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Municipal Finance Law Since 1971

Fitch: Credit Impact of Proposed Utility Sales Generally Limited.

Fitch Ratings-Austin-22 February 2018: Discussions concerning the sale of publicly owned utilities arise periodically in the utility sector, according to Fitch Ratings. There are a number of discussions currently occurring at the federal, state and municipal level. At present, there is no credit impact resulting from the sale discussions for any of these credits. In most cases, Fitch views the privatization of governmental utilities as credit neutral based on the expectation that existing debt obligations will be repaid in full or legally defeased as a condition of the sale. Furthermore, in Fitch's view these proposed transactions are not part of a growing trend but rather the result of specific objectives and priorities of the respective governmental owners.

Consideration of utility sales is often prompted by a specific circumstance such as quality of service issues, high electric rates or the need for cash by the governmental owner. However, few utility sales persist through to completion in the public sector. The reasons the proposals falter vary but it is a time consuming and often expensive process to unwind power purchase contracts and debt obligations. Potential transactions must consider the impact to ratepayers and are not compelling unless ratepayer benefit can be credibly anticipated. Finally, political approval from governing bodies or voter approval is typically required. Fitch views most discussions of asset sales as unlikely to result in a final divestiture of the utility.

Tennessee Valley Authority, TN and Bonneville Power Administration, OR

The 2019 Presidential Budget includes a proposal to sell federal transmission assets of the Tennessee Valley Authority (TVA; AAA/Stable) and Power Marketing Administrations (PMAs), including those of the Bonneville Power Administration (Bonneville; AA/Negative). The key credit consideration in the event of a partial sale of assets is the resulting revenue profile of the remaining assets in relation to a potentially lower leverage position, depending on the ultimate use of sale proceeds. The proposal to sell federal transmission assets has been included in budget proposals offered by prior administrations of both parties. Any final adoption of the proposal will require congressional approval.

If Congress does approve the divestiture of transmission assets only, Fitch believes there would likely be no credit impact to TVA based on the assumption that any remaining debt would continue to be repaid from revenues generated by the balance of assets and the implicit governmental guarantee supporting TVA's current 'AAA' rating. Fitch notes that in the case of a full divestiture of TVA assets, TVA's bond resolution requires either the full repayment or provision for the continued payment of principal and interest.

Similarly, in Bonneville's situation, the potential sale of Bonneville's transmission business line would be evaluated in the credit context of the power business line's ability to support remaining obligations. Since the transmission system has historically been 100% debt financed, the planned use of any sale proceeds would be a material consideration as to the ultimate leverage profile of the remaining utility. Fitch's timeline for reflecting credit implications will be dependent on affirmative legislative action or compelling legislative momentum towards acceptance of the proposal and details regarding final treatment of related debt.

The President's 2019 budget proposal also raised the idea of PMAs being permitted to charge market rates for their services. Bonneville's power supply contracts with 125 preference customers extend through 2028. Fitch believes the contracts would postpone any movement away from cost based rate methodology through the contract term, even if this proposal gained legislative support.

South Carolina Public Service Authority (Santee Cooper), SC

The decision in July 2017 by Santee Cooper (A+/Stable) and South Carolina Electric & Gas Co. (SCE&G; BBB-/Rating Watch Evolving) to abandon construction of the Summer Nuclear Units 2 and 3 ignited controversy across the state and has drawn intense political scrutiny. The Governor has called for the sale of Santee Cooper in a stated effort to eliminate costs to ratepayers related to the $4.3 billion Santee Cooper spent at Summer Units 2 and 3. Discussions regarding the sale of Santee Cooper are occurring against the backdrop of various legislative proposals that include placing Santee Cooper's rate setting under Public Service Commission oversight and not allowing new rates or charges to be imposed for the repayment of costs related to Summer Units 2 and 3.

At present, Fitch continues to view the potential sale of Santee Cooper as credit neutral to bondholders given our expectation that any privatization would require the repayment or legal defeasance of all outstanding debt obligations ($8.1 billion as of September 2017. It remains unclear whether or not the sale will gain the required state legislative approval and whether a willing buyer will propose a satisfactory proposal that will be accepted by the state. Separate and distinct from the sale of the utility, legislative changes that impact Santee Cooper's independent rate authority could weaken credit quality.

Discussion Regarding Sale of JEA, FL

JEA (AA/Stable) is a combined electric, water and wastewater and chilled water utility located in Jacksonville, FL. JEA and its owner, the City of Jacksonville, are proceeding through an evaluation process regarding the sale of the utility. The undertaking does not appear to be driven by concerns such as poor quality of service or the need for cash at the city, but was prompted by the premise that the recent scope and pace of change in the utility market warrants a fresh analysis regarding whether or not JEA should remain a governmentally owned utility. Fitch believes the exercise is in very preliminary stages but that any ultimate sale would involve the full retirement of its over $4 billion in outstanding debt obligations as of Sept. 30, 2017.

Pending Sale of Vero Beach, FL

Vero Beach, FL (A+/Stable) is in the process of selling the city's electric system to Florida Power & Light, which is expected to occur in 2018, nearly 18 months after both parties signed the original letter of intent, and will include the full retirement of Vero Beach's approximately $20 million in outstanding debt.

The sale arose from a strong degree of customer dissatisfaction with Vero Beach's above average electric rates over a number of years. One of the complexities in reaching an agreement was the settlement of Vero Beach's participation in multiple power supply projects at Florida Municipal Power Agency (FMPA) with project-specific secured debt. While the process to complete the sale is a lengthy one, the majority of the many steps necessary have already been achieved, including approval from FMPA's nearly 20 separate participant city commissions and the required transfer and assignment of Vero Beach's obligations under the various FMPA power sales contracts.

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[Missouri Hospital Becomes Second Municipal Bankruptcy of 2018.]

A hospital district in Pilot Knob, Missouri, filed for protection from its creditors Wednesday, marking the second municipal bankruptcy of the year.

The Iron County Hospital District, which owns a local hospital, listed liabilities between $10 and $50 million and assets between $1 million and $10 million.

The district has about $6.5 million in bonds outstanding, said Daniel Doyle, a lawyer at Lashly & Baer who is representing the district.

The district marks the second municipal bankruptcy filing this year after the Surprise Valley Health Care District in Cedarville, California.

Bloomberg Markets

By Amanda Albright

February 21, 2018, 2:06 PM PST

[Bloomberg Brief Weekly Video - 2/22]

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

[Watch video.]

Bloomberg

February 22nd, 2018, 2:38 PM PST

Florida City Ponders Privatizing 8th Largest U.S. Public Utility.

- **Jacksonville has eighth largest public utility in the U.S.**
- **Electric, water company said worth $7.5 billion to $11 billion**

A sizzling sellers' market for power companies could prove enough for Jacksonville, Florida, to put its prized community-owned utility on the auction block.

While elected officials in the city of 881,000 on Florida's northeastern seaboard are divided over whether to place the power, water and sewer utility, known as JEA, up for sale, market conditions may provide the kind of valuation that would make such a deal attractive, consultants hired to evaluate a sale said in a report to JEA's board earlier this month.

The utility could be worth between $7.5 billion and $11 billion before costs are calculated, Michael Mace, a managing director with Public Financial Management, told the city council Feb. 14. A sale to private investors could probably net the city about $2.9 billion to $6.4 billion after debt is retired, he said.

The question of privatizing JEA has vexed Jacksonville officials, mostly because the value of the utility never seemed enough to make it worth while. That's in part because JEA is a cash machine. It gave the city $117 million in the current fiscal year to help prop up Jacksonville's $1.27 billion budget.

Elected officials and community leaders are also concerned about losing local control over the rates the JEA — the eighth largest community-owned U.S. utility — charges its 458,000 electric, 341,000 water and 264,000 sewer customers.

'Old Math'

PFM in its report said federal corporate tax cuts, a rising equity market and low interest rates are contributing to a sellers' market right now. Consolidation in the industry — driven by a weak growth outlook that is forcing companies to merge if they want to boost earnings — led to $68.2 billion of acquisitions in 2017, the most in a decade, according to data compiled by Bloomberg.

These changing conditions "justify a new look at the old math that had always favored municipal ownership," PFM said in its report.

A sale of JEA would be one of the largest and most complex municipal privatization in the U.S., PFM said in the report. JEA has more than $4 billion in municipal debt outstanding. And a sale deal could take years to complete and would face regulatory hurdles, PFM said.

"JEA is a huge entity that is both an electric utility and a water, sewer utility and they also have some telecommunications infrastructure," said Ted Kury, a professor at the University of Florida and a researcher in public utilities. "It's highly unlikely that any potential purchaser would want to buy JEA consolidated," suggesting the only way to sell the utility would be to split it up among at least two, possibly more buyers.

Jacksonville isn't alone in looking to privatize municipal utilities. Florida power giant NextEra

Energy Inc. reportedly is interested in buying the troubled state-owned utility Santee Cooper from South Carolina. And President Donald Trump proposed in his budget to sell off transmission line assets now owned by government-run utilities Tennessee Valley Authority and Bonneville Power Administration.

Bloomberg

By Danielle Moran

February 21, 2018, 6:14 AM PST

[Promising Billions to Amazon: Is It a Good Deal for Cities?]

A review of the 20 finalists finds that several are already forgoing hundreds of millions of dollars in potential revenue each year and might not be able to afford to give up more.

In the quest to land Amazon's second headquarters with its juicy 50,000 jobs and potential $5 billion investment, cities have made some eye-popping proposals. Maryland's transportation chief, for instance, promised a "blank check" — an offer that has since been walked back — and Newark, N.J., pledged a whopping $7 billion in tax breaks.

But according to a Governing analysis of the 20 finalist cities in Amazon's HQ2 search, some are already forgoing hundreds of millions of dollars in potential revenue each year through tax incentives and might not be able to afford to give up more.

Take Chicago. The fiscally strapped city, which has been repeatedly downgraded by credit rating agencies and has raised property taxes to help its budget, reported that it gave up more than a half-billion in tax revenue in 2016 via incentives primarily associated with tax increment financing. TIFs subsidize companies by refunding or diverting a portion of their taxes to help finance development in a specific area. According to the city's financial report, its giveaways in 2016 represented more than 16 percent of what the city collected in total revenue that year.

[Continue reading.]

GOVERNING.COM

BY LIZ FARMER | FEBRUARY 22, 2018

[Affordable Housing Shortage Expected to Worsen Under New Tax Law.]

Congress indirectly diluted the tax incentives for building affordable housing — a change that's predicted to result in a quarter of a million fewer units.

Even before Congress passed a $1.5 trillion tax cut in December, the demand for affordable rental housing far exceeded the supply. For every 100 renters who fit the federal government's definition of "extremely low income," only 35 units were available.

Congress offers some money for people who can't cover the full cost of rent, but that, too, is inadequate: A recent study found that federal housing assistance goes to fewer than one in five of those who qualify.

Now, because of the new tax law, the affordable housing shortage is expected to get worse.

Continue reading.

GOVERNING.COM

BY J.B. WOGAN | FEBRUARY 21, 2018

S&P: Pension Pressures Are Likely To Weigh On Illinois Municipal Credit Quality.

While there's been a lot of attention nationally on the unfunded pension liabilities of the state of Illinois and city of Chicago, many downstate Illinois and suburban Chicago municipalities face formidable funding gaps of their own in their public safety pension plans.

Continue Reading

Feb. 22, 2018

Tax Reform Creates "Opportunity Zones" – A New Tool for Economic Development, but States must Act Quickly.

Notwithstanding all the doom and gloom around these parts about "the bill formerly known as the Tax Cuts and Jobs Act" (final name pending conclusion of sponsorship negotiations),[1] the final legislation created a new tool for economic development in low-income communities, called the "Opportunity Zone" program. The program provides incentives for taxpayers to invest in low-income communities by allowing them to defer and potentially avoid gain on the sale of stock or other property if they reinvest their gains in a low-income community through an "Opportunity Fund." But, state governors must act soon to designate eligible census tracts as Opportunity Zones, or they may lose the opportunity forever.

Our colleague Steve Mount has written a comprehensive analysis of the new program for BNA's Tax Management Real Estate Journal; you should download it from the Squire Patton Boggs website by clicking here. Click through for a brief summary of the program here, and be sure to download Steve's article for the full details on this new program.

Continue Reading

The Public Finance Tax Blog

By Johnny Hutchinson on February 21, 2018

Squire Patton Boggs

Welcome to San Francisco. Would You Like to Make a Deposit?

A groundswell of interest in public banking has advocates pondering how city-owned banks could transform the way municipalities collect and spend their money.

It's no surprise that Malia Cohen worries about what local public dollars are doing. As a member of the San Francisco Board of Supervisors, the municipal legislative body, it's her job to know how, where and why the city's money is coming in and going out. But recently, Cohen has joined a growing number of public officials around the country who are wondering what happens in between — what happens when the money in the city coffers goes to sleep at night.

In fiscal year 2017, the city of San Francisco took in an average of $508 million a month in revenues and put out $467 million a month in expenses. But in between, the banks that handle all that cash sometimes used public dollars in ways that, in the opinions of Cohen and others, contradict the reasons why that money is coming and going in the first place.

"The existing banking and financial structures we're operating in don't always mirror our city's values," Cohen says. "For example, we had many people opposing the Dakota Access Pipeline. Many of the banks we bank with support the funding of this pipeline."

Continue reading.

Next City

by Oscar Perry Abello

Feb 19, 2018

The Amazon 'Top 20' and Why Incentives Matter for Muni Credit.

Amazon released its list of 20 finalists for its second headquarters. In reality there were no surprises given its requirements for access to land, education and culture facilities, and air transportation. The list includes Boston, New York, greater Washington D.C. (3 locations), Newark, Pittsburgh, Philadelphia, Raleigh, Atlanta, Miami, Austin, Dallas, Los Angeles, Nashville, Denver, Chicago, Indianapolis, and Columbus, OH. The 20th is Toronto in the Great White North.

The real game will not be based in facilities but how successful the winning city is in terms of providing subsidies and tax incentives which Amazon has not been reticent about citing as one of its major selection criterion. This is it gets really interesting. We see the ends to which some states like Wisconsin have been willing to go to attract line manufacturing jobs.

The value of the Amazon jobs versus those of manufacturing jobs is geometrically higher. The logical extension of that is to believe that the level of incentive Amazon believe its jobs should command would be that much higher. It is a high stakes game being played with significant risk to a "winning" state or locality which does not price the incentives correctly.

Maryland, for example, is dangling $5 billion worth of incentives – largely tax breaks and transportation upgrades – will come through legislation Governor Hogan is introducing in the General Assembly known as the Promoting Extraordinary Innovation in Maryland's Economy Act, or

PRIME Act, after Amazon's membership program. The PRIME Act would offer Amazon a tax credit for every new job at HQ2, along with credit and discounts on income and property taxes. The tax incentives are expected to cost $3 billion, and the transportation upgrades $2 billion. The package of incentives would require Amazon to commit to creating 40,000 jobs paying at least $100,000.

Meanwhile, When Incentives Send Mixed Messages – A Wisconsin Case Study

There is always some risk when a state which borders a more populous one offers huge tax incentives to companies to move there that many of the jobs attracted might actually go to out of state residents. This was a concern when Wisconsin's Foxconn state incentive deal was announced. A combination of low unemployment, proximity to Illinois, and a potential mismatch of skills to needs all contributed to that risk. Now a new advertising program being paid for by the State to attract young Chicago residents may be proving the point.

The Wisconsin Economic Development Corp. launched the $1 million marketing campaign last week — the first of its kind in state history — with a series of ads contrasting cramped subway cars and apartments in Chicago with cheaper rent and faster commute times in Wisconsin. It claims that "In Wisconsin, the average commute is less than 22 minutes." It includes advertising on social media and other websites, posters in health clubs, coasters in downtown Chicago bars, and ads on the interior and exterior of Chicago Transit Authority trains.

So unwittingly, Wisconsin may be proving the view that some have that it is overpaying for the Foxconn factory to locate in southern Wisconsin. Only time will tell but we are skeptical regarding the State's efforts.

As we discussed above, tax incentives do not always work out for luring big business. Issuers could watch the above example as a way to gauge whether these deals are worth making.

Neighborly Insights

Posted 02/19/2018 by Joseph Krist

This Special Focus is brought to you by Court Street Group.

Assessing Your Innovation District: Five Key Questions to Explore.

Over the past two decades, a confluence of changing market demands and demographic preferences have led to a revaluation of urban places—and a corresponding shift in the geography of innovation. This trend has resulted in a clustering of firms, intermediaries, and workers—often near universities, medical centers, or other anchors—in dense innovation districts. Local economic development leaders are now exploring ways to support this evolution as a means of fostering job creation, economic opportunity, and revitalization in their communities.

In "Assessing your innovation district: A how to guide," we provide guidance for how public, private, and institutional leaders stakeholders can undertake the first key step in that process: assessing their innovation ecosystem. Such an "audit" provides critical intelligence on an area's strengths, weaknesses, and opportunities, which can inform a unified vision, a clear set of goals, and customized strategies for reaching them.

Developed with our colleagues at Brookings, Project for Public Spaces, and Mass Economics, and road tested through on-the-ground work in Philadelphia, Pittsburgh, and Oklahoma City, the guide lays out a framework to help leaders identify an area or areas in their region with strong potential for innovative growth and development and/or evaluate an area already recognized as an emerging innovation district. The guide is centered around five big questions local "auditors" need to explore:

1) Where are your region's highest concentrations of innovation assets?
Companies today need to be able to interact with researchers, inventors, and entrepreneurs, as well as with other firms, to define new products and identify new markets. Density and proximity are paramount in facilitating this type of interaction. Local leaders therefore need to look across their urban landscape to determine what area or areas have a critical mass of well-connected innovation assets from which a district can grow and develop.

2) Is the district leveraging and aligning its distinctive advantages to grow and strengthen firms' innovation capacity?
Successful innovation districts have the collective ability to translate ideas into new products and services that improve the quality of life in their city and region, and, potentially, have a positive impact on people and places across the globe. This can take many forms and originate from several types of institutions—from research hospitals to engineering schools to technology startups, among others. To assess a district's innovation capacity, local leaders need to understand their innovation ecosystem's inputs (e.g. research strengths), outputs (e.g. start up activity), and levels of connectivity among actors and assets.

3) Does the district have an inclusive, diverse, and opportunity-rich environment?
A healthy innovation district comprises a diversity of people and provides economic opportunity for workers with a range of skills and education levels. And many emerging districts are within or adjacent to areas of economic distress, offering the opportunity to meaningfully engage nearby residents in district growth. But this won't happen by accident: Leaders must assess existing measures of diversity and inclusion and develop intentional strategies to ensure that all residents have a chance to benefit from, and are an integral part of, district development.

4) Does the district have physical and social assets that attract a diversity of firms and people, increase interactions, and accelerate innovation outcomes?
Dense, walkable, and highly connected areas help nurture the increasingly collaborative and open culture of innovation. These places include the kinds of spaces, in both the public and private realms, that bring a diversity of firms, institutions, and workers together in both formal and informal ways; that grow and strengthen social networks; and that offer the kind of vibrant environments where people want to spend time. In short, stakeholders should recognize (and thus evaluate) quality of place—connectivity, proximity, and the presence of dynamic, inclusive spaces—as central to a district's economic proposition.

5) Does the district have the leadership necessary to succeed?
Regardless of their economic, physical, or human capital strengths, burgeoning innovation districts will not reach their full potential without capable leadership. District leaders can play a variety of roles in fostering a new culture of collaboration and collective impact, whether by serving as champions of a district vision, conveners that mobilize stakeholders to engage, or catalysts of action. While leadership structures will vary, districts can't succeed unless leaders of key organizations—anchor research institutions, nonprofits, intermediaries, and/or private firms—make a shared, sustained commitment to drive change.

While the starting points for different districts will vary, knowing the right questions—and tailoring them to the local context and capacities—will help district leaders conduct an analysis most appropriate for their individual needs. Indeed, no two places will use this guide the same way, and we expect that the process itself will evolve over time to consider new measures, and be undertaken in novel and innovative ways by new groups of stakeholders working within districts and across them. As they do, communities will hopefully learn from each other in a virtuous feedback loop that gets sharper and more effective at every turn.

The Brookings Institute

by Jason Hachadorian and Jennifer S. Vey

February 21, 2018

Will Chicago's "AAA-Rating" on Its Sales Tax Securitization Corp. Hold During Bankruptcy?

The City of Chicago's new debt transaction, secured by sales-tax revenues, emerges as the epitome of financial engineering and ingenuity of a bond transaction structuring.

The city, with its own financial challenges and mounting pension obligation, is going to be selling debt instruments under a newly created company secured by a first lien position pledge on the city's sales-tax revenues; these debt instruments are being labeled as secure as U.S. Treasuries with a AAA credit rating. In the municipal debt markets, every local government strives to earn the best possible rating on their debt issuance to bring the cost as low as possible, as high ratings directly correlate to positive outlook and low coupons for the debt instruments.

In this article, we will take a closer look at the debt structuring of Chicago's Sales-tax debt, the rating criteria and the potential impacts during a financial downturn.

Obtaining "AAA-rating" With Relatively Low General Obligation Ratings

A low general obligation rating can substantially restrict a municipality's access to capital markets or make it substantially more expensive to issue debt. In the City of Chicago's case, their general obligation debt ratings vary from strong investment-grade to junk status, which has essentially restricted their access to capital through debt financing.

Recently, with the help of well-known investment banks, Chicago has ventured into issuing revenue-backed debt by creating a new corporation and using it to issue new bonds while assuring investors have first claim on the city's sales tax revenues. This transaction has already earned an AAA-rating by a couple of the rating agencies and a positive outlook on the city's sales tax revenue streams.

However, this presents its own dilemmas in the event of financial insolvency of the municipality; as in, whether the debt holders will continue to get their coupon payments or, if instead, the city will be required to meet its other obligations to its pensioners, local government employees and funding critical city-wide programs.

The Case of Sales Tax Revenue Pledged Debt for Puerto Rico

For many investors, Chicago's sales tax backed debt seems very relatable to Puerto Rico's COFINA debt, which was backed by the first pledge on the sales tax revenue streams. Throughout the financial restructuring of Puerto Rican debt, there has been the emergence of two primary disputes between GO and revenue-backed debt.

Many investors assume, rightfully so, that revenue-backed debt is a relatively safer investment option and consider its position to be higher than general obligation debt due to the specific revenue streams that are typically collateralized to make payment on these bonds. However, this assumption can be severely challenged in the event of local government insolvency or restructuring efforts. This conundrum has caused quite a stir among Puerto Rico's GO and COFINA debt holders. GO bondholders and their legal representatives have brought forward lawsuits claiming that their debt obligations must be met by the island's government before COFINAs are paid, irrespective of any revenue pledges, liens or secured debt. Several references and interpretations have been made toward the GO debt structures, and the island's Constitution states that GO debt must be paid before other expenses. The legal teams in favor of GO bonds have argued that the COFINA structure is invalid and violates the island's Constitution because Puerto Rico cannot continue to pay its sales tax bonds while skipping GO payments, especially when GO debt structure entails a claim on any "available resources" of the Commonwealth, including sales tax revenues.

On the other hand, COFINA debt holders have filed their own lawsuits claiming that their debt indentures allow them to have the first claim on any revenues generated through sales tax, and that these revenues are not part of the general revenue to pay GO debt obligations prior to revenue debt. In addition, they have also claimed the invalidity of GO debt, since any GO debt issued after 2011 has been over the Constitutional limit and, according to the lawsuit, should be rendered invalid. COFINA holders also say that since the sales tax revenue is specifically pledged for payment of revenue-backed debt, it doesn't constitute "available resources" and cannot be mingled into the general fund.

As if this feud wasn't enough to keep investors occupied, there have been internal legal disputes between senior and subordinate COFINA debt holders. As in many local U.S. governments, revenue debt is typically issued depending on the timing and the capital needs of the municipality and can often be structured with senior and subordinate lien positions on the pledged revenues. As the sales tax revenues are also on a decline for the Commonwealth, COFINA holders are scrambling to get clarity on their positioning to claim those sales tax revenues. In obvious terms, senior debt holders claim that their debt service obligations must be met before any junior or subordinate lien positions are paid; senior lien holders would like this to be true for both semi-annual debt payments (such as interest and principal payments) or full payment on senior holdings prior to subordinate debt in the event of bankruptcy. Subordinate debt holders disagree with these terms and would like to have a claim on the sales tax revenues equal to that of the senior debt holders.

Investors and the municipal markets have shown similar concerns on the AAA-rating for the City of Chicago's revenue-backed debt and the validity of these ratings during a financial distress similar to Puerto Rico.

municipalbonds.com

by Jayden Sangha

Feb 22, 2018

State Treasurers Want Advance Refunding Tax Exemption Restored.

States have used advance refunding bonds to refinance debt. Their tax-exempt status was nixed as part of last year's tax rewrite.

State treasurers are pushing Congress to reinstate a municipal bond tax exemption that was scotched as part of last year's tax overhaul.

The federal income tax exemption applied to interest earned on what are known as "advance refunding" bonds. These bonds are a refinancing tool that state and local governments have commonly used in the past to lower borrowing costs and restructure debt.

In a letter sent Wednesday to leaders in the Senate and House, the National Association of State Treasurers said reviving the exemption would help to achieve the goals outlined in an infrastructure investment plan that President Trump is pushing for.

"Advance refunding bonds save money for taxpayers and free up money for additional infrastructure projects, by allowing state and local issuers to refinance bonds at a lower interest rate," they wrote.

"As experts on infrastructure financing, we believe that reinstating the tax-exempt status of these bonds will be critical for state and local governments to properly execute any infrastructure proposal."

State and local governments finance over 75 percent of all U.S. infrastructure projects, and last year more than $100 billion in advance refunding bonds were issued, according to the letter.

There are still big questions about how much buy-in Trump's infrastructure plan will get in Congress. The White House proposal calls for $200 billion of direct federal investment, with the goal of driving at least $1.5 trillion in public works spending over a decade when combining that money with state, local and private funds.

Because tax-exempt municipal bond earnings are not subject to federal income tax, it's generally understood that investors in the debt expect lower interest rates compared to taxable bonds. This, in turn, can save governments and taxpayers money by reducing borrowing costs

The treasurers endorsed a bipartisan bill in the U.S. House that would reinstate the tax-exempt status of advance refunding bonds, and urged that it be included in any forthcoming infrastructure legislation.

Rep. Randy Hultgren, an Illinois Republican, is the lead sponsor of that bill. He introduced it last week. The legislation currently has three Democratic and two Republican co-sponsors and has been referred to the Ways and Means Committee.

Route Fifty

By Bill Lucia,
Senior Reporter

February 22, 2018

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

Tax Reform's New Incentives for Investments in Low-Income Communities:

Part 1

State Governors Given Responsibility for Nominations of Opportunity Zones

HIGHLIGHTS:

- A new tax incentive in the recently enacted Tax Cuts and Jobs Act would allow investors selling appreciated securities or other investment property to defer tax on those gains to the extent that the proceeds are reinvested in an Opportunity Zone Fund. Further tax incentives would allow for exclusion of both some of the deferred gain and any post acquisition gain if the Fund is held long enough.
- Each of the 50 states and the District of Columbia (as well as U.S. possessions) will have an opportunity to nominate a minimum of 25 Opportunity Zones located within the state, district or territory.
- Eligible zones must generally must be nominated by the governor of a state within a 90-day period starting on the Act's date of enactment (by March 21, 2018, unless a 30-day extension is applied for and granted).

The Tax Cuts and Jobs Act (the Act), signed into law on Dec. 22, 2017, contains new tax incentives for making investments in low-income communities. The first tax incentive would allow investors selling appreciated securities or other investment property to defer tax on those gains to the extent that all of the proceeds are reinvested in an Opportunity Zone Fund. In addition to deferring gains that are reinvested in Opportunity Zone Funds, the provision would reduce such gain subject to tax for those who hold their investments at least five years and would reduce it even further if held at least seven years. The second tax incentive would exempt from tax any post-acquisition gains on investments in the Opportunity Zone Funds themselves – if they are held at least 10 years.

Under the Act, each of the 50 states and the District of Columbia (as well as U.S. possessions) will have an opportunity to nominate a minimum of 25 Opportunity Zones located within the state, district and territory. Eligible zones must generally must be nominated by the chief executive of a state **within a 90-day period starting on the Act's date of enactment** and under rules described below. The nominated zones must either be "low-income communities" as defined below or "contiguous" to designated low-income communities subject to certain statutory limitations.

Because of the short period within nominations must be made, this Holland & Knight client alert focuses primarily on the rules applicable to the Opportunity Zone nomination and designation process. Subsequent alerts will focus on the rules for Opportunity Zone Fund formation and how the tax incentives for Opportunity Fund investors will work.

Continue reading.

By Kristin A DeKuiper & Kathleen M Nilles

January 8, 2018

Holland & Knight

Tax Reform's New Incentives for Investments in Low-Income Communities:

Part 2

Certification and Operation of Qualified Opportunity Funds

HIGHLIGHTS:

- Part 1 of this series of Holland & Knight alerts described a new tax incentive contained in the Tax Cuts and Jobs Act for investments in low-income communities designated as "Opportunity Zones." Part 1 also explained the process for nomination by state governors and designation of Opportunity Zones by the U.S. Department of the Treasury.
- In Part 2, we discuss the requirements for formation and certification of an Opportunity Fund and the rules governing its operations. A qualified Opportunity Fund is defined as any investment vehicle organized as a corporation or a partnership for the purpose of investing in "qualified opportunity zone property," and that holds at least 90 percent of its assets in "qualified opportunity zone property."
- In an upcoming Part 3, we will discuss benefits for investing taxpayers.

