after natural disasters.

“We’re not making any decisions today on whether they will be forgiven or not,” Mnuchin said.

Bloomberg Politics

By Saleha Mohsin and Michelle Kaske

March 6, 2018, 8:51 AM PST

— With assistance by Yalixa Rivera

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U.S. Muni Bond Market Inches Up to $3.851 trln in 4th Quarter - Fed.

NEW YORK, March 8 (Reuters) – The U.S. municipal bond market inched up to $3.851 trillion in the fourth quarter of 2017 from $3.809 trillion the previous quarter, according to a quarterly report from the Federal Reserve released on Thursday.

Households, or retail investors, held $1.570 trillion of debt sold by states, cities, schools and other muni issuers in the latest quarter, slipping from $1.573 trillion in the third quarter, the Fed report said.

U.S. banks’ muni bond buying spiked after dwindling the previous three quarters. Financial institutions added $37.4 billion in the fourth quarter, compared with $8.6 billion in the third quarter.

Property and casualty insurance companies took on $7 billion of munis in the fourth quarter after adding $3.4 billion in the third quarter. Life insurance companies picked up $5.1 billion of the bonds.

U.S. mutual funds bought $25.3 billion of munis in the fourth quarter, down from $40.7 the previous quarter, while exchange traded funds added $7.6 billion, up from $4.8 billion.

Foreign holdings of munis rose to $104.6 billion.

(Reporting by Laila Kearney in New York Editing by Matthew Lewis)

US Green Finance: A Clearer Year Ahead.

The US green finance surge continues regardless of federal government, argues S&P Global Ratings' Michael Ferguson

The American green bond market has been stepping up. Last year, dollar-denominated green issuance grew substantially: self-labelled US municipal bonds reached $10.4bn, a 43 per cent increase on 2017. Importantly, American municipal issuance alone accounted for 34 per cent of the global sub-sovereign issuance, and included 10 first-time issuers, according to the Climate Bonds Initiative (CBI).

This expansion of the marketplace could just be the beginning. Forecasts suggest that issuance by US municipalities could top $15bn in 2018 – representing an increasingly diverse and proactive group of sub-federal actors, which also extends to large corporations. On this evidence, state-level climate action is significantly bolstering the country's green marketplace even amid uncertainty at the federal level.

In turn, this is driving forward a decarbonisation agenda, despite the current federal disinclination to pursue comprehensive carbon reduction policies. Indeed, uncertainty about US regulatory policy may have hitherto contributed to limited growth in corporate green bond issuance. The US' revised tax code, however, has provided some market clarity, at least for now.

It ensures that both the production tax credit (supporting wind) and the investment tax credit (supporting solar) will continue. So, corporate taxpayers can still benefit from the credits, which have propelled investment in renewable assets in the past. And though the credits' retention was a surprise to many, it has revealed a clear bipartisan support for renewable energy in the US, possibly contributing to a continuing a surge in green finance.

Continuing tax credits

The production tax credit (PTC) has historically supported wind power generation. With its help, America's wind capacity quadrupled between 2007 and 2014. Then, in 2015, the market suspected (incorrectly, with hindsight) that the PTC would be excluded from future budgets. As a result, installed wind capacity surged to capture the credits before expiry. When the credit was omitted from early versions of the 2017 federal budget – along with the investment tax credit (ITC) for solar – the market gave pause.

However, the final version of the tax reform bill signed into law by President Trump in December 2017 continued the credits. Many believe that the bill could substantially increase the federal deficit, based on non-partisan estimates. Yet, in a bill passed without a single democratic vote, the preservation of both the PTC and the ITC speaks to the enduring value of the credits as tools for spurring renewable development.

With the phase-out of the tax credit temporarily avoided, S&P Global Ratings expects that renewable financing, especially corporate power purchase agreement (PPAs), will continue to grow. Although growth will be spurred in part by diminished costs, we don't expect an immediate surge in financings as experienced in 2015. But with a clearer outlook ahead, the US renewable energy market will likely enjoy a steadier growth trajectory through the beginning of the next decade.

Worth a little less?

That being said, the revised tax code may have an indirect impact on the value of the PTC and ITC, thereby presenting a possible new market dynamic. A lower corporate tax rate – with the marginal percentage down to 21 per cent from 35 per cent – could undermine the value of some tax equity investments. In turn, this may influence issuers' decisions about whether to use tax-exempt municipal issuances, corporate debt, or project finance debt.

Further, in the absence of a federal policy on climate change, we're not likely to see the pricing signals associated with a carbon tax or emissions trading, and consequently the financeability of projects could be dependent on both state level policies (including RPS) and the value of these tax credits. Given the limited pool of equity investors, revisions to the tax code may also have ramifications for the green marketplace – and alter how such projects are funded.

Infrastructure goes green

Regardless, the funding will have to come from somewhere. America's infrastructure needs are vast – with green finance increasingly used to fund improvements. According to the US Environmental Protection Agency, the country's water, wastewater and irrigation systems require over $630bn of investment through to 2033 in order to bring them up to modern standards. And there is broad consensus on Capitol Hill that the country's aging infrastructure, which has been underfunded for decades, is in need of an overhaul.

The White House has recently proposed over $1tr in infrastructure investments, in addition to the $200bn included in the 2018 budget. However, much of the funding for these projects – about 75 per cent according to the Council on Foreign Relations – will have to come from state and municipal budgets, as it has done for most of the past century. This, coupled with heightened sub-federal decarbonisation and adaptation initiatives, makes more green financings possible nationwide.

In turn, S&P Global Ratings anticipates another banner year for US green bond issuance – and the wider green finance marketplace. Propelling the market will likely be a mixture of renewable-backed issuances and others to repair, or even replace, some of the country's infrastructure. While estimates for green bond issuance vary wildly, and can hinge on a bevy of market and political conditions, it is clear that green instruments have firmly secured their place within the US financial landscape, and their prominence will only grow as investors become more sensitive to climate concerns.

businessgreen.com

Michael Ferguson, S&P Global Ratings

09 March 2018

Michael Ferguson is director of US energy infrastructure at S&P Global Ratings

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[Here's Why Muni-Bond Demand Could Get a Lift from Bank Legislation.]

Banks own close to 15% of the municipal bonds outstanding

As municipal bondholders continue their struggle to make sense of last year's tax legislation, Congress is set to knock down one argument against participating in the $3.8 trillion market.

Investors are expecting the Senate to pass a bipartisan bill that would include municipal debt in the coveted category of high-quality liquid assets as part of a bid to roll back some elements of the Dodd-Frank law put in place after the financial crisis. The proposed legislation would stoke appetite for municipal bonds among banks, steadying a market still reckoning with the recent tax cuts.

"It takes one of leg of the argument against the muni market as it goes through a shake-up," said John Mousseau, director of fixed-income strategy at Cumberland Advisors.

It was only a few months ago when President Donald Trump's revamp of the tax code threatened to sink the viability of municipal debt by eliminating private activity bonds and advanced refunding paper, two key pillars of the $3.8 trillion market. That led local governments to issue billions of dollars in bonds in December in order to front-run the tax changes. But since then, municipal bonds have largely recovered.

The bill would put municipal bonds in the company of high-grade corporate paper and government debt in the eyes of financial watchdogs.

Rules elevating corporate bonds above munis in the regulatory environment has been a chip on the shoulder of market participants. The National Association of State Treasurers blamed the absence of municipal debt from the high-quality liquid assets designation, or HQLA, for contributing to higher borrowing costs for local governments.

Regulations mandating banks hold a minimum amount of HQLA to handle market turmoil were designed with the intention of avoiding a repeat of the 2008 financial crisis when banks found much of the investments on their books were difficult to off-load and less creditworthy than they had initially seemed.

On that front, analysts point out municipal debt features a lower default rate than their private-sector peers at every rung of the credit ladder as they are backed by the full taxing authority of local governments. According to a Moody's historical study stretching from 1970 to 2015, the frequency of defaults among BBB-rated municipal bonds was lower than that of AAA-graded corporate bonds.

"Why wouldn't you want better credit collateral than you're getting with existing legislation on corporation debt," said Mousseau.

Moreover, municipal debt could hold good value for banks with extra cash. The yield difference between municipal bonds and comparable Treasurys have widened, with the tax-free yield on a 10-year municipal bond slipping to around 85% of the taxable yield on a 10-year Treasury TMUBMUSD10Y, +0.00% for most of this year, well below the 95% seen in early 2017. A lower ratio implies munis are cheaper relative to Treasurys.

Though the revamped bank legislation should boost their investment in municipal paper, its unlikely to return Wall Street to their previous role as the linchpin of the market.

Nonetheless, Mousseau says the bill, if passed, is an under-appreciated step that could prove a boon to smaller financial institutions and commercial banks that have few avenues for long-term investments.

In 1975, banks owned close to half of the municipal bonds outstanding. Their share hit a low in 2004, shrinking to 5%, before making a comeback to 15% in 2017 after former President Barack Obama expanded the allowance for banks to qualify for tax exemptions on interest payments, a key appeal of the municipal bond market.

“If individual investor ownership is the bedrock of municipal holdings, then bank ownership is the topsoil,” said Thomas Kozlik, municipal strategist for PNC Capital Markets, in a January note. He added that “bank buying patterns have historically been sensitive to tax reform and government incentives.”

Their role as a backstop against weakening demand for municipal paper has come to the fore in recent years. Bank holdings of municipal paper rose close to $120 billion from 2015 to 2017, even as households sold around $110 billion of municipal bonds, according to the Federal Reserve data.

But some investors are still waiting for the dust to settle from the Republican tax legislation before making up their minds on how much of a boon a renewed Dodd-Frank bill would be for the municipal bond market.

“Right now the market is trying to figure out what bank activity will be as a result of the tax-cut legislation. Banks very well could find relative value elsewhere,” wrote Kozlik.

Market Watch

by Sunny Oh

Published: Mar 9, 2018 2:12 p.m. ET

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Big Banks Get a Big Win in Senate Rollback Bill.

Nation's largest banks would gain incentive to buy more municipal bonds in legislation targeting smaller banks

WASHINGTON—Bipartisan legislation expected to clear the Senate as early as this week has just one provision that is set to directly benefit the nation's megabanks: a section aimed at making it easier for them to buy state and local bonds.

The provision, championed by Citigroup Inc. and other large banks, would ease a new rule aimed at ensuring banks can raise enough cash during a financial-market meltdown to fund their operations for 30 days, requiring them to hold more cash or securities that are easily salable.

Under federal banking rules approved in 2014, those "high quality liquid assets" included cash, Treasury bonds and corporate debt—but not municipal debt. Banks historically like to hold municipal bonds because of their safety and tax advantages.

The Senate on Tuesday voted 67-32 to formally begin debate on the bill, which primarily benefits small and medium-size banks, easily reaching the 60 votes needed and signaling that the measure has enough support from Democrats to pass by a comfortable margin. The legislation was backed by 16 Democrats and one independent, Maine Sen. Angus King, bucking Massachusetts Sen. Elizabeth Warren and 31 other Democrats who opposed the procedural vote.

Including the municipal-bond provision in the deregulatory bill was a priority for the nation's biggest banks that buy a lot of municipal securities as investments. A Citi lobbyist recently told a Senate staffer that the firm would be pleased if easing the treatment of municipal debt under the bank-funding rule was the one thing it could accomplish during the current Congress, according to a person familiar with the conversation.

State and local officials have praised the move, saying their securities could suffer if banks begin to shun them.

A Citi spokesman said the bond provision "is supported by a wide array of groups focused on helping cities and states address critical infrastructure needs."

While the provision is a victory for Citi, the biggest U.S. banks haven't lobbied extensively on the

Senate bill, according to congressional aides. Big firms have spent billions to comply with a gamut of postcrisis rules and generally aren't eager to tear them down.

Analysts have said changing the rule for municipal products would be a mistake because it would erode the core of a bank-safety rule put in place after the 2010 Dodd-Frank law. While municipal securities have relatively low default rates, they are traded thinly and shouldn't count as liquid assets, critics say.

"It's an outrageously bad idea," said Phillip Swagel, a professor at the University of Maryland who served in the George W. Bush Treasury, characterizing the provision as an implicit federal guarantee of the municipal market. In the next crisis, banks will have trouble selling their municipal securities, freezing up the market for them and requiring the government to step in to backstop it, he predicted.

While lawmakers agreed to include the municipal debt measure, they rebuffed Citi and JPMorgan Chase & Co. efforts to water down a separate postcrisis capital requirement known as the supplementary leverage ratio. That regulation effectively restricts banks from making too many loans without adding new capital, forcing firms to maintain a proportion of capital to fund their assets—including loans, investments and even the collateral clients post on derivatives transactions.

The legislation includes a provision to diminish the leverage ratio in a way that lawmakers say would only benefit financial institutions primarily engaged in "custody services," in which they hold assets on behalf of other banks. Citi and JPMorgan, global banks that don't fit the definition but still offer custody services, have argued it is unfair to carve out certain banks from the provision and not others.

"As Congress has sought to make a common sense change to the way capital rules treat custody assets, we have asked that they apply that change to all custody banks to maintain a level playing field in this important business," a Citi spokesman said.

Senate aides said lawmakers crafted a delicate compromise that can pass the chamber and don't want to broaden the bill with more provisions helping big banks—which became a target of criticism during the crisis—and risk having the bill fail. "That is not happening," said one Senate Democratic aide.

Federal Reserve Chairman Jerome Powell said on Feb. 27 that the Fed would prefer that Congress allow regulators to rewrite the leverage ratio rule. Instead, the bill directs regulators to exclude certain assets from the calculation of the leverage ratio for custody banks such as Bank of New York Mellon Corp. and State Street Corp.

The Wall Street Journal

By Andrew Ackerman

Updated March 6, 2018 2:49 p.m. ET

—Ryan Tracy contributed to this article.

Fitch: West Virginia Employee Wage Dispute Highlights Fiscal Pressures.

Fitch Ratings-New York-09 March 2018: Fitch Ratings believes the recent wage dispute in West Virginia, which ended with approved salary increases for the state's teachers, service personnel and state employees, is further evidence of the fiscal pressures that underpin our Negative Outlook on the state's 'AA' Issuer Default Rating (IDR).

The state's financial challenges, which have increased with the need to fund the higher salaries, are likely to continue despite recent revenue improvement. The multi-year weakness in the state's key state revenue sources has reflected its struggle with a long-term decline in coal production and related economic turmoil, despite some improvement in fiscal 2018.

The salary increases provide for a fixed-dollar-amount, average 5% raise for all employees effective July 1, 2018. The increases have a $100 million impact on the $4.8 billion (General Revenue, Lottery and Excess Lottery) executive budget for fiscal 2019; $80 million above the 1% average salary increase initially proposed by the governor. The state expects to adjust the governor's recommended budget and apply cash balances in its Medicaid program in fiscal 2019 to accommodate the increases. Fitch believes this additional cost may prove challenging to accommodate in future budgets given vacillating severance, income and sales taxes; prior use of reserves to fund operations; and the cuts the state has already made through a period of revenue weakness. As in most states, education and health and human services spending are the state's largest operating expenses, and the strong employee push for wage increases and health care plan improvement speak to the challenges of cost control efforts in these areas.

Revenues in fiscal 2018 are meeting expectations through February 2018, and the governor has identified an additional $58 million in resources to fund the fiscal 2019 budget beyond what was incorporated into his budget proposal. The legislative budget that is currently moving through both the House and the Senate does not apply the additional forecast revenue to funding the fiscal 2019 budget.

Revenue growth is forecast in personal income and sales taxes as the state anticipates economic momentum from road construction projects, increased consumer spending related to federal tax cuts and stability in the energy sector. Given fiscal performance prior to 2018, Fitch remains cautious that the state will achieve these targets. Additional resources do not include any direct windfall revenue from the federal Tax Cuts and Jobs Act as the state subsequently decoupled its personal income tax exemption policies from those of the federal government, relinquishing $140 million in estimated potential tax benefit in fiscal 2019.

The state's 'AA' IDR incorporates the state's economic concentration in natural resource development, strong ability to control revenue and spending policy, and commitment to addressing its liability profile. The rating is supported by a still sizable level of reserves at the state's disposal, and the governor's budget proposal does not appropriate from the rainy day fund for operations. The Negative Outlook reflects the risks associated with the state's cyclical natural resource markets, particularly the longer term decline in coal production, and Fitch's concern that the state will be challenged in providing a durable response to its long-term economic and financial challenges.

For more information on the state, see "Fitch Rates West Virginia's $44MM School Building Bonds 'AA-'; Outlook Remains Negative" dated Sept. 7, 2017 and available at www.fitchratings.com.

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Fitch: Los Angeles' FY 2018 Operational Deficit Remains Solvable, But Challenges Continue.

Fitch Ratings-San Francisco-09 March 2018: Los Angeles (Issuer Default Rating AA-/Stable) recently issued its midyear financial status report for fiscal 2018, highlighting the city's ongoing operational deficit. Based on recent years' experience, Fitch Ratings expects that the majority of the small projected general fund shortfall of $35 million (less than 1% of fiscal 2018's budgeted $5.83 billion in revenues) will likely be solved during the course of the year. Despite numerous past projected deficits that have varied widely in size, the city added to its unrestricted general fund balance every year between fiscal years 2011 and 2016. This was achieved in the face of increasing expenditures. However, ongoing expenditure pressures did result in an unrestricted general fund balance drawdown in fiscal 2017.

The city's recently released fiscal 2017 audit results show that general fund expenditures increased by almost 6% year-over-year, largely driven by increased employee remuneration and contractual service costs. Such ongoing expenditure pressures are anticipated by Fitch's 'a' expenditure framework assessment. By contrast, general fund revenues increased by just over 2%, largely due to increased receipts for most taxes given ongoing economic growth. Fitch's 'aa' revenue framework assessment incorporates the city's ability to capture revenues from across its wide range of economic activity.

In fiscal 2017, large transfers out of the general fund to support debt service obligations, capital costs, and non-general fund departmental operations, as well as a decrease in the reserve for inventories, resulted in a $142 million total general fund balance drawdown. Nevertheless, fiscal 2017 ended with a still strong total general fund balance of $886 million (16% of spending), down from $1.03 billion (20%) the prior year. The unrestricted general fund balance declined to a still healthy $841 million (15%) in fiscal 2017, from $903 million (19%) in fiscal 2016.

The city lists various revenue and expenditure concerns for fiscal 2018, most of which had previously been cited in fiscal 2017. These include local and federal funding uncertainties, a HUD settlement payment, and potential unbudgeted expenditures for liability claims. The city's multiyear projections (last published in June 2017 and due to be updated in April) indicate that structural balance could be achieved by fiscal 2022. However, this assumes that the city will solve each year's deficit with ongoing solutions, rather than general fund reserve drawdowns. This will likely be challenging given rising employee costs (particularly related to retirement benefits) and service expansion pressures.

The city measures reserves in terms of its emergency, contingency, and budget stabilization reserves, plus its unappropriated general fund balance. Currently, the city estimates these cumulative reserves at just under 8%, a slight drop since the last financial status report due to recommended expenditures from the unappropriated general fund balance to offset citywide shortfalls, unbudgeted expenses, and proposed loans. Cumulative reserves remain below the fiscal 2016 peak of 10%. Fitch measures reserves in terms of unrestricted general fund balance, which remain healthy at 15% of spending in fiscal 2017. Fitch would be concerned if the city continued to draw down its reserves to meet operational expenses, particularly during this period when the city's economy is performing well. Lower reserves could constrain the city's financial flexibility when it needs it most during a future economic downturn.

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Fitch: Internet Sales Tax Ruling May Slow Declines for US States.

Fitch Ratings-New York-07 March 2018: US states and local governments could benefit from a pending Supreme Court ruling on internet sales taxes, but long-term stagnation of sales tax revenues are likely to continue, Fitch Ratings says. Sales tax collections have fallen steadily over the past 20 years as a proportion of total state tax revenues due to the growth of internet commerce and other changes in consumer spending patterns. If the Supreme Court rules to extend state sales taxes to internet purchases it would have a modest effect on sales tax collections nationally, but would not be sufficient to reverse the long-term credit challenge arising from diminished sales tax growth.

Oral arguments on *South Dakota v. Wayfair* are scheduled for April 17. A ruling in South Dakota's favor could help state and local governments extend taxes to all internet sales, providing up to $13.4 billion in new revenue annually according to the US Government Accountability Office. This amounts to 3.6% of state and local government general sales tax collections in 2015, and less than 1% of total tax collections. Other estimates have been higher. The actual amount is likely to increase over time as internet sales grow.

The importance of sales tax revenues for state and local government budgets varies widely. Five states do not impose sales taxes while 20 rely on sales taxes for more than one-third of their total tax revenues. States with a high reliance on sales tax have the greatest stake in the court's review of this case.

Continue reading.

Fitch: WV Strike Shows Janus May Have Little Impact on US Locals.

Fitch Ratings-New York-05 March 2018: The ongoing work stoppage by teachers in West Virginia indicates that local governments may not gain much expenditure flexibility should the U.S. Supreme Court make a decision that would loosen collective bargaining requirements in the case of Janus v. American Federation of State, County and Municipal Employees, Fitch Ratings says. At issue in the Janus case is whether public-sector workers should be able to opt out of required fees related to negotiating and enforcing union contracts, effectively conferring right-to-work status on all states.

Salaries and benefits comprise the majority of spending for most local governments, making the ability to adjust these costs, if needed, an important element of Fitch's evaluation of expenditure flexibility. We include a workforce evaluation in all local government rating analyses that considers both the formal bargaining relationship between labor and management and the practical ability to adjust spending. The inflexibility of pension contributions, which can be a sizable component of labor spending, makes the ability to adjust headcount, salaries and current benefits the primary focus of the analysis.

Currently, 28 states have right-to-work laws, which prohibit compulsory union dues by non-union members. Federal law prohibits compulsory union membership. Right-to-work laws do not control union membership or union negotiation and enforcement of labor contracts.

West Virginia adopted a right-to-work law in 2016 but it was stalled by litigation and did not go into effect until late 2017. A work stoppage by teachers and other West Virginia school employees is in its second week. Governor Jim Justice's proposal for a 5% pay raise beginning in July, instead of the previously-proposed 2%, was passed by the House of Delegates on Feb. 28. The senate approved a smaller 4% increase on March 3 that was not adopted by the House. Even if the raise were approved, issues regarding health care insurance costs remain unresolved. News reports indicate that teachers in Oklahoma, another right-to-work state, are considering a work stoppage.

The West Virginia state Attorney General has asserted that the work stoppage was unlawful, but did not indicate that any action will be taken against striking employees. This demonstrates that the legal framework governing the labor-management relationship is not the only indicator of labor-related spending pressure. An outcome of the Janus case that loosens collective bargaining requirements would therefore not yield an automatic improvement in local governments' levels of expenditure flexibility, a key consideration in Fitch's rating criteria.

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Fitch to Include Disclosure on PR Special Rev Ruling in Related Issuer Research.

Fitch Ratings-New York-09 March 2018: On March 12, 2018 Fitch Ratings will begin inserting a comment into its rating action commentaries (RACs) for credits the agency believes could be affected if a final ruling upholds a recent decision on the interpretation of a section of Chapter 9 of the U.S. bankruptcy code. A Jan. 30, 2018 district court ruling dismissed claims regarding payment of Puerto Rico Highways and Transportation Authority (PRHTA) debt. The ruling states that section 922(d) was included in the code as permission for a municipality to continue paying special revenue obligations if it chooses to do so during bankruptcy rather than as relief for bondholders from the constraints of the code's automatic stay provisions.

A final ruling in the case that is consistent with this approach would create uncertainty about full and timely payment of special revenue obligations including those of utilities, transportation, and other enterprises of local governments as well as some dedicated tax bonds in the event the related government files for a Chapter 9 bankruptcy. Fitch's Rating Criteria for Public Sector, Revenue-Supported Debt already consider the influence on enterprise debt of the credit quality of the general government, including common management and service area characteristics as well as legal, financial and operational connections. Restrictions on the use of pledged revenues for other municipal purposes, such as federal law prohibiting diversion of airport revenues to other municipal uses, is another strong credit consideration.

Fitch will insert the following comment in RACs it believes are subject to uncertainty in the event of a final ruling in the PRHTA case that is consistent with the district court ruling:

"A Jan. 30, 2018 district court ruling that dismissed claims regarding payment of Puerto Rico Highways and Transportation Authority debt has raised questions about the scope of protections provided by Chapter 9 to bonds secured by pledged special revenues. Fitch's rating criteria treat special revenue obligations as independent from the related municipality's general credit quality. The outcome of the litigation could result in modifications to Fitch's approach. For more information, see 'What Investors Want to Know: The Impact of the Puerto Rico Ruling on Special Revenue Debt' (February 2018)."

Fitch will not include this comment in RACs of bonds rated based on the pledged special revenue definition described in section 902(2)(E) of the code. In these cases, Fitch believes the possibility of a payment interruption due to an automatic stay would remain remote even if the recent ruling were to stand. Fitch sets a high bar to consider tax-supported debt to be secured by pledged special revenues under section 902(2)(E) and thus unaffected by the operating risk of the related municipality. Among the elements required for Fitch to rate such bonds without regard to the government's issuer rating is a statutory requirement that a governmental official outside the municipality collects and remits the tax revenues to the paying agent, placing the funds outside the control and direction of the municipality.

Fitch has most commonly applied this analysis to bonds issued by school districts in California. In Fitch's opinion, this structure places the bond security outside the scope of the Puerto Rico decision. The court's opinion notes that section 922(d) permits third parties to continue to apply special revenues held by them to debtors, free from the automatic stay.

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Bloomberg Brief Weekly Video - 03/08

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

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Bloomberg

March 8th, 2018

California Shows Bond Buyers Willing to Jettison Industry Staple.

- **State opted for shorter call dates after U.S. tax change**
- **Deputy treasurer says didn't pay up for different structure**

Since the Great Recession, the $3.8 trillion municipal-bond market proved adaptable as the debt insurance industry collapsed, derivatives disappeared and the federal government created a new type of taxable security to stoke the economy by encouraging spending on public works.

If California's bond sale this week is any guide, it seems just as willing to embrace the latest change: Shorter call dates, in response to provisions in the U.S. tax overhaul that curbed governments' ability to refinance debt before it can be repurchased from investors.

When the most-populous U.S. state sold $2.2 billion of general-obligation debt, it gave itself the option to call back most of the bonds in five or eight years, meaning bondholders could be forced to part early with what they expected to be a long-term investment. But that did little to deter demand, with buyers placing orders for twice as many bonds as were being sold and some maturities six-times oversubscribed, Tim Schaefer, California's deputy treasurer, said in an interview.

"The fact that we did this and got such good reception on it is confirmation that the market has grown to a much more sophisticated place," he said.

The sale marked the biggest test yet of whether investors would be willing to embrace the shorter call dates, though demand may have been stoked in part by the dearth of new municipal bond issues this year. Wisconsin and Utah's Davis School District sold similar securities on a smaller scale this year, and analysts anticipate that more borrowers will follow suit.

Investors accepted yields of 2.74 percent on a 5 percent coupon bond due October 2029 with an eight-year call, while the same maturity with a five-year call yielded 2.42 percent. The price of the securities edged up in subsequent trading.

The state didn't appear to pay a price for the call-option shift because the difference between the state's yields and top-rated securities was similar, or lower, than during its debt sale a year ago, Schaefer said.

While some other governments may have to pay higher yields to compensate buyers for the risk the securities will be paid off ahead of schedule, the earlier calls will preserve their ability to save money if interest rates fall.

"It's a good compromise for issuers who want that flexibility going forward, don't want to wait 10 years, and are willing to accept modestly higher rates on a yield to maturity basis and in a rate environment that is still historically quite low," said Jay Wheatley, head of Citigroup's municipal syndicate desk. "It's going to become more of the norm, especially in a low issuance environment."

Bloomberg Markets

By Romy Varghese

March 9, 2018, 6:07 AM PST

— With assistance by Danielle Moran

If You're Fleeing Volatility, There's Refuge in the Muni Market.

- **10-year yield has budged 0.01 percentage point in three weeks**
- **Muni prices haven't been this steady in nearly three years**

Quick: What are the most commonly used adjectives when describing the $3.8 trillion municipal-bond market?

If you said, “sleepy,” or ”boring,” you win.

Over the last three weeks, it has lived up to that reputation, with yields on 10-year AAA municipal bonds moving exactly one basis point, to 2.49 percent from 2.48 percent. The difference between the daily high and low yield over that period is nearly as minuscule — a range of a mere 2.6 basis points, a difference that amounts to about $26 on a $100,000 investment. The price volatility over the past 20 days is the lowest since mid-2015, according to data compiled by Bloomberg.

Treasury yields haven’t moved much either since Valentines Day, just 3 basis points. But there’s been a 15 basis point difference between the three week high of 2.95 percent on Feb. 21 and the 2.81 percent low on March 1.

So why has trading municipal bonds become about as exciting as working as the Maytag repair man?

New offerings of long-term, fixed-rate state and local government debt is down 40 percent, compared with last year, because municipalities rushed to market in December before the federal tax overhaul sharply limited their ability to refinance debt. The issuance drought helped support the market amid the selloff in January triggered by speculation that the Fed will raise interest rates more aggressively than expected, leaving munis with a smaller loss than Treasuries so far this year.

“The lack of supply has kept the market from sort of falling off a cliff,” said Nicholos Venditti, who oversees $11.5 billion of municipal bonds at Thornburg Investment Management in Santa Fe, New Mexico.

What’s more, retail investors, who drive the muni market, haven’t been spooked — yet — by the losses showing up in their month-end statements. Munis lost 1.5 percent through the end of February, their worst start to a year since the 2008, during the early pangs of the credit crisis.

The market may get more volatile as mom and pop investors start selling and signs emerge that banks and insurance companies are gradually paring tax-exempt bonds and buying taxable bonds instead because corporate tax cuts have made tax-exempt debt less attractive, Venditti said.

Add a pick-up in issuance by municipalities and that could lead to a bearish market, Venditti said, making his job — and maybe yours — more interesting.

Bloomberg Markets

By Martin Z Braun

March 7, 2018, 11:29 AM PST

Trump Can't Derail Renewable Energy Push

Public-private partnerships at the state and local levels are stepping in for federal funding.

When President Donald Trump entered office, it was clear that policies boosting energy production would take precedence over those protecting the environment.

The administration’s 2019 budget and its addendum proposed sweeping rollbacks to programs designed to limit environmental pollution and mitigate the effects of climate change, while slashing funds devoted to research on renewable energy.

Yet despite this setback, these policies should not leave investors in renewable energy holding the short end of the stick. Instead, this sector is showing signs of a revival thanks to public-private partnerships at the state and local levels.

Continue reading.

Bloomberg View

By Shelley Goldberg

March 9, 2018

Mayors and Governors Urge Congress to Pass Legislation Expanding Public-Private Partnerships (P3s) for Public Buildings.

The Performance Based Building Coalition calls for rebuilding America's unsafe and dilapidated public buildings

WASHINGTON, March 2, 2018 /PRNewswire/ — March, 1 2018, A bipartisan group of 14 mayors and 10 governors have sent letters to Congressional leadership expressing their strong support for the Public Buildings Renewal Act (S. 3177/ H.R. 5361) or PBRA, which will spur private investment in rebuilding America's unsafe and dilapidated public buildings. http://www.p3buildings.org/wp-content/uploads/2018/02/PBBC-Letter.pdf

The bill would permit state and local governments to access $5 billion in private activity bonds (PABs) for the financing of critical construction and infrastructure projects for qualified public buildings, such as schools, hospitals, courthouses, universities, police stations, and prisons.

"Infrastructure across our country is in desperate need of investment; and that includes our nation's public buildings. Providing services to our citizens depends on it," said Colorado Governor John Hickenlooper. "This proposed legislation needs to be a part of the conversation that brings us a comprehensive solution to our infrastructure needs."

Currently, the use of public-private partnerships (P3s) to deliver public buildings is extremely limited because unlike the transportation sector, public buildings are not eligible for private activity bonds. This inhibits public building P3s from combining tax exempt financing with private financing, resulting in an increased cost of financing.

"Private Activity Bonds for buildings are a triple win for governments, taxpayers, and the economy," said David Tuerck of Beacon Hill Institute which authored a study on the economic benefits of the PBRA. "Our findings show that, in the short run, every dollar of new infrastructure investment made possible by the PBRA will add $2.80 to the U.S. economy. At the same time, taxpayers save nearly 25 percent over the life of these projects compared to traditional building methods, while these projects are delivered on time with guaranteed long-term performance."

Nearly every U.S. transportation P3 project has utilized federal financing, at least 75% of which have accessed Private Activity Bonds. Over $36 billion in transportation P3 projects have been undertaken since 2010 with a cost savings of more than 20 percent on most projects.

This bill will catalyze the use of P3s in public buildings just as PABs have for transportation. By empowering the private sector to tackle these projects, the bill would make these projects more cost effective, stretching every public dollar further.

The Joint Committee on Taxation provided a very low score for this legislation, which shows it will have a minimal impact on the Federal budget– estimating a cost of only $18 million over five years and $48 million over 10 years.

The PBRA bill has bi-partisan support in Congress. It is sponsored by Senators Dean Heller (R-NV) and Bill Nelson (D-FL) in the Senate and by Representatives Mike Kelly (R-PA) and Earl Blumenauer (D-OR). There are 10 Senate co-sponsors and 28 House co-sponsors. The bill includes more bipartisan Ways and Means support than nearly any other bill pending before the Committee.

About the Performance Based Building Coalition: Founded in 2012, the Performance Based Building Coalition is the nation's only non-profit industry coalition exclusively dedicated to developing the market for social infrastructure public-private partnership (PPP) projects in the United States. The PBBC's mission is to pass federal tax legislation that will create a new category of exempt facility bonds for government owned buildings, while simultaneously educating the public sector on all aspects of executing a P3 project. PBBC leadership & roster of over 90 members. www.p3buildings.org

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IRS Releases Adjusted 2018 Caps for LIHTCs, PABs

The Internal Revenue Service (IRS) today issued Revenue Procedure 2018-18, which includes updated low-income housing tax credit (LIHTC) and private activity bond (PAB) state cap numbers based on a chained consumer-price index introduced by tax legislation that passed in December. The LIHTC per-capita amount is $2.40, unchanged from October, and the small state minimum is $2,760,000, just $5,000 less than announced last year. The PAB per-capita amount is $105, also unchanged from October, and the small-state minimum is $310,710,000, a decrease of $665,000 from the cap set last year.

Friday, March 2, 2018 – 4:15pm

Will Opportunity Zones Help Distressed Residents or Be a Tax Cut for Gentrification?

States are fast approaching a deadline set by the new tax law to designate low-income neighborhoods as "Opportunity Zones"—a designation that will unlock favorable capital gains treatment for investments in those areas. Supporters say this will help revitalize distressed communities, but there is a risk that instead of helping residents of poor neighborhoods, the tax break will end up displacing them or simply provide benefits to developers investing in already-gentrifying areas.

Unfortunately, the evidence on the benefits of existing place-based policies is inconclusive. To understand whether Opportunity Zones are effective—and worth extending when key benefits come up for renewal as soon as next year—states have only a short window to act to incorporate evaluation mechanisms into their selection process. States and the District of Columbia must select qualified neighborhoods for Treasury's approval by March 21. Only one in four low-income areas in any state can be designated as an Opportunity Zone, so states must reject more neighborhoods than they select. This is a perfect opportunity to build in a rigorous comparison of places that made the cut to those that did not, to see whether the program helps residents of low-income communities, which elements are effective, and whether it should be renewed.

For background, Opportunity Zones offer favorable capital gains treatment for taxpayers who invest in designated high poverty neighborhoods. Invest in real estate or businesses located in a qualified zone, hold it for ten years, and not only can you sell your investments free of capital gains tax, but you also you get a tax break on untaxed capital gains rolled into an Opportunity Zone investment. Individuals in a high-tax state and with short-term capital gains can avoid $7.50 in taxes for each $100 they invest, even before considering any return on their Zone investments. It's very favorable treatment.

Continue reading.

The Brookings Institute

by Adam Looney

Monday, February 26, 2018

Why the Rust Belt Economy will Suffer in a Trade War.

President Trump's unanticipated announcement of steel and aluminum tariffs has sent markets reeling, and stoked trade war fears. The president appears motivated in part to deliver on his promise to voters in the industrial Midwest, where many responded positively to his anti-trade rhetoric and pledge to dismantle what he called the NAFTA "disaster."

But Trump's proposed tariffs, which many see as his latest negotiating tactic to make Mexico and Canada accept his demands on NAFTA, are unlikely to help these Midwestern voters and their communities. The early consensus is that the tariffs would cost many more jobs than they will keep or create. As Economic Outlook Group chief economist Bernard Baumohl put it, "More workers in the U.S. make products that are made from steel, than make steel itself."

Continue reading.

The Brookings Institute

John C. Austin

Tuesday, March 6, 2018

IRS Rules Solar Energy-Storage Upgrade Is Eligible for Tax Credit: Ballard Spahr

In a new letter ruling (PLR 201809003) issued on March 2, the IRS ruled that a residential behind-the-meter solar energy storage device—a battery—meets the definition of "qualified solar electric property expenditure" under section 25D(d)(2) of the Internal Revenue Code of 1986 (the Code), as amended, if 100% of the energy used by the battery is derived "from the sun," therefore allowing the 30% tax credit for the energy-storage device. The new policy could lead to an increase in the amount of upgrades and retrofits to existing residential solar energy systems.