Part 1 of this series of Holland & Knight alerts described a new tax incentive contained in the Tax Cuts and Jobs Act (the Act) for investments in low-income communities designated as "Opportunity Zones." The Opportunity Zone incentive is now embodied in Sections 1400Z-1 and 1400Z-2 of the Internal Revenue Code. Part 1 of this series discussed the process for nomination by state governors and designation of Opportunity Zones by the U.S. Department of the Treasury. Part 2 discusses the requirements for formation and certification of an Opportunity Fund and the rules governing its operations. In an upcoming Part 3, we will discuss the benefits for investing taxpayers, namely the deferral or exclusion from gain from the sale or exchange of an asset by a taxpayer who invests in an Opportunity Fund, as well as the potential exclusion of gain from disposition of an investment in an Opportunity Fund.

Continue reading.

By Kristin A DeKuiper & Nicole M Elliott

January 24, 2018

Holland & Knight

Tax Reform's New Incentives for Investments in Low-Income Communities: Part 3

HIGHLIGHTS:

- Part 1 and Part 2 of this series of Holland & Knight alerts described a new tax incentive contained in the Tax Cuts and Jobs Act for investments in low-income communities designated as "Opportunity Zones."
- In Part 3, we discuss the benefits for investing taxpayers, namely the deferral or partial exclusion of gain from the sale or exchange of an asset by a taxpayer who invests in a Qualified Opportunity Fund, as well as the potential exclusion of gain from disposition of an investment in an Opportunity Fund.
- Part 3 also highlights recently issued guidance on nominating census tracts as Opportunity Zones and recently enacted legislation providing for the automatic treatment of all low-income census

tracts in Puerto Rico as Opportunity Zones.

Part 1 and Part 2 of this series of Holland & Knight alerts described a new tax incentive contained in the Tax Cuts and Jobs Act (the Act) for investments in low-income communities designated as "Opportunity Zones." The Opportunity Zone incentive and related rules are now codified in Sections 1400Z-1 and 1400Z-2 of the Internal Revenue Code.

- Part 1 of this series set forth the process for nomination by state governors and designation of Opportunity Zones by the U.S. Department of the Treasury.
- Part 2 focused on the requirements for formation and certification of an Opportunity Fund and the rules governing its operations.

In this third and final alert in the series (Part 3), we discuss the benefits for investing taxpayers, namely the deferral or partial exclusion of gain from the sale or exchange of an asset by a taxpayer who invests in a Qualified Opportunity Fund1 (Opportunity Fund), as well as the potential exclusion of gain from disposition of an investment in an Opportunity Fund (Opportunity Fund Investment). Part 3 also highlights recently issued guidance on nominating census tracts as Opportunity Zones2 and recently enacted legislation providing for the automatic treatment of all low-income census tracts in Puerto Rico as Opportunity Zones.

Continue reading.

Holland & Knight LLP

USA February 22 2018

How Municipal Issuers Can Advance Refund Taxable or Tax-Advantaged Debt.

PHOENIX – Municipal issuers can issue tax-exempt bonds and use the proceeds to advance refund either taxable bonds or tax-advantaged bonds like Build America Bonds, as long as the federal subsidy payments are "turned off' in the case of the BABs, a Treasury official told lawyers meeting here late last week.

Some bond attorneys attending sessions at the National Association of Bond Lawyers' Tax and Securities Law Institute questioned whether the new tax law enacted in December that prohibits advance refundings bans tax-exempt advance refundings of taxable debt. They asked for guidance on this issue.

Treasury Department Associate Tax Legislative Counsel John Cross told the lawyers who raised the questions that he was surprised that they would think an issuer couldn't issue tax-exempt bonds to refund taxable bonds.

Cross said that existing tax rules make clear that municipal issuers can issue tax-exempt bonds to advance refund taxable bonds because the refunding would not result in two sets of tax-exempt bonds outstanding — the basic problem with a tax-exempt advance refunding of tax-exempt bonds.

"You don't need any more guidance," Cross said during a session on hot tax topics in which he focused his presentation on the Trump administration's infrastructure proposal for a new category of private activity bonds. None of the audience questions were on Cross's preferred topic of the proposed PABs for infrastructure financing.

Lawyers also wanted to know if they could issue tax-exempt bonds to advance refund tax-advantaged bonds such as Build America Bonds. BABs are taxable but they are called tax-advantaged because the issuers of these and other direct-pay bonds receive federal subsidy payments from the Treasury equal to a percentage of their interest costs.

Cross said, “If you turn off the subsidy, I think you are fine. If the subsidy stays then I think you’ve got problems.” Cross predicted Treasury will issue a guidance in this area “reasonably soon.”

Cross said later that he thinks the source of confusion, in part, is that the federal tax code doesn’t generally use the word “tax-exempt.” The new tax law also does not say “tax exempt,” it just says advance refundings are prohibited.

But Section 1.149(d)-1(e) of the tax rules make clear that the only time an advance refunding is a problem is if it results in “two tax-exempt issues being outstanding concurrently for more than 90 days,” Cross said, adding, “That section of the rules is a road map on how to treat taxable debt for restrictions on advance refundings.”

Issuers would not have this problem with a taxable advance refunding of a tax-exempt bond or a tax-advantaged bond that no longer received federal subsidy payments, he said.

In the case of a BAB, once the taxable bond proceeds are put into an escrow to defease the BAB, the BAB no longer exists and doesn’t continue to receive federal subsidy payments, lawyers said. Once defeased, the BAB is considered to be reissued, which means it becomes a new taxable bond, not a BAB. Issuers haven’t been able to issue BABS since 2010, the bond can no longer be a BAB.

But Cross said issuers can also “turn off” the subsidy payments for their BABs without doing a refunding. They can inform Treasury they no longer want to receive the payments.

Despite the reassurance from Cross, only some of the attorneys who attended a Friday session on refundings and reissuance raised their hands when asked by if they felt confident taking out taxable debt to advance refund tax-exempt debt.

One member of the panel suggested that the NABL board might send a letter to Treasury making a request for guidance.

Jessica Giroux, NABL’s director of governmental affairs, said Friday she planned to query the board.

Tom Vander Molen, who chaired the Friday session, told The Bond Buyer he understood the concern about the language in the new tax law.

“There’s still concern about the literal language,” said Vander Molen, partner in public finance and tax groups at Dorsey & Whitney in Minneapolis. “Literally you cannot use a bond to advance refund another bond. It doesn’t say taxable or tax exempt.”

“They are saying and it’s my position, but not necessarily everybody is comfortable with that, that’s okay so long as you don’t have two exempt bonds issues for the same purpose outstanding simultaneously more than 90 days,” Vander Molen said. “So if the original tax exempt bonds that were refunded taxable are gone you should be able to refund the taxable bonds with tax exempt bonds.”

Elizabeth Walker, who joined Vander Molen of the panel, came away with the same message.

“The concern I heard from the audience, there are people who are concerned that the new tax law does not unequivocally allow taking out taxable debt on an advance refunding basis of tax exempt," said Walker, an attorney at Hall Render Killian, Heath & Lyman in Indianapolis.

Vander Molen and Walker each said they agreed with Cross that the new tax law did not terminate taxable refundings.

Vander Molen said he agreed with Treasury's Cross that the advance refunding regulations under Section 1.149 never covered taxable bonds unless the bonds were subject to the anti-abuse rule. "The anti-abuse rule is why we are concerned about BABs," Vander Molen said.

Walker said, "I don't think there's ever any harm in additional guidance. As with anything, it will depend on the facts and circumstances whether you would need additional guidance or not."

But Walker has not encountered any situations yet where additional Treasury guidance was needed. "I think there are many scenarios in which you take out taxable debt with tax exempt debt but frankly I have not encountered a lot of those that would be an advance refunding because usually it is a contemplated integrated transaction where the taxable debt is easily callable," she said.

Kimberly Min, a partner at Whiteford Taylor Preston in Baltimore, also attended the Thursday session with Cross and Tsilas and the Friday discussion on refundings.

"As to whether a taxable advance refunding can be accomplished, I agree that there doesn't necessarily need to be guidance on that front," Min said in an interview. "But there were other comments that they made, I think, that will necessitate some guidance."

Min said the issues guidance could address include "how you treat a forward pricing on a Cinderella type structure and the concerns that they mentioned relating to artificially pushing the yield back into the tax exempt price versus at the taxable price when there really are different interest rate risks associated with each component of the financing."

Cliff Gerber, the immediate past president of NABL and a partner at Norton Rose Fulbright in San Francisco, said attorneys were "keenly awaiting" the comments from the Treasury and IRS attorneys at Thursday's meeting.

"A number of us… are going to caucus with our partners and consider the statements and figure out their relative comfort levels," Gerber said in an interview.

BY SOURCEMEDIA | MUNICIPAL | 09:47 AM EST

In New Jersey, New York, Tax Overhaul May Be Lifting Muni Bonds.

- **Analysts expected demand in high-tax states would increase**
- **New Jersey, New York yields have narrowed against benchmark**

Some municipal-bond analysts expected the new $10,000 limit on state and local deductions would increase demand for debt issued by high-tax states as wealthy residents look for ways to reduce their federal tax bills.

The prices of New York and New Jersey bonds seem to be bearing out that call.

The yields on 10-year bonds issued by the two states have drawn closer to top-rated bonds since the federal tax-overhaul legislation was released in early November, according to data compiled by Bloomberg. New York's yields — which were as much as 0.19 percentage point above the benchmark in early November — have since dropped to about 0.06 percentage point below it. For New Jersey, that gap has slipped to about 0.66 percentage point from more than a percent point in November.

That stands in contrast to Florida and Texas, two relatively low-tax states whose bonds have been little changed against the benchmark since the tax changes were enacted.

The limit on state and local tax deductions will fall heavily on residents of states where many pay more than $10,000 a year in property and income taxes. Analysts speculated that the change could boost interest in municipal bonds, whose income is tax-exempt, as a possible way to cut their federal tax bills.

Not all the higher-tax states are seeing a bond-market impact. California's yields, which have been steadily declining against the benchmark for years because of the government's improving finances, have been little changed. And in Connecticut, where Governor Dannel Malloy has been contending with chronic deficits, demand hasn't been enough to turn the tide: Investors are demanding even higher payouts to compensate for that risk.

Bloomberg Markets

By Amanda Albright

February 26, 2018, 9:43 AM PST

How Should You Respond When SEC Examiners Come Knocking?

PHOENIX – How a dealer or municipal advisor responds to a Securities and Exchange Commission examination or enforcement investigation is crucial in determining the outcome, lawyers and an SEC official said Thursday.

The comments were made during a pair of panels focused on topics and trends in securities law and SEC enforcement during the first day of the National Association of Bond Lawyers' Tax and Securities Law Institute. Panelists spoke about the process and pitfalls of both examinations by the SEC's Office of Compliance Inspections and Examinations (OCIE) and investigations by the commission's Enforcement Division's Public Finance Abuse Unit.

Nadine Sophia Evans, an OCIE attorney, said that the SEC has seen a lot of registration failures among municipal advisors, who are required to be registered with both the SEC and with the Municipal Securities Rulemaking Board if they provide muni bond-related advice to municipal issuers and other entities. Also frequent among MAs are books and records deficiencies and supervisory system shortcomings, Evans said. OCIE's current MA exam priority is independent MAs that who are not dual-registered as broker-dealers, she said.

When the SEC has seen failures with respect to the fiduciary duty — a duty created for MAs by the Dodd-Frank Act requiring them to put the interests of their municipal issuer clients ahead of their own — Evans said it has typically been related to a failure to disclose a conflict of interest such as a competing business arrangement. Whether a problem is handled by OCIE, the enforcement staff, or the Financial Industry Regulatory Authority, depends on a variety of factors, Evans said.

But several panelists agreed that how the target of an SEC exam or investigation reacts is crucial.

Evans said that OCIE offers registrants a chance to have an "open conversation" with the SEC about the preliminary findings, and that findings of deficiency are kept confidential inside the SEC. But a lawyer at the session said that litigation experience has taught her that there's "no such thing as an 'open conversation' with anyone from the SEC."

Nadine said that litigation is a different matter from a less formal discussion with OCIE. Andrew Kintzinger, a panelist who practices with Hunton & Williams in Washington D.C., cautioned that statements freely given to OCIE can bite firms later because they can be used against the firms by the Enforcement Division.

"The legal concern is still there," Kintzinger said. "Voluntary today can be treated as an admission tomorrow."

In a later panel Kathleen Marcus of Straddling Yocca Carlson & Rauth in Newport Beach, Calif., warned against taking a hostile view of SEC attorneys. SEC lawyers view themselves as regulators rather than as the enemies of the firms they are looking into, she said, and being professional them is best.

"Being very adversarial … it's not going to end well," she said. Enforcement actions could even be avoided with cooperation in some cases, panelists said.

The OCIE said in its recently-published priorities that it is also going to be focusing on examining the MSRB.

Michael Post, general counsel of the MSRB who was also a panelist, said that the board was recently examined with respect to its compliance with federal regulations aimed at safeguarding the technological infrastructure of the market. The MSRB has faced larger OCIE exams before and is apparently due for another, Post said.

"We produce thousands of documents to OCIE in those processes," Post said, adding that he believes the MSRB's experience is probably not unlike the experience of a registered entity like a dealer.

Panelists also discussed takeaways from recent SEC enforcement actions, noting that they have generally contained an element of public corruption such as when the commission in November charged Oyster Bay, N.Y. with hiding the existence and potential impact of side deals with a businessman who owned and operated restaurants and concession stands.

Evans said that the SEC is going to continue focusing on disclosure. "I don't think that theme is going away anytime soon," she said.

The NABL conference concludes Friday afternoon.

By Kyle Glazier

BY SOURCEMEDIA | MUNICIPAL | 02/22/18 07:01 PM EST

Berkeley's Plan to Make Its Own Cryptocurrency Raises Eyebrows.

Facing a homelessness crisis and funding gaps from recent tax cuts, the city of Berkeley is considering something revolutionary: making its own bitcoin-like cryptocurrency.

“Acts of resistance require creating resources,” said Councilman Ben Bartlett, one of the people behind the plan. He’s working with Mayor Jesse Arreguín, and teaming up with the startup Neighborly and UC Berkeley’s Blockchain Lab on proposals to turn municipal bonds into digital currency, with the goal of raising additional funds for specific projects.

Bartlett and Arreguín came up with the idea over dinner when they were brainstorming about the affordable housing crisis with constituents, some of whom work with digital currencies.

“This is largely driven by Berkeley residents,” Bartlett said. “Their nickname for Berkeley is Crypto City.”

Some of cryptocurrency’s harshest critics have characterized them as Ponzi schemes, even as others anticipate that they will revolutionize payment systems. A few early backers of cryptocurrencies are now billionaires on paper, thanks to the run-up in prices. Startups have sought to use the issuance of new digital currencies, called inital coin offerings, to fund development of software tools and marketplaces instead of raising venture capital.

Berkeley has no plan to buy bitcoin, ether or other similar currencies with city funds. Instead, the idea is to break up municipal bonds, allowing people to buy them in smaller quantities as digital tokens, similar to how other cryptocurrencies are traded. The currency will use blockchain technology, as most cryptocurrencies do, that creates a decentralized ledger of transactions designed to increase people’s trust in cyber money. But the micro-bonds recorded on the blockchain will be tied to an asset — the underlying bond. Bartlett argues that this makes it less risky than other cryptocurrencies, which have seen wide price swings in the past year.

The councilman said he expects the plan to be embraced by residents and regulators. But John Reed Stark, a lawyer and professor who was formerly head of the Securities and Exchange Commission’s Office of Internet Enforcement, is dubious.

“I truly cannot believe this,” he said of Berkeley’s plan. He says cryptocurrency offerings resemble “the drivers-ed film of securities violations. They trigger every single kind of security violation.”

“The notion that a municipality is somehow encouraging the use of pseudo-anonymous currency strikes me as incredibly irresponsible,” Stark said. “There are tremendous security ramifications, and they should expect an unbelievable amount of regulatory scrutiny. Whatever they do will be under the microscope of the SEC.”

More than a dozen companies have shelved plans to raise money from investors after SEC officials called them up, Robert Cohen, head of the SEC’s cyber enforcement unit, said Friday. The SEC scrutiny prompted firms to realize that their offerings may have violated federal securities laws, he said at a conference in Washington.

Lynnette Kelly, president and executive director of the Municipal Securities Rulemaking Board said it’s too early to say whether there would be concerns about security or stability in Berkeley’s case.

“There are rules in place and all of those rules need to be followed,” she said. “I think having a currency backed by a municipal bond is different, and I know the SEC and the (Commodity Futures Trading Commission) have talked at length about cryptocurrencies and issues surrounding these coins.”

“We’ll continue to investigate and monitor, and get smarter about this and any other new technique in the market, but that doesn't mean it necessarily raises red flags," Kelly said.

A spokesman for the SEC declined to comment.

Marc Lifsher, a spokesman for the State Treasurer's Office, said the office has no position and views it as a local issue.

"The State Treasurer's Office has not talked to Neighborly or Berkeley about cryptocurrency," he said.

Jase Wilson, CEO of San Francisco's Neighborly, shrugged off questions about instability.

"The volatility looks more like a municipal bond," Wilson said. "Berkeley is an extremely strong and fiscally disciplined borrower."

The downside of a relatively stable security is that it's unlikely to attract the get-rich-quick speculators and arbitrageurs who have caused gyrations in the prices of cryptocurrencies but also created relatively liquid markets in them.

The Berkeley project's goal is to streamline the process for buying and selling municipal bonds, cut transaction costs and allow people to invest in projects of their choosing at low levels.

"For a normal person to invest in a bond is like $5,000, but under a micro-bond enabled by the blockchain it could be like $25 or $50," Bartlett said. Someone could theoretically invest in the creation of a new park — or even just the purchase of a swing set.

While Bartlett's long-term goal is to fund big projects like affordable housing, he wants to start small. Some ideas so far, which Bartlett said came from residents: planting a row of trees, buying another ambulance for a fire station and engaging a group of artists to create a series of rotating public art pieces.

The city and its partners are planning what backers like to call "an initial community offering" for May.

Bartlett said that either the City Council would have to approve the plan, or its backers could pursue it with a private company without the council's OK.

They want to move quickly, he said: The technology promises "direct community engagement, and the need is more pressing than ever."

San Francisco Chronicle

By Sophie Haigney

February 23, 2018

Bloomberg News contributed to this report.

[Many Scratching Their Heads Over White House Infrastructure Plan.]

An ambitious White House infrastructure plan released Feb. 12 that depends on private investors and state and local governments to finance as much as $1.3 trillion in projects is leaving out a lot of details, including whether the money and attractive projects are there, potential partners and industry experts say.

A core tenet of the plan is transferring decision-making authority to state and local governments, along with streamlining the permitting process and reducing regulatory barriers. The federal government would put in $200 billion to stimulate that $1.3 trillion, with $100 billion of that going to a new incentives grant program for state and local government projects that attract additional investment, including credit for some past projects if they generate revenue.

Another $20 billion would go toward expanding infrastructure financing programs, with $14 billion for existing credit programs, and $6 billion to expand tax-exempt private activity bonds. Another $50 billion would go to block grants to governors for rural projects, which experts say are now overlooked. Another $20 billion would be for what the White House calls "transformative" projects highlighting next generation approaches as opposed to rebuilding current systems. The remaining $10 billion would be for a "capital financing fund."

According to the American Society of Civil Engineers, the United States needs to invest $4.6 trillion in infrastructure through 2025 – but only $2.5 trillion in funding identified is available. The ASCE puts the infrastructure investment deficit at $2 trillion over 10 years.

Still, infrastructure investing is growing in the U.S., with $418 billion in private capital assets under management for infrastructure funds, including $65 billion raised for infrastructure funds that closed in 2017, according to data from Preqin.

Ball in states' court

The major shift away from Washington had board members of the $356.6 billion California Public Employees' Retirement System, Sacramento, meeting right after the announcement, wondering if states would have the money to match the federal dollars. "When you look at the state and local jurisdictions fiscally, there's a lot of question marks about whether they can afford to participate in this without raising a whole bunch of charges," CalPERS portfolio manager and head economist John Rothfield told the board. "There's been such a build-up in federal debt that the situation here seems to be to pass some of this on to state and local municipal-level debt funding or raising revenue."

Andrew Marino, Washington, managing director and co-head of Carlyle Group LP's $750 million global infrastructure fund, is much more optimistic. Providing incentives for state and local governments "is absolutely the best thing for this market," he said. "What makes our country different than other countries is that the U.S. infrastructure market is fundamentally a local market. And each of these jurisdictions have their own stakeholders to manage and their own process to follow. Those dynamics are incredibly important … to balance the needs of the investors and the stakeholders.

"That means that more deals are going to get done. It means our market is going to get more efficient. It's going to force investors in infrastructure to be local," he said, adding, "we are not daunted by local politics." Carlyle has a long history managing union pension funds, and "we also see creating jobs and protecting taxpayers as integral components of any project," he said.

Carlyle, which has a large presence in local and state infrastructure markets, is "happy footing the bill (for the project) ourselves," said Mr. Marino, who foresees state and local governments adopting more of an Australian model that lets local officials step in if agreements are violated. "Out of financial necessity, state and local governments are becoming more innovative and very entrepreneurial," including airport terminal projects and broadband systems.

Increased demand

"The Trump proposal will increase the demand side. I'd say the investor side is already there," said Michael Likosky, principal and head of infrastructure at 32 Advisors in New York, whose firm advises on the origination, structure and close of funds. He has seen U.S. investors traditionally in real estate becoming increasingly interested in infrastructure over the last 15 years in terms of the risk/return profile.

"It's a perfect asset class for institutional investors, who have been doing it for 20 years internationally. What they're doing is stuff that has worked in other places. It's a basic formula. It's just a matter of people seeing that opportunity," particularly in small markets and particularly overlooked rural areas, said Mr. Likosky. The learning curve for institutional investors, he said, will be monitoring their third-party fund managers. Private-sector pension funds "aren't allocating as much as they could" because they have been waiting for third-party managers to find the deals in a "Balkanized" market with countless states and counties for investors to figure out.

For the states, a key to making Mr. Trump's infrastructure plan work is expanding the use of tax-exempt debt, said Vermont Treasurer Beth Pearce, who is also president of the National Association of State Treasurers. She notes that state and local governments finance more than 75% of all U.S. infrastructure projects, and while state and local governments appreciate the emphasis on partnering with them, it's up to Congress to support tax-exempt financing, including maximizing the use of tax-exempt municipal bonds and private activity bonds, and reinstating access to tax-exempt advance refunding bonds, which were eliminated in the 2017 tax law.

Even coming up with that $200 billion in federal funds will be a challenge, following an expensive tax reform plan that adds $1 trillion or more to the federal deficit over the next decade. The $200 billion for infrastructure would have to be offset by cuts to other programs such as mass transit, which would face stiff resistance in Congress. The fight over infrastructure financing has not even begun and the administration's proposalis far from the bipartisan solution that affected parties say is necessary.

Add in the midterm elections this fall, and the clock may run out on the proposal, said William Galston, Brookings Institution senior fellow, Washington. "Getting private capital involved makes a lot of sense in principle, (but) the idea that states and local governments are going to be able to come up with that much money strikes me and a lot of other people as a stretch."

Who pays for it?

Another question is whether Americans will pay to use public assets, a necessary part of making the deals attractive to investors who would need to earn a return on their investments and eligible for the proposed federal incentives. "The problem for U.S infrastructure has never been a shortage of private capital, but rather how it is paid for," wrote analysts at S&P Global Inc. in New York, in a research note published Feb. 14.

Even if the White House plan, including the role for private capital, is rejected, they see "an inevitable need for Americans to accept paying more to use the nation's infrastructure. At its very essence, the plan forces into the political debate a conversation about who will support new infrastructure because massive federal funding is no longer on the table. And if the gap cannot be bridged by local and state governments alone or through additional direct federal spending or programs, the private sector will inevitably have to be involved in the solution."

Mr. Marino of Carlyle believes that federally funded infrastructure projects may follow, but will be more complicated. He sees "the first big wave of transactions" inspired by a shift away from Washington that will pave the way, helping bankers and other intermediaries get more knowledgeable and comfortable, which in turn can lower the costs of infrastructure capital, he said.

"We think that the market right now supports a different type of deal because it requires more expertise to make things happen," he said. For both the potential financial and societal benefits, "it is really exciting."

PENSIONS & INVESTMENTS

BY HAZEL BRADFORD · FEBRUARY 19, 2018

Trump Public-Works Plan Gets Nudge From $2 Trillion Pension Pool.

- **Pension industry Down Under says it can help unlock funds**
- **Turnbull leads 22-strong business delegation to Washington**

Australian Ambassador to the U.S. Joe Hockey discusses investing in U.S. infrastructure.
President Donald Trump's pledge to fix America's ailing roads, bridges and airports may get an unlikely boost from retirement savers some 10,000 miles away in Australia.

In face-to-face talks at the White House this week, Prime Minister Malcolm Turnbull will propose using a chunk of Australia's A$2.53 trillion ($1.99 trillion) pension savings pool to help unlock funding for Trump's infrastructure push. He's being joined on the trip by local money managers who help control the world's fourth-largest pot of retirement savings.

"There's a very bold ambition to drive U.S. infrastructure and Australia should be front and center in terms of project design, build, financing and management," Trade Minister Steven Ciobo said in an interview ahead of the visit.

Trump's $1.5 trillion public-works plan has hit potholes amid a lack of bipartisan support in Congress and questions over who would pay for the initiative despite his pledge of $200 billion in federal funding over 10 years. Australian officials have pointed to their own success in selling or leasing public assets to finance new construction without incurring new debt — a concept known as asset recycling.

Joe Hockey, now Australia's ambassador to the U.S., was a key champion of the initiative when he was federal Treasurer and has been pivotal in promoting it in Washington.

"There's no doubt when it comes to infrastructure and better rollout of infrastructure, Australia has some examples that may be of use to the United States," Hockey said Wednesday. Australia could help deploy "private money in partnership with state, county and city governments to give the infrastructure America desperately needs just to maintain its current economic growth, not to fall backwards," he said.

Fund managers in Turnbull's delegation of 22 business leaders will continue the push at the National Governors Association meeting this weekend.

"The key blockage in the U.S., which is also common across the world, is the political risk due to community concern over private ownership of what people perceive should be public assets," said David Whiteley, chief executive of Industry Super Australia — the representative body for not-fo--profit funds that invest the retirement savings of 5 million Australians with more than A$224 billion under management.

Assets in Australia's compulsory pension savings system, known as superannuation, have increased nearly ten-fold in the past two decades. Assets aren't expected to peak for another 20 years, with estimates of the system's ultimate size ranging from A$3.5 trillion to A$5.1 trillion.

"Few Australians —- and even fewer Americans —- know Australia has grown a titanic stock of capital in its superannuation funds," the University of Sydney's United States Studies Centre said in a report released on Thursday. "Massive amounts of this colossal investment pool" is already invested in the U.S., helping "grow American firms, build and repair U.S. infrastructure."

Brett Himbury, chief executive officer of Melbourne-based IFM Investors Pty, canvassed potential cross-border infrastructure deals with Vice President Mike Pence last year and joins Turnbull on this trip.

"The administration needs $1 trillion and it's unlikely that can all be supplied from the public purse," Himbury said. "So there is a growing realization that private capital is needed."

IFM, which has A$101 billion of assets under management, invests money on behalf of entities from 16 countries including seven of the top 10 U.S. pension funds, according to Himbury.

"Part of our pitch is that this is worker's money from many different countries being used to build infrastructure in the U.S. and helping to create jobs for U.S. workers," Himbury said. "And we think that is a pretty compelling proposition."

Still, some U.S. states and municipalities remain wary of private ownership, even if assets are bought by not-for-profit retirement funds. Ten years ago, Chicago's move to lease its parking meters for 75 years cost the city $974 million in lost revenue and angered voters who were left paying higher fees.

"The U.S. is obviously free market, but many of the states still have quite socialist attitudes towards ownership of some infrastructure assets," said Jim Miller, chairman of Infrastructure Victoria in Australia's second-largest state. "Many states are pretty unlikely to change their attitudes to private ownership."

Bloomberg Politics

by Jason Scott and Brett Foley

February 21, 2018, 3:00 AM PST Updated on February 21, 2018, 5:13 PM PST

— With assistance by Emily Cadman, and Mark Niquette

White House Unveils Infrastructure Plan: Funding Questions Remain.

The American Infrastructure Initiative (infrastructure plan) released by the White House last week aims to stimulate more than $1.5 trillion in new investment over the next decade, shorten the process for approving projects, and address unmet rural infrastructure needs. But the plan offers little insight into how the government will come up with the initial $200 billion in federal funding, particularly in light of the president's proposed budget for 2019, which cuts spending on existing infrastructure programs.

The 53-page plan, released on February 12—expands on President Trump's initial infrastructure vision released early last year and calls upon Congress to move quickly to enact a law that will enable builders to construct new, modern, and efficient infrastructure across the country.

The plan is divided into four main parts: (1) funding and financing infrastructure improvements; (2) additional provisions for infrastructure improvements; (3) infrastructure permitting improvement; and (4) workforce development.

Infrastructure Incentives Program. The plan outlines various funding and financing mechanisms for infrastructure improvements, including establishment of a $100 billion infrastructure incentives program to encourage increased state, local, and private investment in infrastructure. Incentives include targeted federal investments in the form of grants to states and municipalities that would maximize investment in infrastructure, leverage federal investment, ensure long-term performance of capital infrastructure investment, modernize project delivery practices, increase economic growth, and attract new, non-federal revenue streams. Federal funds would be divided in specific amounts to be administered by the U.S. Department of Transportation, U.S. Army Corps of Engineers, and the U.S. Environmental Protection Agency. Eligible projects include surface and air transportation, passenger rail, ports and waterways, flood control, water supply and resources, hydropower, drinking water and wastewater facilities, storm water facilities, and brownfield and Superfund sites. Each lead federal agency would solicit applications upon enactment of the incentives program and every six months thereafter.