In a 2013 letter ruling (PLR 201308005), the IRS had ruled that a commercial, behind-the-meter battery included in the original installation of a solar system will be considered part of the "energy property" within the meaning of section 48(a)(3)(A)(i) of the Code, and, therefore, an investment tax credit could be claimed on its full cost. The 2013 ruling also provided, however, that the battery's eligibility as energy property is subject to a "cliff" that eliminates all investment credit for the device if less than 75% of the energy stored in the device during an annual measuring period is from the solar energy source, and to a "haircut" that may reduce the investment tax credit pro-rata, if less than 100% (yet more than 75%) of the energy stored in the device during an annual measuring period derives from the solar energy source. See Treasury Regulation § 1.48-9(d)(6).

This more recent IRS letter ruling is of interest in the following respects:

- The new ruling allows the tax credit for an energy storage device that was installed *one year after* the installation of the original solar system, while the 2013 ruling was applicable to an energy storage device *installed as part of the original solar system*. Although the 2018 ruling addresses a residential behind-the-meter energy storage application, the holding in that ruling suggests that it would be possible to have commercial after-installed storage devices qualify for the 30% investment tax credit as well.
- The later ruling makes clear that a residential behind-the-meter storage device has a solar energy storage "cliff" of 100%, unlike a commercial solar-connected energy storage device, which, by regulation, is subject to the 75% cliff rule described in the 2013 ruling.
- The use of the term "derived from the sun" in the 2018 ruling regarding a residential solar system, as opposed to a reference to the on-site solar system as a source for battery charging, prompts the question whether a behind-the-meter energy storage device (residential or commercial) could qualify for the 30% tax credit, if the solar energy stored in the battery was generated remotely, e.g., in a community solar project or contracted through a corporate power purchase agreement, assuming the subscriber/offtaker receives the renewable energy certificates from its subscription or offtake from the remotely-installed solar system.

Like all IRS private-letter rulings, the 2018 ruling is binding only on the taxpayer who received it and may not be used or cited as a precedent. It may provide guidance, however, as to the thinking of the IRS on the issues presented, and may indicate the likelihood that a proposed letter ruling involving similar facts will be approved. It will be interesting to watch the evolution of this topic in future IRS letter rulings and other IRS guidance.

Ballard Spahr's Energy and Project Finance Group assists clients in developing strategies to thrive in the fast-changing regulatory, technological, and financing environment of the energy industry.

Attorneys in Ballard Spahr's Public Finance Group have extensive experience with the rules and regulations set by the IRS.

Ballard Spahr's Tax Credits Group has experience with all the major governmental tax credit programs, including renewable energy production and investment tax credits.

by the Energy & Project Finance, Public Finance, and Tax Credits Groups

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S&P Global Trade At A Crossroads: U.S. States And Localities May Take Another Look At Budget Forecasts.

In its 2018 sector outlook for U.S. states, S&P Global Ratings cited the potential for policy missteps as a leading risk to its baseline economic forecast for the year. President Trump's recent decision to impose import tariffs of 25% on steel and 10% on aluminum is an example of this type of risk.

Continue Reading

Mar. 9, 2018

S&P: Odds Are Favorable For Continued Strong Credit Quality For U.S. Lottery Revenue Bonds Despite Slower Future Growth.

Consistent with S&P Global Ratings' long-held view, we anticipate that the highly rated U.S. lottery bonds sector will remain stable, despite expectations of slower lottery revenue growth. S&P Global Ratings maintains ratings on lottery bonds issued by four states, with all but one rated 'AAA' (our highest rating).

Continue Reading

Mar. 6, 2018

S&P: Pension Assumption Delay Makes Near-Term New Jersey Budgets More Manageable, But Doesn't Address Long-Term Pension Issue.

NEW YORK (S&P Global Ratings) March 5, 2018–S&P Global Ratings today said that it believes a delay in implementing changes to pension return assumptions, recently announced by New Jersey's acting treasurer, should allow the state more near-term budget flexibility, but does not address the state's long-term pension problems.

Continue Reading

Combining Tax-Exempt Bonds with Public-Private Partnerships under Current Law: Squire Patton Boggs

On February 13, the Trump Administration released its proposal to finance improvements of the nation's infrastructure. This proposal promotes the use of public-private partnership ("P3") arrangements to fund these improvements by expanding exempt facility bonds (a type of tax-exempt private activity bond that can be used to finance a list of specific types of projects, such as airports, sewage facilities, etc.) so that tax-exempt bonds can be used more easily in conjunction with P3 arrangements. For example, many public infrastructure projects, such as convention centers, courthouses, and fiber optic networks, do not fit within the patchwork list of projects that qualify for private activity bond financing, and so they cannot be financed with tax-exempt bonds if the bonds would exceed the private activity limits.

The day after the Trump Administration released its proposal, House Ways and Means Chairman Kevin Brady made it clear that he does not support an expansion of tax-exempt private activity bonds($). If the scope of exempt facility bonds is not expanded to facilitate the more ready use of tax-exempt bonds in P3 financing structures, and Chairman Brady's resistance could make this a likely outcome, P3 arrangements that wish to include tax-exempt bond financing will need to satisfy current law. One way to accomplish this objective is for the private party in the P3 arrangement not to be the owner or long-term lessee of the tax-exempt bond-financed property but instead to use this property under a management contract that complies with Revenue Procedure 2017-13 (which we have analyzed here, here, and here).

What if the P3 arrangement contemplates that the private party will hold attributes of ownership in the subject property that will result in excessive private business use of the bonds that would finance that property, so that the qualified management contract approach is not a solution? One technique, which is often used to allow the use of tax-exempt bonds to finance professional sports stadiums (which, since the Tax Reform Act of 1986, have not been among the list of projects that can be financed with exempt facility bonds), presents a potential alternative solution.

The Public Finance Tax Blog

By Michael Cullers on March 6, 2018

Squire Patton Boggs

Issuer Brief: A New Microgrid in Chicago and What It Means for Governments Moving Forward.

Microgrid Approved in Illinois — A Case Study

The Illinois Commerce Commission has approved ComEd's plan to construct one of the nation's first utility-scale microgrid clusters in the Bronzeville neighborhood on the South Side of Chicago. The project, which has received more than $5 million in grant funding from the U.S. Department of Energy, will enable the study of how microgrids support the integration of clean energy onto the grid and increase grid security to keep power flowing even during extreme weather or a catastrophic event.

A microgrid is a small power grid with defined boundaries which can operate both when connected to the larger electric grid and as an "'island" when there's an interruption on the main grid. It draws on distributed energy resources, such as solar power or cogeneration facilities, to serve customers within the microgrid footprint.

In this case, the project will serve an area that includes 10 facilities providing critical services, including the Chicago Public Safety Headquarters, the De La Salle Institute, and the Math & Science Academy, a library, public works buildings, restaurants, health clinics, public transportation, educational facilities, and churches. It will also be connected to an existing microgrid at the Illinois Institute of Technology. The completed project will serve about 1,060 residential, commercial, and small industrial customers. It will be constructed in two phases and will include battery storage and solar photovoltaic cells. It is scheduled for completion in 2019.

Our interest here is the technological improvement. Although it is being undertaken by an investor-owned rather than a municipally owned and operated utility, there are clearly many municipally operated utilities which could potentially use and benefit from this technological step, by reducing peak capacity requirements and carbon footprints. So we will look with interest at the results of the project as they impact, cost, efficiency, and reliability for this major urban electric distributor.

Privatization Takes a Hit

From the earliest days of the Trump Administration, Rep. Bill Shuster R-PA has been pursuing an effort to privatize the federal air traffic control (ATC) system. For a while, the ATC privatization plan was the only thing that the Trump Administration could cite as its infrastructure program. Since then, the Administration has put out an infrastructure plan weighted in favor of private interests. Over that same period, the Shuster privatization legislation has met bipartisan resistance, and Rep. Shuster has announced that he will retire at the end of his term in January.

So it is with real interest that we received the news that "despite bipartisan support among lawmakers, industry and labor groups, there isn't enough support to approve the proposal this year," Shuster said. He also said that instead he would work with his counterpart, Sen. John Thune, R-S.D., to approve FAA legislation without air-traffic control privatization.

General-aviation advocates feared that the corporation would favor airlines at busy airports and would have charged higher fees than the government. Groups including the Aircraft Owners and Pilots Association, the General Aviation Manufacturers Association, the National Air Transportation Association and the National Business Aviation Association issued a joint statement opposing the effort.

The moral of the story is that privatization is not the answer for all infrastructure situations. A successful process will concentrate on the best result rather than the method used to accomplish it.

Is the NY-NJ Gateway Tunnel Project Hitting a Wall?

There have been concerns since the unveiling of the Trump administration infrastructure "plan" in mid February about whether funding commitments to the Gateway Tunnel project by the Federal government would be adhered to. In December, the acting administrator of the Federal Transit Administration, K. Jane Williams, said in a letter to officials in New York and New Jersey that any such agreement was "nonexistent." The signals this week were not very encouraging. First, Transportation secretary Elaine Chao told transportation advocates that federal loan funds provided to participants in the Gateway project would not be counted as part of the states' equity contributions. This would require N.Y. and N.J. to come up with even more locally generated funding. At a Senate Environment and Public Works hearing Sens. Kirsten Gillibrand (D-N.Y.) and Cory Booker (D-N.J.) pressed Chao about why the administration doesn't consider federal loans as equity, she said it's simply not the way things have been done. Gillibrand and Booker disagreed, and at one point Booker cited a DOT webpage he said seemed to invalidate her position. Chao said that wasn't her understanding, but promised to "look at it."

The Secretary ran into additional pushback during a hearing held by the House Transportation and Infrastructure Committee Tuesday. Chao said the concern is that the project would consume all of the available federal funding. "If they absorb all of these funds, there would be no others left for the rest of the country," Chao said. That does echo fears some rural legislators have expressed.

The project is also getting caught up in the maelstrom of chaos engulfing the White House. President Trump is pressing congressional Republicans to oppose funding for a new rail tunnel telling Speaker Paul Ryan this week not to support funding for the $30 billion project. The stance is likely fueled by Trump's animus toward N.Y. Sen. Chuck Schumer. The project is widely considered to be among the most pressing and most expensive infrastructure needs in the country, making up 20% of the nation's GDP. A document issued by Trump's transition team listed the Gateway project as the No. 1 national infrastructure priority.

Congressional appropriators are looking to spend at least $950 million in federal funds on the Gateway project in the coming omnibus spending bill. Lawmakers are expected to pass the legislation ahead of a March 23 government shutdown deadline. The chairman of the House appropriations subcommittee on transportation, said the project was among the top priorities to be funded in the new bill. On the Omnibus funding, if the money is added to the New Starts program or State of Good Repair program for it, then it has to be signed off in by Chao which could present problems if Trump is super dug in. However, if the money goes through the Amtrak account, it goes straight to the Amtrak board who then can get it out without DOT signoff.

Posted 03/08/2018 by Joseph Krist

This Issuer Brief is brought to you by Court Street Group.

Neighborly Insights

Tax Court Denies Church's Property Tax Exemption.

The New Jersey Tax Court, in *Christian Mission John 316 v. Passaic City*, recently issued a decision refusing to allow a property tax exemption for a commercial property under construction for a new religious use. The Tax Court strictly construed N.J.S.A. 54:4-3.6 and found a religious nonprofit corporation's limited use of its property, which was under construction as of the assessing date, did not meet the requirements for a local property tax exemption.

At issue was whether the subject property was available for religious services absent a temporary or final certificate of occupancy and whether the plaintiff actually used the subject property for religious purposes. The plaintiff is a religious nonprofit corporation and owns and operates a church with an adjacent parking lot. The church and parking lot are both exempt from local property tax. In September 2009, the plaintiff purchased the adjoining property in order to expand its facilities. Between 2009 and 2012, the property was not exempt from local property tax, and the plaintiff did not appeal the decision. In late 2011, the plaintiff began significant renovations of the property to convert it from a commercial warehouse into a large sanctuary, offices and meeting space. During the construction, the plaintiff conducted 20-minute prayer sessions on the property for church members and their spouses who were part of the construction team. In 2012, the defendant city denied the plaintiff's application for a local property tax exemption for the subject property for the 2013 tax year. The plaintiff appealed the decision and moved for summary judgment.

In its decision, the Tax Court concluded the property was not exempt from local property taxes for the 2013 tax year. The court held that the 20-minute prayer sessions did not constitute "actual use" as contemplated under N.J.S.A. 54:4-3.6 because neither the public nor a majority of the plaintiff's congregation derived a benefit from the property as of the assessing date. In support of its decision, the Tax Court explained that the prayer sessions were not available to the public and were incidental to the prayer services offered by the plaintiff, and that formal religious services commenced several weeks after the assessing date of October 1, 2012. It did not matter that the goal, intent or objective was to furnish a tax-exempt purpose (religious activities), because the subject property was not in a position to provide its services or benefits to the public as of the assessment date.

The Tax Court also found that the subject property could not be considered actually in use or fully available for use under N.J.S.A. 54:4-3.6, because a temporary certificate of occupancy was not issued until April 14, 2013, roughly six months after the assessing date. The Tax Court noted that the Uniform Construction Code (UCC) "strictly prohibits use or occupancy of a structure until a certificate of occupancy has been issued." The court stated that it could not envision the New Jersey Legislature condoning a taxpayer, in order to qualify for tax exemption, attempting to make actual use of a property prior to the property having an occupancy permit. In holding that the subject property did not qualify for exemption, the Tax Court circumscribed its opinion to "properties that: (1) have not previously been granted tax exemption; (2) are experiencing new construction or renovation to permit an intended use of the property for an exempt purpose; and (3) have not been the subject of an added assessment."

The Tax Court also, in a matter of first impression, narrowly construed the Appellate Division's decision in *Society of the Holy Child Jesus v. City of Summit*, 418 N.J. Super. 365 (App. Div. 2011), which holds that tax assessment statutes and construction and zoning laws are not to be read in pari materia, and municipalities have separate avenues of enforcement with regard to those laws. The Tax Court here relied substantially on the UCC as strictly prohibiting the use or occupancy of a structure until a certificate of occupancy has been issued as a basis for the denial of the tax exemption. However, under *Society of the Holy Child*, that would have been a non sequitur vis-à-vis the tax exemption. Even though the *Society of the Holy Child Jesus* opinion is governing legal precedent, the Tax Court took great pains to narrowly construe its holding. It is possible this extremely narrow reading may be subject to further challenge or appeal.

In light of the Tax Court's decision, exempt taxpayers should not assume property being converted to tax-exempt purposes will qualify for a tax exemption prior to the completion of construction. They therefore may wish to establish a reserve to cover the period of nonexemption. Also, tax-exempt religious entities such as churches, synagogues or mosques may want to allow the public, not just a select few, to attend or take part in any services held on the property during its construction or reconstruction, if safely or reasonably possible. Obtaining a temporary certificate of occupancy as soon as possible could be an important first step toward perfecting the exemption. Last, exempt taxpayers may want to weigh the costs and benefits of a renovation of a property that has not been previously tax-exempt if the cost of temporary taxes will be particularly significant.

by Christopher John Stracco Katharine A. Coffey Alyssa R. Musmanno

March 7, 2018

Day Pitney Alert

TAX - PENNSYLVANIA

In re Appeal of Springfield Hospital Folio No. 42-00-06625-01

Commonwealth Court of Pennsylvania - February 13, 2018 - A.3d - 2018 WL 828284

Following entry of order adopting payment in lieu of tax (PILOT) agreement between taxing authorities and non-profit corporation, which operated hospital, sale of hospital property from non-profit corporation to tax-exempt entity, and sale of hospital property from tax-exempt entity to limited liability company (LLC), taxing authorities filed petition to enforce order adopting PILOT agreement, which exempted property from real estate taxes so long as it was used solely for hospital purposes by non-profit corporation or by any entity exempt from federal tax.

The Court of Common Pleas granted petition and ordered property's status to be changed to taxable non-exempt. LLC appealed.

The Commonwealth Court held that:

- LLC failed to file its motion to remand, for assignment to different judge, at earliest possible moment, and thus LLC waived such motion, and
- LLC waived for appellate review its argument that Consolidated County Assessment Law (CCAL) prohibited trial court from enforcing PILOT agreement.

Limited liability company (LLC), which purchased hospital property from tax-exempt entity, which in turn had acquired hospital property from non-profit corporation, failed to file its motion to remand, for assignment to different judge, at earliest possible moment, and thus LLC waived such motion, in taxing authorities' action to enforce prior court order exempting non-profit corporation and its successors from real estate tax on hospital building, where LLC knew over four months before filing motion of alleged conflict of interest arising from judge serving on board of directors for foundation of tax-exempt entity.

Commonwealth Court would deny motion for remand filed by liability company (LLC), which purchased hospital property from tax-exempt entity, which in turn had acquired hospital property from non-profit corporation, in taxing authorities' action to enforce prior trial court order adopting payment in lieu of tax (PILOT) agreement exempting non-profit corporation and its successors from real estate tax on hospital building, since LLC failed to allege any facts or present any evidence tending to show bias, or even the appearance of bias, of any trial court judge.

Limited liability company (LLC), which acquired hospital building from tax-exempt entity, which in turn had acquired hospital property from non-profit corporation, waived for appellate review its argument, that section of Consolidated County Assessment Law (CCAL) governing tax assessment role and interim revisions prohibited trial court from enforcing payment in lieu of tax (PILOT)agreement between taxing authorities and non-profit exempting non-profit corporation and its successors from real estate tax on hospital building, in taxing authorities' action to enforce such order, since argument was not raised in LLC's answer to taxing authorities' petition to enforce order, nor was argument raised in LLC's statement of errors complained of on appeal.

TAX - MISSOURI

City of Kansas City v. Cosic

Missouri Court of Appeals, Western District - February 27, 2018 - S.W.3d - 2018 WL 1061358

City filed petition against taxpayer, seeking to recover delinquent earnings taxes and requesting penalties, attorney fees, and other costs.

Following bench trial, the Circuit Court entered judgment against taxpayer, awarding city unpaid earnings taxes and other costs, but failing to award penalties and prejudgment interest. After city's motion to reconsider the judgment was denied, city appealed.

The Court of Appeals held that record on appeal did not contain evidence necessary to determine city's claim that trial court erroneously failed to award prejudgment interest under city ordinance.

Record on appeal did not contain evidence necessary to determine city's claim that trial court erroneously failed to award prejudgment interest under municipal ordinance that purportedly imposed prejudgment interest on unpaid earnings taxes when trial court entered judgment against taxpayer in city's action to recover delinquent earnings taxes, and thus review of claim on appeal was not possible; success of claim depended on ordinance, record did not establish the ordinance was introduced into evidence at trial, and ordinance was not part of the record on appeal.

What's the Outlook for Munis as HQLA?

PHOENIX – A bill that would allow banks to count municipal bonds among their high-quality liquid assets appears to be headed towards eventual passage, potentially alleviating a situation that some market participants have said has hurt demand for munis.

Provisions that would allow banks to treat readily-marketable, investment-grade municipal securities as high-quality liquid assets under federal banking rules is included in S. 2155, the Economic Growth, Regulatory Relief, and Consumer Protection Act sponsored by Sen. Mike Crapo, R-Idaho. The provisions, the same as were included in a previously-introduced bill backed by Sen. Mike Rounds, R-S.D., is a response to rules adopted in 2014 by the Federal Reserve Board, the Office of the Comptroller of the Currency, and the Federal Deposit Insurance Corp.

These rules require banks with at least $250 billion of total assets or consolidated on-balance sheet foreign exposures of at least $10 billion to have a high enough liquidity coverage ratio – the amount of HQLA to total net cash outflows – to deal with periods of financial stress.

The regulators did not include munis as HQLA under the rule because they felt the securities were not liquid enough. The Fed later amended its rules to include some munis as HQLA but muni market participants said the amendments were still too restrictive and, in any case, would mean little if the other banking regulators did not follow suit.

Banks have emerged as major buyers of munis in recent years, with their holdings rising to about $537 billion in 2016 from about $191 billion in 2006 according to the Municipal Securities Rulemaking Board, a trend many in the market were concerned would be curtailed by the rules.

If passed into law, banks would be able to treat some munis as level 2B HQLA, the same level as for mortgage backed securities. That's a level down from the level 2A securities the market was hoping munis could belong to, the same level applied to sovereign debt.

The Senate voted March 6 to proceed to debate on the bill, which is broad and touches on not only munis but also mortgage lending and credit standards. The bill has 12 Democrat cosponsors and should be able to pass through the Senate and the House fairly smoothly and be signed into law within a few weeks, according to a source on Capitol Hill.

Emily Brock, director of the Government Finance Officers Association's federal liaison center, said she is "confident in the bill's progress."

"It's the bottom of the totem pole of what issuers could support," she said, noting that issuers had really hoped for a level 2A classification. "It's time to have a bipartisan, bicameral conversation about keeping the bond market strong," she added.

John Mousseau, executive vice president and director of fixed income at Sarasota, Fla.-based Cumberland Advisors said he believes the bill would be a win for the muni market if it becomes law, because it would help cement banks' important place as buyers of municipal debt.

The bill is unpopular with the more progressive Senate Democrats, who view it as largely a rollback of the Dodd-Frank provisions enacted in the wake of the 2007/2008 financial crisis rather than the effort to help the smaller regional and community banks that Republicans say the bill will help. Sen. Elizabeth Warren, D-Mass., has criticized her colleagues for supporting the bill and vowed to fight it.

By Kyle Glazier

BY SOURCEMEDIA | MUNICIPAL | 03/08/18 06:52 PM EST

Opportunity Zones.

Included in the Tax Cuts and Jobs Act and passed in December 2017 was a set of provisions to incentivize new investment in low-income communities throughout the United States. Under the law, governors are given the opportunity to nominate qualifying census tracts to receive a new designation, "Opportunity Zones."

Importantly, there is only a short window for governors to nominate Opportunity Zones. They must submit their recommendations to the Department of Treasury by March 21, 2018, or else they must request a 30-day extension. For more information about this process, visit the CDFI Fund Opportunity Zone Resource Page.

Once Opportunity Zones have been designated, individual and corporate investors are then given the opportunity to defer capital gains taxes when they reinvest the earnings in these communities. Additional incentives accrue over five, seven and ten years if the investment is maintained – thereby promoting the kind of patient capital that distressed communities so often lack.

There are currently **trillions of dollars'** worth of unrealized gains in the capital markets. If even a portion of those gains are moved to invest in distressed communities, it could have a transformative impact.

The Economic Innovation Group, a bipartisan public policy and research organization, spearheaded the effort to draft and pass the legislation that authorizes Opportunity Zones.

For the past year, the U.S. Impact Investing Alliance has been engaged with investors, communities and policymakers to understand how the Opportunity Zone program could catalyze private impact capital.

Resources

- **What are Opportunity Zones?** Opportunity Zones are made up of low-income community census tracts (and a small number of adjacent census tracts). Each state's governor may nominate up to 25% of its low-income community tracts to receive the Opportunity Zone designation.
- **Enterprise has developed dynamic state mapping tools to assist governors and stakeholders in this decision-making process.**
- **What are the benefits to investors?** Investors are able to defer capital gains on earnings that are reinvested in "Qualified Opportunity Funds" – special purpose entities that exist to invest in businesses located in Opportunity Zones. Long term investors receive an additional step-up in basis, cancelling out some of their original tax bill (10% after five years and rising to a total 15% increase in basis after seven years). Investments maintained for ten or more years are not subject to any additional capital gains tax on earnings from Opportunity Zone Investments.
- The Economic Innovation Group has prepared a fact sheet **outlining the benefits of Opportunity Zones for investors.**
- **What types of investments will be available?** In general, the statute is written to promote equity investments in new businesses. The U.S. Impact Investing Alliance is currently working with investors, communities and regulators to understand how investment capital can best be deployed to deliver impact to Opportunity Zone communities. If you would like to be involved, please contact us at info@impinvalliance.org.

First Municipal Bond ICO Is in the Works.

Investors can't seem to agree on the value of cryptocurrency, but when it comes to blockchain, there's a strong consensus: the public ledger has the potential to transform the investment world. As it turns out, blockchain technology might offer an innovative method for cost savings and transparency in the municipal bond market.

Berkley, California and underwriting firm Neighborly will make history this spring when they launch the first initial coin offering (ICO) backed by municipal bonds. The city plans to hold the ICO in May, giving investors an opportunity to purchase municipal bonds in tokenized form. ICO is a controversial but extremely popular crowdfunding model that startups have used to generate billions of dollars in financing over the past 14 months.

However, unlike typical ICOs that generate cryptocurrencies, Berkley plans to implement a "tokenized system for creating, distributing, storing and relaying bonds denominated in USD," according to Neighborly chief executive, Jase Wilson. The company has already set up the technology to issue the tokens and has a proven track record in delivering to non-traditional markets. In 2017, Neighborly took home the Bond Buyer Deal of the Year award in the non-traditional assets category for the mini-bond sale it executed for Cambridge, Massachusetts.

Continue reading.

municipalbonds.com

by Sam Bourgi

Mar 08, 2018

A Change to the Lobby Tax: Venable

A little-noticed provision tucked away in the recently enacted Tax Cuts and Jobs Act (TJCA) will affect associations that lobby at the local level. Under the TJCA, expenses incurred in connection with attempting to influence legislation at the local or municipal level (including Indian tribal governments) will no longer be deductible. For associations, this tax code change means that such local lobbying expenses will need to be counted as part of the association's lobbying tax calculations.

In general, since 1993, the tax code has required associations recognized as exempt under Section 501(c)(6) to either:

1. Tell their members what portion of their dues is spent on lobbying and is therefore nondeductible, or
2. Pay a proxy tax on the amount the association spends on lobbying.

The tax code contained a specific exception for expenses incurred in connection with influencing local legislation. The TJCA eliminates this exception immediately, effective for any such expenditures incurred on or after December 22, 2017.

For associations involved in local lobbying as well as state and/or federal lobbying, this means that the percentage of dues they report to their members as nondeductible may increase. Associations that are involved only in local lobbying—such as a local chamber of commerce—will now have to report to their members the portion of dues that is nondeductible. This could be a big shift in how such associations operate, since they may not have been accustomed to capturing staff time, expenses, and fees to outside lobbyists and reporting that as a percentage of their dues to members.

Another change to the tax code will likely have a positive effect on some associations affected by the lobbying nondeductibility rules. Specifically, those associations that choose to pay a flat proxy tax rather than estimate the portion of the membership dues allocable to lobbying expenditures and report such nondeductible amounts to their members will benefit from the reduced corporate rate—the proxy tax amount decreases from 35% of lobbying expenditures to 21%. As such, the lower corporate rate may reduce the tax liability for associations that elect to pay the proxy tax.

The requirement to report the percentage of membership dues allocable to lobbying does not apply to Section 501(c)(3) organizations, which are generally prohibited from devoting more than a substantial part of their activities to influencing legislation.

As a reminder, the rules on deductibility of lobbying are completely unrelated to lobbying disclosure rules. Many states require registration and reporting at the state level for local lobbying (such as New York). In addition, many localities have their own lobbying registration systems (such as New

York City, to name just one of many).

Venable LLP

by Ronald M. Jacobs, Lawrence H. Norton, George E. Constantine and Christopher N. Moran

USA March 7 2018

[Paul Ryan Says House Infrastructure Action Will Happen in 'Stages']

The House speaker's remarks come one day after he ruled out the idea of raising the gas tax.

House Republicans will move ahead with a series of infrastructure bills in the coming months, Speaker Paul Ryan said Thursday.

The Wisconsin Republican's comments came a day after he ruled out the possibility of hiking the federal gas tax, and as the Trump administration is promoting a public works plan that calls for $200 billion of federal spending, mostly for new grant programs.

Until legislation starts to emerge, it will be unclear how closely the efforts Ryan described will hew toward the plan Trump has proposed. Some of the bills the speaker referenced were due to arise in Congress even without any extra prodding by the president.

Continue reading.

Route Fifty

By Bill Lucia,
Senior Reporter

MARCH 8, 2018

[City Leaders Prepare for an Infrastructure Lobbying Push.]

The effort will take place this week as part of the National League of Cities 2018 Congressional City Conference.

WASHINGTON — City leaders from across the U.S. vowed Monday to keep pressure on Congress to advance infrastructure legislation.

Infrastructure is the marquee issue at the National League of Cities 2018 Congressional City Conference taking place here this week. Over 2,000 city officials are attending the event and more than 200 NLC delegates have about 150 meetings planned on Capitol Hill.

"It's no secret," Little Rock, Arkansas Mayor Mark Stodola, the current president of the National League of Cities, said at a press conference Monday, "America has an infrastructure problem."

Continue reading.

Route Fifty

By Bill Lucia,
Senior Reporter

MARCH 12, 2018 10:16 PM ET

U.S. DOT Announces TIGER Grants Totaling Nearly $500 Million.

The White House has called for axing the grant program in each of the two budget plans it has sent to Congress.

The White House has called for axing the grant program in each of the two budget plans it has WASHINGTON — Nearly a half-billion dollars is set to flow to 41 infrastructure projects in 43 states through grant awards the U.S. Department of Transportation announced on Friday.

The grants come via the Transportation Investment Generating Economic Recovery program, commonly referred to as TIGER. President Trump has proposed ending the competitive, Obama-era grant program in each of his last two budget requests.

Even so, the White House touted last week's awards in an email to media outlets on Friday, linking them to the Trump administration's ongoing push for greater infrastructure investment.

Continue reading.

Route Fifty

By Bill Lucia,
Senior Reporter

MARCH 11, 2018

- Tax-Exempt Advance Refunding of Taxable Bonds (Including BABs)? A Report from the Tax and Securities Law Institute.
- SIFMA Comments on Amendments to MSRB Rule G-21 and New Rule G-40.
- Insights: Threat to State Tax Revenues, What's Next for Advanced Refundings?
- Insolvent "On Behalf Of" Municipal Bond Issuers: Chapter 9, Chapter 11, or Ineligible?
- Yes, Special Revenue Bonds Remain Special: Mintz Levin
- Follow the Money: How to Track Federal Funding to Local Governments.
- S&P: When Analyzing Municipal Utility Credit Quality, Strong Management Is Often An Asset.
- And finally, Thanks For Nothing is brought to us this week by *Kelly v. DiNapoli*, in which police officer was ordered not to enter a home that had collapsed during Hurricane Sandy until a "technical response unit" could be dispatched. The cop – responding to the "blood-curdling" screams coming from the residence – ignored the order and fought his way into the building where he rescued a woman who had been impaled and pinned to the floor. In the process, he sustained

devastating physical injuries. His reward? The denial of disability benefits because the incident hadn't been an "accident" and the guy was just engaged in the ordinary course of his duties. Let that be a lesson to all you would-be heroes (a disproportionate number of which, of course, practice public finance law.)

PUBLIC EMPLOYMENT - NEW YORK

Kelly v. DiNapoli

Court of Appeals of New York - February 13, 2018 - N.E.3d - 2018 WL 828098 - 2018 N.Y. Slip Op. 01016

Police officer and firefighter filed individual applications for accidental disability retirement benefits.

The Supreme Court, Appellate Division denied police officer's application, and the Supreme Court, Appellate Division, granted firefighter's application. Upon appeal, the cases were consolidated.

The Court of Appeals held that:

- Police officer's injuries to neck and back were not result of an "accident," and
- Firefighter's injuries to heart were not result of an "accident."

Police officer who sustained neck and back injuries when roof beam fell on him while he was rescuing trapped homeowners after hurricane was not injured as a result of an "accident," as would permit him to receive accidental disability retirement benefits, since there were no precipitating accidental events occurring that were not a risk of the work he performed; police officers were expected to assist injured persons, and responding to emergencies was among their ordinary duties.

Firefighter who sustained disabling heart injuries when he was exposed to toxic gasses while performing cardiopulmonary resuscitation (CPR) for approximately 25 to 30 minutes on an individual inside a commercial freezer was not injured as a result of an "accident," as would permit him to receive accidental disability retirement benefits, since there were no precipitating accidental events occurring that were not a risk of the work he performed; exposure to toxic chemicals was a risk for which firefighter had been trained, he had responded to a gas leak in the past, and his job duties specifically required working with exposure to fumes, explosives, toxic materials, chemicals and corrosives.

PUBLIC UTILITIES - CALIFORNIA

Goncharov v. Uber Technologies, Inc.

Court of Appeal, First District, Division 1, California - January 29, 2018 - Cal.Rptr.3d - 19 Cal.App.5th 1157 - 2018 WL 580714 - 18 Cal. Daily Op. Serv. 1007

Licensed taxicab drivers filed putative class action lawsuit against operator of ride-sharing service, which utilized GPS-enabled smartphone application to connect consumers with its partner drivers, alleging operator failed to comply with the Public Utilities Commission licensing requirements for charter-party carriers and asserting claims for violation of the Unfair Competition Law (UCL) and other causes of action.

The Superior Court granted operator's demurrer to second amended complaint and subsequently entered judgment in its favor. Drivers appealed.

The Court of Appeal held that:

- Operator was not required to comply with statute governing reconsideration motions when it filed demurrer to second amended complaint, and
- Superior Court's resolution of taxicab drivers' claims would interfere with CPUC's exercise of regulatory authority, and thus action was barred under statute limiting review of CPUC actions.

Superior Court resolution of claims by licensed taxicab drivers alleging that operator of ride-sharing service, which utilized smartphone application to connect customers with drivers, operated as unpermitted and unlawful charter-party carrier would hinder or interfere with exercise of regulatory authority by California Public Utilities Commission (CPUC), and thus action was barred by statute limiting review of CPUC actions to Supreme Court and Court of Appeal, though CPUC had issued permit for one of operator's transportation options; CPUC was actively involved in addressing questions of whether operator was charter-party carrier and which regulations applied, judicial determination of those issues would infringe on CPUC's rulemaking, and issuance of permit preserved CPUC jurisdiction over that transportation option.

REFERENDA - CALIFORNIA

Lafayette v. City of Lafayette

Court of Appeal, First District, Division 4, California - February 21, 2018 - Cal.Rptr.3d - 2018 WL 991451

City residents petitioned for peremptory writ of mandate to require city to submit referendum to public vote.

The Superior Court denied petition. Residents appealed.

The Court of Appeal held that city had mandatory duty to submit referendum to public vote.

Local governments are not empowered to exercise discretion in determining whether a duly certified referendum is placed on the ballot; if the local government believes an initiative or referendum is unlawful and should not be presented to voters, it should file a petition for a writ of mandate seeking to remove it from the ballot.

City had mandatory duty to submit residents' referendum, which placed city's enacted zoning ordinance on a ballot, to a public vote, even though referendum, if successful, would have resurrected former zoning ordinance which was inconsistent with amended general plan; referendum itself did not create any inconsistency, and it did not seek to enact a new or different zoning ordinance but rather simply sought to put existing ordinance before voters.

ZONING & LAND USE - MARYLAND

Precision Small Engines, Inc. v. City of College Park

Court of Appeals of Maryland - February 21, 2018 - A.3d - 2018 WL 991872

Property owners brought action against city and county, seeking declaration that memorandum of understanding (MOU) between city and county restricted city from requiring non-residential occupancy or building permits issued by city where occupants previously obtained use and occupancy or building permits from the county.

The Circuit Court determined that the MOU restricted city's authority to require permits. City and county appealed. The Court of Special Appeals reversed. Property owners petitioned for writ of certiorari, which was granted.

The Court of Appeals held that MOU between city and county permitted city to require non-residential occupancy and building permits under city building code in addition to use and occupancy and building permits that were required under county code; although MOU empowered city to enforce county's zoning laws, the MOU did not contain any relinquishment of power by the city in order to gain concurrent enforcement power, MOU made clear that parties intended for city to retain the right to create and enforce its own zoning laws, and power of city to enact regulations was separate from power granted by county in MOU.

INVERSE CONDEMNATION - MISSOURI

Scott Family Properties, LP v. Missouri Highways and Transportation Commission

Missouri Court of Appeals, Eastern District, Division Four - February 13, 2018 - S.W.3d - 2018 WL 828756

Following construction of wall between office building and highway, owner of office building brought action against Highways and Transportation Commission for inverse condemnation based on nuisance.

The Circuit Court granted Commission's motion to dismiss. Owner appealed.

The Court of Appeals held that:

- Commission's alleged non-compliance with Department of Transportation policy was not unlawful, and
- Owner was not injured.

Highways and Transportation Commission's alleged non-compliance with Department of Transportation policy in inverse condemnation action was not unlawful, and thus did not give rise to personal cause of action in tort, since policy was not codified by statute or regulation.

Owner of office building was not injured by Highways and Transportation Commission's construction of wall between building and adjacent highway in inverse condemnation action based on nuisance, although wall obstructed visibility of office building from highway, since owner had no legally protectable property right in public visibility of its building.

MUNICIPAL CORPORATIONS - MISSOURI

Howard County Ambulance District v. City of Fayette

Missouri Court of Appeals, Western District - February 20, 2018 - S.W.3d - 2018 WL 941800

Provider of ambulance services brought claim against city and individual’s mother for payment of medical bills for services provided to intoxicated individual who was detained by city police officer.