Rural Infrastructure Program. The plan would establish a $50 billion rural infrastructure program aimed at enhancing regional connectivity through public and private interregional and interstate rural projects that reduce costs for sustaining safe, quality rural communities and increase economic growth and competitiveness in rural areas by closing the gaps in local infrastructure. The legislation would create a "rural formula," calculated based on rural lane miles and population-adjusted to reflect policy objectives. The rural infrastructure program also would dedicate a portion of the funding to tribal and U.S. territory infrastructure.

Other Programs. Additional programs under the funding and financing section of the plan include a $20 billion transformative projects program aimed at significantly improving availability, safety, reliability, frequency, and service speed while reducing user costs and introducing new types of services. It also dedicates $20 billion to expanding existing credit programs like those under the Transportation Infrastructure Finance and Innovation Act (TIFIA), Water Infrastructure Finance and Innovation Act (WIFIA), and Railroad Rehabilitation & Improvement Financing (RRIF), and to the expansion of private activity bonds. In addition, it would create a federal revolving capital financing fund, as well as various public land and federal real property asset disposal programs.

Streamlining of Permitting. The infrastructure plan also includes provisions for streamlining and facilitating various authorization and approval processes, and expanding some financing mechanisms. The plan would increase flexibility and reduce barriers for certain state-run infrastructure and project delivery for highways, rail, airport, and water systems. It also would expand funding eligibility and projects for land revitalization for brownfield/Superfund reform, including creation of a Superfund revolving loan fund and grant program.

Worth noting is the mandate to eliminate constraints on the use of public-private and public-public partnerships in transit projects. The National Environmental Policy Act (NEPA) approval process would be streamlined and a “One Agency, One Decision” environmental review structure would be established. Inefficiencies and redundancies in environmental reviews would be reduced further by allowing in some cases for the acquisition and preservation of rail rights-of-way before the completion of the NEPA review process and by delegating some review and permitting decisions to states.

Workforce Development. The fourth and final focus of the plan includes the implementation of policies that will help Americans secure stable, well-paying jobs by expanding access to education and development programs, expanding grant programs, reforming career and technical education, and revamping the Federal Work-Study program.

While the infrastructure plan does expand on President Trump’s focus on infrastructure investment, it does not outline any sources for the initial $200 billion in federal funding. The President’s proposed budget for the 2019 fiscal year incorporates as much as $275 billion in cuts to existing infrastructure programs, including cuts to Transportation Investment Generating Economic Recovery (TIGER) grants. The plan also does not address the underfunding of the Highway Trust Fund or a potential increase in motor fuel taxes. Additionally, there is no timeline for when Congress expects to address the plan and it remains to be seen how the plan will be received by lawmakers on both sides of the aisle.

Attorneys in Ballard Spahr’s Public Finance Group have extensive experience with the rules and regulations set by the IRS and U.S. Treasury. Working closely with attorneys in Ballard Spahr’s P3/Infrastructure Group, they routinely monitor and report on new developments that impact federal and state infrastructure programs.

by the Public Finance Group

Feb 20, 2018

Ballard Spahr LLP

Issuer Brief: Trump's Infrastructure Plan Does Very Little to Help the

Municipal Industry

The Infrastructure 'Plan' Needs Some Constructive Criticism

The Trump Administration's preliminary plan to support additional infrastructure financing, is purportedly in the form of $200 billion in Federal funding that, along with state, local and private sector resources, would supposedly trigger a total of $1.5 trillion in new infrastructure spending over the next 10 years.

Frankly, we remain highly doubtful that any significant incremental project funding will be triggered by this proposal, which requires considerable new private sector investments, and assumes that state and local governments will enthusiastically seek out subsidies paid at a meager rate of 20 cents in Federal moneys for 80 cents in state or local moneys. Historically, Federal subsidies of state and local programs have provided as much as 80% of total costs of projects, as opposed to the proposed 20% level. We anticipate that the ultimate form of any successful new law will diverge quite dramatically from the initial 53-page proposal.

The plan is structured around four main pillars:

1. Generate $1.5 trillion for an infrastructure proposal, including $100 billion through an incentives program that supports governmental infrastructure. It would also focus on regulations reform to streamline the permitting process for new project down to two years.
2. Invest in rural infrastructure projects and advance workforce training. Half of the federal seed money ($200 billion) would go toward an incentives program to match financing from state and local governments, while a quarter of the appropriations would be used for rural projects in the form of block grants to states so governors may decide where to invest.
3. $20 billion is for "transformative programs" meant for new projects rather than rehabilitation of old infrastructure, while another $20 billion is meant to expand the use of loans and private activity bonds, a common tool used to fund infrastructure projects.
4. The last $10 billion would go into a "capital financing fund," which would fund the construction of federal office buildings and similar infrastructure for actual government use.

Our bottom line at this point is that the proposal 1) doesn't really add ANY new moneys to current Federal spending on infrastructure and 2) reduces the amount of aggregate funding that state and local governments have available. A number of infrastructure experts have already put out analyses and releases that are sharply critical of the proposal, and we expect more to come. While the proposal and budget anticipate more use of private activity bonds, they are offset by deep cuts to existing funding for state and local governments.

The proposal is complex (even the outline is more than 50 pages long). While some commentators have expressed a desire for the President to have called for more spending, the proposal appears to seek a balance between providing capital and encouraging the participation of additional resources to create a sustainable financing mix that will not require permanent budgetary support from the Federal government. Translating the proposal into legislation and getting it through Congress will not be easy, and with mid-term elections looming in the Fall, time is of the essence. That said, we are hoping that the proposal will incorporate much of the criticism before being resurrected in a more effective form. Hoping, but far from confident: any proposal that incorporates actual significant net spending to help support infrastructure in an effective fashion will run into massive resistance from fiscal conservatives who have been reborn since the tax bill was passed, and in the face of $1 trillion dollar or more annual deficits.

Ride-Hailing Fees Popping Up in Chicago, Philadelphia and Others

As Uber and Lyft and other ride-hailing services grow more and more ubiquitous, municipalities are moving to tax these services to fund the existing mass transit facilities against which these services compete. Some examples include Chicago, where a 15-cent fee on Uber, Lyft and other ride-hailing services is helping to pay for track, signal and electrical upgrades to make the city's trains run faster and smoother. In Philadelphia, a 1.4% tax expected to raise $2.6 million this year for the city's public schools that will also generate more than a million dollars for enforcement and regulation of the ride-hailing industry itself.

South Carolina has adopted a 1% ride-hailing fee has yielded more than a million dollars for municipalities and counties to spend as they choose. Massachusetts collects 20 cents for every ride-hailing trip this month, earmarking the revenue to improve roads and bridges, fill a state transportation fund and even help the taxi industry adapt with new technologies and job training. New York State approved a 4% assessment on ride-hailing trips that begin outside New York City (rides in the city are already subject to state and local taxes). It is expected to raise $24 million a year for the state's general fund.

In Oregon, Portland sought to create a single standard for taxis and ride-hailing cars and assessed a 50-cent ride fee on both of them, which is paid by passengers. The 50-cent fee has added up to more than $8 million to help pay for city enforcement efforts, including spot inspections of cars and incentives to companies and drivers to choose wheelchair accessible cars.

Predictably, the ride-hailing industry feels it is being singled out. It views its service as complementary rather than competitive with taxis and mass transit. We beg to differ. Ride hailing has its place but its continued implementation of a business model that resists regulation as one of its basic tenets should not be surprised to find itself in the position of being targeted for its tax revenue generating potential. Another aspects that the public transit system benefits everyone who lives and works in the city regardless of whether they're using it.

Chicago estimates that ride-hailing companies have cost the city about $40 million a year in lost revenue from transit fares, parking fees, licenses and permits. A newly imposed 15-cent fee was the first of its kind to raise money solely for public transit from those who might not even use it because they could afford the ride-hailing cars. It is projected to bring in $16 million this year, which will be turned over to the Chicago Transit Authority. The money will be used to secure additional funding through bond sales to pay for a total of $179 million in capital improvement.

As these companies continue to grow, states and localities will need to keep up revenues and can look to these examples as a creative way to fund infrastructure.

Neighborly

Posted 02/22/2018 by George Friedlander

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What It Would Actually Take to Fund Infrastructure.

Commentators have broadly agreed Trump's infrastructure proposal is not nearly enough. Here's a blueprint for how to do better.

The coverage of President Donald Trump's recent infrastructure plan has harped on one point: there's not enough funding. The plan, touted as a $1.5 trillion infrastructure stimulus, in actuality only dedicates $200 billion in federal funds over the next ten years for what Trump envisions as "gleaming new roads, bridges, highways, railways, and waterways across our land". For the rest, it relies on state, local, and private investment. The American Society of Civil Engineers gave American infrastructure a D+ rating on its 2017 Infrastructure Report Card and estimates that it will take $4.6 trillion over ten years to get American infrastructure where it needs to be. While this number may be somewhat exaggerated, it's clear that $200 billion and a shrug to state and local governments is not nearly enough to get the job done. The plan needs to be tweaked.

While critical of the plan, few commentators have proposed solutions to make American infrastructure work. The plan is in need of more dedicated federal dollars, and states and cities need to raise lots of money for their own part, but where will this money come from?

To raise the revenue necessary for a real infrastructure overhaul, the United States needs to think big and small. While the national government needs to take radical measures to raise big chunks of money for infrastructure, state and local governments must take a number of smaller actions that together will chip away at the funding gap.

Continue reading.

CITY LAB

STEPHEN GOLDSMITH FEB 21, 2018

Public Finance Associate.

Nixon Peabody
New York, NY

Job Description:

Our Public Finance Practice Group is seeking to hire an associate to join our New York City office.

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- Further Fallout from the 2017 Tax Legislation – Beware of Reissuance of Bank-Held Tax-Exempt Obligations.
- What GFOA is Warning on Alternatives to Advance Refundings.
- GFOA: Potential Impacts of Tax Reform on Outstanding and Future Municipal Debt Issuance.
- Big Banks Got Huge Tax Cuts, Then Hiked Cities' Interest Rates.
- When Public-Private Partnerships Fail: A Look at Southern Indiana's I-69 Project.
- S&P: Diagnosing Distress In U.S. Local Governments.
- Fitch Report: Puerto Rico Ruling Muddies Special Revenue Debt Waters.
- Intro Tax Credit Finance WebCourse.
- *City of Bowling Green, Kentucky v. Mills Family Realty, Inc.* – In case brought by city for misappropriation of bond proceeds and TIF revenue, District Court denies city's RICO claim, finding that city had failed to establish an investment injury arising from the defendants' use or investment of the bond funds and TIF revenue into their own businesses that was distinct from any alleged injury the city suffered as a result of the predicate racketeering offenses of withdrawing those same funds; federal action dismissed for lack of subject matter jurisdiction.
- And finally, When Stereotypes Attack is brought to us this week by *Brooks v. Powers*, in which Westbrook's Finest were questioned as to their whereabouts on the night in question. And thus we learned that: "When the defendants arrived for work, they punched in, got into a cruiser, and drove to a donut shop. After that, they drove to the marina to inspect the boat." "…they did not need to get out of the cruiser to inspect the boat: 'We would just look to make sure that the boat was still there…" "Once they completed their inspection, the officers drove to a convenience store. Powers stayed with the cruiser while Milardo went in to get some snacks." Sleep well, good citizens of Westbrook. You're clearly in good hands.

PENSIONS - CALIFORNIA

Alameda County Deputy Sheriff's Association v. Alameda County Employees' Retirement Assn.

Court of Appeal, First District, Division 4, California - January 8, 2018 - 19 Cal.App.5th 61 - 227 Cal.Rptr.3d 787 - 18 Cal. Daily Op. Serv. 335 - 2018 Daily Journal D.A.R. 309

In consolidated cases, public employees and public employee organizations brought mandamus actions challenging constitutionality of Public Employee Pension Reform Act (PEPRA) as it applied to certain plan members under County Employees Retirement Law of 1937 (CERL).

The Superior Court denied relief in part and issued writs of mandate. Employees and organizations appealed and State and county sanitary district filed appeals and cross-appeals.

The Court of Appeal held that:

- Under CERL, an item is either includable in compensation, compensation earnable, and final compensation, or it is not, and if item fails to satisfy any one of the statutory litmus tests, it may not be included in a member's pensionable compensation;
- Under CERL, it is the employee's election to turn an otherwise in-kind benefit into cash, either through a leave cash-out or by choosing to receive vacation pay without working, that creates the remuneration paid in cash that is pensionable compensation;
- PEPRA amendment to CERL, expressly excluding terminal pay from compensation earnable, does not amount to a change in existing CERL law and continues to require that compensation must be payable during the final compensation period to be included in compensation earnable;
- PEPRA removed CERL's inclusion of on-call premium pay in compensation earnable, requiring vested rights analysis;
- PEPRA's exclusion of any compensation paid to enhance a member's retirement benefit, in determining compensation earnable, was a change to pre-PEPRA CERL law, requiring vested rights analysis; and
- Balance of equities supported application of estoppel to require CERL boards to continue to treat terminal pay as compensation earnable.

MUNICIPAL ORDINANCE - CALIFORNIA

San Francisco Apartment Association v. City and County of San Francisco

United States Court of Appeals, Ninth Circuit - February 8, 2018 - F.3d - 2018 WL 774001 - 18 Cal. Daily Op. Serv. 1315

Individual property owner and organizations of landlords, property managers, and real estate agents brought action in state court against municipality and county, alleging that ordinance that imposed requirements on the process of negotiating tenant buyouts violated United States and California constitutional rights to free speech, to enter into voluntary settlement of disputes, to equal protection and due process, and to privacy.

Municipality and county removed case to federal court. The United States District Court for the Northern District of California granted judgment on the pleadings for municipality and county. Individual and organizations appealed.

The Court of Appeals held that:

- Requirement that landlord retain copies of signed disclosure forms did not condition right to commence buyout negotiations on tenant having signed form;
- Discussion between landlord and tenant about possibility of entering into buyout agreement, as required by municipal ordinance, was commercial speech;
- Ordinance requiring landlord to provide tenant with certain disclosures on authorized form and to certify that he or she provided such disclosures prior to negotiating buyouts with tenant passed First Amendment scrutiny for restrictions on commercial speech;
- Disclosures that ordinance compelled landlords to make to tenants before engaging in buyout negotiations were purely factual, and thus rational basis review applied to landlord organizations'

challenge to ordinance on the basis that it violated the First Amendment by compelling speech;
- Ordinance did not violate California's constitutional right to privacy;
- Ordinance requiring landlords to make certain disclosures to tenants and inform tenants of their rights with regard to buyout negotiations and agreements had rational basis;
- Ordinance requiring redaction of tenant's identity from publicly searchable database of buyout agreements, but not the landlord's identity, was rationally related to municipality's legitimate interest in reducing information asymmetry between tenants and landlords and improving inferior bargaining position of tenants in buyout negotiations while protecting tenant privacy; and
- Ordinance establishing that property was not eligible for condominium conversion for 10 years after owner or former owner entered into buyout agreement with senior, disabled, or catastrophically ill tenant, or with two or more tenants in same building, did not violate constitutional freedom of contract.

IMMUNITY - CONNECTICUT

Brooks v. Powers

Supreme Court of Connecticut - February 2, 2018 - A.3d - 2018 WL 702808

Administratrix of estate of drowning victim brought negligence action against two police officers, alleging that officers' negligence in responding to report that a woman, subsequently identified as victim, was standing in field during severe thunderstorm was proximate cause of victim's accidental drowning the next morning.

The Superior Court found that officers were shielded from liability as matter of law by immunity afforded municipal employees for their discretionary acts and granted officers' motion for summary judgment. Administratrix appealed. The Appellate Court reversed. Officers appealed.

The Supreme Court of Connecticut held that:

- Drowning was not reasonably foreseeable result of police officers' failure to respond to report that victim was standing in field during severe thunderstorm, and thus did not give rise to duty on part of officers to take immediate steps to protect victim, and
- Victim's death by drowning was too attenuated from risk of harm created by police officers' failure to respond to report for jury reasonably to conclude that drowning was imminent, and thus officers' conduct did not fall within identifiable person, imminent harm exception to statutory governmental immunity.

BANKRUPTCY - KANSAS

In re Grillot

United States Bankruptcy Court, D. Kansas - December 21, 2017 - 578 B.R. 651

Creditor moved to dismiss debtor's Chapter 7 case for substantial abuse. Debtor filed motion for summary judgment, asserting his debts were not primarily consumer debts.

The Bankruptcy Court denied the motion, and the case proceeded to trial.

The Bankruptcy Court held that debtor's guaranty of his estranged wife's company's industrial revenue bond obligations was not a "consumer debt."

Chapter 7 debtor's guaranty of his estranged wife's company's industrial revenue bond obligations in connection with a commercial development project in exchange for her waiver of spousal support was not a "consumer debt," for purposes of statute permitting dismissal for substantial abuse; the guaranty debt was incurred primarily on behalf of a business venture and commercial transaction, and not for a personal, family or household purpose.

PENSIONS - KENTUCKY

County Employees Retirement System v. Frontier Housing, Inc.

Court of Appeals of Kentucky - December 22, 2017 - S.W.3d - 2017 WL 6542741

Participating employers in County Employee Retirement System (CERS) petitioned for a declaratory judgment for withdrawal from CERS.

The Circuit Court denied State's motion to dismiss. State appealed.

The Court of Appeals held that sovereign immunity did not apply to employers' petition; the petition for declaratory judgment was not a claim for damages, and there was no harm to State resources in participating employers' wanting to withdraw from the CERS program.

RICO - KENTUCKY

City of Bowling Green, Kentucky v. Mills Family Realty, Inc.

United States District Court, W.D. Kentucky, Bowling Green Division - December 20, 2017 - Slip Copy - 2017 WL 6521309 - RICO Bus.Disp.Guide 12, 978

County issued $22 million in industrial revenue bonds to finance a commercial development project and city created a TIF district as one source of payment for the bonds.

City subsequently sued the developers, alleging misappropriation of the bond proceeds and the TIF revenue. In addition to the usual causes of action, the city also alleged a RICO claim. To support this claim, city alleged that the defendants committed over 25 predicate acts of racketeering, most of which were requests made by the defendants to withdraw funds from trustee bank in which they certified that they were entitled to the funds.

Defendants argued that the city failed to allege an investment injury, as a plaintiff must plead a specific injury to the plaintiff caused by the investment of income into the racketeering enterprise, *distinct* from any injuries caused by the predicate acts of racketeering.

The District Court agreed, finding that the city had not alleged any such injury arising from the defendants' use or investment of the bond funds and TIF revenue into their own businesses that was distinct from any alleged injury the city suffered as a result of the predicate racketeering offenses of withdrawing those same funds.

Having dismissed the only federal claim, the court dismissed the action for lack of subject matter jurisdiction.

INVERSE CONDEMNATION - MARYLAND

Colbert v. Mayor and City Council of Baltimore

Court of Special Appeals of Maryland - February 2, 2018 - A.3d - 2018 WL 679868

Resident brought negligence action against city and mayor after underground water main ruptured in close proximity to her residence, causing flooding to her home.

The Circuit Court granted summary judgment in favor of city and mayor. Resident appealed.

The Court of Special Appeals held that:

- City did not have actual or constructive notice of defect in water main prior to break, and
- Res ipsa loquitur did not apply to establish city's negligence.

City did not have actual or constructive notice of defect in water main, and therefore city did not breach duty to maintain public works in good condition, such that it was not liable for negligence to resident whose home flooded after water main ruptured; although, before leak in question, there were complaints of leaks in close proximity to resident's home and city had trouble keeping up with needed maintenance projects, there was no evidence presented to counter evidence from city employee that "longevity" of water main pipe, which was installed in 1939, was "upwards of 120 years," there was nothing in city's service records to link prior repairs or prior leaks to defect in water main, and nature of defect in water main was not readily observable, as it was underground.

Res ipsa loquitur did not apply to establish city's negligence in action by resident whose home flooded as result of rupture of underground water main break in close proximity to home; there was no evidence to suggest that the ruptured water main, which was 76 years old at time of the rupture, was a casualty that usually did not occur in the absence of negligence.

Further Fallout from the 2017 Tax Legislation – Beware of Reissuance of Bank-Held Tax-Exempt Obligations.

Public finance tax lawyers have been acutely aware of the direct effects of the 2017 tax legislation, especially the elimination of tax-exempt advance refundings, but some of the indirect effects have begun to appear only recently. One of those is the triggering of bank rate adjustments resulting from the drop in the corporate tax rate. As frequently touted by the President, the legislation reduced the maximum corporate tax rate from 35% to 21%. The effect of this rate reduction on bond interest rates is more pronounced because of the popularity of bank placements of tax-exempt bonds in recent years. For a number of reasons, including to remain competitive, many banks have been willing to forego or reduce the interest rate increase to which they are entitled under the bank loan documents. This is obviously good news for bond obligors but the tax consequences – namely, a potential reissuance – must be kept in mind.

Continue Reading

By Bob Eidnier on February 13, 2018

The Public Finance Tax Blog

GFOA: Potential Impacts of Tax Reform on Outstanding and Future Municipal Debt Issuance.

Passage of the tax reform bill in December 2017 eliminated state and local governments' ability to use tax-exempt bonds to advance refund outstanding bonds, as of January 1, 2018. An advance refunding occurs when bonds are refunded more than 90 days prior to the optional redemption, or "call," date of the outstanding bonds. Tax-exempt advance refundings offered an important tool for state and local governments to reduce debt service costs, freeing up resources to be used for other important purposes, and minimizing taxpayer and ratepayer burdens**1**. Advance refundings are also utilized to restructure debt service payments or address problematic bond terms and conditions, if needed.

Federal tax laws previously provided issuers an opportunity to advance refund bonds on a tax-exempt basis. Since 1985, issuers were permitted a single advance refunding prior to the call date of the bond. In 2017, advance refundings represented approximately 20% of total tax-exempt municipal bond issuance. Market solutions seeking to provide similar outcomes to that of previous tax-exempt advance refundings are emerging, as are changes to new bond issuances. Issuers should work with their advisors to understand potential new risks and other considerations that may accompany these alternatives.

GFOA best practices recommend utilizing the skills and expertise of Bond Counsel and Municipal Advisors in making financing or refunding decisions. GFOA also cautions many entities against entering into swap or derivative agreements.

1*Federal regulations continue to allow issuance of tax-exempt current refunding bonds, where outstanding bonds may be refinanced on a tax-exempt basis within 90 days of the optional redemption, or "call," date of outstanding bonds.*

The following offers preliminary considerations for the issuer when working within the new tax laws:

Considerations for Outstanding Bonds
Market participants will likely recommend previously utilized tools or develop new tools or mechanisms to simulate the beneficial impacts of tax-exempt advance refundings. Potential alternatives may include taxable advance refundings, interest rate locks, forward-purchase agreements, or other options. Issuers should be particularly mindful of the unique risks and uncertainties associated with these options, and discuss these options with their municipal advisors and legal counsel. Additionally, issuers wishing to refund Build America Bonds (or similar tax credit subsidy bonds) will need to consult with their legal counsel and municipal advisors before proceeding.

Issuers should also be aware that outstanding bank loans or direct placements could be impacted by tax law changes that reduced corporate tax rates. "Gross up" provisions included in many bank loan agreements may result in increased interest costs effective immediately, and issuers should discuss possible solutions with their debt management team. Bank waivers or modifications of gross up provisions may trigger "reissuance" of the obligations.

Considerations for Future Bond Issues
Governments preparing to issue new municipal bonds may feel compelled to pursue issuance alternatives that provide early refinancing options in the absence of tax-exempt advance refunding provisions. These alternatives may include use of shorter call features, bullet maturities, derivative products and variable rate financing options. The same alternatives could also be pursued with current refunding bonds.

Issuers should be certain that specific benefits, risks, and costs of any financial tool are fully understood and are consistent with the entity's debt policies. For example, shorter call features may come with an increased cost premium at the time of issuance, or other material changes to terms or costs. Performing diligent cost-benefit analysis of call features is likely to increase in importance.

What GFOA is Warning on Alternatives to Advance Refundings.

WASHINGTON – The Government Finance Officers Association's federal liaison center is warning some members against using interest rate swaps and derivatives as alternatives to advance refundings.

In a recently published alert, GFOA noted that the tax law changes enacted in December prohibit the use of tax-exempt advance refundings as of Jan. 1, 2018. As a result, issuers are looking for alternatives.

"Issuers should work with their advisors to understand potential new risks and other considerations that may accompany these alternatives," GFOA said in the alert, adding it, "cautions many entities against entering into swap or derivative agreements."

The alert suggests that local and state officials rely on "the skills and expertise of bond counsel and municipal advisors in making financing or refunding decisions."

That's the approach that Timothy Firestine, chief administrative officer of Montgomery County, Md., plans to use.

"We will go through the normal dance with our advisors and decide," Firestine said, predicting that his underwriters will come up with new ways to refinance outstanding debt. "We will hopefully pick the best ones."

Several issuers interviewed said they are either waiting to current refund their bonds within 90 days of the call date, which is still permitted, or are considering doing taxable refundings, if they make economic sense.

Kenton Tsoodle, assistant finance director for Oklahoma City, Okla., said, "As vice chair of GFOA's debt committee, I feel we have a responsibility to make sure that issuers know that these tools could provide some benefits, but there are other considerations, other risks."

Tsoodle said he's considering a limited use of taxable refundings later this year in the $30 million to $35 million range as a substitute but will otherwise wait until outstanding municipal bonds qualify for a current refunding when they reach the 10-year call mark.

Advance refundings had been widely used in the municipal bond market until this year.

Florida saved $2.2 billion on a present-value basis since 2011 through 98 refunding transactions totaling $14.1 billion, Florida's Bond Finance Director Ben Watkins reported in December.

Municipal bond market experts say the alternatives aren't as useful.

The National Association of Bond Lawyers recently issued a four-page paper listing seven alternatives to advance refundings.

"All these other tools are interesting, but they are far less effective in my opinion," Utah State Treasurer David Damschen, senior vice president of the National Association of State Treasurers, said in an interview. "None of them struck me as particularly compelling in comparison to advanced refundings."

A half dozen municipal finance directors and state treasurers surveyed by The Bond Buyer said they are in no rush to use any of the alternatives.

Taxable advance refundings, however, are one of the top options the finance directors and treasurers said they considering.

The other options listed in the NABL paper include tax-exempt current refundings that occur within 90 days of the call date of the bonds to be refunded; a negotiated change in the interest rate or a waiver of call protection; and so-called "Cinderella Bonds" that are initially taxable and convert to tax-exempt bonds at a specified date.

The remaining options are more complicated and include swaps or derivative agreements that GFOA is cautioning against using.

"If you are getting into these, you better understand them and know what you are getting into," said Bob Eichem, chief financial advisor of the City of Boulder, Colo. and a member of the GFOA debt committee.

"Of all the options I've seen, the taxable refunding option makes the most sense to me based on my risk appetite," said Lisa Marie Harris, finance director and treasurer of the San Diego County Water Authority which serves 3.3 million people.

"It's just a matter of doing the analysis and, in fact, the taxable market versus the tax-exempt market, the difference between the two financings is only like 17 basis points," Harris said.

Harris said taxable refundings also make sense for mixed use facilities such as hospitals and airports which won't have to calculate what of the refinancing is government-related and what part is business-related. It avoids legal issues and having to do arbitrage calculations, she said.

The San Diego County Water Authority did its last advance refunding in late 2015 for a savings of more than $10 million but doesn't have any planned for 2018.

Instead, Harris said her water authority is working on a callable refunding for $203 million in pipeline bonds that were issued just over 10 years ago. "It's current refundable, so I don't have to consider all these fancy alternatives," she said.

Likewise, Jennifer Brown, finance director for the City of Sugar Land, Texas said she's waiting until the next 10-year call date on outstanding bonds before her next refinancing.

Sugar Land was among the many issuers that rushed to do advanced refundings before they were terminated as a part of the tax overhaul.

On Dec, 28 Brown closed an advanced refunding of a $98 million issue from 2011 for a surface water treatment plant. The refinancing is saving $600,000 annually in debt service, or $15 million in total, that can be returned to water customers through lower rates.

“I went ahead and fast tracked that one,” Brown said.

By Brian Tumulty

BY SOURCEMEDIA | MUNICIPAL | 02/15/18 07:09 PM EST

Big Banks Got Huge Tax Cuts, Then Hiked Cities' Interest Rates.

- **Tax cut triggers loan provisions that protect banks’ returns**
- **Muni bank-loan market may be as much as $180 billion**

As U.S. banks were tallying up the billions of dollars in extra profits they’ll reap from the sweeping tax cuts signed into law by President Donald Trump, they were quietly delivering unwelcome news to local governments: The interest rates on their loans were about to go up.

That’s because banks often include clauses in contracts when they lend to states and cities giving them the right to trigger the increases if legal changes lower the returns on their investments.

The tax cut did just that. Slashing the corporate rate made the tax-exempt loans less valuable than before compared with other assets, once federal taxes are taken into account. So companies including Wells Fargo & Co., U.S. Bancorp and SunTrust Banks Inc. demanded more interest to make them whole.

The impact is being felt across the country by governments and non-profits that borrowed through loans, a loosely regulated niche of public finance that took off after the end of the last recession. Municipal Market Analytics estimates that there are about $180 billion of such loans outstanding. That could translate into tens of millions of dollars in extra costs each year for local agencies that Trump is pushing to boost spending on roads, airports and other projects.

“It takes away from money that would help the state’s reserve, or it takes away from money the state may appropriate for other statewide public purposes,” said David Erdman, the capital finance director for Wisconsin, whose payments on a $279 million loan will jump by about $750,000 next year. He declined to name the lender.

Direct lending proliferated in the $3.8 trillion municipal market because states, local governments and non-profits can borrow at rates comparable to those on bonds, without the fees or disclosure requirements associated with securities sales. They also offered a way for borrowers to refinance floating-rate bond deals that unraveled after the 2008 credit crisis.