The Circuit Court entered judgment in favor of city finding that there was no written agreement between provider and city for services and entered judgment against mother in amount of $1,266.01. Provider appealed.

The Court of Appeals held that:

- City was not liable for ambulance services, and
- Where statutory and charter provisions relating to municipal contracts are not complied with, doctrine of equitable estoppel is not applicable.

City was not liable for ambulance services provided to intoxicated individual who was detained by city police officer; while provider of ambulance services had statutory power to fix, charge, and collect reasonable fees for its services, it did not enter into contract with provider that complied with statute requiring that contract made by city be in writing and duly executed, and ordinance governing liability for ambulance services provided to individual detained by law enforcement did not constitute writing as required by statute.

Where statutory and charter provisions relating to municipal contracts are not complied with, the doctrine of equitable estoppel is not applicable and the municipality is not estopped.

IMMUNITY - NEW JERSEY

Lee v. Brown

Supreme Court of New Jersey - February 21, 2018 - A.3d - 2018 WL 987870

Decedents’ estates and several individuals injured while trying to escape fire in multi-unit home brought action against city, electrical inspector employed by city, and other city employees.

Following consolidation, the Superior Court ruled that qualified immunity applied to both city and the inspector. City and electrical inspector appealed. The Superior Court, Appellate Division, affirmed. Leave for appeal was granted.

The Supreme Court of New Jersey held that:

- City electrical inspector was not required to follow a prescribed course of action by law when investigating and resolving code violations, and thus, his actions or inactions were not subject to liability under an ordinary negligence standard, but rather, would be determined based on whether they constituted a failure to enforce the law, and
- Both city and its electrical inspector were entitled to absolute immunity under the State Tort Claims Act (TCA).

City electrical inspector was not required to follow a prescribed course of action by law when investigating and resolving code violations, and thus, because his actions were discretionary and not ministerial in nature, he would not be subject to liability under an ordinary negligence standard for any resulting injuries; inspector had a broad range of discretion in investigating and resolving violations, such as issuing a notice to repair the issue, a summary offense, or seeking a shut-off through departmental procedure.

Both city and its electrical inspector were entitled to absolute immunity under the State Tort Claims Act (TCA), when the gravamen of complaints brought by decedents' estates and several individuals injured while trying to escape fire in multi-unit home was that the fire was caused by the inspector's ineffective enforcement of the construction code, a failure to enforce the law; inspector's prior conduct of inspecting and issuing notices of violation were not sufficient to submit him and city to liability, and the fire, allegedly caused by faulty wiring on the electrical panels, was not the result of any corrective action taken by the inspector.

CONTRACTS - NEW YORK

Dormitory Authority v. Samson Construction Co.

Court of Appeals of New York - February 15, 2018 - N.E.3d - 2018 WL 889524 - 2018 N.Y. Slip Op. 01115

City and Dormitory Authority of the State of New York (DASNY) brought action against architect, alleging, inter alia, breach of contract and negligence with respect to construction of forensic biology laboratory for Office of the Chief Medical Examiner.

The Supreme Court, New York County, granted in part and denied in part architect's motion for summary judgment and denied plaintiffs' motion to reargue. The Supreme Court, Appellate Division, affirmed as modified, and certified architect's question of whether order of Appellate Division properly made.

The Court of Appeals held that:

- City was not intended third-party beneficiary of contract, and
- Negligence claim was duplicative of breach of contract cause of action.

City was not intended third-party beneficiary of contract between Dormitory Authority of the State of New York (DASNY) and architect with respect to construction of forensic biology laboratory for Office of the Chief Medical Examiner, and thus city was precluded from asserting breach of contract claim against the architect; city was not the only entity that could recover under the contract, contract did not expressly name city as intended third-party beneficiary nor authorize the city to enforce any obligations thereunder, and contract expressly reserved third-party enforcement rights to the city.

Negligence claim asserted by City and Dormitory Authority of the State of New York (DASNY) against architect was merely restatement of implied contractual obligations asserted in cause of action for breach of contract with respect to construction of forensic biology laboratory for Office of the Chief Medical Examiner, and thus negligence claim was duplicative of breach of contract cause of action; factual allegations set forth in each cause of action were identical except that negligence claim was framed in terms of architect's failure to comply with professional standards of care, only damages alleged under either theory of recovery were additional expenses required to complete the project, including costs to repair damage to adjacent structures, and in contract itself, parties contemplated architect's responsibility for additional costs of expenses incurred by DASNY as result of architect's design error and omission, and addressed it in contract terms.

DEDICATION - NORTH DAKOTA

[Winnie Development LLLP v. Reveling]

Supreme Court of North Dakota - February 22, 2018 - N.W.2d - 2018 WL 1006465 - 2018 ND 47

Landowner brought quiet title action against city to resolve dispute over land noted on plat for dike access and acquired by quitclaim deed for access to landowner's property. City counterclaimed alleging access rights.

The East Central Judicial District Court entered judgment in favor of city. Landowner appealed.

The Supreme Court of North Dakota held that:

- Plat statement was not statutory dedication of property to city;
- Common-law dedication arose; and
- The dedication transferred easement to city, and, thus, quitclaim deed from original grantor transferred fee title to landowner.

Plat statement dedicating "all streets and park as shown on said plat to the use of the public" was not statutory dedication of parcel noted on plat for "City Dike Access" due to the lack of a legally accurate description, and, thus, fee simple title did not vest in the city.

Common-law dedication of parcel to city for dike access arose from plat map indicating intent to grant right of access for dike access and city's use of parcel for dike access since 1979.

Interest transferred to city by common-law dedication of parcel for dike access was an easement for dike access, and, thus, quitclaim deed from original grantor transferred fee title to adjacent landowner to use parcel for access to property in ways not inconsistent with the city's easement.

[Tax-Exempt Advance Refunding of Taxable Bonds (Including BABs)? A Report from the Tax and Securities Law Institute.]

Last week's NABL Tax and Securities Law Institute included a discussion featuring John Cross (Associate Tax Legislative Counsel – Treasury) and Vicky Tsilas (Chief Branch 5 — IRS General Counsel's Office) of whether tax-exempt bonds can be issued to advance refund taxable bonds, including build America bonds (BABs) despite the prohibition of tax-exempt advance refundings by the 2017 tax legislation. The prohibition, set forth in Internal Revenue Code (Code) section 149(d)(1), states: "Nothing in section 103(a) or in any other provision of law shall be construed to provide an exemption from Federal income tax for interest on any bond issued to advance refund another bond." The Code provides that "[t]he term 'bond' includes any obligation." Code section 150(a)(1). Thus the question is whether a taxable bond is a "bond" as that term is used in the advance refunding prohibition. BABs are included in the question because interest on BABs is included in gross income under Code section §54AA(f)(1). So with this statutory backdrop, can tax-exempt bonds be issued to advance refund taxable bonds?

[Continue Reading]

The Public Finance Tax Blog

By Bob Eidnier on February 28, 2018

PUBLIC RECORDS - WASHINGTON

West v. Puyallup

Court of Appeals of Washington, Division 2 - February 21, 2018 - P.3d - 2018 WL 989868

Requestor brought Public Records Act (PRA) action seeking disclosure of posts made by city council member on her personal social media page.

The Superior Court granted summary judgment in favor of city. Requestor appealed.

The Court of Appeals held that:

- Public official's posts on personal social media page could constitute public records subject to disclosure under Public Records Act (PRA), but
- City council member's posts to her personal social media page were not prepared within scope of her official capacity as city council member.

Public official's posts on a personal social media page can constitute an agency's public records subject to disclosure under the Public Records Act (PRA) if the posts relate to the conduct of government and are prepared within a public official's scope of employment or official capacity.

City council member's posts to her personal social media page were not prepared within scope of her official capacity as city council member, and therefore posts were not "public records" within meaning of Public Records Act (PRA); although almost all of the posts at least referred to government activities, position as city council member did not require that she post on social media, city did not direct that council member prepare the posts, and posts did not contain specific details of council member's work as a city council member or regarding city council discussions, decisions, or other actions, rather posts merely provided general information about City activities and occasionally about council member's activities.

Insights: Threat to State Tax Revenues, What's Next for Advanced Refundings?

The potential threats posed to state revenues by the tax reform law have already been discussed. The other shoe to drop has been the steady stream of budget proposals that have been articulated since tax reform was enacted. Many of these cuts are in areas broadly defined as social service based. They include health, housing, income maintenance as well as the administration's love affair with block granting.

In each case, the proposed changes would either reduce revenues available for services to satisfy demographically driven demand or would replace cash income available to generate retail sales. No matter how you slice it, the budget ideas from the Trump Administration are bad for state finances.

Take the proposal to replace half of the cash portion of the food stamp program with the distribution of food boxes. While presented as a source of both cost savings and better health, the plan would make a serious dent in the income generated from the sale of the products to be distributed. The federal government would buy food products at wholesale and compete against entities whose purchases currently generate sales tax revenues on their own. The government could also use its scale of purchasing power to drive down prices and therefore, agriculture-related incomes. By reducing the amount of food purchased by SNAP recipients from retailers, those retail food distributors would see their sales go down, thereby reducing their taxable incomes. The likely result would be employment reductions at those stores resulting in further declines in the taxable income base.

Then there are the stealth proposals to reduce benefits to the fast-growing elderly population. The Centers for Medicare and Medicaid Services (CMS) actuary said this week that American healthcare spending will grow from 4.3% in 2016 to 5.3% this year and 5.7% by 2021. Much of that increase will be driven by aging baby boomers in need of more medical care. With the retirement assets of most Americans way below their needs, much of that cost will be borne by Medicaid—the health insurance program for low-income and disabled Americans —not by Medicare. Some states are taking a proactive approach.

At least five states — Maine, Arizona, Utah, Wisconsin and Kansas — have asked the Department of Health and Human Services (HHS) to approve proposals that would put a cap on how long Medicaid beneficiaries can receive coverage. Republicans on the House Budget Committee are pushing forward with a new budget resolution this year designed largely to rein in spending on entitlement programs like Medicare and Social Security.

The Administration has proposed a freeze on most funding under the Older Americans Act, which provides money for social and nutrition services for seniors, including Meals on Wheels. While the proposal contains a small increase for food programs, it would cut funding for disability programs by about 30%. It would also eliminate federal block grants that states use to fund programs for seniors.

Since Congress just passed a two-year spending plan, it's highly unlikely Trump's budget will be enacted but it signals where, at least the Republican party, would like to go on entitlements. All of this would be credit negative for the states.

Response to the Loss of Advanced Refundings and Alternatives For the Market

Much has been written about how issuers of new deals, issuers with bonds that are not yet callable, and investors are likely to respond to the loss of advanced refundings. That loss was a substantial blow to financial flexibility for issuers—certainly an ironic result, given the purported desire to generate more capacity to finance and fund infrastructure.

Here are the key considerations for all three parts of a muni transaction:

- First, issuers seeking to maximize flexibility on new long-term financings need to be cautious about expectations that shorter-call paper will be absorbed readily by the market at a yield commensurate with how short-call paper has traded recently. We believe that if short-call paper becomes more common, the yield spread between this paper and bonds with 10-year calls will increase dramatically.
- Second, we support the use of variable-rate debt for a portion of a strong issuer's financings as a way to enhance flexibility without increasing all-in borrowing costs. The challenge will often be in getting credit backstop for such an issue, or in keeping current credit ratings. Stronger issuers such as double-A-rated states will have more flexibility in this context.
- Third, some issuers have discussed the use of much larger amounts of lower-coupon bonds as a way to reduce the yield-to-call on paper with a 10-year call, and thus the urgency to find an alternative to advance refundings. As with short-call paper, issues with coupons well below 5%

may find that the market is not willing to buy such deals except at substantial yield premium over more traditional 5s. This pattern may also reduce the proportion of competitively sold paper. Competitive issues tend to use bidding requirements that lead to a large proportion of lower-coupon bonds—the type that the market may increasingly require to have higher yields to the call date than 5s.
- Fourth, institutional investors with old, short-call paper that they would like to unload also need to be cautious. We expect that either new or aged short-call paper will run into situations of diminishing returns as more of it reaches the market.
- Fifth, issuers seeking to refund bonds significantly before the first call date need to be cautious about paying up too much in yield for alternatives such as forwards or taxable crossover bonds, rather than simply waiting until the bonds are currently refundable. Most potential techniques for refunding such bonds before the first current refunding date will lead to a relatively sharp increase in the borrowing cost, which only makes sense under the assumption that muni yields will be moving significantly higher between now and the first current refunding date.
- Sixth, we are less worried than some observers about the use of floating-to fixed swaps or other derivatives as a way to do an early refunding—but only if the issuer is equipped to recognize the risks and extra costs involved in such a transaction. Many issuers will need outside expertise to handle such potential risks and costs. We note that some of the well-described disasters in swaps stemmed from a reliance on auction rate securities or other warning signs that no longer apply. We do agree strongly with the need for strong hands-on expertise when considering such a choice, however.

03/02/2018 by Joseph Krist

Neighborly Insights

Insolvent "On Behalf Of" Municipal Bond Issuers: Chapter 9, Chapter 11, or Ineligible?

Last week, President Trump unveiled his proposal to fix our nation's aging infrastructure. While the proposal lauded $1.5 trillion in new spending, it only included $200 billion in federal funding. To bridge this sizable gap, the plan largely relies on public private partnerships (often referred to as P3s) that can use tax-exempt bond financing. In evaluating bankruptcy and default risk with P3s and similar quasi-governmental entities it is important to understand whether such entities are eligible debtors under the Bankruptcy Code, and, if so, whether they are Chapter 11 or Chapter 9 eligible.

P3s often involve the issuance of bonds by quasi-governmental hybrids, including so-called "63-20 corporations" (named after an IRS Revenue Ruling) that meet IRS criteria for the issuance of bonds by a non-profit corporation "on behalf of" a state or municipality. Such hybrids are used because they have a sufficient nexus to a state or municipal government to satisfy federal tax criteria for the issuance of tax-exempt municipal debt, while being sufficiently distinct from the state or municipal government to escape otherwise applicable state law restrictions on the incurrence of debt. Given such hybrid nature, questions can arise about whether the issuing entity is eligible for Chapter 9 of the Bankruptcy Code (in those states that have authorized filings under that Chapter) or Chapter 11 of the Bankruptcy Code. That distinction is significant.

Not only are the rules in Chapter 9 and Chapter 11 different (particularly as they relate to bond debt), but there are more eligibility restrictions in Chapter 9 than in Chapter 11. Chief among these is the requirement of specific state authorization for Chapter 9 eligibility. Where such authorization currently does not exist, bondholders can be lulled into a false sense of security thinking their issuer cannot file bankruptcy under Chapter 9, only to find out that the issuer is Chapter 11 eligible.

Continue reading.

By William W. Kannel & Charles W. Azano

February 26, 2018

Mintz Levin

Yes, Special Revenue Bonds Remain Special: Mintz Levin

Judge Swain's decision in the PROMESA Title III bankruptcy proceeding of the Puerto Rico Highways and Transportation Authority ("PRHTA") that a federal bankruptcy court cannot compel a municipal debtor to apply special revenues to post-petition debt service payments on special revenue bonds has generated controversy and caused some market participants to question whether, if the decision is upheld by the First Circuit on appeal, the perception that special revenue bonds have special rights in bankruptcy remains justified.

The short answer is that, whatever the First Circuit does with the Swain ruling, bonds secured by special revenues should continue to emerge from bankruptcy proceedings more unscathed by the issuer's bankruptcy than bonds that are not special revenue bonds or secured by statutory liens.

Judge Swain's order dismissed a complaint by PRHTA's bond insurers for declaratory and injunctive relief requiring PRHTA to remit special revenues received by PRHTA to its bond trustee for payment of bond debt service, and for a declaration that PRHTA lacked a property interest in the trustee-held debt service reserve fund (which would have permitted the trustee to apply the debt service reserve fund to bond debt service payments without further legal analysis.)

It is important to focus on what Judge Swain did and did not hold:

- The most controversial portion of Judge Swain's opinion addressed the meaning of Section 922(d) of the Bankruptcy Code, which exempts from the bankruptcy stay "the application of pledged special revenues." Judge Swain stated that Section 922(d) "makes clear that the automatic stay is not an impediment to continued payment, whether by the debtor or another party in possession of pledged special revenues, of indebtedness secured by such revenues…." She held, however, that the quoted exception from the stay did not extend to lifting the stay in order to permit a creditor to seek a court order compelling the debtor to turn over special revenues to a bond trustee.
- Even under Judge Swain's narrow reading of Section 922(d), a bond trustee in possession of special revenues need not seek or obtain relief from stay to apply special revenues to debt service payments. Special revenue bonds structured with a "true" lockbox, in which revenues flow directly to the bond trustee or an agent for the trustee, should not be impacted by Swain's decision, even if upheld. In contrast, under Judge Swain's reading of Section 922(d), special revenue bonds in which revenues flow to the issuer and the issuer covenants to turn the revenues over to the bond trustee upon receipt may, at a minimum, suffer delay in the payment of scheduled debt service.
- Judge Swain's rulings on the debt service reserve fund consisted of rejection of the proposition that the debtor lacked a property interest in the reserve, and an assertion that the court lacked authority to compel the application of the reserve fund to debt service. Even under Judge Swain's narrow reading of Section 922(d), a trustee-held reserve fund containing special revenues may be

applied by the bond trustee to debt service on the bonds without relief from stay. It is unclear whether the bond trustee in the PRHTA case lacked confidence that the funds in the reserve fund qualified as special revenues; if they so qualified, there was no apparent need to seek any court ruling prior to applying such funds, nor is there anything in the court's ruling precluding such application of special revenues.

On appeal, the bond insurers will seek to persuade the First Circuit that Judge Swain's reading of Section 922(d) is overly literal, that legislative history suggests Congressional intent that special revenue bonds not be "impaired" in a bankruptcy, and that failure to receive scheduled post-petition payments when due constitutes the type of impairment Congress intended to preclude by enacting Section 922(d).

However the First Circuit reads Section 922(d), good reasons remain for an issuer to turn over net special revenues, as debtors in Chapter 9 proceedings have historically done. Section 928 of the Bankruptcy Code provides that a "lien on special revenues … derived from a project or system shall be subject to the necessary operating expenses of such project or system." In the PRHTA proceeding, the "special revenues" included, in addition to toll revenues, some Commonwealth-imposed excise taxes that may not qualify for this operating expense carveout because they are not "derived from a project or system." But most special revenue bond issuers are protected by Section 928 from being left without a source of payment for necessary operating expenses even if they turn over net special revenues. Moreover, even under a narrow reading of the special revenue protections, to the extent an issuer seeks to apply net special revenues for purposes other than debt service, it is dissipating cash collateral and the creditors should be entitled to relief from stay in the absence of "adequate protection". What may or may not be "adequate protection" for an issuer's expenditure of cash collateral is a separate topic that Judge Swain has addressed tangentially in other opinions, but in most instances special revenue bond issuers should have little incentive to hang on to net special revenues versus turning them over – they may lose adequate protection litigation, and even if they do not, special revenue bond issuers are often standalone authorities precluded by state law (and in the case of PROMESA, federal law) from applying their revenues for purposes other than their own operating expenses, debt service and, although there is yet another litigable issue over whether funding capital expenditures at the expense of paying current debt service is permissible (and if so, under what circumstances) under the Chapter 9 special revenue provisions, capital expenditures on the system that generates the special revenues.