Because loans aren’t classified as securities, states and cities aren’t immediately required to disclose them, making it impossible to know how many borrowers might be subject to rate increases. Banks may also decide to waive the provision to preserve other business with municipalities, like investment work, and governments may opt to refinance, though interest rates in the bond market have been on the rise.

But several banks have been alerting borrowers that their interest rates are going to increase. Tennessee, the Metropolitan Atlanta Rapid Transit Authority, and Portland, Oregon, are among those whose payments are set to rise, according to public officials.

“We’ve heard underwriters are dealing with it in different ways,” said Emily Brock, federal liaison for the Government Finance Officers Association, which represents local government officials. “One things for sure, not all issuers understand clearly how that gross-up provision is going to impact them.”

Gross-up, or rate-hike provisions, are common for loans that are pegged to the London Interbank Offered Rate. A standard formula calls for multiplying the interest rate by 1.22 if corporate tax rates decline to 21 percent. For bonds bearing a fixed rate with a 5 percent coupon, the increase would be more than a full percentage point.

Tennessee will pay an extra $300,000 a year on a $70 million credit line with Wells Fargo and U.S. Bancorp, said Sandra Thompson, director of the state comptroller’s Office of State and Local Finance. The increase is significant “considering it wasn’t a cost that we incurred before Jan. 1 of this year,” she said.

Wells Fargo has informed its clients the rate increase is automatic, but borrowers can try to negotiate new terms, said Adam Joseph, the head of Public Finance Capital Strategies at the San Francisco-based bank. He said the increases haven’t come as a surprise.

“The existence of the factor was very much known to the client at the time of the deal,” he said.

SunTrust “is working through” the rate adjustment with clients, said Thomas Crosson, a spokesman for the bank. Dana Ripley, a U.S. Bancorp spokesman, declined to comment.

The San Francisco County Transportation Authority is paying 0.45 percentage point more in interest on its $72 million revolving credit facility to State Street Corp. than it did last month because of an increase in Libor and the effect of the gross-up. State Street informed the transportation authority in advance that its borrowing cost would rise, said Cynthia Fong, the authority’s deputy director for finance. The credit facility expires in June. Julie Kane, a State Street spokeswoman, didn’t return a call and email seeking comment.

While larger borrowers will likely be able to handle the impact of the rate increases, small non-profits may find it more of a burden. One non-profit client of Michael Wiener, a bond lawyer at Holland & Knight in Lakeland, Florida, could pay an extra $100,000 a year in interest on $27 million in variable-rate debt, he said.

“One hundred thousand dollars a year is still a decent amount of money for a lot of these borrowers,” said Wiener, who declined to name the client.

Some are getting a break. First Republic Bank has told California non-profits that it won’t trigger the clause in their loans, said Cathy Martin, treasurer and chief financial officer of Guide Dogs for the Blind, in San Rafael, California. If it hadn’t, its costs on a $30 million loan would have jumped by $100,000 a year. Greg Berardi, a spokesman for First Republic, declined to comment.

“I can’t tell you how grateful I am because it would have been fairly significant money for us,” said Martin.

Bloomberg

By Martin Z Braun and Benjamin Bain

February 15, 2018, 5:52 AM PST

When Public-Private Partnerships Fail: A Look at Southern Indiana's I-69 Project.

The United States has major transportation infrastructure needs. According to the American Society of Civil Engineers, the surface transportation sector—defined as highway, public transportation, and rail facilities—will face an investment shortfall of approximately $1 trillion over the next decade.

Public-private partnerships (P3s) are often mentioned as a solution to this shortfall.1 This idea is simply wrong. State and local government project sponsors do not lack access to financing but rather have insufficient tax revenues to repay new project debts. As the U.S. Treasury Department notes, "All infrastructure investments ultimately depend on either user fees, government tax revenues, or a combination of both."2 Government project sponsors can access low-cost financing through the municipal bond market and the Transportation Infrastructure Finance and Innovation Act (TIFIA) loan program at the U.S. Department of Transportation.3 Private financing in the form of private activity bonds (PABs) and equity capital are still project obligations that must be repaid. Simply changing the source of project debts through a P3 does not resolve the two most common restraints on government revenues: economic hardship and insufficient political support.

Public-private partnerships offer state and local governments the ability to shift project risks to a private concessionaire in ways that are not possible through traditional design-bid-build procurement. When structured properly, P3 agreements allow project sponsors to offload three categories of risk: delivery, finance, and operations.4 The private concessionaire charges a premium price for taking on project risks. A key challenge for project sponsors is determining the appropriate risk-adjusted price to ensure that the procurement is cost-beneficial. Given the nation's major need for expanded and improved surface transportation infrastructure, it is crucial that policymakers understand that risk transference through P3s is not guaranteed.

Continue reading.

Center for American Progress

By Kevin DeGood

February 15, 2018

S&P: Diagnosing Distress In U.S. Local Governments.

Highly rated credits that demonstrate a strong level of stability are the hallmarks of the local government ratings sector. So when rare occasions of fiscal distress arise, it offers opportunities for S&P Global Ratings to incorporate observations and lessons from municipal market events into our view of ratings.

Continue Reading

Feb. 12, 2018

Tax and Jobs Act of 2017 and How It Will Affect Nonprofits.

When the first version of the bill that would eventually become the Tax and Jobs Act of 2017 emerged, bond professionals were alarmed. The original House bill took several shots at tax-exempt bonds, most notably eliminating the ability to issue "private activity bonds" on a tax-exempt basis. These bonds are generally issued by municipal authorities to finance projects on behalf of hospitals and other health care providers, colleges and universities, as well as to finance low-income housing projects, among others. While this segment of the tax-exempt market is dwarfed by the much larger market for bonds issued by states, towns and municipalities, it is nonetheless an extremely important tool for nonprofits.

Issuers and beneficiaries of private activity bonds were given a reprieve as the ability to issue private activity bonds on a tax-exempt basis survived the Tax Act. However, institutions are beginning to realize that it was not a complete win for this segment of the market. What most market participants did not initially account for was the negative effect the reduction in the federal corporate income tax rate would have on the borrowing cost of many small nonprofits.

Historically, many smaller nonprofits have had difficulty accessing the tax-exempt market. This may have been because the amount of their borrowing was not large enough to justify the added expense of accessing the general tax-exempt market or the nonprofit may not have had a credit rating, making access to the public market difficult and expensive. In recent years, banks stepped into this void by using a "direct placement" structure. In this structure, a municipal authority issues a bond on behalf of an institution and sells it directly to a bank, often the nonprofit's existing bank. For the bank, it is an opportunity to create or enhance a relationship with an institution. The amount of the bond, which may have been too small to create interest in the public market, is well within the bank's credit profile. The bank could also spend the time necessary to understand the credit and would often secure its loan with a real estate mortgage, a structure within most bank's comfort zone. The rates were often fixed for a period of time (7-10 years) and were comparable to rates for publicly traded bonds with the same maturity. In fact, the structure was so efficient, it attracted many larger nonprofits and other municipal issuers like school districts.

Once the Tax Act was passed, however, the value of these bonds to banks diminished considerably as the banks' nominal tax rate decreased from 35 percent to 21 percent. Many banks anticipated this development and included yield maintenance language in their documents, which gave them the right to increase the interest rate should the corporate income tax rate decline. In one typical formula, the rate increases by a fraction, the numerator of which is 79 (one minus the new tax rate) and the denominator of which is 65 (one minus the old tax rate), or 122 percent, expressed as a decimal. So, if the borrower's old interest rate was 4.00 percent, the bank could now increase that to approximately 4.88 percent. An interest cost increase of over 20 percent could have significant budget impacts on many small nonprofits.

Whether and by how much the rate can increase depends on each borrower's loan documents. In many cases, the nonprofit borrower will simply have to absorb the rate increase. Refunding the bond will often carry prepayment penalties and even if they could refund, the rates for a new bond will likely not be any better unless they are able to access the public market (where the effect on the decrease in the corporate rate has been negligible).

The other headwind nonprofits will face is the possible negative effect of the increase in the standard deduction to $24,000. With the new $10,000 limit on deductibility of state and local taxes is taken into consideration, it is possible there will be fewer people itemizing deductions. If that is the case, one of the incentives for making charitable gifts disappears, which may lead to revenue losses across the board for nonprofits.

Most nonprofits are in the process of their budget discussions and it looks like this budget year could be all the more challenging given the expected effects of the Tax Act.

The Legal Intelligencer

By Kevin B. Scott | February 14, 2018 at 04:25 PM

Kevin B. Scott is a partner in the corporate department of Fox Rothschild with a particular focus on public fiance, project finance, mergers and acquisitions and nonprofit corporate finance.

MSRB Seeks Input on a Compliance Resource to Help Distinguish Advice and Recommendations.

Washington, DC – The Municipal Securities Rulemaking Board (MSRB) today requested input from municipal market participants and the public on a draft compliance resource about core requirements for municipal advisors related to providing advice on, and making recommendations of, municipal securities transactions or municipal financial products.

MSRB Rule G-42, on the duties of non-solicitor municipal advisors, forms the foundation of a comprehensive regulatory framework for municipal advisors developed as a result of the Dodd-Frank Wall Street Reform and Consumer Protection Act. The MSRB seeks to support compliance with various aspects of this key rule.

“Through our engagement with the municipal advisor industry, we have received many questions on the topic of advice versus recommendations,” said MSRB President and Executive Director Lynnette Kelly. “We are seeking further input from market participants to develop a useful compliance resource that addresses common questions and illustrates the application of the rule in scenarios that municipal advisors may encounter.”

The MSRB’s draft compliance resource is intended to enhance municipal advisors’ understanding and application of Rule G-42. The responses to frequently asked questions (FAQs) are not meant to be interpretive guidance and all proposed answers are derived directly from the rulemaking record. Though it is not routine for the MSRB formally to seek written comments on draft FAQs or similar compliance materials, the MSRB is seeking public input prior to the publication of a final document. Comments should be submitted no later than April 16, 2018.

“We have heard from stakeholders that they very much want the opportunity to further engage with the MSRB as we advance our long-term strategic goal to facilitate compliance,” Kelly said. “In this case, given that we are addressing a foundational rule for newly regulated entities, the MSRB believes market participation and public input will provide valuable insight that could improve the usefulness of the FAQs.”

Date: February 15, 2018

Contact: Jennifer A. Galloway, Chief Communications Officer
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When Calling an Uber Can Pay Off for Cities and States.

In Chicago, a 15-cent fee on Uber, Lyft and other ride-hailing services is helping to pay for track, signal and electrical upgrades to make the city's trains run faster and smoother.

Ride-hailing trips in Philadelphia are expected to raise $2.6 million this year for the city's public schools through a 1.4 percent tax that will also generate more than a million dollars for enforcement and regulation of the ride-hailing industry itself. In South Carolina, a 1 percent ride-hailing fee has yielded more than a million dollars for municipalities and counties to spend as they choose.

And Massachusetts began collecting 20 cents for every ride-hailing trip this month, earmarking the revenue to improve roads and bridges, fill a state transportation fund and even help a rival — the struggling taxi industry — adapt with new technologies and job training.

As ride-hailing services become a dominant force across the country, they have increased congestion, threatened taxi industries and posed political and legal challenges for cities and states struggling to regulate the high-tech newcomers. But they are also proving to be an unexpected boon for municipalities that are increasingly latching onto their success — and being rewarded with millions in revenue to pay not only for transportation and infrastructure needs, but also a host of programs and services that have nothing to do with the ride-hailing apps.

Now New York is seeking to join this growing wave with a new surcharge on ride-hailing and taxi trips that could become a central piece of an ambitious congestion pricing plan for Manhattan. A state task force has proposed fees of $2 to $5 per ride that would be among the highest in the nation — and could generate up to $605 million a year for the city's failing subway system.

"We used to have yellow cabs, we now have yellow cabs and black cars and green cars and every color in the rainbow and they cruise downtown Manhattan to pick up fares," Gov. Andrew M. Cuomo has said. "That is one of the first places I would look to reduce congestion and to raise money."

Even as President Trump promotes a plan to rebuild the country's tattered infrastructure, many local governments are not waiting to see what, if any, help Washington provides and are finding novel ways to pay for transportation and other public works projects.

Across the nation, more than a dozen states and municipalities have imposed fees or taxes on ride-hailing companies or their passengers, or sometimes both, and many more are considering such measures, according to transportation and tax experts. Advocates for the charges contend that the ride-hailing cars should pay for using public streets and resources, contributing to gridlock and pollution, and siphoning passengers and fares from public transit.

"If they want to share the pie, then they have to pay the price," said Fayez Khozindar, the executive director of the United Taxidrivers Community Council, an advocacy group for taxi drivers in Chicago. "It's fair because we know the city is short on funds and they want to fill the hole."

But some drivers and passengers for the ride-hailing companies say they have been unfairly singled out — in many places the new fees do not apply to taxis.

“Uber and Lyft have always been an easy target for cities looking for new streams of revenue,” said Harry Campbell, a driver for Uber and Lyft in California who writes a popular blog, The Rideshare Guy.

In New York and Chicago, Uber and Lyft have said they see their services as complementing the public transit systems and providing another option for riders, especially in transit deserts with few bus routes and train lines. Uber supports a congestion plan for Manhattan — even running an ad campaign backing the idea — as long as it does not single out for-hire vehicles.

“A comprehensive congestion pricing plan that is applied to all vehicles in the central business district is the best way to fully fund mass transit, reduce congestion and improve transportation for outer borough New Yorkers,” an Uber spokeswoman, Alix Anfang, said. “A surcharge alone will not accomplish these goals.”

Last year, New York State approved a 4 percent assessment on ride-hailing trips that begin outside New York City (rides in the city are already subject to state and local taxes). It is expected to raise $24 million a year for the state’s general fund though one state legislator, Senator John E. Brooks, a Democrat from Long Island, has proposed legislation to direct that revenue to local bus and commuter rail services. “We need to think creatively and outside of the box in order to improve funding for local transit,” he said.

The new fees and taxes are often part of broader regulatory measures as states and localities scramble to update tax codes and laws that have not kept up with the proliferation of app-based ride services. For instance, a Georgia state tax applies to rides in taxis but not ride-hailing cars even though they essentially do the same thing, said Carl Davis, research director for the Institute on Taxation and Economic Policy in Washington.

“A lot of tax codes weren’t set up to take them into account,” Mr. Davis said. “They’re so new they didn’t even exist a decade ago. It’s an emerging tax issue, and states and localities are playing catch up.”

South Carolina added a 1 percent fee to ride-hailing trips in 2015, in part to establish a single regulatory framework and block local efforts to charge prohibitively high fees to keep them out, state officials said. Now that fee has become a source of extra cash. The city of North Charleston, for instance, receives more than $30,000 annually and uses it for municipal operations.

In Oregon, Portland officials initially barred Uber but eventually agreed to allow it and Lyft to operate through pilot programs. In 2016, the city sought to create a single standard for taxis and ride-hailing cars and assessed a 50-cent ride fee on both of them, which is paid by passengers.

The 50-cent fee has added up to more than $8 million to help pay for city enforcement efforts, including spot inspections of cars and incentives to companies and drivers to choose wheelchair accessible cars. The fee “hasn’t been a barrier to the riders at all as the ride-hailing services have continued to expand,’’ said Dave Benson, a senior manager for the Portland Bureau of Transportation. “We haven’t seen the top yet.’’

Still, many Portland taxi owners and drivers say the fee has hurt them more than their rivals. Noah Ernst, a superintendent for Radio Cab, said many taxi drivers feel the 50-cent fee means a smaller tip because passengers lump everything together when they pay. Taxi companies also face the headache of trying to collect the fee from drivers.

He added that taxis continued to face more stringent safety, equipment and insurance requirements, and were targeted more often for inspections because their cars were easily identified by company colors and logos.

“It’s not an equal playing field at all and we were trying to tell them this the entire time they were rewriting the code,” he said.

As a result, he said, taxi companies are struggling and at least two have gone out of business. His company, Radio Cab, has lost more than a third of its business since 2015.

Chicago officials have calculated that ride-hailing companies have cost the city about $40 million a year in lost revenue from transit fares, parking fees, licenses and permits. In 2014, the city imposed a 20-cent fee on ride-hailing trips in response to concerns that taxis were being undercut. Two years later, that fee went up to 50 cents, with an additional two-cent fee paid by the ride-hailing companies themselves. And now, the new 15-cent fee for the transit system brings the total to 65 cents for passengers.

The city also assessed a separate $5 fee on passengers who were picked up or dropped off by ride-hailing cars at the major airports, the convention center and the Navy Pier, a popular tourist destination.

The ride-hailing fees produced nearly $39 million for the city’s general fund in 2016, up from about $100,000 in 2014, according to city estimates. Last year’s revenue, which is still being collected, is expected to reach $72 million.

“It’s a fairly new industry and once they actually got settled in the city we saw a lot of growth,” the Chicago budget director, Samantha Fields, said.

Mayor Rahm Emanuel of Chicago, who has made modernizing the L a priority, said the new 15-cent fee was the first of its kind to raise money solely for public transit from those who might not even use it because they could afford the ride-hailing cars. “I think it’s a progressive transportation tax,” Mr. Emanuel said. “It will make public transportation competitive with the rideshare industry.”

In effect, Mr. Emanuel said, it will serve as a “backdoor approach” to fighting congestion created by the ride-hailing cars by helping shift more people — by their own choice — to the transit system. “There’s a congestion fee and I would just say the rideshare fee is kind of parallel parking into the same position,” he said.

The 15-cent fee is projected to bring in $16 million this year, which will be turned over to the Chicago Transit Authority. The money will be used to secure additional funding through bond sales to pay for a total of $179 million in capital improvements, according to city officials.

Kyle Whitehead, the government relations director for Active Transportation Alliance, a Chicago advocacy group for biking, walking and transit, said that the transit system contributes to the health of the city by getting more people out of cars, increasing exercise levels and reducing pollution — and it is now in dire need of money.

“The public transit system benefits everyone who lives and works in the city, he said, “regardless of whether they’re using it.”

THE NEW YORK TIMES

By WINNIE HU

FEB. 18, 2018

How the New Tax Law Could Slow Disaster Recovery in Small Towns.

A lesser-known provision in the GOP tax overhaul ends the benefits for victims of small-scale disasters.

Since Congress passed its sweeping tax overhaul in December, considerable attention has been paid to new rules around mortgage interest deductions and state and local tax deductions — both of which could have serious implications for taxpayers and state and local revenue streams.

But one substantial shift has gotten somewhat lost in the shuffle: a change to what are known as "casualty loss" deductions, which filers can claim when they're hit by a major, unexpected disaster. It's not just for victims of natural disasters like one of the several hurricanes to hit the U.S. last year. It's also for victims of smaller disasters like car crashes, house fires and floods.

Until now, that is.

Continue reading.

GOVERNING.COM

BY NATALIE DELGADILLO | FEBRUARY 16, 2018

TAX - TENNESSE

Chuck's Package Store v. City of Morristown

Supreme Court of Tennessee - February 6, 2018 - S.W.3d - 2018 WL 718348

Alcoholic beverage retailers, who were charged higher inspection fees than authorized by municipality's ordinance, brought action against municipality for recovery of excess collections.

The Chancery Court denied municipality's motion to dismiss and awarded retailers judgment for overpayments. Municipality appealed. The Court of Appeals affirmed. Municipality's application for permission to appeal was granted.

The Supreme Court of Tennessee held that taxpayer must pay under protest disputed municipal taxes before filing suit for refund, overruling *Admiralty Suites and Inns, LLC v. Shelby County*, 138 S.W.3d 233, and *Decatur County v. Vulcan Materials Co.,* 2002 WL 31786985.

The Supreme Court Grants Certiorari in Online Sales Tax Case.

The United States Supreme Court recently granted a petition for certiorari in *South Dakota v. Wayfair, Inc., Overstock.com, Inc., and Newegg, Inc.,* No. 17-494. This closely watched case will decide whether states can require internet-only retailers to collect sales taxes in states where the online sellers do not have a store or other "physical presence." Given the number of amici that submitted briefs in support of or opposition to the petition—including retailers, taxpayer groups, academics, trade associations, members of Congress, and 35 states—it is clear that this issue is critically important to many different groups.

South Dakota's petition argued that the current rule—under which states can only require online retailers with a "physical presence" within their boundaries to collect the tax that consumers owe on all transactions whether or not the retailer collects the tax—should be reconsidered because it harms local and regional economies and creates an uneven playing field for traditional brick-an--mortar retailers. It asserted that *Quill Corp. v. North Dakota*, 504 U.S. 298 (1992)—which reiterated the "sales tax only" rule that had been adopted a quarter century earlier—was decided at a time when internet sales were nothing like they are today. It argued that, while the decision's "legal rationales have imploded with experience, its practical impacts have exploded with the rapid growth of online commerce." It defined the reasons for granting certiorari as follows: "First, under contemporary conditions, Quill's rule is unusually (and increasingly) harmful. Second, *Quill* is not only incorrect, but also now the kind of mistake that should not be reinforced for the sake of stare decisis. And third, this issue cannot wait: The extensive activity in the States and uncertainty in the regulated industry now make it doubly 'unwise' for this Court to delay any further." As the petition noted, Justice Kennedy encouraged such a petition, noting in 2015 that it would be "unwise to delay any longer a reconsideration of the Court's holding in *Quill*." *Direct Mktg. Ass'n v. Brohl,* 135 S. Ct. 1124, 1135 (2015) (Kennedy J., concurring).

Amicus briefs in support of the petition were submitted by the Retail Litigation Center; the American Booksellers Association; the International Council of Shopping Centers; the National Association of Wholesaler-Distributors; the National Retail Federation; the South Dakota Retailers Association; the Tax Foundation; the Streamlined Sales Tax Governing Board, Inc.; the National Governors Association; the International Council of Shopping Centers; the American Farm Bureau Federation; the American Lighting Association; four United States Senators and two United States Representatives; the Multistate Tax Commission; Colorado and 34 other States and the District of Columbia; and law professors and economists. In its amicus brief, the Retail Litigation Center, which "represents national and regional retailers, including many of the country's largest and most innovative retailers, across a breadth of industries," explained that brick-and-mortar retailers have "suffer[ed] competitive disadvantage merely for being a physical part of the communities they serve." It argued that, although such retailers have "met these market forces by incorporating technology into their businesses," "no amount of ingenuity can get around the unfair advantage that [is] give[n] to absentee retailers by making their online sales appear duty-free." It also noted that *Quill* has created an extraordinary advantage for internet-only retailers, "distort[ing] interstate commerce and State tax policy" and stripping states and municipalities of much-needed tax dollars.

Wayfair, Inc., Overstock.com, Inc., and Newegg, Inc. opposed the petition. They argued that this case is not a proper vehicle for reexamining *Quill*, that South Dakota's petition ignored fundamental principles of *stare decisis*, and that the petition sought "what amounts to an advisory opinion on a barren factual record." They asserted that "South Dakota has manufactured an entirely inappropriate vehicle for . . . [the] Court to reconsider the continuing vitality of *Quill*." Although acknowledging that the "retail marketplace has changed considerably" since 1992, they noted that e-commerce giants such as Amazon have begun to voluntarily collect state sales taxes despite *Quill*, and that smaller internet-only retailers would be stripped of meaningful access to a national sales market, and subjected to a host of complicated compliance issues, if *Quill* were reversed. Instead, they argued, the proper recourse would be for Congress—which is "assign[ed] . . . the responsibility of regulating interstate commerce"—to address the issue through remote sales tax legislation.

Amicus briefs opposing the petition were submitted by the National Taxpayers Union Foundation; NetChoice; Hon. Representative, Robert W. Goodlatte; Chris Cox, former member of Congress and co-author of the Internet Tax Freedom Act; the American Catalog Mailers Association; and Americans for Tax Reform. South Dakota filed a reply brief on December 20, 2017.

Both sides agree that the retail environment is rapidly changing with the advent of new technologies. The law often struggles to keep up with the effects of those changes, and this case frames an issue of great importance to many different interest groups on both sides of the issue. We will monitor this proceeding and report on the Court's decision, which is sure to have significant implications for retailers of all types and state and local communities.

Drinker Biddle & Reath LLP – Thomas J. Barton, Michael P. Daly, Kathryn E. Deal and Meredith C. Slawe

January 18 2018

Fitch Report: Puerto Rico Ruling Muddies Special Revenue Debt Waters.

Fitch Ratings-New York-14 February 2018 – Last month's Chapter 9 ruling over Puerto Rico's highway and transportation debt, if upheld, could increase the risk of delayed payments on special revenue debt in future municipal bankruptcies, according to Fitch Ratings in a new report.

With an appeal of the district court ruling already pending and the ultimate outcome likely to change, Fitch does not envision any immediate impact on criteria or ratings. "The Puerto Rico ruling suggests a different paradigm for assessing special revenue obligations and is very much at odds with prior bankruptcy treatment of special revenue obligations," said Managing Director Amy Laskey. "Chapter 9 protections shielding special revenue debt from the automatic stay provisions have consistently insured timely payment from available special revenues during bankruptcy proceedings."

Various restrictions around diverting enterprise revenues could remove much of the incentive to delay payments to special revenue bondholders during a municipal bankruptcy even if a final ruling upholds the district court decision. "Any potential criteria modifications would need to fully consider how to account for such protections when separating enterprise ratings from a municipal IDR," said Laskey.

"What Investors Want to Know: The Impact of the Puerto Rico Ruling on Special Revenue Debt"

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Pullback From Muni-Bond Could Be a 'Yellow Flag' After Market Losses.

- **Muni funds saw outflows this week after weeks of gaining cash**
- **Investors may be responding to worst January on record**

The municipal market's short-term future might be on shaky ground.

Mutual funds that focus on state and local government bonds saw investors pull out about $443 million in the week leading up to Wednesday, breaking a five-week streak during which they continued to pour in funds, according to Lipper US Fund Flows data. Exchange traded funds lost $30.3 million this week, its first negative since April 2017, according to CreditSights analyst Pat Luby.

"It's a yellow flag, not a red flag yet," Luby said. "Inflation news has provided a dose of reality for the market."

The outflows come after municipal bonds slid amid speculation that the pace of the economy will fuel higher interest rates, sending the securities to their worst January loss since at least 1981, according to the Bloomberg Barclays index. Analysts have speculated that the loss may cause a pullback by individual investors, who are the largest holders of municipal bonds.

Greg Kaplan, the director of fixed income for City National Rochdale, said such investors are "historically reactionary." After January's performance, he expected flows to worsen as investors saw their account statements.

Jeff Lipton, managing director for Oppenheimer, said some investors have been cautious about state and local bonds because of concerns about the ripple effects of the federal tax overhaul enacted in December. He said outflows are a result of market uncertainty, especially looming interest rate hikes from the Fed, though he expects that the retreat from municipal funds will only be temporary.

"Even with disproportionate volatility, it will be positive for the year," Lipton said. "There will just be intermittent periods of negative flows."

Bloomberg Markets

By Zachary Hansen

February 16, 2018, 8:28 AM PST

Bill Aims to Rescue Cost-Saving Tool for Nonprofit Hospitals.

The measure would restore tax exemption for advance refunding bonds, which nonprofit organizations have used to finance major projects and manage debt.

The tax-exempt status for advance refunding bonds ended January 1 as a result of the Tax Cuts and Jobs Act, which President Donald Trump signed into law late last year. But a bipartisan bill introduced in the House this week would undo that, restoring a tool nonprofits have used to keep their costs down.

Reps. Randy Hultgren, R-Ill., and Dutch Ruppersberger, D-Md., who co-chair the Congressional Municipal Finance Caucus, introduced the measure Tuesday, arguing the bill is warranted because hospitals and other public and private entities serving local communities across the country need access to affordable debt.

"In recent years, tax-exempt advance refunding bonds have saved Illinois taxpayers $80 million per year on average," Hultgren said in a statement. "Given that interest rates are expected to increase, this tool is especially important to states and local governments responsibly planning for the future."

Ruppersberger said the tool had been saving nearly $37 million annually in Maryland.

The legislation won support from the American Hospital Association, which published a letter praising Hultgren for the bill.

"Tax-exempt advance refunding bonds were an important financing tool that allowed 501(c)(3) hospitals to respond to credit market conditions to reduce the cost of capital," AHA Executive Vice President Tom Nickels wrote. "They have resulted in billions of dollars of savings for hospitals and the health care system. Loss of the ability to restructure debt with tax-exempt advance refundings will divert resources from patient care and could diminish access to needed health care services."

There was concern among healthcare leaders last fall that Congress would revoke access to tax-exempt private activity bonds (PABs), as earlier drafts of the tax law would have done. But Hultgren and other lawmakers persuaded their colleagues to preserve PABs.

Their efforts to spare the tax-exempt status of advance refunding bonds, however, were unsuccessful, which is why they're circling back now to push for the policy as a standalone measure.

Original cosponsors of the bill, H.R. 50003, include Reps. Luke Messer, R-Ind.; Ed Royce, R-Calif.; Dan Kildee, D-Mich.; and Michael Capuano, D-Mass.

The bill was sent to the House Ways and Means Committee, where it is unlikely to find support from chairman Rep. Kevin Brady, R-Texas, according to The Bond Buyer's Lynne Hume, who reported Wednesday that Brady this week reiterated his opposition to expanding tax-exempt PABs or restoring advance refundings.

Health Leaders Media

by Steven Porter

February 15, 2018

[Access and Affordability in the New Housing Finance System.]()

Abstract

One of the measures by which any proposed housing finance system must be judged is how well it

would serve low- and moderate-income (LMI) households. In this analysis, we assess how well the multi-guarantor system proposed in the draft bill under discussion in the Senate Banking Committee (as of February 2018) would serve these households, concluding that they would do considerably better than they do under the system we have today. The bottom line is that the proposed system provides considerably more and better-targeted support to assist LMI households.

Read the full brief.

The Urban Institute

by Jim Parrott, Michael Stegman, Phillip L. Swagel, and Mark M. Zandi

February 13, 2018

Neighborly Insights: Florida Puts a Price on Resilience, KC Airport Moves Closer to Takeoff and the Impact of Tech on Property Values.

Costs of Resiliency Begin to Come Into Focus in Florida

For Monroe County, Florida, home of Key Largo, resiliency is a more pressing concern than it has ever been. Like many other places in the Keys, Monroe is coming to terms with change in climate and sea levels, and the impact of recent storms. While national policymakers debate the climate issue and the need – or lack thereof – for action, Monroe County residents have seen enough evidence to move them to support governmental action.

The county's plans to address resiliency concerns currently focuses on road projects, and it's clear why: half of the Monroe's 300 total miles of county roads have been assessed by the county to be susceptible to sea level rise in the next 20 years. The county has already spent $10 million on road projects that include elevation, and plans to spend at least $7 million more in the near future. One such plan is to elevate the lowest, most flood-prone road in the Twin Lakes Community of Key Largo and in the low-lying Sands neighborhood of Big Pine Key, 70 miles south.

In Big Pine, the road is going up a foot. In Key Largo, it's being raised six inches. Those elevations are just an inch above what researchers say is necessary for both roads to be above sea level for the next 25 years. But it is a start and will provide useful experience and help to refine cost estimates for wider-scale flood mitigation.

Continue reading.

Posted 02/16/2018 by Joseph Krist

Neighborly Insights

Recent Legislation Further Limits School District Options in Connection with the Sale of Excess Property.

Legislation enacted in 2017 and amended last month significantly expands the range of prohibitions on a school district's ability to influence the future use of real property that it sells or transfers. When disposing of real property, school districts often desire to obtain affirmative covenants restricting the use of the property to types of uses which support its interests, such as a residential development project to add families to the community. Prior to this recent legislation, Section 1260 of the Revised School Code prohibited school districts from using negative deed restrictions prohibiting the use of disposed property for any lawful public education purpose and further prohibited school districts from refusing to lease or rent property to a party solely because the party intended to use the property for an educational purpose.

The restrictions under Section 1260 did not prevent school districts from imposing affirmative obligations on the use of disposed of property solely for a particular purpose or imposing negative covenants against using the property for certain non-educational purposes. The new legislation significantly limits the ability of school districts to use these types of affirmative and other restrictions.

In 2017, the Educational Instruction Access Act (the "Act") expanded the scope of the prohibited restrictions. The Act applies not just to school districts, but to all local government entities. The Act continues the prohibition on the use of negative deed restrictions by prohibiting a lawful public education use and continuing the prohibition on the refusal to sell, lease or rent to a party who intends to use the property for an educational purpose; then expands upon that prohibition by barring restrictions that bar educational uses expressly or by operation (i.e., have the effect of barring those uses). Although the Act provides that the governmental entity may not refuse to sell, lease or rent to an educational user, it also provides that it is not required to sell, lease or rent to the educational user. The Act also prohibits local governments from adopting an ordinance, policy or resolution which would prohibit an educational use for transferred property. Finally, the Act also provides enforcement provisions for non-compliance.

The Act was recently amended by Act 7 of 2018, which became effective on Jan. 26, 2018. Act 7 repealed Section 1260 and further expanded these prohibitions by barring the use of affirmative use deed restrictions that do not include an educational use or purpose. Act 7 also voids any affirmative or negative deed restrictions in effect on Jan. 26, 2018 that prohibit or do not permit property previously used for an educational purpose from being used for any future educational purpose.

Under the Act, as amended, a school district may now only use an affirmative deed restriction if it includes an educational purpose as one of the restricted uses. It will be interesting to see how the courts interpret the Act's provision voiding existing deed restrictions or how broadly they construe the new proscriptions on municipal actions. If you have questions regarding the impact of this legislation on prior or proposed property transfers, please feel free to contact us.

Miller Canfield PLC – James Crowley and Amanda Van Dusen

February 9, 2018

Q4 2017: Municipal Advisor Exam Results.

On November 7, the SEC's National Examination Program issued a Risk Alert providing the SEC staff's observations after conducting over 110 examinations of municipal advisors during the Municipal Advisor Examination Initiative. Some of the key observations highlighted by the Risk Alert include:

- **Registration Deficiencies:** The SEC staff frequently observed failures to (i) register with the SEC or the MSRB prior to engaging in municipal advisory activities; (ii) file annual updates and/or amendments to Form MA, Form MA-I, and MSRB Form A-12 when required; and (iii) complete Form MA with accurate and complete information, particularly with respect to compensation arrangements and outside business activities. The SEC staff also observed instances of municipal advisors failing to pay MSRB registration fees and late fees and file a Form MA-W and withdraw MSRB Form A-12 when withdrawing from registration.
- **Books and Records Deficiencies:** The SEC staff frequently observed failures to (i) maintain copies of written and electronic communications sent or received by the firm related to municipal advisory activities; (ii) make and keep documents material to a recommendation made to a client; and (iii) prepare and maintain accurate, required financial records, including general ledgers and records of cash receipts and disbursements.
- **Supervisory Deficiencies:** The SEC staff frequently observed failures to (i) have a system to supervise the municipal advisory activities of employees that was reasonably designed to achieve compliance with all applicable rules, such as monitoring gifts, travel, and entertainment expenses (including the maintenance of accurate records of travel and entertainment expenses) and overseeing the firm's responses to requests for proposals; (ii) have WSPs reasonably designed to ensure compliance with applicable rules, tailored to the firm's business activities and conflicts of interest; and (iii) designate one or more principals to be responsible for supervisory activities.

Rule Changes

MSRB Implements New CE Program for Municipal Advisors

January 1, 2018, The MSRB begins implementation of the continuing education program for municipal advisors, as required by amendments to MSRB Rule G-3.

Read the full information on the change.

Per the MSRB release, the adoption of continuing education (CE) requirements for municipal advisors represents an important milestone in developing professional standards and CE requirements as mandated by the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act"). The adoption of the amendments to establish CE requirements for municipal advisors furthers the MSRB's mandate to protect investors, municipal entities, obligated persons and the public interest. The amendments to Rule G-3 help to ensure that those individuals engaging in municipal advisory activities on behalf of a municipal advisor, as well as those individuals that directly engage in the management, direction or supervision of the municipal advisory activities of the municipal advisor and its associated persons, remain current in their industry knowledge. The accompanying amendments to Rule G-8 promote compliance with a municipal advisor's recordkeeping requirements related to the administration of its CE program. Municipal Advisors have until December 31, 2018 to complete a needs analysis, develop a written training plan and deliver training to comply with the annual CE requirements for 2018.

Rule Changes

Changes to MSRB Rule G-34

The Municipal Securities Rulemaking Board (MSRB) received approval from the Securities and Exchange Commission (SEC) on December 14, 2017, to amend MSRB Rule G-34, on CUSIP numbers, new issue, and market information requirements (the "amendments").

Read the full notice and additional information.

The amendments will codify the MSRB's longstanding interpretive view that brokers, dealers and municipal securities dealers (collectively, "dealers") are "underwriters" when acting as placement agent in private placements of municipal securities, including direct purchases. In addition, the amendments will extend to non-dealer municipal advisors, the requirement that a municipal advisor obtain a CUSIP number when advising on a competitive transaction in municipal securities. Finally, the amendments will provide a principles-based exception for dealers (and municipal advisors in competitive sales) from the CUSIP number requirements when selling a new issue of municipal securities in certain circumstances where the dealer or municipal advisor reasonably believes (e.g., by obtaining a written representation) that the present intent of the purchasing entity is to hold the municipal securities to maturity or earlier redemption or mandatory tender. Dealers also will be able to rely on the principles-based exception with respect to the requirement to apply for depository eligibility for a new issue pursuant to Rule G-34.

The amendments will become effective on June 14, 2018.

Dinsmore & Shohl LLP – Kevin S. Woodard

USA February 8 2018

The First Circuit Joins Several Other Circuit Courts in Finding That Creditors' Committees Have an Unconditional Right to Intervene in Adversary Proceedings.

On September 22, 2017, the First Circuit Court of Appeals held that § 1109(b) of the Bankruptcy Code (the "Code") provides a creditors' committee with an "unconditional right to intervene" in an adversary proceeding.[1] In reaching this conclusion, the court reversed the District Court for the District of Puerto Rico's order denying an intervention motion and distinguished its own precedent, on which the District Court had relied. This decision further bolsters the right of creditors' committees to intervene in and to be heard on all matters within a bankruptcy case and positions the First Circuit in line with the Second and Third Circuits, which both have similarly concluded that the Code affords an unconditional right to intervene.

Continue reading.

Caplin & Drysdale, Chartered

January 23 2018

Bill Aims to Restore U.S. Tax Break for Advance Refunding Muni Bonds.

CHICAGO — The federal tax exemption for a type of debt refunding used by U.S. states, cities, schools and other issuers to lower borrowing costs would be restored under a new bipartisan bill in Congress, two of its sponsors said on Tuesday.

The sweeping tax bill signed into law by President Donald Trump in December ended the federal tax break for new advance refunding bonds, which are used to refund outstanding debt beyond 90 days of its call date to take advantage of lower interest rates in the municipal market.

Bill sponsors U.S. Representative Randy Hultgren, an Illinois Republican, and U.S. Representative Dutch Ruppersberger, a Maryland Democrat, said the legislation would save state and local governments millions of dollars, allowing them to invest in infrastructure and lower taxes.

"Given that interest rates are expected to increase, this tool is especially important to states and local governments responsibly planning for the future," Hultgren said in a statement.

The two lawmakers co-chair the Congressional Municipal Finance Caucus, which unsuccessfully pushed to keep advance refunding bonds out of the tax bill.

Advance refunding bond issuance totaled $91 billion in 2017, accounting for 22.2 percent of supply last year, according to Thomson Reuters data. The municipal bond market is roughly $3.8 trillion in size.

The termination of the tax break for interest earned on the debt is expected to generate $17.3 billion for the U.S. government between 2018 and 2027.

Current debt refundings, which are done within the 90-day call date window, remain tax exempt.

By REUTERS

FEB. 13, 2018, 12:51 P.M. E.S.T.

(Reporting By Karen Pierog; Editing by Daniel Bases and Tom Brown)

Bloomberg Brief Weekly Video - 2/15

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

Watch video.

Bloomberg

February 15th, 2018

After Muni-Bond Boom, Analysts Expect Distress to Be on the Rise.

- **Low rates, small yield penalties have fueled risky borrowing**
- **"Credit risk is increasing in the municipal market," says MMA**

Bankers say bad loans are made in good times, and the $3.8 trillion municipal-bond market may be no exception.

High demand from investors, a dwindling supply of new deals, and historically low yield penalties on the riskiest bonds has created an borrower's market, Municipal Market Analytics analysts Matt Fabian and Lisa Washburn wrote in a note to clients Monday. This atmosphere has produced a rise in issuance in sectors most "prone to impairment," they said.

“Over recent years the mix of defaults has become more diversified than it was previously,” Washburn wrote.

Before the 2008 credit crisis, nearly all defaults were concentrated in the healthcare and housing sectors. Now that trend is expanding into utility districts and tax-based issues, typically known as safe sectors, according to the firm.

Even so, the municipal market remains among the safest in the world, with payment lapses extremely rare even after the economic and financial turmoil brought by the last recession. Although MMA doesn’t forecast defaults, they expect an up-tick in the filings of so-called credit impairments — like technical defaults triggered by a drawn down of reserves — over the next few years.

Bloomberg Markets

By Danielle Moran

February 14, 2018, 12:43 PM PST

Muni Money Funds Have Revival After $100 Billion in Outflows.

- **Muni money market fund assets up by $7 billion in 2018**
- **Assets grown to $138 billion as of Feb. 7 from $131 billion**

If 2017 was the year the municipal money market funds stopped bleeding assets, 2018 is the year they’ve started growing again.

Tax-exempt money market fund assets have increased by almost $7 billion since the beginning of the year, seven times as much as all of last year, according to Investment Company Institute data.

“With rates rising there’s just been a better bid for floating rate products,” said Matt Fabian, a partner at Municipal Market Analytics. “It’s a reasonable place for investors to park cash.”

Yields on municipal securities that reset weekly rose to 1.71 percent at the end of December, the highest since October 2008, after the Federal Reserve raised interest rates for the third time in 2017.

Since then, yields have dropped to 0.98 percent, a sign of customer demand, Fabian said.

Tax-exempt money market funds are growing again after tepid growth in 2017 and the hemorrhaging of more than $100 billion in the first 10 months of 2016, a reaction to U.S. Securities and Exchange Commission rules aimed at reducing the risk of runs on the pools.

The rules required municipal money market funds to adopt floating net-asset values and imposed liquidity fees and redemption suspensions under certain conditions.

“You had the double whammy of zero yields and regulatory changes,” said Peter Crane, president of Westborough, Massachusetts-based Crane Data LLC

Municipal money market fund assets have grown to $138.1 billion as of Feb. 7 from $131.2 billion on

Dec. 27, ICI said.

Bloomberg Markets

By Martin Z Braun

February 12, 2018, 10:11 AM PST

Municipal Market Update.

Read the Update.

Stern Brothers | Feb. 13

S&P: Illinois Embarks On A Fiscal High-Wire Act In New Budget Proposal.

SAN FRANCISCO (S&P Global Ratings) Feb. 15, 2018–On Feb. 14, 2018, Illinois Governor Bruce Rauner presented his fiscal 2019 budget proposal to the General Assembly. The budget foresees a small general funds surplus materializing in fiscal year 2019. S&P Global Ratings views the modest projected surplus (0.9% of spending) and the concurrent stemming of growth in the state's backlog of unpaid bills

Continue Reading

Pittsburgh is Back from Near Bankruptcy.

Municipalities in danger of bankruptcy can be resurrected. Pittsburgh turned deficits to surpluses, cut costs and created standards for best financial practices to get released from state oversight.

While companies with a Pittsburgh presence, like Westinghouse and Bon-Ton, file for bankruptcy, Steel City itself is back from the deep red.

Pennsylvania Governor Tom Wolf joined Pittsburgh Mayor Bill Peduto recently to formally announce the city's release from the state's financially distressed municipality's act, known as Act 47, according to the Pittsburgh Post Gazette.

The city has been building its financial solvency for 14 years, turning deficits to surpluses, cutting costs and creating standards for best financial practices, which included setting realistic revenue projections.

Continue reading.

by Andrea Fox

February 16, 2018

EFFICIENTGOV.COM

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March 8, 2018 | 2:00 – 3:30 PM Eastern

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Tuesday, May 13, 2018 | 1:00 PM Eastern

Click here to learn more and to register.

Advance Refunding Legislation Announced in the House.

On February 13, 2018, Representatives Randy Hutgren (R-IL), Dutch Ruppersberger (D-MD) and Luke Messer (R-IN), with full support of the BDA, plan to introduce bipartisan legislation that would fully reinstate the advanced refunding of municipal bonds.

Background

Municipal advanced refunding were repealed in the *Tax Cuts and Jobs Act.* Groundwork was laid by the BDA for potential fixes in 2018. Passage of this bill would fully reinstate the ability of state and local governments to advance refund tax-exempt municipal bonds, including private activity bonds and qualified 501 c (3) bonds.

2018 will be pivotal in this effort as Congress is expected to produce multiple technical fix packages in response to the passage of the Tax Cuts and Jobs Act.

Next Steps

Later today, the bill is expected to be formally announced. At that time, the BDA will send a **Call to Action** to membership. The BDA is currently coordinating lobbying efforts with the MBFA and the issuer community and grassroots engagement will be critical in the process of gaining support for this legislation. **Your Member of Congress need to hear from you and any issuer clients.**

On February 14, 2018, with support of the BDA, Representatives Randy Hutgren (R-IL), Dutch Ruppersberger (D-MD) and LukeMesser (R-IN) introduced bipartisan legislation, H.R. 5003, that would fully reinstate municipal advance refundings including private activity bonds and qualified 501c (3) bonds. A copy of the bill can be viewed here.

2018 will be pivotal in this effort as Congress is expected to produce multiple technical fix packages in response to the passage of the Tax Cuts and Jobs Act and is working towards a robust debate on infrastructure.

Call to Action

Now is the time to reach out to your Members of Congress and urge them to support H.R. 5003!

It is also vital that your issuer clients reach out to their Member of Congress. Their voice is needed for this legislation to advance.

A draft sample letter for you to send can be viewed here.

You can find your House of Representatives contact information to submit the letter here.

Please send us a copy your final letter so that we can follow-up with Member of Congress staff members.

We also ask that you call your Members office and ask to discuss co-signing the bill with the tax legislative-aide. Multiple points of contact within the office will be beneficial.

Bond Dealers of America

February 14, 2018

Should America Sell Its Existing Roads to Pay for New Ones?

Trump's infrastructure plan eases requirement that investors who buy or lease public infrastructure assets must repay all their existing tax-exempt debt

When President Donald Trump unveiled his long-anticipated infrastructure plan on Monday, there was one word that caught the attention of many investors: recycling.

It isn't the garbage variety. Since early last year, infrastructure fund managers, bankers and lobbyists have been pitching the administration on the concept of infrastructure asset recycling.

Here is how many on Wall Street hope this might play out in the U.S.: The federal government would set up a pot of money to give state and local governments a bonus payment when they privatize or lease one of their existing assets to investors. To earn the bonus, governments would have to commit to using the sale proceeds to fund new bridges, roads or other infrastructure projects in need of money.

President Trump's $1.5 trillion infrastructure plan stopped short of recommending such a fund. But it eased a requirement that investors who buy or lease public infrastructure assets must repay all of their existing tax-exempt debt—an expensive proposition that makes such deals harder to finance. The plan proposes that governments could recycle deal proceeds into new projects, and if they do, the tax-exempt debt could remain outstanding.

"Getting to $1.5 trillion without a significant asset-recycling effort will be a challenge, unless states decide to implement other revenue measures such as big tax or fee increases," said Geoff Segal, senior vice president at Macquarie Capital, the investment-banking arm of Australia's Macquarie Group Ltd.

If it takes root in the U.S., asset recycling could create a pipeline of new deal flow for Macquarie, the world's largest infrastructure fund manager, and its peers. Macquarie estimates U.S. state and local governments could earn as much as $1.25 trillion from privatizing their infrastructure assets.

Australia's ambassador to the U.S., Joe Hockey, has pitched the idea to senior administration officials, including Vice President Mike Pence, National Economic Council Director Gary Cohn, Transportation Secretary Elaine Chao and DJ Gribbin, President Trump's infrastructure-policy adviser and a former Macquarie executive.

He has also met with Rep. Bill Shuster (R., Pa.), chairman of the House Transportation and Infrastructure Committee, which will have a big say in any legislation implementing Mr. Trump's infrastructure push. A spokesman for Mr. Shuster said he believes "Australia's experience with asset recycling is something we should give serious consideration."

The idea also came up in late June, when executives from Goldman Sachs Group Inc., Morgan Stanley and a handful of other pension and infrastructure funds met with White House officials to discuss Mr. Trump's plans to jump-start investment in U.S. infrastructure. Spokeswomen for Morgan Stanley and Goldman Sachs declined to comment.

The meeting was held to broadly discuss how to level the playing field between private investors and governments, which have long enjoyed an advantage in funding U.S. infrastructure thanks to their lower cost of borrowing. One suggestion, according to two attendees, was asset recycling.

"That's how you get lots of cranes up in the air," said Mr. Hockey, who says he coined the term "asset recycling" as Australia's treasurer from 2013 to 2015.

During his tenure, Australia launched a 5 billion Australian dollar (roughly US$4 billion) asset-recycling fund to incentivize its states and territories to privatize assets and plow the proceeds into new infrastructure projects. In exchange, for doing so, they would get a bonus equal to 15% of the value of the privatized asset.

In a statement, the White House said: "The President's plan does not contain a preference for that model or really any specific revenue raiser. The plan is designed to promote innovative and creative solutions to fund infrastructure."

In the U.S., the need for other sources of revenue is paramount. Most of President Trump's $1.5 trillion infrastructure plan will not be financed by the federal government but instead by state and local governments, and private investors.

That is a difficult proposition for mayors and governors. Census data show that state and local tax revenues have been recovering from the 2007 recession at the slowest rate of any economic downturn since 1980. The administration's reduction of the state and local tax deduction, a popular tax break for residents in high-tax states, could make it even harder for those governments to raise taxes.

"He wants everybody else to spend a trillion dollars," said Martin Klepper, who until November headed lending programs at the U.S. Department of Transportation.

Not everyone likes the idea.

"'Asset recycling' sounds like a fancy term for enriching investment bankers while undermining public services," said Lee Saunders, president of the American Federation of State, County and Municipal Employees. The 1.6 million-strong public-sector union believes "infrastructure is a public good, and it should be controlled by taxpayers and built and maintained by public-service workers."

Another worry is that governments won't make the best use of privatization proceeds. In 2008, for example, Chicago agreed to lease its parking meters to Morgan Stanley's infrastructure fund for $1.16 billion and then used the money to plug budget gaps.

Mr. Hockey said it is up to the federal government to craft rules that would prevent a similar situation. But ultimately, he doesn't want to tell the U.S. what to do.

"Take it or leave it," he said.

The Wall Street Journal

By Cezary Podkul

Feb. 14, 2018

Write to Cezary Podkul at cezary.podkul@wsj.com

California Cities' Pension Bills May Rise With Calpers Move.

- **Calpers to review shortening amortization to 20 years**
- **"Death knell" for some cities in down markets, official says**

California cities may see their annual pension costs rise under a new policy from the state's retirement system, threatening to foist added financial pressure on those already struggling to pay for promises to public employees.

The California Public Employees' Retirement System is advancing a staff recommendation that would shorten the amortization period for new pension liabilities from 30 years to 20. That would boost the system's funded ratio, require localities to pay off the debt sooner and allow the pension to recover faster from market downturns, according to a staff report. Approved by a Calpers committee Tuesday, the full board is set to vote on the changes Wednesday.

The ramped up schedule, while positive for the solvency of the pension system by letting it book gains faster, would make market losses felt more swiftly by local governments and require them to pay more into the retirement fund in at least the first few years.

The shorter period reduces the possibility that the system, which currently has about 68 cents for every dollar in liabilities, falls below 50 percent funding, board member Bill Slaton said during the meeting.

“That is not a great position to be in,” said Slaton. “All it takes is another movement or two, and we could find ourselves in a position where we cannot recover.”

The shorter amortization period would be effective in June 2019 and would affect contributions by local governments in fiscal 2022.

While many cities would welcome paying off the debt more quickly to rack up less interest, others that are already struggling with high fixed costs would find it difficult to meet the stepped-up pace, said Dane Hutchings, lobbyist for the League of California Cities. And in the event of poor market performance, municipal contributions to make up the difference would be even higher than projected, compounding the burden.

Such an outcome, when combined with other pressure facing cities, could push a few into bankruptcy, Hutchings said. “It would be their death knell” for some, he said.

California municipalities are already absorbing the effect of the board’s decision in December 2016 to lower the assumed rate of return to 7 percent from 7.50 percent by fiscal 2020, which will also require them to increase their contributions to cover the gap.

The system’s 3,000 cities, counties, school districts and other public agencies have also seen costs rise from several factors, including investment losses and perks granted in boom times. A report this month by the League of California Cities found that under current assumptions, cities in fiscal 2025 would pay Calpers more than 50 percent the amount expected to pay in fiscal 2019.

“Cities are struggling to keep up,” Mike Futrell, city manager for South San Francisco, told the committee before the vote Tuesday in a request to delay changes. The municipality had already been considering whether to ask voters in November to approve a tax increase to help pay its obligations, he said.

Calpers’s review comes as the system is likely to experience more market volatility in 2018 than it had over the past couple of years, Chief Investment Officer Ted Eliopoulos told the board Monday. Meanwhile, the fund’s 20-year return is lagging at 6.7 percent, according to a Calpers’s estimate.

A survey of 164 public pensions by the National Conference on Public Employee Retirement Systems, a trade association, showed that the average amortization period in 2017 was 23.8 years.

Bloomberg

By Romy Varghese

February 13, 2018, 8:03 AM PST Updated on February 13, 2018, 3:49 PM PST

— With assistance by John Gittelsohn

[Broader Private Activity Bond Use in Trump Infrastructure Plan.]

CHICAGO (Reuters) – An infrastructure investment blueprint unveiled by U.S. President Donald Trump on Monday would expand the use of tax-exempt private activity bonds (PABs), while lifting a cap on issuance of the debt.

Trump's proposal seeks to provide $200 billion in federal funds to spur $1.5 trillion in infrastructure investments with state, local and private partners over the next 10 years.

The PABs provision is aimed at increasing the leveraging of federal funds to allow for more efficient infrastructure improvements, according to the president's legislative outline for rebuilding infrastructure.

PABs had been targeted for extinction by House Republicans in their version last year of the federal tax bill, but the final bill signed into law by Trump in December retained the debt's federal tax exemption.

These bonds, which accounted for 27 percent of issuance in 2015, are sold for an array of projects including airports and affordable housing, as well as for nonprofit hospitals, nursing homes, and colleges.Tim Fisher, government affairs manager at the Council of Development Finance Agencies, said the proposal creates new PAB categories, while modifying others.

"It'll take some time for us to evaluate the package as a whole, but I'm very pleased by the PAB improvements outlined in the proposal," he said.

New uses for PABs would include construction of hydroelectric power generating facilities and environmental remediation for brownfield and superfund sites, as well as facilities for rural broadband, flood control, and storm water.

The current use of PABs for airports, water ports, mass transit, water and sewer and surface transportation facilities would be expanded to allow more privately financed infrastructure projects to benefit from tax-exemption.

PABs would no longer be subject to the alternative minimum tax in an effort to lower borrowing costs and increase their use, under Trump's proposal. In addition, a federal population-based, per-state annual cap on the issuance of certain types of PABs would be lifted.

Sandy MacLennan, president of the National Association of Bond Lawyers, said while the proposal appears to look good for the U.S. municipal bond market, public-private and local financings may be restricted under state laws.

"Further, while the financing options may be welcomed, the total proposed dollar investment seems small in comparison to reported needs," MacLennan said in a statement.

Reporting By Karen Pierog; Editing by Daniel Bases and Susan Thomas

FEBRUARY 12, 2018

PABs Would get Boost, but Can Trump Sell His infrastructure plan?

WASHINGTON — Less than three months after the House tried to kill tax-exempt private activity bonds, President Trump has released an infrastructure plan that proposes to expand and use them as a way to leverage financing for public-purpose infrastructure projects.

The plan calls for $6 billion to go toward tax-exempt PABs for public infrastructure. But the $6 billion would represent federal revenue losses over 10 years so the actual amount of additional of PABs issued under the plan would be much greater, sources said.

The PAB proposal is part of a major effort by the administration to place more funding responsibility on the private sector and on state and local governments, rather than the federal government.

"President Trump's infrastructure plan is less important for the funding it may provide, but rather is significant because of its bold and sweeping proposals to move federal policy toward the involvement of the private sector in the provision of public infrastructure," said Chris Hamel, former head of muni finance at RBC Capital Markets who now focuses on infrastructure policy.

The plan, for example, would authorize the federal divestiture of assets that it says would be better managed by state, local or private entities, including Ronald Reagan Washington National and Dulles International Airports, regional transmission systems, and the George Washington and Baltimore Washington Parkways.

Muni market groups applauded the proposed expansion of PABs.

A group of state and local officials met with the president on Monday and Columbia, S.C. Mayor Steve Benjamin, who heads the Municipal Bonds for America Coalition, thanked Trump for supporting tax-exempt PABs in the plan.

Bond Dealers of America CEO Mike Nicholas said, BDA "applauds the focus on utilizing governmental municipal bonds and private-activity bonds to upgrade our nation's infrastructure. For over a century, bonds have been a bedrock investment tool for state and local governments to produce and maintain critical infrastructure."

Emily Swenson Brock, director of the Government Finance Officers Association's federal liaison center, said GFOA has been pushing for the expansion of the use of tax-exempt PABs for public infrastructure projects like airports and seaports for two decades.

Can Trump sell plan to stakeholders, lawmakers?

But many sources questioned whether Trump can sell his plan to stakeholders and lawmakers, who are already complaining it doesn't propose enough federal spending and places too much of the funding responsibility on state and local governments.

"It is a fantasy to assume that states and local governments have the kind of available capital that the Trump plan demands they spend without federal help," said Senate Democratic Whip Steny Hoyer, D-Md.

Some muni market sources worry that, even if lawmakers eventually take up some sort of infrastructure legislation, it might be dangerous to put any PAB-related proposals before the House Ways and Means Committee again given their willingness to terminate them last year.

The U.S. Chamber of Commerce, the American Trucking Associations and many transportation groups want an infrastructure plan to increase federal fuels taxes to fix the ailing Highway Trust Fund, the main source of grants for highway and mass transit programs for states.

Rep. Bill Shuster, R-Pa., chair of the House Transportation and Infrastructure Committee, did not address the president's plan directly but rather talked about an infrastructure bill needing "to be bipartisan, fiscally responsible, and make real long-term investments in our Nation."

Shuster also talked about the importance of "addressing the long-term sustainability of the Highway Trust Fund." The president's plan is virtually silent on the HTF, with only one mention.

Rep. Peter DeFazio, D-Ore., the ranking minority member of the committee, on Thursday called the plan "fake" and said it would place too much reliance on funding from state and local governments and would result in higher tolls.

Rep. Ron Wyden, D-Ore., the ranking minority member of the Senate Finance Committee blasted the president's plan as "another broken promise to rebuild America's aging infrastructure" that caters to "wealthy investors who only care about wasting taxpayer dollars to fund their privatization schemes."