In any event, however broadly or narrowly the courts ultimately construe the Section 922(d) exception to the stay for application of special revenues, the primary reason that special revenue bond status is important and beneficial resides in Section 928(a) of the Bankruptcy Code, which provides that, unlike most revenue pledges that are cut off upon the filing of a bankruptcy petition, "special revenues acquired by the debtor after the commencement of the case shall remain subject to any lien resulting from any security agreement entered into by the debtor before the commencement of the case." This is the main source of protection for special revenue bonds – the fact that the bankruptcy process does not permit the debtor to free itself from the lien on its post-petition special revenues. Because pledged special revenues can stretch into perpetuity until the special revenue bonds are fully paid, there is generally little advantage to issuers in not keeping current on post-petition debt service.

The fact that special revenue bondholders have a permanent lien on special revenues generated by the debtor does not, of course, guarantee full payment of special revenue bonds in instances where structural issues prevent an issuer from fully servicing its debt – i.e the special revenues being generated are simply insufficient to service the debt . But it does mean that special revenue bonds should do better in bankruptcy than comparable bonds that are unsecured or secured only by prepetition revenues.

Where a special revenue bond issuer claims that it will not be able to repay special revenue bonds in full, the case for relief from stay to preclude the issuer from dissipating cash collateral in excess of any applicable operating expense carveout is compelling. The most disturbing element in Judge Swain's opinions to date are statements, mostly in dicta, that come close to the line, or cross the line, of suggesting that PROMESA Section 305, which states that a bankruptcy court "may not, by any stay, order, or decree, in the case or otherwise, interfere with … any of the property or revenues of the debtor", precludes a bankruptcy court from granting any relief from stay when a creditor seeks to prevent detrimental application of cash collateral. Section 305 cannot be read to override other provisions of PROMESA, such as provisions authorizing relief from stay for lack of adequate protection, nor is the lifting of a stay to permit a creditor to pursue state court remedies against a municipal debtor the equivalent of a bankruptcy court's "interfering" with the debtor's revenues. Accordingly, Judge Swain's overbroad pronouncements on Section 305 are likely to be cut back by the First Circuit.

With all of that said, it is understandable that special revenue bondholders would prefer a reading of Section 922(d) that permits creditors to seek to compel a municipal debtor to turn over special revenues during the pendency of a bankruptcy proceeding in those instances where there is not a "true" lockbox and the debtor fails to do so voluntarily. But whether the First Circuit reads 922(d) narrowly or more broadly than Judge Swain, special revenue bonds will remain justifiably "special."

by Leonard Weiser-Varon

USA February 26 2018

Mintz Levin Cohn Ferris Glovsky and Popeo PC

MSRB: How Do Interest Rate Movements Affect Municipal Bond Prices and Yields?

Find the answer here.

SIFMA Comments on Amendments to MSRB Rule G-21 and New Rule G-40.

SIFMA provided comments to the Securities and Exchange Commission (SEC) on 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 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 amended the definition of advertisement under proposed Rule G-40 for advertising by solicitor municipal advisors. 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.

Read the comments.

Michigan's Oversight of Troubled Cities Waning.

(Reuters) – Michigan's list of financially distressed cities subject to state oversight shrank on Friday with the release of Hamtramck, which is surrounded by Detroit, from receivership.

The move leaves just Detroit and Flint on the list, with Detroit aiming to end active supervision of its finances as soon as this spring.

Michigan Treasurer Nick Khouri dissolved Hamtramck's Receivership Transition Advisory Board, giving city officials full control of operations and finances.

Khouri cited improved financial management, policies and practices that allowed Hamtramck to produce an on-time fiscal 2017 audit that showed a budget balance of $6.5 million.

The city of 21,750 was declared to be in a financial emergency by Governor Rick Snyder in 2013 and was run by a state-appointed emergency manager from July 2013 to December 2014. With the fiscal emergency resolved, the advisory board was created to transition the city back to local control.

Michigan ended oversight of eight cities, one township and Wayne County in recent years. Four school districts continue to have some form of state supervision, according to the Michigan Treasury Department website.

With Detroit ending three straight fiscal years with balanced budgets, Mayor Mike Duggan has said the city's financial review commission should soon be able to go dormant. The state commission was created as part of Detroit's court-approved plan to exit in 2014 what was then the biggest U.S. municipal bankruptcy.

Michigan's largest city was able to shed about $7 billion of its $18 billion of debt and obligations in federal bankruptcy court.

In January, Michigan's treasurer diminished the role of Flint's oversight board, giving the mayor and city council more responsibility for operations and finances.

Flint's financial emergency, which began in 2011, became controversial when its state-appointed emergency manager in 2014 changed the city's water source, which caused lead to leach from pipes. The water crisis prompted dozens of lawsuits and criminal charges against former government officials.

By REUTERS

MARCH 2, 2018, 1:06 P.M. E.S.T.

(Reporting by Karen Pierog in Chicago; Editing by Matthew Lewis)

Follow the Money: How to Track Federal Funding to Local Governments.

Abstract

To respond effectively to state and federal policy changes, city leaders, non-profit service providers,

advocates, and researchers all need accurate data on how federal funds flow to local governments. Unfortunately, those data are spread across multiple sources that are often indecipherable or inaccessible to non-experts. The purpose of this guide is to help data users navigate the patchwork of primary data sources and online portals that show how the federal government distributes funding to local governments. We drew on the literature, an inventory of online resources, interviews with local and federal officials, and Urban Institute research staff experience to catalog available data on federal-local transfers. We describe the strengths, weaknesses, and best uses of various data sources and portals and provide guidance on where users can find information to understand trends or how their community stands relative to its peers. Our guide concludes with simple recommendations for how to improve data quality, comparability, and usability at all levels of government.

Read the full report.

The Urban Institute

by Megan Randall, Tracy Gordon, Solomon Greene & Erin Huffer

February 26, 2018

Fitch Affirms Chicago, IL IDR and GO Bonds at 'BBB-'; Outlook Stable.

Fitch Ratings-New York-28 February 2018: Fitch Ratings has affirmed the following Chicago, Illinois ratings:

–Approximately $8.8 billion outstanding unlimited tax general obligation bonds at ‘BBB-‘;
–Long-term Issuer Default Rating (IDR) at ‘BBB-‘.

The Rating Outlook is Stable.

SECURITY
The bonds are payable from the city’s full faith and credit and its ad valorem tax, without limitation as to rate or amount.

ANALYTICAL CONCLUSION

The ‘BBB-‘ IDR and GO ratings and Stable Outlook recognize the city’s role as an economic hub for the Midwestern region of the United States, supporting solid revenue growth prospects, as well as the city’s unlimited independent legal authority to raise revenues. The ratings also consider the city’s high and growing long-term liability burden, constrained expenditure flexibility and improving financial profile. The city’s reserve cushion provides solid capacity to address cyclical downturns, given expected revenue volatility.

Economic Resource Base
Chicago serves as the economic and cultural center for the Midwestern region of the United States. The city’s population totaled 2.7 million in 2016 up 0.3% from the 2010 census, and accounts for 21% of the state’s population. Socioeconomic indicators are mixed with elevated individual poverty rates but above average per capita income levels and strong educational attainment levels.

KEY RATING DRIVERS

Revenue Framework: ‘aa’
Fitch expects slow, steady economic recovery to lead to continued solid revenue growth, excluding the effect of new or raised taxes and fees. The city’s home rule status affords it access to a wide variety of revenue-raising options, many of which are legally unlimited.

Expenditure Framework: ‘bb’
Carrying costs for debt service and retiree benefits equal a substantial portion of operating resources. Public safety, which is fairly inflexible as a practical matter, comprises a majority of general fund spending, further constraining expenditure flexibility. Rising pension costs will continue to drive expenditures to grow at a much faster natural pace than revenues, likely necessitating ongoing revenue-raising measures and careful expenditure control.

Long-Term Liability Burden: ‘bbb’
The long-term liability burden is high relative to the resource base at 41% of personal income, and expected to rise as the city phases into actuarial funding of pension contributions.

Operating Performance: ‘a’
The city’s ability to close recessionary revenue gaps is strong. This is a function of the city’s strong revenue raising flexibility and long-term reserves available to offset the expected level of revenue volatility in a downturn.

RATING SENSITIVITIES
Continued Pension Pressure: The ‘BBB-‘ rating recognizes the improved pension funding framework the city recently implemented as well as the continued challenges associated with stabilizing or decreasing adjusted net pension liabilities. Upward rating momentum is unlikely until annual contributions are sufficient to accomplish this stabilization, but failure to show progress according to the city’s plan could put negative pressure on the rating.

Structural Balance: The Stable Outlook incorporates Fitch’s expectation that the city will continue to make progress toward structural balance according to its announced plan and maintain reserves commensurate with the rating throughout the economic cycle. A reversal of this trend could lead to negative rating action.

CREDIT PROFILE

Chicago acts as the economic engine for the Midwestern region of the United States and offers abundant and diverse employment opportunities. The city also benefits from an extensive infrastructure network, including a vast rail system, which supports continued economic growth. The employment base is represented by all major sectors including wholesale trade, professional and business services and financial sectors, with no one sector dominating. Socioeconomic indicators are mixed as is typical for an urbanized area, with above-average per capita income and educational levels but also elevated individual poverty rates.

Revenue Framework
Operating revenues are diverse, with the largest source, state and local sales tax, comprising 18% of general fund revenues. Other large sources include the transaction tax, utility tax, and income tax which account for 13%, 12%, and 11% respectively. Notably, property taxes do not fund general fund operations, but are directed to other funds in support of debt service, pensions and a small amount of library contributions.

Growth prospects for revenue are solid. Fitch believes that natural revenue growth, without taking into account planned rate increases, will continue to exceed the rate of inflation, but fall short of national GDP. After a long period without major revenue-raising policy action, the city has raised a variety of taxes and fees to provide funding for dramatically increased pension funding.

The city is a home-rule unit of government, and as such, enjoys the ability to raise or impose a wide variety of taxes and fees, many of which are legally unlimited.

Expenditure Framework
The city devotes 63% of the general fund budget to public safety and 29% for general government.

Fitch expects the natural pace of spending growth to be well above that of revenues, requiring careful budget management. The fastest growing expenditure item will be pension contributions as the city ramps up from statutory to actuarially-based contributions over the next several years. The city has identified revenue sources for much of these in the near-term, and intends to continue raising revenues to offset these rising costs in the out years.

Expenditure flexibility is constrained, given the large proportion of the budget devoted to public safety, which may be difficult to cut as a practical matter, and very high fixed carrying costs. The carrying costs for debt service, actuarially-required pension contributions and other post-employment benefit (OPEB) actual payments, account for 46% of governmental fund spending, or approximately 43% when taking into account enterprise fund support. That percentage may decline somewhat in the near term, as overall spending rises due to ramped up pension payments that are closer to the actuarially determined contribution, but will still comprise an outsized proportion of the budget for the foreseeable future.

The city contributes to four single employee plans covering municipal employees, laborers, police and firefighters. Annual funding contributions had reflected calculations pursuant to state statute, leading to severe underfunding and further raising the actuarial contributions necessary to prefund the plans. Contribution levels have been rising given recent policy changes that are devoting various new revenue streams toward contributions for each of the four plans. As of 2016 the city paid only $590 million in pension contributions, compared to $2.2 billion in actuarially-determined contributions (ADC). Even if the city meets its target contributions for all four plans, which is expected in 2022, they will still fall short of the ADC, reaching an amount sufficient to provide a 90% funding ratio, rather than full prefunding. This ratio is expected to be achieved in 2055 for the police and fire plans and 2057 for the municipal and labor plans.

Actuarial assumptions include a 30-year open amortization, among other factors that are likely to produce little funding progress absent the plans' consistently exceeding their 7.25% to 7.5% investment return targets, which Fitch views as unlikely. Fitch calculates that the annual cost to amortize the Fitch-adjusted NPLs over 20 years with a 5% interest rate would equal $3.7 billion, or 1.7x the ADC.

Long-Term Liability Burden
The long-term liability burden for total debt (direct and overlapping) and adjusted net pension liability (NPL) is high, at 41% of personal income. Sixty-three percent of the liability relates to net pension liability; Fitch leaves the NPL of three of the city's four single-employer plans unadjusted given their use of blended discount rates below Fitch's 6% target for measuring liabilities; all four plans report depletion dates. The 2016 total adjusted NPL measures $38 billion, and assets covered a scant 20% of adjusted liabilities, which had raised the real risk of plan depletion before the recent contribution increases.
For the city's public safety plans, a 2016 state law requires a five-year ramp up to an actuarial contribution, by 2020. The city council passed a multi-year property tax increase to accommodate the resulting steep increase in contributions. For the laborers' plan, a 911 cell phone fee will support

increased contributions, while the municipal employees' plan will receive revenue from a tax on water and sewer charges. Together, pension contributions for the four plans are slated to increase from approximately $1.2 billion in 2018 to $2.2 billion in 2022.
Amortization of GO, motor fuel and Sales Tax Securitization Corporation (STSC) debt is slow with about 30% scheduled for retirement in 10 years. STSC, a separate legal entity, has issued bonds to refund the city's outstanding sales tax bonds as well as some city GO debt. While these refundings extend maturities in some cases, the overall amortization rate is relatively unchanged.

Operating Performance
Reserve levels have stabilized over the last several years, standing at 24% of spending in fiscal 2016. The city relies on a variety of revenue sources to fund operations, some of which are economically sensitive. During a normal downturn Fitch estimates revenues are at risk of a slightly elevated rate of decline, leaving the city with a fairly substantial shortfall to address. This would present a challenge to the city's financial operations in a downturn but financial flexibility would likely be recovered as conditions improve. Recent extensive revenue-raising measures make it unlikely the city would rely solely on its revenue-raising authority to close such a recessionary gap. Similarly, the constrained expenditure flexibility makes it unlikely that the city could make meaningful spending cuts to address the gap. As such, Fitch believes that while the city may take some revenue- or expenditure-side policy action to address a revenue decline, reserve levels would bear the brunt of the shortfall but would remain at levels consistent with the rating throughout the economic cycle.

Chicago's budget management at times of economic recovery has improved markedly in recent years, although full structural balance remains a challenge even well into the economic recovery. Management has made significant progress toward matching ongoing revenues with annual expenditures. Fitch considers sustainable, affordable, actuarially-based pension funding a critical component of structural balance. Successful execution of the city's plan toward financially sustainable practices would be considered a positive rating factor over time. Remaining plan elements include the elimination of scoop-and-toss refundings by 2019, elimination of the use of current funds to pay routine legal settlements or judgments, and growth of the 'rainy day fund.'

The 2017 general fund budget was balanced with a reduced but still significant amount of one-time measures, including scoop-and-toss refunding and a small amount of appropriated reserves ($53 million) and also included funding for 1,000 new police officers. The $3.6 billion general fund budget closed the previously identified budget gap of $137.6 million through a variety of recurring and one-time measures and no appropriation of general fund balance. The year ended with a $54.4 million net general fund operating surplus (1.5%).

The 2018 general fund budget is balanced with reliance upon approximately $120 million of tax increment surplus and debt service savings from refunding (including principal deferrals), $50 million in expected growth in revenues, $39 million in revenue adjustments, $20 million in spending cuts, $11 million in improved enforcement and debt collection, and $37 million (less than 1% of spending) of appropriated unassigned general fund balance. As it has in recent years, the budget includes a $5 million deposit into its rainy day fund.

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Fitch: New York State PIT Bonds Unlikely to be Affected by Proposed State Tax Changes.

Fitch Ratings-New York-27 February 2018: Fitch Ratings expects that Governor Cuomo's proposed changes to New York State's personal income tax (PIT) are unlikely to affect the credit quality of the state's PIT revenue bonds, the state's largest source of bond financing for capital projects.

Fitch currently rates New York State's PIT revenue bonds 'AA+'/Stable, on par with the state's Issuer Default Rating (IDR) based on bond provisions that link them to the general credit quality of the state. As a result, any rating impact from the tax law changes would be to the state's 'AA+' IDR. Assuming that any enacted state tax code changes succeed in their goal of leaving state revenue collections near current baseline expectations, the changes would have little impact on the state's revenue growth prospects or overall credit quality.

The proposed changes, which were released as part of the 30-day amendments to the fiscal 2019 executive budget, are intended to mitigate the expected negative impact on New York State taxpayers of the federal Tax Cut and Jobs Act (TCJA), passed in December 2017. Among multiple provisions, the state legislation would decouple the state tax code from the federal code to preserve individual and business filers' state deductions and prevent a state revenue windfall in the absence of offsetting changes in state law. This windfall is estimated by the state's comptroller to total a net $1.1 billion.

Additionally, the legislation would establish an optional, phased-in payroll tax (the employer compensation expense tax, or ECET) on taxable income over $40,000 for employers that choose to participate, which would be accompanied by an offsetting tax credit for their employees' wages. The ECET would be intended to leave unchanged both individual filers' take home pay and state tax revenues, while taking advantage of the continued federal deductibility of payroll taxes paid by businesses. The legislation also would establish two charitable public funds to receive taxpayer donations on behalf of state education and healthcare-related services, with such donations offset by a partial tax credit on individual filers' New York State taxable income.

The legislation appears to be crafted to address any potential negative impact on PIT bondholders. It would raise the set aside of estimated available PIT receipts to 50%, from 25%, and supplement the pledge with 50% of future ECET receipts. Combined PIT and ECET tax receipts are intended to match collections under the existing PIT, and the higher set aside is also intended to address the potential impact of charitable contributions on PIT receipts.

New York State has $34.8 billion in outstanding PIT revenue bonds as of January 2018, issued by five state agencies. Although PIT bonds benefit from the dedication of a portion of the state's largest tax revenue source, Fitch limits the credit quality of the PIT bonds to the state's 'AA+' IDR because an appropriation is required for debt service. The PIT bonds are rated on par with the state's IDR, rather than one notch below as is standard for appropriation-supported debt, because the incentive for appropriation is significantly enhanced by requirements under the bond indenture that trap pledged receipts in the revenue bond tax fund (RBTF) in the event of non-appropriation. The bond documents also require the state comptroller to transfer resources to the RBTF from the general fund without appropriation if pledged receipts are insufficient.

Beyond the implications of the proposal on New York State's PIT bonds, Fitch cautions that implementing tax law changes to a major state revenue source like the PIT always carries the risk of unforeseen consequences. With the exception of the decoupling provisions, the governor's proposal seeks to leave total state revenues largely unchanged. Other provisions, such as the optional nature of the ECET and its three-year phase-in, are intended to minimize disruptions to employers, such as those with multiyear labor contracts.

Nonetheless, other important unknowns must be considered by the legislature, such as how any change would affect cross-border commuters, whether the changes would extend to the local PIT levied by New York City and Yonkers, and how any changes to New York City's PIT would affect the future tax secured bonds issued by the New York City Transitional Finance Authority (TFA). The TFA's future tax secured bonds are payable from revenues derived from city PIT and sales and use taxes, as authorized by New York State, and are rated 'AAA'/Stable by Fitch. Fitch will monitor the legislature's actions on the governor's proposal and any other tax law changes that emerge over the coming months.

Outside of the tax proposal, the governor's executive budget for fiscal 2019 (which begins on April 1) hews closely to the state's policy direction in recent years. Consistent with the recent experience of many states, revenues in New York State are forecast to rise, albeit at a slower pace than in recent prior forecasts. State actions to absorb slower revenue growth and the resulting forecast budget gaps have included holding budgeted state operating funds spending growth at no higher than 2% annually, curbing Medicaid spending growth at the current 3.2% statutory growth cap, and making targeted fund and timing shifts. As with last year's budget, the executive budget proposes a mechanism to adjust state spending in the event that federal budget cuts exceed $850 million for either state Medicaid or other program areas.

New York State's 'AA+' IDR reflects its considerable economic resources, solid economic performance and growth prospects, strong ability to control its budget and responsive budget management. Due to budget management improvements in the last decade, the state is in a materially improved position to address future economic and revenue cyclicality relative to past experience, in Fitch's view. Liabilities and related carrying costs are just below the median for states and remain a manageable burden on resources.

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Bloomberg Brief Weekly Video - 3/1

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

Watch video.

Bloomberg

Muni Market Headed for Worst Start of a Year Since 2008 Crisis.

- **Munis poised to post 1.5% loss in first two months of the year**
- **Selloff driven by Fed, less corporate buyers after tax reform**

This year hasn't been kind to the $3.8 trillion municipal-bond market, which is starting off with the biggest loss since the turmoil of the credit crisis a decade ago.

State and local government bonds are headed for a 1.5 percent loss, the first drop for the first two months of a year since 2008, when they tumbled by more than 3 percent, according to Bloomberg Barclays indices. The poor performance comes after Congress enacted an overhaul of the tax code that reduced the appeal of tax-exempt debt to corporations and amid expectations that the Federal Reserve will raise interest rates more aggressively than previously expected.

"It's going to be a very tough market," said Mike Brilley, senior vice president for Sit Investment Associates, which holds about $4 billion of municipals. "But getting interest rates up to levels above inflation is a very attractive development."

Yields on top-rated municipals maturing in 30-years have soared in 2018, climbing to 3.1 percent on Wednesday, the highest since last March.

Brilley said the selloff has been driven by "significantly reduced" interest from insurance companies and banks after their income-tax rates were slashed to 21 percent, reducing the allure of tax-exempt bonds.

Investors may want to thank the deep slowdown in the pace of new bond issuance this year for preventing returns from going deeper in the red. Sales fell 38 percent in January and February from a year earlier after Congress eliminated a key debt-refinancing tool and as interest rates rise.

"If it were not for the lack of supply, year-to-date muni returns would be even weaker," Jeffrey Lipton, head of municipal research and strategy at Oppenheimer & Co., said in a note this week.

Bloomberg Markets

By Amanda Albright

February 28, 2018, 10:02 AM PST

— With assistance by Danielle Moran

Muni Mispricings Seen Stinging Taxpayers for Up to $25 Billion.

- **Consultant study finds prices rise 1.6 percent in early trades**
- **That suggests the debt was priced too low, Fideres says**

Every time America's states and cities sell bonds to build new roads, schools and bridges, they may be leaving a big chunk of money on the table.

Investment banks, which governments hire to line up buyers for their bonds, routinely underprice the securities, delivering gains to early investors at taxpayers' expense, according to a study by Fideres Partners LLP, a London-based consulting firm. It found that bond prices increased by an average of 1.6 percent soon after they were first sold — indicating governments could have raised over $25 billion more from 2006 to 2015 if the debt was sold at those higher prices.

"The reason why these bonds trade so heavily and go up in price so much right after issuance is because people think the issuers overpaid — that that bond is worth more," said Alberto Thomas, who worked on the study. "Someone in that process has not done their job properly."

The $3.8 trillion municipal-bond market is the key way that local governments finance construction projects, so any failure to adequately price the securities would be felt broadly. President Donald Trump has sought to encourage states and cities to pump more money into airports, roads and other infrastructure, some of which was neglected as governments dealt with the economic fallout of the Great Recession.

Other research has raised questions about the efficiency of the municipal market. A study released more than a decade ago by professors at Carnegie Mellon University found "substantial" underpricing of new issues. And others have asserted that governments could save money by selling their debt more frequently in competitive auctions, instead of the typical practice of relying on underwriters picked ahead of time.

Fideres, which also studied the rigging of the Libor benchmark interest rate and often prepares research for use in class-action lawsuits, looked at 8,000 tax-exempt bond issues sold between 2006 and 2015 worth about $1.1 trillion. It was limited to fixed-rate deals above $50 million sold through both negotiated and auction sales.

The price increase from the day the bonds were awarded until the settlement date was "abnormally high” compared to other asset classes, the report said. Corporate bonds rose about 0.64 percent — less than half as much as the munis — while U.S. Treasuries gained 0.33 percent, the firm said. Fideres has previously asserted that the gap shows that corporate debt is being “systematically underpriced,” too.

For municipal bonds, those early increases have been shrinking, potentially because low interest rates — which have pushed up debt prices — have given the securities less room to rise. In 2010, prices rose an average of 1.88 percent between the initial pricing and the close date, according to Fideres. That shrank to 0.85 percent in 2015.

The Securities Industry and Financial Markets Association, the trade group for underwriters, hadn’t seen the study and declined to comment, spokesman Katrina Cavalli said.

Underwriters may have a reason to underprice securities: They often retain a portion of the bond issue after a sale, which means they’ll benefit if the price climbs, the report said.

“Knowing a bond price will increase shortly after issuance allows them to generate trading profits, incentivizing them to set lower issuance prices,” the report said.

Bloomberg Markets

By Amanda Albright

March 2, 2018, 5:35 AM PST

— With assistance by Joe Mysak

S&P 2018 U.S. Municipal Green Bond And Resiliency Outlook: Comparing The Self-Labeled Market With U.S. And Global Peers.

The volume of U.S. municipal debt issuers label “green”–bonds that finance projects with net positive environmental impacts–continues to increase, and market estimates for 2018 suggest that issuance could top $15 billion. S&P Global Ratings expects to see issuers across a wide variety of sectors continue to use the green label…

Continue Reading

Feb. 28, 2018

S&P: When Analyzing Municipal Utility Credit Quality, Strong Management Is Often An Asset.

When S&P Global Ratings revised its utility revenue bond rating criteria, it added two new components that evaluate the issuer’s management team: the operational management assessment (OMA) and financial management assessment (FMA).

Continue Reading

Feb. 20, 2018

[Permanent or Temporary Deferral of Tax on Gains: Opportunity Zones - Ballard Spahr]

The new tax law, known as the Tax Cuts and Jobs Act, allows states, the District of Columbia, U.S. possessions, and Puerto Rico to designate Qualified Opportunity Zones to encourage new capital investment in low income census tracts by allowing a taxpayer to defer eligible gain by investing in a Qualified Opportunity Zone. Each Qualified Opportunity Zone exists until the December 31 on or after the 10th anniversary of its designation. (See our e-alerts addressing how opportunity zones are designated and the Treasury's expanded list of eligible opportunity zones).

The Opportunity Zone tax incentives are designed to encourage investors to redirect gain from prior investments into investments in Opportunity Zones. Electing taxpayers will be able to defer, and in some cases permanently exclude, certain gains by investing in a Qualified Opportunity Fund. To be eligible, within 180 days of a sale or exchange, a taxpayer must roll-over gain into a Qualified Opportunity Fund and the Qualified Opportunity Fund must use that cash to purchase Qualified Opportunity Zone Property. A Qualified Opportunity Fund is a corporation, LLC, or partnership organized for the purpose of investing in Qualified Opportunity Zone Property that satisfies certain other rules set forth below.

The Qualified Opportunity Zone tax incentives build on incentives provided under the New Markets Tax Credit (NMTC) program and prior capital gains exclusion programs for investments in federally-designated enterprise zones, empowerment zones, and renewal communities. Unlike the NMTC program, however, there is no national limitation on the amount of gain that can be deferred or excluded under this program. Many of the specifics related to the investments and the parameters for the tax relief will need to be clarified by the IRS and the Community Development Financial Institutions Fund (CDFI Fund), which are jointly administering the Qualified Opportunity Zone program. Ballard Spahr will monitor guidance and provide additional updates as guidance is released.

Continue reading.

Ballard Spahr LLP

by the Public Finance and Tax Groups

March 1, 2018

S&P U.S. Military Housing Sector 2018 Outlook: Sector Credit Quality Remains High.

S&P Global Ratings believes its rated issuers in the U.S. military housing sector have very high credit quality, with 90% of ratings in the 'AA' or 'A' categories in 2017. Our portfolio of public ratings covers 46 projects consisting of over 143,000 units of housing at bases throughout the U.S., and most of our projects exhibit strong debt service coverage (DSC) ratios, high occupancy levels…

Continue Reading

Mar. 2, 2018

How QE Using Municipal Bonds Happens in the Next Recession.

I'm worried. I know this sounds strange. After all, we are in arguably the best growth phase in this economic cycle. And very few economists are predicting, let alone talking about, recession. I don't see recession around the corner either. But, still, I am concerned. And my worry is about a recession and public pension crisis. I am even talking about the Fed buying up municipal bonds using quantitative easing. That was my last post.

Since I have put this out there so early, let's talk about how the Fed actually does it. I mean, we are still a long way from recession or crisis. So think of this post as an OJ-style "If I did It" piece, with me ghostwriting for the Fed.

Continue reading.

Credit Writedowns

by Edward Harrison

4 March 2018

Better Data, New Tools Make Municipal Bond Market More Transparent.

Despite numerous regulatory efforts for greater transparency, the nature of the municipal bond market remains opaque due to its fragmented nature. While some of the attempts at increasing transparency such as municipal issuer continuing disclosure requirements or near-real time trade data reporting have been effective, even with 30,000+ trades reported daily, publicly available trade data fails to provide meaningful context for price discovery of municipal securities without extensive manipulation. And even though they may appear to be alike, no two municipal bonds are directly comparable due to the innate diversity of municipal issuers. For many investment professionals, it is difficult to establish the relative value of securities in which they wish to invest. The problem is magnified for the end investor.

Existing solutions fall into two broad categories: benchmarks (i.e. yield curves) and indices. Between the two they provide some framework, but do not necessarily equip the investors with a transparent or complete engine to ease their search for value. For example, popular municipal yield curves use polling techniques to establish an opinion of value (rather than observable market data) and do so over a very small slice of the municipal market. One such curve is limited to bonds rated AAA with a 5% coupon, which represent less than 2% of daily trading in municipal bonds. Another uses a single state (Maryland) and bond characteristic (general obligation) as a general guide. While these simplifications are appealing in that they remove complications from the calculations, they do not make for a more comprehensive depiction of the actual market. With today's large, detailed databases, improved hardware and software techniques for dealing with masses of data, it is time to revisit the need for simplifications that remove available data from calculations.

Indices represent a greater portion of the municipal market and are designed to be broadly inclusive. This inclusive nature means that they will include securities which are not available for purchase. As such, they wholly depend on third party evaluations. And unlike yield curves, indices are primarily used as benchmarks for portfolio total returns rather than facilitating daily trading or investment related decisions by allowing comparisons across bonds at a point in time.

In either case, with current yield curves or indices there is an inherent bias and lack of transparency because neither of the benchmarks are based on actual market observations. What then does the market need?

Emerging technology tools can enable traders and investors to address this problem through a transparent, quantitative and flexible approach utilizing newly publicly available trade data. These state-of-the-art solutions include the fixed coupon investment grade segment of the tax exempt municipal market (representing 80-85% of daily municipal trading activity), and provides what BondWave believes is just the right amount of context to municipal price discovery.

Municipal Benchmarks

In the contemporary municipal market, predominantly two types of benchmarks influence the determination of general level of interest rates:

Yield Curves – the term structure of interest rates, representing the relation between yield levels and maturities at a point in time; and
Bond Indices – a broad rules-based composite used to determine value of a certain bond market segment over time, regardless of the underlying constituent maturities.

While they influence trading patterns, investment decisions and relative value, most popular yield curves and indices have a few common weaknesses which an investor alone cannot overcome.

Prevailing yield curves are defined by a specific set of criteria – such as coupon rate, rating or sector. These criteria, as in the earlier examples, usually define a very narrow portion of the market. The underlying assumptions are also very rarely updated to reflect current trading behavior. The calculated yields are synthesized and updated based on opinions of analysts and market participants introducing the potential for bias into the calculations. The potential for bias can be removed by a properly constructed yield curve that relies on the truest expression of value: arm’s length transactions between informed market participants. Historically, this proved impossible prior to the advent of the near real-time reporting of all trades to a publicly available database. More recently it proved inconvenient because the organization, size and diversity of that database made analysis difficult. However, with improved tools for analysis, consumption, and organization of near real-time trade data it is time to update yield curve techniques to reflect these realities.

Bond indices are slightly different. They are more inclusive in nature and provide ways to group similar securities via a set of inclusion and exclusion rules. A few popular indices consider the entire bond universe when creating such groups, while others focus on a much smaller set of issuers (or specific securities). This subjects them to the ‘narrowness bias’ not unlike the yield curves. When it comes to valuation, indices are not valued based on opinions; but nor are they valued based on actual observable market data. Indices are valued based on theoretical evaluated prices of their constituent securities or estimates from market participants. Therefore, performance of the indices is influenced by the inclusion of a few large issuers regardless of whether those large issues trade in the market.

On-the-run or bellwether securities could also be potential benchmark options, but it is not a notion that fits in the municipal market. Unlike the US Treasury market, defining such a benchmark for municipal securities is a difficult task because of the diverse nature of issuers and the wealth of possible structures. Not all municipal issuers have sufficient debt outstanding to provide the necessary liquidity. And while there is no lack of trade volume on any given day, it is difficult to find a single security which trades consistently enough to be defined as a benchmark. Regulatory (bank qualified securities, disclosure rules, etc.) and other market forces (state/municipal budget deadlines, availability of funding, early redemptions, etc.) heavily influence which bonds are available for purchase. That makes it nearly impossible to come up with something akin to a set of 'on-the-run' or bellwether securities as benchmark.

How does one get beyond the shortcomings of existing benchmarks to arrive at meaningful conclusions?

Why Guess When We Can Measure?

We have at our disposal accurate, comprehensive, publicly available trade data published by MSRB. It holds immense potential to be analyzed numerous ways to create observable quantitative benchmarks. Such an approach can make up for the inadequacies of prevailing benchmarks by being:

1. transparent (based on an observable dataset),
2. quantitative (methodology based on measurable calculations as opposed to opinions), and
3. flexible (enough to provide investors with ways to navigate the murky waters of municipal relative value analysis).

The first step was creating a consistent quantitative methodology based on publicly available municipal trade data to deliver yield context. Various clusters of trades are formed, where each cluster has its own unique set of 'similarity' characteristics. Each of these clusters can be thought of as a distinct 'Bond Type'.
Trades within each given Bond Type can be meaningfully compared to one another. A user can also map any given security to one of these Bond Types based on relevant set of characteristics. Additionally, with these newly available tools, users can create customized versions of the available yield curves tailored to their needs – introducing immense flexibility in the analysis they wish to carry out.

BondWave QCurves Yield Curves: Design and Methodology

The methodology behind BondWave QCurves takes a consistent data-centric, transparent approach to development of yield curves. The basis for yield calculations is publicly available municipal trade data obtained from MSRB. This dataset is examined daily for irregularities and carefully analyzed for inaccuracies.

Bond descriptive elements such as municipal sector, rating, coupon type and state of issue of the security are used to divide trade data into distinct clusters (or Bond Types).
Zero coupon bonds are excluded from the analysis. They usually trade at a deep discount, and have a unique duration/return dynamic due to their non-coupon paying nature, thus demonstrating a trading behavior that is fundamentally different from their fixed coupon paying counterparts.

All three trade types (dealer to dealer, purchase from customer and sale to customer) and all trade sizes are included in preliminary yield calculations. Users have the flexibility to choose between the three trade types and relevant groups of trade sizes to meet their analysis requirements.

Trades are further grouped by years to maturity within each cluster.

Minimum data requirements1 are imposed per maturity year to ensure that yield curve calculations are meaningful. Additionally, a quartile-based outlier removal method2 is applied to each maturity subset within each trade cluster so that the resulting interest rates remain neutral to extreme observations.

Interest rate levels weighted by trade size are calculated from these standardized datasets for the entire term structure, and a 'best fit' curve is also derived. For this, we employ a second order polynomial equation to determine a graphical curve that represents the interest rates accurately.

As an important step taken towards improving transparency in benchmark calculations, the metrics indicative of the depth of data of any given point are displayed. These metrics include, but are not limited to, number of trades, total par traded, number of unique securities traded, R-squared3 value and p-value4 for the best fit curve.

BondWave QCurvesYield Curves will help users drive their search for value both for a specific security, and across the spectrum of these curves. Because of the consistent methodology, these benchmarks can be meaningfully compared to one another at any point in time. They can also be used to understand the trends in municipal yields over time.

A transparent data centric methodology, attractive visual display of calculated data, and intuitive quick filters which provide alternative views of the traded securities should empower the user with material insights into price/yield levels of tax exempt municipal securities.

Traders Magazine Online News

by Madhura Katre

March 1, 2018

Nebraska Archway's Survival Is Cautionary Muni Bond Tale.

- **Tourist attraction was funded in 1998, during a muni bond boom**
- **Checkered history is warning to buyers in current sales spree**

A surviving relic of the first Golden Age of Public Finance returned to the headlines last week, when the Great Platte River Road Memorial Archway outside of Kearney, Nebraska, said it had turned a profit for the first time in 17 years.

"We're done playing defense!" was how Eric Hellriegel, a Kearney city official who now also runs the Archway, put it to me on Friday.