Wyden also complained that, "$200 billion is a drop in the bucket compared to the $1.5 trillion Republicans in Congress just spent to slash taxes for multinational corporations and the donor class."

National Association of Bond Lawyers' president Sandy MacLennan, said, "A recurrent theme throughout the administration's broad infrastructure proposal is the facilitation of private investment in public projects and also the removal of impediments in existing federal law to tax-exempt financing of these projects. While that looks good on the surface for the municipal market, particularly the expanded list of private activity bond-eligible projects and expanded remedial action for change in use, there may be state law restrictions on public-private endeavors that will need to be reviewed, as well as state restrictions on local financing."

"The total proposed dollar investment seems small in comparison to reported needs," she said.

PAB Details

The president's infrastructure plan would remove state volume caps, and the $15 billion transportation volume caps for tax-exempt PABs used for public infrastructure projects, which would be expanded to include ports and airports.

The alternative minimum tax would also be removed for PABs. Historically the AMT has led to higher interest rates on many PABs, making them more costly for state and local governments to issue.

Public-purpose infrastructure projects would have to be owned by state or local governments, with some exceptions. Projects could be owned by private parties but only under arrangements in which the rates charged for services or the use of the projects are subject to state or local regulatory or contractual control and approval.

Also the projects would have to be available for general public use or to provide services to the general public.

A project would be treated as governmentally owned if a state or local government leases it to a private business if: the term of the lease is no longer than 95% of the reasonably expected economic life of the project; the private lessee agrees not to take depreciation or the investment tax credit with respect to the project; and the private lessee has no option to purchase the project other than at fair market value.

The plan would allow longer-term leases and concession arrangements for projects financed with tax-exempt PABs.

Public infrastructure projects would include the existing tax-exempt PAB categories of: airports; docks, wharves, maritime and inland waterway ports, and waterway infrastructure, including dredging and navigation improvements; mass commuting facilities; facilities for the furnishing of water; sewage facilities; and solid waste disposal facilities.

In addition such projects would include modified or new categories of: surface transportation facilities, including roads, bridges, tunnels, passenger railroads, surface freight transfer facilities, and other facilities that are eligible for federal credit assistance under the Transportation Infrastructure Finance and Innovation Act; hydroelectric power generating facilities, including new construction; flood control and stormwater facilities; rural broadband service facilities; and environmental remediation costs on Brownfield and Superfund sites.

The plan calls for modifying so-called change-of-use tax rules to more easily preserve the tax-exempt status of governmental bonds when the bond-financed project is either used, or purchased, by one or more private parties. It would also provide change-of-use cures for private leasing of infrastructure projects to ensure preservation of the tax exemption of the bonds.

Overall plan details

Overall, the infrastructure plan proposes $200 billion in federal funding over $10 years, which could be used to leverage $1.5 trillion in new infrastructure investment, mostly through incentive grants and the enhancement of several federal loan programs.

The $200 billion would be paid for from cuts in existing programs, such as transit and Transportation Investment Generating Economic Recovery (TIGER) grant programs where “this administration thinks funds haven’t been spent that efficaciously,” a senior White House official told reporters this weekend.

Asked about an increase in federal gasoline tax, the official said, “The president has said he’s open to new sources of funding. This is the start of a negotiation to find best solution for the U.S.”

“We’re not proposing eliminating the Highway Trust Fund, or changing the state revolving funds,” he said. “So to the extent that communities are eligible for federal funds already, that eligibility remains.”

Of the $200 billion, $100 billion would be spent on incentive grants for state and local governments that identify projects and revenue streams, such as property taxes, sales taxes, or user fees, to fund them. These governments can then apply to federal agencies – the Transportation Department, the U.S. Army Corps. of Engineers, and the Environmental Protection Agency — for some percentage of matching funds to complete the financings.

An incentive grant could not exceed 20% of new revenue. An individual state could not receive more than 10% of the total amount available under the incentives grant program.

The White House official took umbrage at the notion that the president wants to reverse funding ratio so that state and local governments will now get only 20% instead of 80% of federal funds for projects.

"It's wildly inaccurate," he said, adding that kind of match is currently only available for federal-aid highways.

Currently the federal government only funds 14% of infrastructure costs, the official said. The remaining 86% of costs is evenly split between state and local governments and the private sector.

Many programs involve far less of a federal match than 80%, he said. Water projects, for example, on average involve a 4% federal share and a 96% state or local government share.

Additionally, a Rural Infrastructure Program would be established and provided $50 billion for capital investments in rural infrastructure investments. A portion of these funds would be set aside for Indian tribal governments and territories.

Governors would receive 80% of the funds via a formula based on rural lane miles and rural population adjusted to reflect policy objectives. The governors, in consultation with a designated federal agencies and state directors of rural development, would choose the infrastructure projects in which to invest.

Another $14 billion will be spent on the expansion of federal loan programs such as TIFIA for transportation projects, the Water Infrastructure Finance and Innovation Act (WIFIA) for water projects, and the Railroad Rehabilitation and Improvement Financing (RRIF) for rail projects.

Also $20 billion will also be used for transformative projects . "Funding under this program will be awarded on a competitive basis to projects that are likely to be commercially viable, but that possess unique technical and risk characteristic that otherwise deter private sector development," the plan states.

The Commerce Department would chair the program and could request other federal agency employees to be temporarily assigned to it. Funding could cover eligible costs of up to: 30% for demonstration; 50% for project planning; and 80% for capital construction.

And $10 billion will be put into a capital financing fund and used for federal office building infrastructure.

Permitting

The president wants to shorten the environmental permitting process to two years by establishing a new 'one agency/one decision' process, the White House official said.

A federal agency with the most expertise will be designated as the lead agency and it will work with other agencies to coordinate the permitting process to reach a collective decision over a 21-month period. The agencies would all sign a "record of decision." They will then issue permits over a three month period, he said.

"The process we have in the U.S. just takes way too long," the official said. "It's not really focused on the outcome in terms of making sure we build projects responsibly. It's focused more on litigation and building up massive documents."

"We are not touching any of the fundamental requirements of the core environmental acts [but rather] the process to be used to do the analysis," the White House official said on Saturday.

The plan will also include plans to remove obstacles and disincentives for individuals to go into the trades to work on infrastructure projects, he said. For example, the administration will call for the licensing process to be more flexible so that licenses can be transferred easily from one state to another. And programs will be set up to expand apprenticeships for workers to more easily develop skills.

Administration officials have spent weeks talking about the infrastructure plan and trying to get some ideas and consensus from lawmakers on Capitol Hill and industry groups. President Trump called on Congress in his State of the Union speech to come up with an infrastructure package.

It won't be easy. White House officials noted there are five to six committees with jurisdiction in each of the House and Senate. Senate Democrats have already called for the federal government to spend $1 trillion on infrastructure, apart from any leveraging.

President Trump asked the state and local officials he met with on Monday to lobby their Senate and House members to support his plan.

The Bond Buyer

By Lynn Hume

February 12 2018

FINRA Requests Comment on the Application of Certain Rules to Government Securities and to Other Debt Securities More Broadly.

Summary

FINRA is requesting comment on the application of the following rules to government securities, including U.S. Treasury securities: FINRA Rules 2242 (Debt Research Analysts and Debt Research Reports); 5240 (Anti- Intimidation/Coordination); 5250 (Payments for Market Making); 5270 (Front Running of Block Transactions); 5280 (Trading Ahead of Research Reports); 5320 (Prohibition Against Trading Ahead of Customer Orders); and NASD Rules 1032(f) (Securities Trader), 1032(i) (Limited Representative – Investment Banking) and 1050 (Registration of Research Analysts). In addition, FINRA is requesting comment on the application of FINRA Rule 5320 as well as NASD Rules 1032(f) and 1050 to all debt securities, in addition to government securities.

Questions regarding this Notice should be directed to:

Afshin Atabaki, Associate General Counsel, Office of General Counsel (OGC), at (202) 728-8902; or Meredith Cordisco, Associate General Counsel, OGC, at (202) 728-8018.

Comment Period Expires: April 9, 2018

View the Full Notice.

How Trump Plans to Turn $200 Billion Into $1.5 Trillion in Infrastructure Spending.

President Trump's long-awaited infrastructure plan proposes that the federal government put up $200 billion in incentives and investments over 10 years, leaving state and local governments and private industry to come up with the rest.

Here's a look at how the plan may pan out, and what the challenges will be in turning $200 billion into $1.5 trillion.

Continue reading.

THE NEW YORK TIMES

By KEITH COLLINS and PATRICIA COHEN

FEB. 12, 2018

Infrastructure Plan Falls Flat for Investors.

President Donald Trump's infrastructure plan has left investors in infrastructure firms unimpressed

Maybe it should be called "Infrastructure Weak."

In the days following the 2016 U.S. presidential election, investors took President-elect Donald Trump at his word that he would open the floodgates of federal spending and deregulation to fix America's creaking transport, energy and water systems.

A basket of 10 U.S. stocks with exposure to infrastructure spending beat the S&P 500 by nearly 13 percentage points in the eight trading sessions through November 17, 2016. In the four sessions following Monday's much-delayed release of the White House's infrastructure plan, though, the same stocks lagged behind the broader market.

Whether one calls it a $1.5 trillion plan or a $200 billion plan—the latter is the actual value of proposed new federal spending over a decade—investors clearly sense that there is less to it than meets the eye.

One reason is the assumed ratio of funding. The largest chunk, $100 billion for the so-called Incentives Program, would be awarded based largely on an at-least four-to-one the ratio of nonfederal to federal money. That gets the value of the administration's plan to $1.5 trillion. Most of the nonfederal money must come from state or local governments rather than private entities.

That ratio, though, is far above the one-to-one typical of large projects such as the recently completed new Tappan Zee Bridge in New York. A more serious problem is that the White House's budget proposal would reduce existing federal infrastructure funding elsewhere.

The recently passed tax cut also weighs on the infrastructure plan. The growing federal budget deficit and rising bond yields have made borrowing more expensive for state and local governments. A lower marginal top tax rate makes municipal bonds less attractive to wealthy individuals, their biggest buyers. And limits on deductions for state and local taxes makes it harder for governments to raise taxes.

Unless the federal government comes up with more funding for existing programs like the Highway Trust Fund, whatever gains are achieved by the infrastructure programs will be offset by cuts elsewhere.

The Highway Trust Fund, which was bailed out in 2016, will need about $100 billion in the next decade to stay solvent, based on Congressional Budget Office projections—the same amount as the proposed Incentives Program. The U.S. Chamber of Commerce, which praised the infrastructure program, also called this week for a gasoline tax increase of 25 cent per gallon to support the highway fund.

Gaudy headline numbers aside, investors are clear in their view that Mr. Trump's infrastructure plan, even if adopted, would do little to boost overall spending. New rules and incentives are nice, but more spending and the revenue to back it up are the missing ingredient.

The Wall Street Journal

By Spencer Jakab

Feb. 16, 2018 5:30 a.m. ET

Write to Spencer Jakab at spencer.jakab@wsj.com

Blackstone, Other Private-Equity Firms May Sit Out Trump Infrastructure Push.

Private-equity funds have raised nearly $34 billion for infrastructure investments in North America

Private-equity firms raised a record sum for infrastructure investment last year, aided by President Donald Trump's promise to pump $1 trillion into America's aging roads and bridges. That was the easy part. Spending it is another matter.

After lobbying the White House to create incentives for states and cities to accept more private money for transportation projects, buyout firms got some of what they sought in the administration's infrastructure plan released Monday.

But few firms believe Mr. Trump's infrastructure plan will open the floodgates for privatization deals, which have long been out of their reach because of cheap funding alternatives such as municipal debt and the challenges of navigating local politics.

Fund managers say they are mainly looking for assets that are already privately owned—such as renewable energy, railroads, utilities and pipelines—and not the deteriorating government-owned infrastructure like roads and bridges that helped attract the capital in the first place. To the extent they are interested in public assets, the focus is more likely to be on privatizing existing infrastructure than on new development—the heart of Mr. Trump's push.

That is the paradox of the administration's plan: It creates incentives for investment that most infrastructure funds aren’t much interested in, and never really have been.

Take Blackstone Group LP. The private-equity firm plans to raise as much as $40 billion for North American infrastructure, but may devote only 10% to public assets, according to a person familiar with the matter. Other prominent infrastructure investors such as Macquarie Group have similar targets—if they target public assets at all. Macquarie, Carlyle Group LP and KKR & Co. are among the firms that have been raising infrastructure funds.

Concentrating their firepower on private assets could mean more competition, higher prices and ultimately lower returns for infrastructure funds. That has some deal makers warning of another false start for the U.S. infrastructure market after poor performance in the wake of the financial crisis.

“Most firms are probably scratching their heads, saying, ‘how do I put the money to work apart from buying existing assets and paying high premiums?’” said Roger Wood, a Moelis & Co. infrastructure investment banker.

Private-equity firms raised a record $33.7 billion for North America-focused infrastructure funds last year, according to Preqin. That brought the funds’ infrastructure-focused capital to roughly $70 billion, a figure that is up more than 40% since the end of 2015.

Those numbers don’t include Blackstone’s fund.

“The extensive discussion of infrastructure during the presidential election created a significant amount of excitement about the sector,” said Mike Parker, U.S. infrastructure advisory leader at EY. “And you’ve seen significant fundraising on the backs of that.”

U.S. infrastructure has been a tough nut for investors to crack. The U.S. market is the largest in the world for privately owned infrastructure, but it also is behind other countries when it comes to privatizing critical transportation assets such as roads and airports. Unlike other countries in which the federal government often has more control, decisions about how U.S. infrastructure projects are financed are often made at the state and local level.

The U.S. also has a larger and more liquid municipal-bond market than other countries. While voters tend to support transportation-spending ballot measures, the idea of giving Wall Street control of key highways or ports is often a hard sell.

That makes buying or leasing public infrastructure assets difficult for private investors. Deals often take years to get done and are notorious for falling apart at the last minute when an administration changes or legislatures reverse course.

Mr. Trump’s plan would streamline the permitting and approval process for new projects, but not do much to change the dynamics of leasing or selling existing assets. The 53-page plan allocates $200 billion of federal spending to new infrastructure projects over a decade. The administration hopes state and local governments and private investors will provide the remainder of the tab, subsequently raised to $1.5 trillion.

These and other provisions could change considerably—or die—as they wind their way through Congress.

Still, the anticipation of the Trump plan appears to have helped Blackstone land a commitment of up to $20 billion from Saudi Arabia’s Public Investment Fund, or PIF, last May. When the investment was announced, Yasir Al Rumayyan, PIF’s managing director, said it reflected “our positive views around the ambitious infrastructure initiatives being undertaken in the United States as announced by President Trump."

Blackstone, whose Chief Executive Stephen Schwarzman headed Mr. Trump's policy advisory council of executives until it disbanded in August, has said the firm's talks with PIF began in May 2016—before Mr. Trump was elected. The firm is now in the initial phase of raising as much as $20 billion to match PIF's money.

"[I]t's very fudgy, historically, trying to do things with the public sector," Mr. Schwarzman said on an analyst conference call Feb. 1. Legislation that encourages private infrastructure investment in public projects "would be sort of a cherry on a sundae for us," he said.

That hasn't stopped Blackstone from making public infrastructure projects a major selling point for its fund. In a marketing document obtained by The Wall Street Journal under a public-records request, Blackstone listed $122 billion of public-investment opportunities, primarily new projects, that could be financed with private capital.

Last month, the Pennsylvania Public School Employees' Retirement System approved a $500 million commitment to the Blackstone fund. A memo recommending the investment cited Blackstone's $122 billion list and concluded President Trump's infrastructure plan "could have a meaningful positive effect" on the buyout firm's ability to invest in the projects.

A spokeswoman for the Pennsylvania fund said the memo's intent was to illustrate "the enormous need" to upgrade U.S. infrastructure.

The Wall Street Journal

By Miriam Gottfried and Cezary Podkul

Feb. 13, 2018

Write to Miriam Gottfried at Miriam.Gottfried@wsj.com and Cezary Podkul at cezary.podkul@wsj.com

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Trump "$1.5 Trillion" Infrastructure Plan Is a Mirage.

Administration officials claim that the President's new infrastructure plan will support $1.5 trillion in infrastructure investment, but his 2019 budget reveals that that number's a mirage: the President would cut annual federal support for infrastructure in the long run and shift costs to states, cities, and private individuals. As we previewed here, it likely would mean cuts to some of the areas in which new infrastructure investment is needed most — while providing a potential windfall for private investors.

At its core, the President's approach is a bait and switch that would cut federal support for infrastructure over the long term. The centerpiece is $200 billion in "new" federal funds that the Administration claims can support at least $1.5 trillion in investment. But the budget proposes deep cuts to programs in the same agencies that would receive new grant-making authority under his infrastructure proposal.

For example, the budget (even with its "addendum" to account for the budget deal) slashes support for mass transit, ends the Transportation Department's TIGER program (which supported some of the most innovative local infrastructure projects over the last eight years), and cuts investment for new projects at the Army Corps of Engineers. It also eliminates the Department of Housing and Urban Development's main programs for building and renovating affordable housing, even as the Trump infrastructure initiative would not support much-needed housing infrastructure.

In addition, the President's budget includes — buried on page 122 of the supplemental "Analytical Perspectives" document — a major cut in federal spending from the Highway Trust Fund that would reach $21 billion a year by the end of a decade. Normally trust fund projections would reflect the spending needed to maintain the current levels of investment. But the Administration proposes to spend no more in a given year than the dedicated trust fund revenues it's currently projected to receive each year, largely through the federal gas tax. This change would move away from a bipartisan consensus in recent years to provide additional money to the fund to prevent such an outcome, effectively resulting in a cut of $122 billion in Highway Trust Fund spending over the last seven years of the budget's ten-year timeframe. The budget reflects this lower spending without proposing anything (beyond the new infrastructure initiative) to address it. Indeed, "Analytical Perspectives" states that the "Federal Government should incentivize more States and localities to finance their own transportation needs," showing that this lower level of support represents an explicit policy choice. Similarly, the budget justifies its other infrastructure cuts on the basis of the new infrastructure initiative, illustrating the President's approach of giving with one hand while taking with the other.

The headline $1.5 trillion figure hides the fact that the proposal would shift costs to states, cities, and individuals. The $1.5 trillion figure simply assumes that states, localities, and the private sector will provide $1.3 trillion of that support. The core element of the new initiative — $100 billion in grants that must account for no more than 20 percent of a project's cost — puts the burden on states and localities to fund the vast majority of any investment, while punting on the question of how they will raise the money. And that's on top of other burdens that the budget would impose on states and localities by cutting programs like Medicaid and SNAP (formerly food stamps), even as the new tax law may make it harder for them to raise revenues by limiting the state and local tax deduction.

The Administration has indicated that private investment will be a major component of its plan, with investors providing funding through public-private partnerships that achieve a financial return through collecting tolls, fees, or other revenues. But this approach could give short shrift to projects that don't lend themselves to tolls, fees, or other dedicated revenue streams — from repairing bridges to filling potholes to modernizing schools to rebuilding infrastructure in low-income communities. And it raises the likelihood that the ultimate cost of the proposal will be borne by low- and moderate-income people through new regressive taxes or fees. Meanwhile, the emphasis on private investment creates potential windfalls for investors through subsidies for projects they might have pursued anyway.

The President wants spending cuts to pay for his proposal but hasn't specified them. Administration officials explained over the weekend that while they haven't attached specific offsets to the proposal, they envisioned paying for it with cuts elsewhere in the budget — including to infrastructure. For example, the President's budget cuts the core Transportation Department budget by more than 19 percent, and White House officials say they might seek to use some of these savings, from cuts to programs like mass transit, to pay for the infrastructure initiative.

The President could also seek to use his infrastructure proposal as a cudgel to try to force Congress to pass his other proposed cuts, in programs ranging from health care to food assistance to housing, as a way to help offset the $200 billion cost. Those cuts would come in lieu of offsetting the cost by raising revenues from wealthy taxpayers or corporations that benefited the most from the recent tax bill. The result? Even beyond any measures that states and localities may need to take to fill the funding gap left by federal infrastructure cuts, the President's initiative could ultimately hurt the same low- and moderate-income families he claims to help.

Center on Budget and Policy Priorities

by Jacob Leibenluft

Feb 12, 2018

[Counties Respond to President Trump's Infrastructure Plan.]

The National Association of Counties (NACo) today responded to President Trump's infrastructure plan and underscored counties' role in not only connecting people and places, but also increasing our global competitiveness.

"We welcome President Trump's focus on upgrading our nation's infrastructure," said NACo Executive Director Matthew Chase. "We must work together to achieve long-overdue infrastructure improvements."

"Counties are using every tool at our disposal to deliver infrastructure projects to our residents," Chase continued. "Despite strict constraints on our ability to generate revenue and an ever-growing list of federal and state unfunded mandates, we invest significantly in infrastructure. We also leverage innovative financing and private-sector partnerships to meet our communities' infrastructure needs."

Counties invest more than $122 billion in infrastructure and public works annually. Counties build and maintain the largest share of public road miles – 46 percent – and 38 percent of America's bridges. Counties are also involved in a third of the nation's airports and support 78 percent of all public transportation systems. Additionally, counties construct water and sewer systems, hospitals, libraries and other public facilities and public safety communications networks.

"To build upon our efforts, we need a reliable federal partner to invest in our communities and streamline processes that inhibit our efficiency," Chase concluded. "Transformational improvements to America's infrastructure have always been the result of a strong federal-state-local partnership. We stand ready to work with the administration and Congress – along with other public, private and nonprofit sector allies – to reinvest in our communities."

Feb. 12, 2018

[S&P: President Trump's Infrastructure Plan: A Substantive Shift To Private-Sector Funding.]

After more than a year of anticipation, on Feb. 12 the Trump released the details of of its plans to fix the nation's broken and crumbling infrastructure. President Donald Trump's "Legislative Outline for Rebuilding Infrastructure in America" framework is aimed at shaking up the federal government's role in infrastructure investment.

Continue Reading

Feb. 14, 2018

The President's Infrastructure Proposal Misses the Mark: Too Much Cynicism, Too Little Leadership.

Rebuilding America was always a central part of Donald Trump's political ambitions. His affirmative message and decades of real estate experience created a palpable sense among both the general public and the media that the President would bring a major infrastructure push to Washington. But from the very first months of his administration, it became clear the new White House team wasn't ready with tangible ideas to match Trump's grandiose rhetoric. With multiple missed deadlines and no official documents since the last budget release, the wait for the plan's grand reveal stretched for months with seemingly no end in sight.

The wait is finally over—and it doesn't feel worth it.

Rather than establishing a clear long-term vision for the country's infrastructure that supports a more competitive and inclusive economy, the proposal is mostly a vehicle to indiscriminately boost spending. Even worse, the proposed cuts elsewhere in the FY 2019 Budget mean the administration is effectively asking everyone else – especially cities and states – to do nearly all the spending all while still claiming credit for new investments. There are certainly commendable elements within the 53 pages, but the core programs include too much cynicism and too little leadership. It's a missed opportunity.

Continue reading.

by Adie Tomer
Fellow – Metropolitan Policy Program

Feb 13, 2018

The Brookings Institutte

Fitch: IL Governor's Budget Proposal Relies on Significant Cost Shifts.

Fitch Ratings-New York-16 February 2018: Governor Rauner's fiscal year 2019 budget proposal for Illinois – which utilizes measures including a pension cost shift to school districts and changes to state employee health insurance to generate a modest surplus – is likely to face significant legislative opposition and Illinois will remain challenged in achieving fiscal balance, Fitch Ratings says. A re-emergence of political stalemate that negatively affects fiscal operations, including a material increase in accounts payable, could trigger a downgrade.

If implemented, the governor's proposed pension cost shifting could pressure budgets for school districts, and would reverse a change implemented just six months ago that increased funding for

Chicago Public Schools (CPS). Illinois' accounts payables would remain very high under the governor's budget, but could gradually be reduced over multiple years if some of his most significant proposals were implemented. The $37.6 billion general funds budget does not incorporate any rollback of recent tax increases. But the governor proposes that the legislature consider pension benefit changes to generate $900 million in savings in support of a partial individual income tax rollback. Fitch believes that this proposal too will face significant legislative opposition, and, if enacted, would likely be subject to legal challenge.

ACCOUNTS PAYABLE REMAINS A KEY CHALLENGE

By the end of fiscal year 2019, the governor's budget office estimates unpaid bills will be $7.4 billion, slightly higher than the $7.1 billion average between December 2010 and June 2015, but more than double what the administration considers a long-term target of 30 days. This is down considerably from a peak of $16.2 billion in October 2017, reflecting a $6 billion November 2017 bond sale, receipt of significant federal Medicaid matching funds following the enactment of a state budget after a two-year delay, and interfund borrowing. But the still extraordinary overhang of budgetary liabilities, nearly nine years into the national economic expansion, reflects the depth of fiscal and policymaking challenges Illinois faces.

Material progress in reducing accounts payable appears unlikely over the next several years, absent unexpectedly robust economic and revenue growth. The governor's budget includes the first year of a proposed four year plan to shift pension costs to school districts and public colleges and universities, with $1.4 billion in annual budgetary savings estimated upon full implementation in fiscal year 2022. The administration anticipates dedicating these savings, along with future operating surpluses, to reducing accounts payable over time. At that rate, it could still be many years before accounts payable approaches a level the state considers normal.

CURRENT YEAR GAP

For the current year, the governor estimates a $590 million operating deficit, despite the large tax increase passed in July 2017 and the resulting 20% increase in revenues, and balancing actions taken by the governor earlier this year. Delays in both implementation of budgeted pension changes and the sale of the Thompson Center state office building in Chicago (now forecast in the fiscal 2019 budget) are key factors behind the projected deficit. Additionally, the governor anticipates $1.1 billion in supplemental needs to address unappropriated spending from fiscal year 2017. On a budgetary, or cash, basis, the gaps are addressed mainly through proceeds from last November's GO sale and matching federal Medicaid funds, and the state ends with a $2 billion surplus in the executive budget projection.

FISCAL 2019 BUDGET DEPENDENT ON SIGNIFICANT COST SAVINGS

For fiscal year 2019, the governor projects a $2 billion general revenue funds structural budget gap, or approximately 5% of projected operating sources. To address the gap the governor proposes several steps including shifting the normal costs for pensions to school districts ($490 million) and public colleges and universities ($101 million). Twenty five percent of the normal costs, or $262 million, would shift to most school districts in fiscal year 2019, the first of a four-year transition envisioned by the governor. But CPS (Issuer Default Rating of BB-/Stable), would see an immediate 100% shift costing $228 million. Just last summer, CPS won legislative and gubernatorial approval for the state to cover the normal cost for pensions, in line with other school districts in the state, which this budget proposal would immediately reverse. Fitch believes it is unlikely that the legislature would revisit this change for CPS so quickly, or push higher pension costs onto other school districts. The executive budget calls for increased evidence based funding formula aid of

$350 million, or 5%, for school districts.

The governor also proposes removing health insurance from collective bargaining with state employees, and instead giving the administration the ability to impose terms that would yield an estimated $470 million in savings for fiscal year 2019. Other proposed changes to group health insurance include shifting costs to public universities ($105 million) and ending subsidies for retired teachers and community college employees ($129 million).

For fiscal 2019, the governor proposes offsetting the higher pension and group health costs for public colleges and universities with higher operating appropriations. But the pension cost shift would ramp up over three additional years, without any commitment for additional state support in those years. Public colleges and universities could be challenged to absorb these cost shifts, particularly following several years of severely delayed state appropriations that weakened their liquidity positions.

The governor proposes closing the remainder of the $2 billion gap primarily through $600 million in interfund borrowing and $150 million from Medicaid provider rate reductions. Interfund borrowing could become outright transfers without a repayment requirement if the legislature approves a related gubernatorial proposal. And the Medicaid rate cuts would require federal approval, which the budget anticipates would take up to six months to secure.

TAX ROLLBACK NOT BUILT INTO BUDGET PLAN

For fiscal 2018, the legislature’s budget (enacted over the governor’s veto) included $4.5 billion in new revenue from increases in the individual income tax (4.95% from 3.75%) and corporate income tax rates (7% from 5.25%), and the fiscal 2019 executive budget retains those increases. But the governor proposes the legislature enact pension benefit changes to generate $900 million in savings that the governor would use to fund a rollback of 0.25% of the individual income tax rate to 4.7%. Pension changes, even the considerations model the governor suggests, are likely to face legal challenges given the strong constitutional protections for pension benefits in Illinois. Fitch notes that the fiscal 2019 executive budget does not assume savings from the proposed pension benefit changes.

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Fitch: CalPERS Funding Change Means More Pressure for California Local Governments.

Fitch Ratings-San Francisco-16 February 2018: A recent change to the California Public Employees' Retirement System's (CalPERS) pension funding rules could heighten budgetary pressure on some of the state's local governments, according to Fitch Ratings.

The action by CalPERS (the nation's largest public employee pension plan) would shorten the amortization period for unfunded liabilities from 30 years to 20 years and raise employer contributions beginning in 2021. It follows previous CalPERS steps that phase in lower assumed earnings on pension assets and revise mortality assumptions for plan members, which have likewise led to earlier contribution increases for participating governmental employers. These actions together are intended to accelerate funding progress and improve CalPERS' long-term sustainability.

That said, the changes are likely to precipitate short-term pressure to some governmental budgets. Potential cost pressures will vary by locality and may depend on legal decisions going forward, but local governments in California will be especially challenged given their limited ability to raise revenues and a history of judicial decisions protecting existing pension arrangements.

California's Supreme Court is expected to soon review several recent appellate decisions that have questioned the "California Rule," a 1955 precedent that established pension benefits, once granted, as a vested contractual right that cannot be subsequently impaired unless offset by a comparable new benefit. This principle has been cited as an impediment to pension benefit reductions in 12 states in addition to California. Some clarity on this point may be forthcoming from California's Supreme Court, but Fitch expects that legal challenges will continue to slow governmental efforts to reduce pension liabilities.