In 2017, the Archway brought in operating revenue of $799,393, a 3 percent profit.

The Archway was built with $60 million in unrated revenue bonds in 1998, when it seemed that anything could be financed in the municipal bond market, from aquariums and theme parks to paper de-inking mills and a recycler of "broiler mortality." The Archway, which looks like an enormous covered bridge over Interstate 80 outside of Kearney, was designed as a tourist attraction detailing the history of Western migration.

The first Golden Age of Public Finance ran from the mid-1990s to September of 2000, when the Heartland high-yield municipal bond fund imploded. We are living in the second one, if last year's issuance is any indication.

The Archway bonds, which carried yields as high as 7 percent, defaulted in 2002. In 2003, the issuer exchanged $22 million in new bonds for the original debt. Even this was too great a debt load, however, and a bankruptcy judge in 2013 eventually awarded bondholders pennies on the dollar.

Once upon a time a bond analyst told me, "Remember, they don't call them infeasibility studies." This is the lesson to be learned from the Archway experience.

The 1998 bond issue contained a feasibility study projecting that the Archway would attract 906,000 visitors during the first year it was open. This year, attendance was projected to be just shy of 1.5 million. Revenue from the sales of tickets to these visitors repaid the bondholders.

At least in theory. In reality, the Archway never made its projections. In the first year of operation, about 300,000 people visited. After that, keeping up with attendance figures at the Archway got very sketchy. In other words, I'd call them, and they didn't want to tell me. In 2007, the bond trustee reported that attendance was about 10 percent of projections, or roughly 100,000.

Well, it's a new day at the Archway. Executive director Hellriegel sent me his presentation to the city council, which shows attendance was 49,851 in 2013, 55,959 in 2015 and 57,592 in 2017. Could be time for a site visit!

Investors during the second Golden Age of Public Finance would be well-advised to keep the cautionary tale of the Great Platte River Road Memorial Archway in mind as they consider new deals.

Bloomberg Politics

By Joe Mysack

March 5, 2018, 5:52 AM PST

Fossil-Fuel Giants Take Legal Action Against Local Government.

Exxon Mobil's targets are several California cities and counties that have filed state lawsuits.

WASHINGTON — Exxon Mobil Corp. and other fossil-fuel giants are taking legal action against local governments, seeking to undermine a key part of their finances — their relationship with lenders.

Exxon Mobil's targets are several California cities and counties that have filed state lawsuits, claiming that the oil and coal industries worked for decades to cover up their roles in climate change and the consequences. The local governments want the industries to pay for damage and adaptation costs resulting from climate change, including sea-level rise and more extreme storms.

Exxon Mobil responded last month by petitioning a state court in Tarrant County, Texas, to subpoena California officials and lawyers involved with the lawsuits. In a novel legal tactic, Exxon Mobil alleges that the local government officials are defrauding buyers of municipal bonds by not disclosing to lenders the climate risks they have claimed in their lawsuits.

It is unlikely that Exxon Mobil will ultimately win in court, but the tactic may succeed in discouraging other cities and states from filing similar lawsuits. That may be the point.

“We knew they were going to deliver a counterpunch, but we didn’t know what it would be,” said Ryan Coonerty, a supervisor in Santa Cruz County, one of the local governments suing the oil companies. Exxon Mobil’s response, he said, “is particularly outrageous and clearly an effort of intimidation.”

It is not the first time Exxon Mobil has attempted to pre-empt climate change litigation and investigations that could expose it to court damages. After New York and Massachusetts attorneys general issued subpoenas to investigate Exxon Mobil’s practices, the company sued both of them, claiming they were part of politically motivated conspiracy against the company.

“The reasons our investigations came to light was because Exxon actually sued us to shut down our investigations,” Massachusetts Attorney General Maura Healey said last week.

Healey called the Exxon Mobil lawsuits an “unprecedented step” to “squash the prerogative of state attorneys general to do their jobs.” Since then, no other state has joined New York and Massachusetts in going after the company.

For both sides in the ongoing litigation, the stakes are considerable. Climate activists have been preparing for more than a decade to launch mass litigation against the oil industry and other companies responsible for large emission of greenhouse gases. They compare their litigation to lawsuits that eventually cost the tobacco industry billions of dollars.

But the oil companies are not letting this campaign gain momentum. Along with countersuing the jurisdictions that are suing, they’ve been getting help from a collection of industry-friendly think tanks and trade associations. Those groups launched their own recent counterattack against the litigating local governments, which include San Francisco, Oakland, Richmond, Imperial Beach, Marin and San Mateo counties and Santa Cruz city and county.

Groups that have received oil industry funding, such as the National Center for Public Policy Research and the Chamber of Commerce’ Institute for Legal Reform, have recently criticized the coastal communities in Fox News and Sacramento Bee op-eds. In January, the National Association of Manufacturers hired a former Bush administration lawyer to counter litigation filed against oil refiners and other companies.

The Competitive Enterprise Institute has also entered the fray. The recipient of millions of dollars in funding from Exxon Mobil and the oil industry, CEI has been among the most effective nonprofit groups in spreading doubt about climate change science.

In May 2016, the group purchased a full-page ad in the New York Times criticizing the attorneys general of New York and the U.S. Virgin Islands for subpoenaing documents from CEI and other groups related to the climate investigation of Exxon Mobil. The CEI claimed that its free-speech rights were being violated.

“CEI ran an aggressive campaign to generate backlash against the USVI case,” said Kert Davies, founder of the Climate Investigations Center, a group that tracks the oil industry and its nonprofit allies.

It worked. By late June that year, the Virgin Islands dropped its subpoena.

In February, three weeks after Exxon Mobil filed its legal action in Texas, the CEI filed a petition with the U.S. Securities and Exchange Commission urging the regulatory agency to investigate the cities and counties suing Exxon Mobil for bond fraud. “The plaintiff cities and counties apparently describe these climate risks in ways that are far different than how they described them in their own bond offerings,” the CEI said in its petition.

The language in the CEI petition mirrors that of Exxon Mobil’s. Both, for example, cite Santa Cruz County’s claims in court that it will face a 98 percent chance of a “devastating three-foot-flood by 2050,” an assertion not included in the county’s bond prospectus.

A CEI lawyer, however, said the group’s petition to the SEC was based on its own research. “We were reading through some of the cases the cities had brought, and saw it did not match what they were telling investors,” said Devin Watkins, who co-wrote the petition.

If the SEC were to investigate and file charges, the California cities and counties could face fines and risks to their bond ratings. Local government officials and their legal advisers, however, say it is preposterous to claim that they have hidden their climate change risks from investors or anyone else.

“If you look on the websites of these jurisdictions, you will see they have done reports on sea level rise and adaptation planning,” said Sean Hecht, a law professor at the University of California, Los Angeles, who is advising some of the litigants. “It would take 30 seconds to find those documents.”

Several state lawsuits by California jurisdictions have been brought against Exxon Mobil, Chevron and other big oil and coal companies. Litigants include San Francisco, Oakland, Imperial Beach, San Mateo and Marin counties and Santa Cruz city and county.

All the lawsuits seek to hold oil companies responsible for contributing to climate change and attempting to cover up its effects. They all argue that under state law, the companies created a “public nuisance” with their actions and should compensate the local governments for the consequences.

Exxon Mobil did not respond to requests for comment.

In its court filings, Exxon Mobil claims to be the victim of a conspiracy by abusive governments and activists. The company claims the conspiracy began five years ago at a meeting in La Jolla, Calif., and spread to local jurisdictions and state attorneys general.

Jurisdiction is a focus of the fight. Oil and coal industry lawyers want the lawsuits moved to federal court, partly because California has a history of “public nuisance” law that hurts their chances.

Last week, a U.S. district judge in San Francisco, William Alsup, ruled that the Oakland and San Francisco lawsuits must be heard in federal court, a potential setback for the plaintiffs.

But another federal judge who is hearing the Marin and San Mateo case, Vince Chhabria, was somewhat skeptical at a recent hearing about the oil industry’s arguments. His ruling could determine whether at least one of the lawsuits is heard in California state court.

In the meantime, Exxon Mobil is continuing to subpoena top officials in Santa Cruz County and other jurisdictions. Coonerty, the county supervisor, said he doubts that Exxon Mobil will prevail but knows his community and others are in for a long fight.

“Any time you have adversaries that have unlimited resources and a determination to win, it is daunting," he said.

By Stuart Leavenworth

March 4, 2018

McClatchy Washington Bureau (TNS)

[Appetite Increases for Green Bonds but Investors Demand More Education and Transparency.]

- **Appetite Increases for Green Bonds but Investors Demand More Education and Transparency**
- **Survey by Natixis and the California State Treasurer's Office reveals challenges and opportunities of green bond market**
  78% of California residents believe it's important to make the world a better place while growing assets1
- **Misconceptions around ESG present barriers to investing; 72% want greater transparency and standardization of reporting**

BOSTON & SACRAMENTO, Calif.–(BUSINESS WIRE)–Individual investors in California are keen to make the world a better place while growing their personal assets, but engaging investors in the green bond market will require a deeper understanding of their motivations, perceptions and knowledge gaps. Natixis Investment Managers' Center for Investment Insight and the California State Treasurer's Office announced today the findings from a new survey of 500 California residents during the California State Treasurer's Green Bonds Symposium. The study explores the challenges and opportunities of engaging investors in the state's growing green bond market.

The survey polled individual investors from California on their investment preferences and expectations, their commitment toward environmental, social and governance (ESG) investment principles, and their predisposition to act on green intentions. Key to motivating investors to participate in the California green bond market will be education, transparency and the development of an investment proposition, the study finds. While 66% of California respondents say they would invest in green bonds because of their potential environmental impact, only 53% say they are knowledgeable about ESG investing and merely 29% claim to know what green bonds are.

"The majority of California residents want their investments to have a positive social and environmental impact," said David Goodsell, Executive Director of Natixis' Center for Investor Insight. "But many need guidance before they can act on their preferences when it comes to investing in green bonds. Public outreach and education will be critical in dispelling some of the misconceptions associated with ESG investing, and we can jumpstart these initiatives by having conversations with the broader advisor community."

The research offers four key insights on California residents' sentiment towards green bonds:

- **Californians want to use their assets to make a difference:** Survey respondents said they want their investments to reflect their personal values (77%), to know their assets are doing social good (76%), to invest in companies that are ethically run (82%), and to invest in companies that have a positive social impact (77%).
- **Investors have misconceptions around ESG investing:** Some individuals perceive limitations

around ESG investments, with 46% believing they have to give up return potential to invest in green bonds and 55% believing that costs will be higher without green bonds delivering adequate returns. However, green bonds are generally not limited in their return potential, nor do green bonds generally come at a higher cost. Three-quarters of respondents say they believe there is a lack of standardized guidelines on what constitutes as a green investment, therefore we believe public education will be essential to dispelling such misconceptions.
- **Californians are prepared to act with enlightened self-interest:** Californians emphasize the potential investment benefits of municipal bonds over their community impact. When asked for their main reasons for investing in municipal bonds, they first focus on direct portfolio advantages, citing tax-free income (55%), low risk (51%) and stability (39%) as the main drivers. Investors in California may not fully understand the potential tax benefit these securities could provide given that only 11% said they would invest to manage tax liability.
- **Financial and non-financial variables factor into green investing:** Top considerations when selecting a green bond investment include return on a bond over its lifetime (50%), how long it takes to mature (40%) and amount paid at maturity (36%). However, 66% say they would invest in green bonds because of their potential environmental impact.

"It's not surprising that nearly four out of five Californians believe it's important that their investments shape a better world. This research demonstrates there is strong momentum for the leadership role we are taking in California to find solutions to pay for projects that generate solar and wind power, reduce methane emissions, provide clean drinking water, and more," said John Chiang, California State Treasurer. "At a time when the White House has abandoned its leadership role in the fight against global warming, California stands with the rest of the world that has declared climate change is an urgent and potentially irreversible threat to human societies and the planet."

Success Factors for California's Green Bond Market

The survey findings indicate that many worry about accurate reporting and verification around green investing. Nearly three-quarters of investors (72%) say that greater transparency and standardization of reporting would increase their desire for green bonds, and six in ten would be willing to pay more for their investment if it meant greater transparency. Californians are willing to accept validation on a wide range of public and personal sources in order to achieve transparency, starting with the media (58%), reports from the issuer (47%) and a financial advisor (45%). Another factor is access to green issuances; overall, more than half of investors say they would prefer buying green bonds through a fund (59%) compared to individual securities (41%).

"As the green bond market matures, we are pleased to see that issuance is growing in tandem with investors' interests," said Chris Wigley, Portfolio Manager at Mirova, a responsible investing affiliate of Natixis Investment Managers. "This symbiotic relationship indicates that both governments and corporations are making the effort to transition to a lower carbon world, which is also motivating the individual investor to consider incorporating ESG into their portfolios."

Methodology

Natixis Investment Managers surveyed 500 investors in California in August 2017, with the goal of understanding the perceptions, attitudes and opinions of individuals residing in California related to green bonds and ESG-focused saving and investing approaches. For more information, visit im.natixis.com/us/research/california-green-bond-market-survey.

February 28, 2018 12:01 PM Eastern Standard Time

About Natixis Investment Managers

Natixis Investment Managers serves financial professionals with more insightful ways to construct portfolios. Powered by the expertise of 26 specialized investment managers globally, we apply Active ThinkingSM to deliver proactive solutions that help clients pursue better outcomes in all markets. Natixis ranks among the world's largest asset management firms2 ($997.8 billion AUM3).

Headquartered in Paris and Boston, Natixis Investment Managers is a subsidiary of Natixis. Listed on the Paris Stock Exchange, Natixis is a subsidiary of BPCE, the second-largest banking group in France. Natixis Investment Managers' affiliated investment management firms and distribution and service groups include Active Index Advisors®;4 AEW; AlphaSimplex Group; Axeltis; Darius Capital Partners; DNCA Investments;5 Dorval Asset Management;6 Gateway Investment Advisers; H2O Asset Management;6 Harris Associates; Investors Mutual Limited; Loomis, Sayles & Company; Managed Portfolio Advisors®;4 McDonnell Investment Management; Mirova;7 Natixis Asset Management; Ossiam; Seeyond;8 Vaughan Nelson Investment Management; Vega Investment Managers; and Natixis Private Equity Division, which includes Seventure Partners, Naxicap Partners, Alliance Entreprendre, Euro Private Equity, Caspian Private Equity and Eagle Asia Partners. Not all offerings available in all jurisdictions. For additional information, please visit the company's website at im.natixis.com | LinkedIn: linkedin.com/company/natixis-investment-managers. Natixis Investment Managers includes all of the investment management and distribution entities affiliated with Natixis Distribution, L.P. and Natixis Investment Managers S.A.

About the Natixis Center for Investor Insight

Investing can be complicated: Event risk is greater and more frequent. Volatility is persistent despite market gains. And investment products are more complex. These factors and others weigh on the psyche of investors and shape their attitudes and perceptions, which ultimately influence their investment decisions. The Center for Investor Insight conducts research with investors around the globe to gain an understanding of their feelings about risk, their attitudes toward the markets and their perceptions of investing.

About Mirova

Mirova, an affiliate of Natixis Investment Managers, offers a global responsible investing approach with a single offer revolving around 5 pillars: equities, bonds, infrastructure, Impact investing, voting and engagement. Mirova has $10.8 billion of assets under management (as of 12/31/2017).

About Natixis Asset Management US, LLC and Mirova

Natixis AM US provides access to investment solutions that benefit from the extensive resources of a leading European asset management group. Natixis AM US launched in 2014, is a U.S.-based investment adviser, majority-owned by Natixis Asset Management and minority-owned by Mirova with $561 million in assets under management (as of 12/31/17). Natixis AM US utilizes the expertise of Mirova, which is operated in the U.S. through Natixis AM US.

Green bonds are securities that finance projects that provide environmental benefits.

Municipal markets may be volatile and can be significantly affected by adverse tax, legislative or political changes and the financial condition of the issuers of municipal securities.

Sustainable investing focuses on investments in companies that relate to certain sustainable development themes and demonstrate adherence to environmental, social and governance (ESG) practices, therefore the Fund's universe of investments may be reduced. It may sell a security when it could be disadvantageous to do so or forgo opportunities in certain companies, industries, sectors or countries. This could have a negative impact on performance depending on whether such investments are in or out of favor.

Diversification does not guarantee a profit or protect against a loss.

Natixis Investment Managers does not provide tax or legal advice. Please consult with a tax or legal professional prior to making any investment decisions.

1 Natixis Investment Managers, 2016 Retirement Plan Participant Survey conducted by CoreData Research, August-September 2016. Survey included 951 respondents, 121 of whom were California residents.
2 Cerulli Quantitative Update: Global Markets 2017 ranked Natixis Investment Managers (formerly Natixis Global Asset Management) as the 15th largest asset manager in the world based on assets under management as of December 31, 2016.
3 Net asset value as of December 31, 2017. Assets under management ("AUM"), as reported, may include notional assets, assets serviced, gross assets and other types of non-regulatory AUM.
4 A division of Natixis Advisors, L.P.
5 A brand of DNCA Finance.
6 A subsidiary of Natixis Asset Management.
7 A subsidiary of Natixis Asset Management. Operated in the U.S. through Natixis Asset Management U.S., LLC.
8 Formerly an investment division within Natixis Asset Management, Seeyond became an independent global affiliate of Natixis Investment Managers effective January 1, 2018. Seeyond is operated in the U.S. through Natixis Asset Management U.S., LLC (Natixis AM U.S.). Natixis AM U.S., which launched in 2014, is majority-owned by Natixis Asset Management (Natixis AM) and minority-owned by Mirova, which is in turn wholly-owned by Natixis AM. Natixis AM U.S. had €467M / $561M / £415M in assets under management as of 12/31/17.

Community Benefit Agreements - Sparking Development.

May 15, 2018 @ 1:00 PM Eastern

Development projects are often touted as being economic windfalls for communities where they are situated. However, low- and moderate-income communities are frequently left behind, and many benefits of economic development filter to higher income communities. In an effort to combat inequality and promote more equity in economic development, many developers have reshaped and elevated the role of community benefits agreements (CBAs). In a CBA, public and private sector participants determine how the benefits of the economic development will be shared among communities. But what do these CBAs actually look like in practice? What types of benefits are negotiated and how do they support making economic development more impactful on the communities that need it the most? During this installment of the CDFA // BNY Mellon Development Finance Webcast Series, hear from experts on how public entities can optimize CBAs to generate greater community buy-in for development projects, and more equitably distribute economic gains.

Speakers:

Rena Nakashima, *Moderator*
Senior Product Manager
The Bank of New York Mellon

Register in advance to confirm your participation and receive login information. Registration is free and open to all interested stakeholders.

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