CalPERS changes are emblematic of a larger trend throughout the country of public pensions accounting for an increasing share of many local governments' expenses, not just in California. A recent report by the League of California Cities found that pension contributions will double as a share of governmental budgets in the next seven years. These pending increases follow a steady expansion in pension costs for local governments over the past decade.

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SEC Announces 2018 National Examination Priorities.

The Securities and Exchange Commission's Office of Compliance Inspections and Examinations (OCIE) recently announced its 2018 national examination priorities, which are broken down into five categories: (1) compliance and risks in critical market infrastructure; (2) matters of importance to retail investors, including seniors and those saving for retirement; (3) Financial Industry Regulatory Authority and Municipal Securities Rulemaking Board matters; (4) cybersecurity; and (5) anti-money laundering programs.

The areas of greatest interest to funds and advisers are:

- ***Cryptocurrency, Initial Coin Offerings (ICOs), Secondary Market Trading and Blockchain Technology.*** In light of the rapid growth of ICOs, OCIE will monitor the sale of these products, and, when the products are securities, examine for regulatory compliance. Noted areas of focus include whether financial professionals maintain adequate controls and safeguards to protect these assets from theft or misappropriation, and whether financial professionals are providing investors with disclosures about the risks associated with these investments, including the risk of investment losses, liquidity risks, price volatility and potential fraud.
- ***Mutual Funds and Exchange-Traded Funds (ETFs).*** OCIE identified ETFs in its exam priorities last year, but has broadened its focus to ETFs and mutual funds that seek to track custom-built indexes. OCIE will be looking for any conflicts the adviser may have with the index provider and the adviser's role with respect to the selection and weighting of index components. OCIE will also pay particular attention to mutual funds (1) that have experienced poor performance or liquidity in terms of their subscriptions and redemptions relative to their peer groups, (2) that are managed by advisers with "little experience managing registered investment companies," or (3) that hold securities that are potentially difficult to value during times of market stress (including securitized auto, student or consumer loans or collateralized mortgage-backed securities).
- ***Anti-Money Laundering (AML) Programs.*** Examiners will review for compliance with applicable AML requirements, with continued focus on examining whether applicable institutions are taking reasonable steps to understand the nature and purpose of customer relationships and to properly address risks. This includes, for example, compliance with new rules promulgated by the U.S. Treasury Financial Crimes Enforcement Network, effective on May 18, 2018, designed to strengthen customer due diligence requirements for "financial institutions," which includes mutual funds (but not registered investment advisers).
- ***Cybersecurity.*** Remaining as an item from last year's priorities, OCIE will continue to prioritize examinations of broker-dealers' and investment advisers' cybersecurity programs. Emphasis will be placed on governance and risk assessment, access rights and controls, data loss prevention, vendor management, training, and incident response procedures.
- ***Other Issues Important to Retail Investors.*** Protecting retail investors continues to be a theme in OCIE's 2018 priorities. OCIE will focus examinations on the disclosure of investment costs and fees, wrap fee programs, retirement products and senior investors, and the execution of customer orders in fixed-income securities. OCIE will also continue to examine advisers and broker-dealers that are offering investment advice through automated or digital platforms, including "robo-advisers." These examinations will focus on compliance programs, marketing, formulation of investment recommendations, data protection and disclosures relating to conflicts of interest.

OCIE's announced priorities should come as no surprise, as they reflect many of the concerns and risks the SEC and its staff have expressed in recent years. More importantly, these priorities should serve as a roadmap for firms to test for, enhance and remediate any suspected deficiencies in these areas as they assess their policies, procedures and compliance programs.

by Ryan F. Helmrich and John P. Falco

USA February 16 2018

Pepper Hamilton LLP

SEC's 2018 Exam Priorities Reflect Continued Focus on Cybersecurity.

Annually, the Securities and Exchange Commission's Office of Compliance Inspections and Examinations ("OCIE") publishes its examination priorities for the new year. Recently, OCIE announced five priorities that will inform its examinations moving in to 2018.

OCIE is committed to "promoting compliance, preventing fraud, identifying and monitoring risk, and informing policy." In support of these "pillars," OCIE intends to focus on:

1. Issues of importance to retail investors, such as fee disclosures, mutual funds, and exchange-traded funds;
2. Entities that are critical to the proper functioning of capital markets, such as clearing agencies and national securities exchanges;
3. Oversight of the Financial Industry Regulatory Authority (FINRA) and the Municipal Securities Rulemaking Board (MSRB);
4. Cybersecurity; and
5. Anti-money laundering programs.

Continue reading.

Squire Patton Boggs – Coates Lear, Tara M. Swaminatha and Elizabeth Weil Shaw

USA February 13 2018

Trump's Infrastructure Plan is a Missed Opportunity: Podcast

Adie Tomer, a fellow in the Metropolitan Policy Program, analyzes the Trump administration's infrastructure plan. Tomer discusses who would benefit and who would be left behind by the administration's plans. He also explains the politics behind the plan and what to expect over the coming months.

Listen to the podcast.

by Adie Tomer

Thursday, February 15, 2018

The Brookings Institute

Still No Free Lunch: Infrastructure Investment Must be Carefully Evaluated.

The President's 2019 Budget gives a prominent place to infrastructure policy, proposing $100 billion of matching funds to state and local governments, as well as $50 billion in funding for rural infrastructure and $50 billion in other spending. The matching funds are intended to spur state and local investment, and would be provided to state and local governments that commit to allocating new revenues to infrastructure projects several times larger than the federal grant. The administration argues that this would leverage the federal investment, generating new state and local spending far in excess of the federal commitment.

Policymaker attention to infrastructure policy is certainly merited. A Hamilton Project blog post, "No Free Lunch: The Pros and Cons of Public-Private Partnerships for Infrastructure Financing," explored this very issue. Falling public investment at all levels of government—shown in the figure below—presents a challenge for building and maintaining American infrastructure at levels that can support robust economic growth.

Continue reading.

by Ryan Nunn

Wednesday, February 14, 2018

The Brookings Institute

Fitch: Infrastructure Plan Is Hurdle for US States and Locals.

Fitch Ratings-New York-13 February 2018: The infrastructure proposal released yesterday by the Trump administration relies primarily on funding from state and local governments. Fitch Ratings believes that providing funding from tax revenues could be challenging for some state and local governments as many have already raised revenues in recent years to fund infrastructure investments and general revenue growth has been slow. The plan includes limited additional federal funding and lacks a long-term solution for the federal highway trust fund, which serves as the primary source of existing federal infrastructure funding. Highway trust fund insolvency remains a significant long-term federal infrastructure issue.

The infrastructure proposal includes approximately $200 billion in federal funding over 10 years, largely repurposed from existing transportation programs. States and locals are asked to provide up to an 80% match for competitive grants and loans for $120 billion of this total. In contrast, most current federal funding operates on a 80% federal to 20% state and local match ratio. In the proposed plan, $50 billion will go directly to governors for rural infrastructure, while $10 billion will be for federally owned infrastructure, and $20 billion will fund expansion of existing federal loan programs and private activity bonds. The $200 billion represents limited increased federal funding over the next decade with much of it reallocated from existing transportation programs including Amtrak and the Federal Transit Administration's Capital Investment Grants (New Starts).

Many states have implemented transportation funding increases in recent years at a time of federal inaction. This will limit their willingness to pursue the additional revenue increases required by the proposal. Since 2013, 26 states and the District of Columbia have implemented transportation funding changes according to the National Conference of State Legislatures. Often, the additional funding has been directed to specific initiatives with a heavy focus on maintenance of existing facilities. Fitch anticipates these states in particular will be challenged to meet the proposed 80% match requirements for new projects.

The new cap on the SALT deduction implemented with the December 2017 Tax Cuts & Jobs Act (H.R. 1) further limits state and local governments' flexibility to generate the funding called for in the administration's plan. Taxpayers in 19 states and the District of Columbia had average SALT deductions exceeding the $10,000 cap imposed by H.R. 1, according to the Government Finance Officers Association (GFOA). The average deduction exceeded $9,000 in another 12 states in the GFOA analysis, which was based on 2015 Internal Revenue Service data. Tepid growth in state tax collections, which makes meeting operating spending demands for education and health care an ongoing challenge, further complicates states' ability to dedicate funding to a new federal transportation program. Using U.S. Census Bureau data, Fitch estimates real year-over-year growth in state tax collections was less than 1% in third-quarter 2017.

Highway trust fund insolvency remains a critical long-term federal infrastructure issue in Fitch's view, and the administration's proposal lacks any measures to address it. The highway trust fund provides roughly $40 billion in highway spending and $10 billion in transit spending to states annually. The Federal Highway Administration reports that since fiscal year 2008, trust fund spending has outpaced revenues, requiring approximately $140 billion in congressional transfers from other funds, mainly the treasury's general fund. The Congressional Budget Office estimates the highway trust fund will become insolvent under current law by 2020, threatening a primary source of existing federal support for infrastructure.

The administration's infrastructure proposal, part of its fiscal year 2019 budget request, faces an uncertain path through Congress.

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

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Puerto Rico's Creditors Unite To Call For A Credible, Pro-Growth Fiscal Plan.

NEW YORK, Feb. 14, 2018 /PRNewswire/ — A group of creditors (the "Creditors" or "we"), which collectively holds a substantial portion of Puerto Rico's outstanding debt, released the below statement today in response to the most recent version of the Commonwealth's Fiscal and Economic Growth Plan (the "Plan" or "FEGP"):

Although Puerto Rico's creditors have differing perspectives on a number of issues related to the ongoing restructuring, we share a unified view that a pragmatic, transparent and growth-focused policy agenda is critical to the island's recovery. This view has only strengthened since the devastation caused by Hurricanes Irma and Maria exacerbated the already difficult economic situation on the island. Unfortunately, we believe the Commonwealth's recently proposed FEGP represents a major step backward on the road to recovery. The Plan fails to provide a credible basis on which to restructure the island's debt, while completely lacking a foundation for revitalizing the local economy and restoring access to the capital markets.

Perhaps the most troubling issue with the FEGP is that it was developed in an opaque manner, essentially relying on outputs from underlying analyses that have never been made public. This flies in the face of the Commonwealth's commitment to transparency and undermines recent guidance from House Natural Resources Committee Chairman Rob Bishop, who stated "[i]t is imperative the Oversight Board and Governor fully integrate those who hold the debt into the development of these [fiscal] plans, thereby guaranteeing accuracy and transparency in the underlying assumptions."

Continue reading.

Creditors Cry Foul on Puerto Rico's Latest Fiscal Plan.

NEW YORK (Reuters) – A large group of Puerto Rico's creditors united on Wednesday in condemning the U.S. commonwealth's revised fiscal plan, calling it a step backwards in rebuilding from years of mismanagement and the devastation caused by Hurricanes Irma and Maria.

Puerto Rico Governor Ricardo Rossello speaks during a Facebook live broadcast in the library of the governor's mansion, in San Juan, Puerto Rico January 24, 2018. REUTERS/Alvin Baez
Unveiled by Governor Ricardo Rossello on Tuesday, the plan highlighted the use of $18 billion in additional money from the U.S. federal budget to turn a deficit into a surplus of $3.4 billion within six years.

"The Plan fails to provide a credible basis on which to restructure the island's debt, while completely lacking a foundation for revitalizing the local economy and restoring access to the capital markets," the creditors said in a joint news release.

Before the storms, the recovery plan had projected a nearly $4 billion surplus through 2021. But after the hurricanes, the government forecast a $3.4 billion gap for the same period that would not allow any repayment of the island's debt.

Puerto Rico was already in crisis when Maria smashed into it. The bankrupt U.S. territory, whose finances the U.S. Congress placed under federal oversight, owed $120 billion in combined bond and pension debt. It had near-insolvent public health and retirement systems, and was suffering from a shrinking population.

The creditors say the new plan remains opaque on issues such defining essential services versus what the government wants to pay; not fully accounting for cash held in accounts that might be available to meet fiscal plan needs; not sharing 2015 audited financial statements; using an outdated migration forecast; and using healthcare cost and plan participation assumptions that contradict the government's own outmigration forecast.

Puerto Rico's financial oversight board is expected to evaluate Rossello's revised plan in the coming weeks and, after a public hearing, determine whether to certify it.

The benchmark GO bond, trading in default without a yield, traded just under 60 U.S. cents on the dollar before Maria hit. On Wednesday it traded at 29.25 cents, up from an all-time low of 21.1820 cents on Dec. 14 74514LE86=MSRB, according to Thomson Reuters. COFINA senior bonds last traded at 50.90 cents 74529JAR6=MSRB from 59.11 cents the day before Maria hit.

This group of debt holders, some of whom are fighting one another over who should be paid first out of any available debt servicing funds, are: bond insurers Ambac, Assured Guaranty, National Public Finance Guarantee Corp; holders of so-called COFINA senior debt which is backed by sales tax receipts; a group of mutual fund creditors that includes Franklin Advisers and OppenheimerFunds; Syncora; The Puerto Rico Funds; and individual investors.

by Daniel Bases

FEBRUARY 14, 2018

Puerto Rico Bonds Stage Record Rally as Surplus Projected.

- **Most active securities jump by 11% on new recovery forecasts**
- **With federal aid coming in, government now expects a surplus**

Puerto Rico bonds rallied the most since the island collapsed into a financial crisis, with prices jumping almost 11 percent after the territory projected budget surpluses that may allow it to resume bond payments in as little as two years.

General obligations with an 8 percent coupon and maturing in 2035, the territory's most active securities, rose Wednesday to an average price of 29 cents on the dollar, the highest since Nov. 1 and up from 26.2 cents Tuesday. It was the biggest one-day gain since the bonds were first issued in March 2014.

The increase reflects a more optimistic view by investors, who dumped the island's debt after it was battered by Hurricane Maria in September amid speculation they faced even deeper losses once the government emerges from bankruptcy.

But the influx of federal aid has left Puerto Rico anticipating a more rapid financial recovery than it did just last month. The updated fiscal plan released Tuesday projects that it will have a $2.8 billion surplus through fiscal 2023, after accounting for bankruptcy costs and other expenses. That's a stark shift from its forecast in January that it would have a large deficit over the next five years.

"The dearth of good news, when there is some, gets a quick positive reaction," said Matt Dalton, chief executive officer of Rye Brook, New York-based Belle Haven Investments, which manages $6.8 billion of municipal bonds, including insured Puerto Rico debt. "Surplus buy, deficit sell."

The rally extended to other commonwealth debt. Senior sales-tax bonds maturing in 2040 traded at an average 51.1 cents on the dollar Wednesday, the highest since Sept. 27, according to data compiled by Bloomberg. Securities issued by the public buildings authority that are due in 2039 rose to 26.9 cents from 24.2 cents.

Puerto Rico has been defaulting on bond payments since 2015 and last year filed for bankruptcy protection from creditors, as allowed under a law signed by then-President Barack Obama to help the island arrest its debt crisis.

The projected surplus could allow Puerto Rico to pay about 14 percent of the $20 billion of debt service due from fiscal 2018 through 2023, according to the plans, though whether any bonds are ultimately paid will be hashed out in bankruptcy court. The surpluses are projected to begin in 2020.

"It seems like the governor is getting what he wants, which is federal help," said David Tawil, president and co-founder of Maglan Capital LP, which bought Puerto Rico general obligations in the past few weeks after spurning the debt since 2014. "And on the basis of that federal help he is at least willing to play ball at some level with the bondholders."

Puerto Rico also provided the first public estimate of how much of the central government's approximately $41 billion of debt it may be able to repay, saying it could cover as much as $19.1 billion of principal if the debt can be restructured with an interest rate of 4.5 percent. The analysis doesn't spell out how that may be divided among varying classes of bondholders who are fighting in court, nor does it apply to debt sold by other arms of the government, such as the electric and water companies.

Even with Wednesday's gain, Puerto Rico bonds are still selling for roughly half what they were before the September hurricane, when they traded for about 56.7 cents.

Creditors are still at odds with the government over its efforts to plot a recovery. A group of bond-insurance companies and investors Wednesday said the commonwealth's federal oversight board and island lawmakers should reconsider the "flawed" turnaround plan and that the debt sustainability analysis relies on sparse data and "outright mischaracterizations."

Bloomberg Markets

By Michelle Kaske and Danielle Moran

February 14, 2018

- Orrick: Tax Issues When Fixing Rate and Fee Adjusters in Tax-Exempt Loans.
- Impact on Muni Bonds of New Accounting Guidelines for Local Governments.
- New MSRB MuniEdPro® Course: Upcoming Mark-Up Disclosure Requirements and Determination of Prevailing Market Price.
- GASB Requests Public Input on Revenue and Expense Recognition.
- Fitch: Puerto Rico Ruling Could Have Wide-Ranging Impact on Municipal Debt.
- Criteria FAQ: S&P Global Ratings' Approach To Rating U.S. Local Government Bonds Secured By Dedicated Limited Ad Valorem Tax Pledges.
- Credit FAQ: An Overview Of S&P Global Ratings' Updated Methodology For Rating U.S. Solid Waste System Financings.
- Neighborly Issuer Brief: A Volatile Stock and Bond Market Makes for a Difficult Space for Munis and Issuers.
- Understanding Costs and Benefits: Leases

- *Paul Cheatham IRA v. Huntington National Bank* – Court of Appeals holds that contract claim for breach of trust indenture entered into between trustee for municipal bondholders and county as obligor, whether asserted against trustee or obligor, arose out of contract with bondholders and was thus a "right in the security" that automatically transferred to subsequent bond purchasers.
- *Zeppelin v. Federal Highway Administration* – District Court holds that it had power, under Administrative Procedure Act, to enjoin Colorado Department of Transportation (CDOT) from sending money to city and county to fund stormwater project, despite fact that CDOT was not federal agency, where CDOT actively consented to federal involvement in its operations and requested federal funds.
- And finally, Unclear on the Concept: Judicial Edition is brought to us the week by *St. Bernard Port, Harbor & Terminal District v. Violet Dock Port, Inc., LLC*, in which the Superior Court judge stated that it wasn't his job to "split the baby," and thus he had no choice but to (apparently randomly) opt for either the city's $16M valuation or the landowner's $35M valuation in eminent domain case. None of that pesky adjudicating for me, thanks. Just in case the Superior Court judge wasn't feeling up to opting between literal and figurative, a bemused Supreme Court of Louisiana went ahead and remanded to the Court of Appeals to split that baby.

CREDITORS' REMEDIES - ALASKA

Beecher v. City of Cordova

Supreme Court of Alaska - January 19, 2018 - P.3d - 2018 WL 473373

City, which had been granted a money judgment against former commercial tenants it had evicted from city-owned land, and had pursued collection for several years before suspending its efforts, resumed its efforts to collect, and tenants moved for an accounting of left-behind property and the amount still owing on the judgment.

The Superior Court allowed execution to continue without an accounting, and former tenants appealed.

The Supreme Court of Alaska held that:

- Burden was on city to explain what happened to former tenant's personal property after city took possession of leased premises;
- City was not required to execute against individual pieces of personal property identified in its creditor's affidavit; but
- Genuine issues of material fact about whether city was estopped from contending that its judgment against former commercial tenants remained unsatisfied precluded trial court from accepting city's accounting and allowing execution against former tenant's personal property to continue.

Burden was on city to explain what happened to former tenant's personal property after city took possession of leased premises, even though it may have placed a considerable burden on city to render a proper accounting given the passage of the time since the original judgment in favor of city; city did not dispute that it had a creditor-debtor relationship with former tenants, former tenants submitted evidence that tended to show city held their personal property without accounting for its value, and city did not dispute that former tenants left behind property they identified in their motion for an accounting.

City was not required to execute against individual pieces of personal property identified in its creditor's affidavit after it received a writ of execution against judgment debtors, former commercial tenants of city, and thus, acted within its grant of authority when it executed on judgment debtors' bank accounts; the writ of execution issued by the court against the property of the judgment debtors did not direct the particular property to be sold, but instead, simply authorized the city to satisfy the judgment with any personal property subject to execution.

Genuine issues of material fact about whether city was estopped from contending that its judgment against former commercial tenants remained unsatisfied precluded trial court from accepting city's accounting and allowing execution against former tenant's personal property to continue; city, in its creditor's affidavits, said it would attempt to satisfy its judgment by levying against certain property, and if it in fact retained former tenants' property for its own use, without accounting for its value, it may have been unjustly enriched to the detriment of former tenants, which could be relevant to the prejudice, interests of justice, and unconscionability elements of the estoppel doctrines.

INVERSE CONDEMNATION - CALIFORNIA

Sierra Palms Homeowners Association v. Metro Gold Line Foothill Extension Construction Authority

Court of Appeal, Second District, Division 7, California - January 29, 2018 - Cal.Rptr.3d - 2018 WL 580250 - 18 Cal. Daily Op. Serv. 1021

Condominium homeowners' association brought action alleging inverse condemnation and other torts against municipal transit authority and private contractor, arising from construction and maintenance of metro railway.

The Superior Court sustained demurrers and struck remainder of complaint. Association appealed.

The Court of Appeal held that condominium homeowners' association had standing, pursuant to statute allowing such associations to bring certain actions on behalf of owners of fractional property interests in common areas, to bring inverse condemnation action against municipal transit authority for alleged damage to common boundary wall.

INFRASTRUCTURE FUNDING - COLORADO

Zeppelin v. Federal Highway Administration

United States District Court, D. Colorado - November 9, 2017 - F.Supp.3d - 2017 WL 6947923

City residents brought action against Federal Highway Administration and Colorado Department of Transportation (CDOT), under Administrative Procedure Act, seeking to enjoin CDOT from funding city and county stormwater project.

The District Court held that:

- Court had power to enjoin CDOT from sending money to city and county to fund project; and
- Court lacked subject matter jurisdiction over claims.

District Court had power, under Administrative Procedure Act, to enjoin Colorado Department of Transportation (CDOT) from sending money to city and county to fund stormwater project, despite fact that CDOT was not federal agency, where CDOT actively consented to federal involvement in its operations and requested federal funds.

District Court lacked subject matter jurisdiction over claims by city residents against Federal Highway Administration and Colorado Department of Transportation (CDOT), brought under Administrative Procedure Act, seeking to stop CDOT from funding city and county stormwater project, since stoppage of state funding would likely not deter city and county from proceeding with project, meaning that any injury to city residents would likely not be redressed by favorable ruling.

ANNEXATION - ILLINOIS

In re Petition to Annex Certain Territory to Village of Lemont

Appellate Court of Illinois, First District, Third Division - December 13, 2017 - N.E.3d - 2017 IL App (1st) 170941 - 2017 WL 6559294

Residential landowners seeking annexation of unincorporated land to adjacent village, which subsequently intervened and joined as plaintiff, filed petition for “forcible” or “involuntary” annexation of land that included golf course property.

Following hearing, the Circuit Court denied landowners’ motion for substitution of judge, and following discovery, granted objectors’ motion for summary judgment. Landowners and village appealed.

The Appellate Court held that:

- Landowners and village were not entitled to substitution of trial judge after trial judge presided over hearing and issued a ruling in favor of objectors;
- Voluntary petitions previously filed by golf course owners seeking annexation of their unincorporated land into village were not abandoned, and thus the voluntary petitions had priority; and
- Trial court did not abuse its discretion by limiting discovery to after a certain date.

Residential landowners, who owned portion of unincorporated territory, and village were not entitled to substitution of trial judge in their proceedings for involuntary annexation of land to village, after trial judge presided over hearing and issued a ruling in favor of objectors, refusing to move forward on the petition and granting objectors’ request to meet after annexation ordinances passed in objecting village; trial judge had already issued a ruling that was substantive in nature and, even if the ruling was not substantive, landowners had been given ample opportunity at the hearing to “test the waters” in order to discern the judge’s potentially unfavorable disposition on the merits.

Voluntary petitions filed by golf course owners seeking annexation of their unincorporated land into village were not abandoned by the owners or the village at issue, and thus the voluntary annexation petitions had priority over subsequent “involuntary” annexation petition filed by residential landowners and joined by competing village; the delay in village’s formal approval of the voluntary petitions was owing to village’s engagement in consistent action to prepare for annexation process, and the village eventually did pass ordinances facilitating the annexation, all of which constituted “action” on the case so as to prove the village was integrally involved in the process and had not abandoned the cause of annexation.

Trial court did not abuse its discretion by limiting discovery to “January 1, 2015, and forward,” in annexation dispute between residential landowners and one village against golf course owners and another village; prior voluntary annexation petitions filed by golf course owners in previous years were never challenged by any opposing annexation petitions, were irrelevant to the matter at hand, which was determining the priority for the 2015 annexation petitions, and no law was cited demonstrating that those prior petitions could even be considered still jurisdictionally "live" once they were replaced with the 2015 petition.

EMINENT DOMAIN - LOUISIANA

St. Bernard Port, Harbor & Terminal District v. Violet Dock Port, Inc., LLC

Supreme Court of Louisiana - January 30, 2018 - So.3d - 2018 WL 618831 - 2017-0434 (La. 1/30/18)

Parish port, harbor, and terminal district filed quick-take expropriation action against owner of property that contained port facilities.

The District Court found, following evidentiary hearing, that taking served public purpose and, following bench trial, rendered judgment finding that value of property was $16,000,000, that port was not entitled to damages for debris removal, and that property owner was entitled to interest on funds that had remained in court registry pending determination on offset claim.

Property owner appealed, and district cross-appealed. The Court of Appeal affirmed as amended, and property owner applied for writ of certiorari.

The Supreme Court of Louisiana held that:

- Parish port, harbor, and terminal district's expropriation of property containing port facilities was for valid public purpose;
- Parish port, harbor, and terminal district's expropriation of property containing port facilities did not violate the business enterprise clause; but
- Trial court's misconception that it could not "split the baby" and arrive at a fair market value somewhere in between two expert opinions was prejudicial to property owner.

Parish port, harbor, and terminal district's expropriation of property containing port facilities was for valid public purpose, and thus did not violate constitutional requirement that taking be for public purpose, though property owner asserted real purpose was so that port could continue to operate its layberthing and cargo facility and obtain contracts with United States Navy; legislature granted district broad discretion and authority to maintain and further development of its operations, district indicated that it intended to maintain current use of property initially, with comprehensive plan to expand facility to include dry and liquid bulk cargo operation, and healthy port would generate local jobs, industry, and associated local consumption, and would provide great public benefit.

Parish port, harbor, and terminal district's expropriation of property containing port facilities did not violate the business enterprise clause, which barred the taking of a business enterprise or any of its assets for the purpose of operating that enterprise or halting competition with a government enterprise; testimony at trial was that property owner's lease with the Navy was an afterthought, and that the "best news" for the Port's operation would be to use the Navy berth to further expand cargo operations, and although property owner argued that its cargo operations were expanding, the record showed them to be negligible, and not in competition with the Port.

Trial court's misconception that it could not "split the baby" and arrive at a fair market value in expropriation case somewhere in between two expert opinions was prejudicial to property owner, insofar as it limited what the trial court believed to be just compensation due property owner under the law; trial court was not required to make a binary choice and accept one side's testimony in its entirety, but was instead empowered to weigh strengths and weaknesses of the experts' testimony.

ZONING & LAND USE - MINNESOTA

Eich v. City of Burnsville

Court of Appeals of Minnesota - January 8, 2018 - N.W.2d - 2018 WL 313087

Manufactured-home-park resident who had received notice from city of alleged property-maintenance- and zoning-code violations brought putative class action against city for damages and injunctive relief, alleging that city's enforcement within manufactured-home park was preempted by federal and state law and violated due-process rights under the state constitution.

After the granting of class certification and temporary injunctive relief, the city changed its code, city repealed all pending violations and violation letters that had been issued within manufactured-home park, and the District Court granted summary judgment and permanent injunctive relief to resident, but stayed the issue of whether resident was entitled to sanctions and damages based on claims made under the state constitution. City appealed.

The Court of Appeals held that:

- City's enforcement of its code in manufactured-home park was not expressly preempted by the National Manufactured Housing Construction and Safety Standards Act;
- City's enforcement of its zoning and property-maintenance codes within manufactured-home park was not preempted, either by express or field preemption, by state law;
- City could enforce state building code within manufactured-home park if the enforcement action was related to a structure other than a manufactured home or to a manufactured home's accessory structures;
- City was not preempted from enforcing the manufactured-home building code within manufactured-home parks; and
- Resident's claims for injunctive relief as to alleged violations of resident's due-process rights under the state constitution were moot.

ZONING & LAND USE - MISSISSIPPI

City of Jackson v. Allen

Supreme Court of Mississippi - February 1, 2018 - So.3d - 2018 WL 654055

After city council passed ordinance rezoning parcel of downtown property, resident, individually and as president of non-profit corporation designated as downtown area's district management group, filed bill of exceptions seeking reversal of rezoning decision.

The Circuit Court denied city's motion to dismiss and ultimately reversed city council's decision. City appealed.

The Supreme Court of Mississippi held that:

- Bill of exceptions is a jurisdictional requirement for the circuit court to hear an appeal, overruling *Bowen v. DeSoto Board of Supervisors*, 852 So.2d 21;

- Resident’s failure to include signature of municipal board’s president on bill of exceptions did not deprive Circuit Court of jurisdiction; and
- Trial court did not abuse its discretion in determining that resident had associational standing to appeal rezoning decision.

PUBLIC UTILITIES - OHIO

In re Review of Alternative Energy Rider Contained in Tariffs of Ohio Edison Company

Supreme Court of Ohio - January 16, 2018 - N.E.3d - 2018 WL 549915 - 2018 -Ohio- 229

Public Utilities Commission initiated action against electric-distribution utility to review prudence of utility’s purchases of renewable energy credits.

The Commission ordered utility to credit customers’ bills based on some imprudent purchases of in-state renewable energy credits. Utility appealed, and environmental group and Office of the Ohio Consumers’ Counsel filed cross-appeals.

The Supreme Court of Ohio held that:

- Commission engaged in unlawful retroactive rulemaking when it ordered electric-distribution utility to credit customers’ bills for failing to act prudently in purchasing renewable energy credits;
- Evidence did not support determination that information about utility’s renewal-energy-credit suppliers and auction process derived independent economic value from not being generally known, as required to find information was a trade secret; and
- Utility took reasonable steps to maintain the secrecy of information regarding renewal-energ--credit suppliers and auction process, as required to find information was a trade secret.

BONDS - OHIO

Paul Cheatham IRA v. Huntington National Bank

Court of Appeals of Ohio, Sixth District, Lucas County - December 22, 2017 - N.E.3d - 2017 WL 6550474 - 94 UCC Rep.Serv.2d 536 - 2017 -Ohio- 9234

Bondholder who invested funds into municipal bond issue brought purported class action against trustee for bondholders, who also served as lessor of project, asserting claims for breach of fiduciary duty, breach of trust, negligence, breach of contract, and liability for mismanagement of the project.

The Court of Common Pleas denied bondholder’s motion to certify class. Bondholder appealed.

The Court of Appeals held that contract claim for breach of trust indenture entered into between trustee for municipal bondholders and county as obligor, whether asserted against trustee or obligor, arose out of contract with bondholders and was thus a “right in the security” that automatically transferred to subsequent bond purchasers pursuant to Ohio version of Uniform Commercial Code (UCC); trust Indenture was part of the contract with the bondholders and was part of the “bond proceedings.”

PUBLIC UTILITIES - TEXAS

City of Richardson, Texas v. Oncor Electric Delivery Company LLC

Supreme Court of Texas - February 2, 2018 - S.W.3d - 2018 WL 663159

City brought breach of contract action against electric utility, alleging that utility's refusal to pay costs for relocating electric utility poles and facilities in order to accommodate city's widening of public alleys violated franchise contract, common law principles, and statutory law.

The District Court entered summary judgment for city. Utility appealed. The Dallas Court of Appeals reversed. City petitioned for review, which the Supreme Court granted.

The Supreme Court of Texas held that tariff, which set rates for utility's relationship with retail customers and required customers to pay relocation costs, did not express with unmistakable clarity an intent that city pay for costs of relocating utility poles to accommodate city's widening of alleys, and thus, tariff did not conflict with franchise contract's requirement that utility pay relocation costs, such that the contract controlled dispute over relocation costs.

EMPLOYMENT - WASHINGTON

Sprague v. Spokane Valley Fire Department

Supreme Court of Washington - January 25, 2018 - P.3d - 2018 WL 547363

Terminated firefighter, whose termination the county civil-service commission had upheld in a decision that was not appealed, brought action against the department on a § 1983 claim for violating his First Amendment free-speech rights, on an equal-protection claim, on a Title VII claim, and on various state-law claims for allegedly firing him for including religious comments in e-mails sent through the department's computer systems and in items that he posted on the department's electronic bulletin board.

The Superior Court denied firefighter's motion for partial summary judgment that the department's e-mail policy was unconstitutional and granted the department's motion for summary judgment. Firefighter appealed. The Court of Appeals affirmed. Firefighter appealed.

The Supreme Court of Washington held that:

- Firefighter spoke as a citizen, not as a public employee, in e-mails that he sent on department's e-mail system concerning a religious fellowship and religious themes;
- Firefighter's e-mails that discussed the mental health and well-being of firefighters related to public safety and matters of public concern;
- Firefighter's e-mails that discussed leadership related to public safety and matters of public concern;
- Firefighter's communications over department's e-mail system and electronic bulletin board that discussed religious fellowship's social activities and logo design were not matters of public concern;
- Department policy that restricted use of department's e-mail system to departmental business was reasonable; but
- Department's restrictions prohibiting firefighter from using department's electronic bulletin board to post information about religious fellowship's activities were unreasonable;
- Department's application of its e-mail system's use policy to preclude firefighter from discussing

otherwise permissible themes from a religious perspective was not a viewpoint-neutral application of its e-mail policy; and
- County civil-service commission's decision that upheld firefighter's termination did not collaterally estop firefighter's action.

GASB Requests Public Input on Revenue and Expense Recognition.

News Release.

Invitation to Comment.

Review: Building 'The Source' of America's Cash Flows and Liquid Assets.

Canals, dams and river projects—given the capital they require—have altered the course of public debt.

'Why is it," Martin Doyle asks, "that sewers are often at the cutting edge in finance?" The question isn't meant as a slur on the financial industry but as testimony to the oversized but underrated role that waterworks have played in the economic annals of the United States. Throughout history, Mr. Doyle argues, our penchant for big-ticket water projects—canals, dams, waste-treatment plants, the wholesale engineering of rivers—has altered the course of public finance and even shifted the balance of power among federal, state and local governments. Instead of "The Source," his book might have been called "Water and Money."

Since colonial times we have bent rivers to our own ends. Originally we harnessed them to power gristmills, whose crucial role and monopolistic status earned them the label of "America's first public utilities," complete with government regulation of the fees that millers could charge. In the early 19th century, entrepreneurs began to extend the reach of rivers with canals and thus ease the movement of goods and people to and from the East Coast. The canal companies were among America's earliest private corporations, and their massive enterprises became the first great public works.

The legendary Erie Canal proved spectacularly lucrative, operating at a profit even before its completion in 1825 and helping to position New York state as a commercial powerhouse. Other canals, scattered from New Hampshire to Virginia to Indiana, hoped to follow suit but had only limited success. When private capital dried up, Mr. Doyle tells us, state governments floated bonds to prop up the too-big-to-fail projects until, by the late 1830s, 86% of all public debt was owed by the states, with the lion's share—more than $100 million—tied up in canals. (Federal debt at the time amounted to just 1.5% of the total.) When the country was plunged into the Panic of 1837, some states were forced into default, only deepening the economic misery.

In the late 1800s, as cities began to install water mains and sewer lines, the once-burned state governments refused to pony up, and cities had no choice but to assume the debt themselves. By the first years of the 20th century waterworks accounted for most municipal indebtedness, and by the 1940s the cities had replaced the states as the leading public debtors, issuing more than 70% of all government bonds. Local property taxes, meanwhile, swelled to 42% of total government revenues. Throughout U.S. history, Mr. Doyle writes, "paying for sewers has resulted in tectonic shifts in the political and financial structures."

THE SOURCE
By Martin Doyle
Norton, 349 pages, $26.95

Another such shift would come during the Great Depression. With local governments on the verge of financial collapse, Washington began sponsoring infrastructure projects, including waterworks (whose ambitious scale made them ideal for absorbing labor), and before long the federal government had replaced the cities as the primary carrier of public debt. For the first time, income taxes (enabled by the 16th Amendment, ratified in 1913), and not property taxes, made up the largest part of all taxes collected. But a portion of what flowed to Washington eventually returned to its source, as the federal government redistributed part of the funds to cities and states. By the late 1970s, federal grants accounted for almost a third of state and local government revenues.

Washington also paid to scrub sewage and industrial pollution from the nation's rivers. But with the funds came new regulations, culminating in the Clean Water Act of 1972, which introduced federal standards for water quality. A decade later, the Reagan Revolution stanched the tide of federal aid to the cities. But the regulations remained, and now local governments had to shoulder more of the expense of treatment plants.

Pressed to maximize their limited capital, some water boards, as Mr. Doyle shows, made Faustian investments in interest-rate swaps, auction-rate securities and other high-risk instruments, until by 2005 more than a quarter of all municipal debt was locked in such ventures. When the crash came two years later, more than a few local governments found themselves in bankruptcy, just as the overextended states had been during the Panic of 1837.

While tracing water's central, shifting role in public finance, Mr. Doyle plumbs such subjects as the transformation of the Mississippi and other major rivers into "highly engineered, optimized hydraulic machines"; the moral hazards created by federal flood insurance, which encourages development in high-risk areas; the restoration of rivers through a kind of cap-and-trade system known as stream credits; and the Western water wars, a fierce, zero-sum game that pits environmentalists against farmers and Native Americans and raises complex issues of property rights and sovereignty.

It is a story more tortuous than the Mississippi itself, but Mr. Doyle, a professor of river studies at Duke, tells it well. His writing, which tacks effortlessly from economics to history to science, is clear and absorbing, whether he is describing intricate credit schemes or the channelizing of rivers. Also welcome are the occasional field trips, including an excursion on a Mississippi towboat and a surprisingly engrossing tour of a waste-treatment plant.

On technical subjects, Mr. Doyle helpfully strips his explanations to the easily grasped essentials. But when he writes on history, this approach serves him less well. In the interest of providing a compelling narrative and advancing his argument, he sometimes falls into overstatement, as when he claims that "the whole economic history of the United States is the saga of negotiating the fiscal roles and responsibilities of the different levels of government in providing the most basic of services for their citizens—the water supply and sewer systems." Even so, "The Source" is an original and thought-provoking exploration of the sinuous course that water has carved through our economic and political landscape.

The Wall Street Journal

By Gerard Helferich

Feb. 9, 2018 4:37 p.m. ET

—Mr. Helferich's most recent book is "An Unlikely Trust: Theodore Roosevelt, J.P. Morgan, and the Improbable Partnership That Remade American Business."

How Are Cities Paying Their Bills? With Fees on Trash, Parking, Sewers and 911 Calls.

From Chicago to Danville, Ill., why residents are paying higher fees for mundane services

Scranton, Pa. is turning to an unlikely source for fiscal strength: garbage.

The distressed city in northeastern Pennsylvania began charging residents a $300 annual fee in 2014 to collect their trash, up from $178. That 68% increase has since raised millions for Scranton, one of the many steps being taken to restore the former coal-mining hub to solid financial footing after decades of decline.

Cash-strapped American cities are increasingly asking their residents to pay higher amounts for mundane services as they struggle to pay for mounting pension obligations, cover costly infrastructure improvements and replace revenue depleted by the last recession. Bills are rising for everything from parking tickets and 911 calls to sewer service and trash pickup.

In 73 U.S. cities, fees and fines increased by a collective $182 million in 2017, according to financial reports analyzed by Merritt Research Services. That annual tally is up 11% since the last financial crisis in 2008.

Fees are expected to go even higher because of recent changes at the state and federal levels. New tax legislation passed last year by Congress caps the amount of local property and income taxes Americans can deduct from their federal tax bills, making local tax increases more costly for residents and thus politically difficult for elected officials.

Thirty four states have also placed separate limits on local government tax or spending increases, according to the National League of Cities. In California, tax increases by local governments must be approved by a vote of residents.

"What's left? Basically what's left are charges," said Andrew Reschovsky, a professor emeritus of public affairs and applied economics at the University of Wisconsin-Madison. "I think the future probably holds more fee increases."

Cities began turning to more fees and fines following the 2008 financial crisis, which eroded property and sales tax revenues due to pullbacks in housing values, employment and consumer spending. Revenue from property taxes, sales taxes and income taxes moved higher in recent years as the economy rebounded but the total collected from those categories in 2017 was still below 2008 levels, according to data from the National League of Cities.

Revenue from fees, on the other hand, was 14% higher in 2015 than in 2009, according to a study of 150 cities conducted by the Lincoln Institute of Land Policy. In 2017, 42% of city CFOs said their towns had raised fees, more than the 27% who said they had raised property tax rates and 8% who reported sales tax increases.

In California, more than a dozen city fire departments are now charging hundreds of dollars for ambulance calls and more for ambulance rides. Long Beach, Calif. began imposing a $250 fee for service calls in 2016 on top of the existing $1,300 to $1,900 for a ride. The ambulance call fee brought in $1.6 million that year and $2.2 million in 2017, the finance director said.

One small Midwestern town, Danville, Ill., is raising its fees for a specific purpose: to chip away at more than $100 million in liabilities owed to police and fire department retirees. The city of about 30,000 first attached a $2 a month "public safety pension fee" to residents' sewer bills in 2014 and in December pushed that charge to $22.25 for those in single-family homes.

Danville Mayor Scott Eisenhauer said the city took this step because it no longer had enough to make its required pension payments without devoting less to firefighting, police, parks, street repairs and code enforcement. "That's what we could no longer afford to do—diminish our services because the pension obligation had increased so dramatically," he added.

Those who pay the higher fees aren't always pleased with the new demands. In Scranton, a property owner filed lawsuits over the $300 trash-collection fee and a fee for landlords, arguing the fees were higher than needed to pay for the services. The plaintiff alleges that Scranton has collected roughly $5 million more in garbage fees the past two years than it needs to run its Bureau of Refuse.

Scranton Mayor William Courtright said the fees are meant to cover the cost of collecting trash and supervising rental properties, not to generate revenue for other purposes. "Public safety and sanitation are the two most expensive endeavors of municipal government," he said in an email.

In Chicago, a city also struggling with massive pension liabilities as well as a mountain of bond debt, officials increased penalties for parking in a disabled zone and other violations between 2012 and 2014 and increased the fee for removing a car boot in 2016. The city also increased property and water-sewer taxes as part of a larger plan to improve its finances.

A city spokeswoman said Chicago reduced its "structural budget gap" by 66% in the last four years "without raising a single parking ticket fine amount." She added: "While revenue is an outcome of parking enforcement, it is not the driver of our enforcement actions."

Some public policy experts say the Chicago increases are causing hardship for certain residents. One resident, Vincent Heard, said in court documents he had accumulated about $11,000 in debt tied to parking tickets, speeding tickets and red-light violations when he filed for chapter 13 bankruptcy in September 2015.

Mr. Heard now makes monthly payments of $225 as part of his bankruptcy repayment plan. That, he said, is a challenge given his earnings of about $600 to $700 a week as a taxi driver.

"It's like I'm just working to pay tickets," Mr. Heard said.

The Wall Street Journal

By Heather Gillers and Sarah Chaney

Feb. 6, 2018 5:30 a.m. ET

Write to Heather Gillers at heather.gillers@wsj.com and Sarah Chaney at sarah.chaney@wsj.com

Gov. Dannel Malloy Offers Plan To Ease Connecticut Tax Burden.

Proposed legislation would help residents make up for $10 billion in lost federal tax deductions under recent overhaul

Gov. Dannel Malloy on Monday proposed legislation to help Connecticut residents make up for $10 billion in lost federal tax deductions under the recent tax overhaul.

His plan aims to assist Connecticut homeowners who face higher federal tax bills because the new law caps state and local tax deductions at $10,000 a year. To get around that cap, Mr. Malloy's proposal would give towns authority to form charitable organizations that residents can contribute to in exchange for property tax credits.

Charitable contributions kept their full deductibility under the tax overhaul.

"It would be unreasonable for us as a state to not propose ways to assist our taxpayers," said Mr. Malloy, a Democrat. His plan requires approval by the state legislature.

The governor included the strategy among his recommended revisions to the state budget for the fiscal year that begins in July. The revisions in his $20.73 billion proposal are applied to the two-year budget lawmakers approved last year.

Other high-tax states such as New York and New Jersey have been searching for ways to ease the impact of the federal tax changes. Some New Jersey towns also have expressed interest in developing a plan similar to the one proposed by Mr. Malloy.

New Jersey Gov. Phil Murphy, a Democrat, supports those efforts. New York Gov. Andrew Cuomo has proposed changing some of the state income tax into a payroll tax on employers.

The Internal Revenue Service didn't respond to a request for comment.

The governors of New York, New Jersey and Connecticut also said in January they would sue the federal government to overturn the new tax law, saying it intentionally discriminates against Democratic-leaning states.

New York tax filers claimed about $22,000 on average in state and local tax deductions in 2015, the highest figure in the U.S., according to the Government Finance Officers Association. Connecticut tax filers claimed more than $19,000 on average and New Jersey nearly $18,000 on average.

Instead of funding municipal services through property taxes, cities and towns would tap a mix of property taxes and money raised from the charitable organizations, under Mr. Malloy's proposal. Details of the plan haven't been fully established.

"The specifics of how that will work will have to be worked out at a local level," said Ben Barnes, the budget chief for the Malloy administration.

Some towns have expressed interest in exploring whether using charities is a viable option, said Elizabeth Gara, executive director of the Connecticut Council of Small Towns.

"But there is a lot of uncertainty as to how the IRS will treat those contributions," Ms. Gara said. She said her group hasn't taken a position on the proposal and would continue to study it.

Mr. Malloy said his administration has determined that his plan would be allowed under the current federal law.

The Wall Street Journal

By Joseph De Avila

Feb. 5, 2018 5:35 p.m. ET

BDA Sends Follow-Up Letter to SEC Chairman Clayton Regarding Retail Confirmation Mark-Up Disclosure.

Read the letter.

Fitch: Puerto Rico Ruling Could Have Wide-Ranging Impact on Municipal Debt.

Fitch Ratings-New York-06 February 2018: A ruling last week by district court judge Laura Taylor Swain that dismissed claims regarding payment of Puerto Rico Highways and Transportation Authority debt has raised broad concerns about the protections provided in Chapter 9 of the U.S. bankruptcy code to holders of bonds secured by pledged special revenues, according to Fitch Ratings. Credit ratings that could be negatively affected if the ruling is upheld on appeal include bonds secured by utility, transportation and tax revenues that are currently rated above the municipality's Issuer Default Rating (IDR).

Through a series of provisions, Chapter 9 protections have resulted in special revenue obligations receiving current payments from available net pledged revenues during the pendency of every municipal bankruptcy since enacted in 1988. These provisions protect special revenue obligations by continuing the lien on post-petition revenues (outlined in section 928(a)) and relieving bondholders from the constraints of the automatic stay provisions of the code (section 922(d)). This allows enforcement of the lien for the purpose of applying net pledged revenues to payment of the special obligation debt payment due.

Section 928(b) specifies that "necessary operating expenses" will be paid prior to debt service where special revenues are derived from a project or system. This alleviates the concern that bondholder payments might be placed above the health and safety of the municipality and its residents when resources are scarce.

The court's opinion appears to introduce a new gloss on the purpose and application of section 922(d). It states that 922(d) was included in the code only as permission for a municipality to continue paying special revenue obligations if it chooses to do so during bankruptcy. This is inconsistent with Fitch's prior understanding of the purpose of 922(d) for two reasons. First, the municipality already has the right to pay obligations of its choice during the proceeding as a general principle. This right is embedded in section 904, which places the municipal debtor in command of its assets and liabilities throughout the process without court intervention. A specific provision authorizing payment of special revenue-backed debt is unnecessary, redundant and not in keeping with Congressional intent. Examples of payments to unsecured creditors during the pendency of a bankruptcy include Central Falls' opting to continue debt service payments on its GO debt and the continuation of required pension contributions by Detroit and Stockton.

The second reason we were surprised by the court's interpretation of 922(d) is that the automatic stay provisions in section 362 act as a constraint on actions by creditors — not debtors — to enforce liens following the filing of a bankruptcy proceeding. The provisions of 922(d) are an explicit exception to this constraint which was clearly intended to allow creditors with a special revenue obligation lien to enforce any currently due debt service payments while the bankruptcy case proceeds. It is correct that the provisions of 922(d) do not create an automatic obligation of the debtor to make the payment — that obligation exists in the underlying bond documentation. 922(d) simply removes a constraint on enforcement by bondholders of rights to receive payments of debt service due.

One of the plaintiffs in the case has already appealed the court's decision, and it will be reviewed by the first circuit court of appeals. Pending the outcome of that appeal Fitch will continue to treat special revenue obligations as separated from the related IDR.

A final court ruling that payment of special revenue obligations during a bankruptcy is optional would create uncertainty about full and timely payment of special revenue obligations, potentially removing the basis for rating special revenue obligations above a municipality's IDR. For example, airport revenue bonds and water and sewer bonds issued by the city of Chicago might be capped at the city's 'BBB-'/Stable IDR. Chicago's sales tax securitization corporation's 'AAA' revenue bond rating would not be affected, as the corporation is a separate entity that would not be affected by a bankruptcy of the city.

We do not believe notching above the IDR to reflect perceived recovery prospects of special revenue debt would be warranted given that there would be new uncertainty around the level of recovery in a future bankruptcy. Existing Fitch criteria allow us to reflect potential recovery in post-bankruptcy security ratings to the extent prospects for recovery become apparent.

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Fitch: PA Budget Proposal Would Close Gap; Prospects Uncertain.

Fitch Ratings-New York-08 February 2018: Governor Wolf's fiscal year 2019 executive budget for Pennsylvania – which utilizes a severance tax, solid revenue growth and targeted savings efforts to support a roughly 3% increase in the general fund budget – will likely face headwinds in the legislature, Fitch Ratings says. The governor has advanced a severance tax proposal since his election campaign four years ago but has not won sufficient legislative support to date. This budget plan comes at the start of an election year for the governor, all members of the commonwealth's house and half of the senate. Fitch's focus during the commonwealth's budget process will be on whether Pennsylvania is able to continue making progress in addressing its still sizable structural budget gap. Fitch's 'AA-' Issuer Default Rating and Negative Outlook reflect concerns that the commonwealth may be challenged in continuing its current path of slow progress in reducing the imbalance. A pattern of weakening fiscal practices, including growth in the structural deficit, could trigger a downgrade.

PROGRESS IN REDUCING STRUCTURAL GAP

Based on analysis from the commonwealth's Independent Fiscal Office (IFO), Fitch estimates the current year (fiscal 2018) budget includes approximately $600 million in non-recurring revenues on a $32 billion general fund spending plan (2%). This is lower than prior years, reflecting recurring revenue increases and savings measures. In January 2016, the IFO estimated a $2.5 billion general fund structural gap for fiscal 2019 – by this past November, the IFO reported that gap had narrowed to $1.1 billion, or 3% of projected spending.

UNCERTAIN BUDGET PLAN PROSPECTS

While the budget proposal from the Democratic governor does not appear to include material non-recurring revenues, Fitch anticipates the Republican-led legislature will develop its own set of budget measures, leading to a final budget that could vary considerably from the original. Three previous budgets under the current governor, and the last one under the prior governor, were enacted after the start of the fiscal year due to policy and fiscal disagreements. This November's election adds additional uncertainty to the budget process – the speaker of the house is vying for the Republican nomination to replace the current governor, which could make for a particularly complicated political dynamic during budget negotiations.

LIMITED REVENUE MEASURES

The key revenue measure is a natural gas severance tax estimated to generate $250 million annually. The governor's three prior executive budgets unsuccessfully proposed a different version of the proposed severance tax. Last summer, the senate did approve a severance tax as part of a revenue package. While the measure did not pass the house, last year's senate passage could lead to additional momentum behind the measure this year. Notably, in contrast to prior years, the governor did not include any personal income or sales and use tax changes in his proposal. Instead, the executive budget forecasts steady organic growth in both sources this year and next. The IFO's revenue forecasts also anticipate continued growth, though at a somewhat more modest pace. Through January, the Department of Revenue reports general fund collections for fiscal 2018 are tracking $90 million (1%) ahead of the official estimate. Of the key tax revenues, sales and use taxes are essentially in line with the estimate while personal income tax revenues were 2% above estimate. An outsized increase in collections for non-withholding personal income taxes in December could be a one-time behavioral shift in reaction to the recent federal tax changes.

EDUCATION AND PENSION SPENDING DRIVE INCREASES

On the spending side, proposed general fund spending of $32.9 billion is up 3%, or just under $1 billion, over the enacted fiscal 2018 budget. The executive budget includes a $100 million increase in basic education aid funding (approximately 2%) for K-12 public schools. If approved, approximately 7% ($400 million) of $6.1 billion in basic education aid would be distributed using a new funding formula adopted in 2016. The governor also proposes increased funding for the Pennsylvania State System of Higher Education (PASSHE, revenue bonds rated AA-/Negative) for the fourth consecutive year.

For pensions, the executive budget proposes full funding of actuarially determined contributions for both the state employees retirement system (SERS) and the public school employees retirement system (PSERS) for the first time since fiscal 2004. The SERS contribution of $685 million is funded directly by the commonwealth, while the more significant PSERS contribution of $2.5 billion flows through school districts via commonwealth appropriations.

As in prior years, savings measures are a key focus of this executive plan. “Complement” (the commonwealth’s term for its total workforce), continues trending downward and the administration reports the proposed level would be the lowest in over four decades.

MEDICAID SPENDING DOMINATES

Medicaid remains a major driver of the budget, with the fiscal 2019 budget proposing $7 billion in general fund spending, or more than one-fifth of the total general fund budget. Commonwealth Medicaid spending would increase less than 2% from the enacted fiscal 2018 amount under the executive budget, well below the rate of national medical inflation. The budget includes continued shifting of Medicaid services to a managed care model, including for long-term care which is a likely driver of future Medicaid spending.

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Lower U.S. Taxes May Dent Insurers’ Demand for Municipal Bonds.

- **‘There’s really not going to be that much interest.’**
- **Property, casualty insurers hold about 10 percent of munis**

Put on the Taylor Swift and pull out the Ben & Jerry’s ice cream: The municipal-bond market’s long relationship with property and casualty insurance companies may be breaking up.

That's because last year's tax overhaul slashed corporate rates to 21 percent, making tax-exempt debt less attractive to a segment of the insurance industry that has $342 billion in municipals, accounting for one-third of its debt investments, according to Federal Reserve data. That's threatening to pose another potential drag on the $3.8 trillion market, where prices have been sliding amid concern the Federal Reserve will increase interest rates more aggressively to slow the economy.

"There's really not going to be that much interest from insurance companies anymore," said Rich Sega, chief investment officer of Conning, which manages investments on behalf of insurers and oversees more than $9 billion in municipal bonds. "On average, it just raises the cost of municipal financing."

Too Late to Say Goodbye

Munis will be less attractive to property and casualty insurers due to lower corporate taxes

Property and casualty insurance companies are already looking to the exits. Citigroup Inc. analyst Vikram Rai said weaker demand from property and casualty insurers was one factor behind the recent downturn in the municipal market, which has already lost 1.3 percent so far this year.

Don McDonald, the chief executive officer of Prime Advisors, which oversees about $17 billion, is working with "many" companies on whether they should sell municipal bonds and shift into other asset classes.

Property and casualty insurers are likely to be "net sellers" in the first quarter, he said, forecasting that the companies' allocations to municipals will drop by 2 to 4 percentage points during the quarter.

"New purchases would have less value," McDonald said. "That's the bottom line – there's no question."

Property and casualty companies have been "cautious" about buying more state and local debt since the tax bill was enacted in December and are likely waiting for interest rates to rise enough to make it worth while, said Matt Caggiano, who helps oversee more than $9 billion of insurers' municipal holdings at Deutsche Asset Management.

Companies will be more attracted if municipals cheapen relative to U.S. Treasuries, he said, speculating that the entry point would be when yields on 30-year municipals rise above 100 percent of Treasuries. That gauge stood at about 96 percent on Wednesday.

Don't Grab Tissues Yet

The portfolios that Caggiano helps oversee for property and casualty insurance companies have allocations to municipals ranging from about 30 to 50 percent, he said. While he anticipates they could cut the amount they allocate over the next year or two, he said it's unlikely that they would reduce their overall muni holdings below 20 percent, given that the securities are among those least prone to default.

"You might see property and casualty insurers decide that's the lowest they want to go," he said.

Payden & Rygel Investment Management, which oversees $3 billion in tax-exempt and taxable municipals for clients including insurers, estimates that even with the lowered tax rates, AA and A rated municipals maturing in 20 and 30 years offer the same or higher after-tax yields than similar corporate bonds. That wasn't the case with AAA and BBB rated municipals, according to an analysis of bonds maturing from two to 30 years.

But Ksenia Koban, a vice president at the firm, said the companies won't exit the market completely. "Portfolios are still going to contain a good number" of the securities, she said.

Life insurers may also help make up for the drop-off in demand. Under the new tax law, those companies will pay taxes on just 30 percent of what they receive from tax-exempt municipal bonds, eliminating a previous uncertainty about how they would be taxed that gave them a disincentive to buy state and local debt.

Property and casualty insurance companies might be less interested in the tax-exempt municipal market, but they will likely still be big buyers of taxable municipals, a much smaller segment of the market that accounted for about $34 billion of sales last year.

Prime Advisors has added to its exposure to taxable municipals over the last two years, McDonald said. "Taxable municipals are a great alternative," he said.

Bloomberg Politics

By Amanda Albright

February 9, 2018, 6:23 AM MST

Bloomberg Brief Weekly Video - 2/8

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

Watch video.

Bloomberg

February 8th, 2018

What the Budget Deal Means for States and Localities.

Congress agreed on a two-year bipartisan spending deal just before dawn on Friday, after a brief shutdown of the federal government, which was the second shutdown in as many months.

The agreement, which President Trump has indicated that he will sign, increases spending by $300 billion over the next two years. Slightly less than half of that increase is slated for domestic programs.

John Hicks, executive director of the National Association of State Budget Officers, called the deal "the first salvo of federal budget certainty" that state and local governments have enjoyed in the

Trump era.

Continue reading.

GOVERNING.COM

BY LIZ FARMER | FEBRUARY 9, 2018

Credit FAQ: An Overview Of S&P Global Ratings' Updated Methodology For Rating U.S. Solid Waste System Financings.

On Jan. 29, 2018, S&P Global Ratings published its updated criteria for rating solid waste systems in the U.S. The update is part of our regular criteria review process, and its goal is to provide additional transparency and comparability to help market participants better understand our approach…

Continue Reading

Jan. 29, 2018

S&P RFC Process Summary: Solid Waste System Financings

On Aug. 21, 2017, S&P Global Ratings published a request for comment (RFC) on its proposed criteria, "Solid Waste System Financings". As more fully described in the RFC, the proposed criteria provide additional transparency and comparability to help market participants better understand our approach…

Continue Reading

Jan. 29, 2018

States Must Act Now on Opportunity Zone Tax Incentives That Target Low-Income Communities.

The IRS and the Community Development Financial Institutions Fund (CDFI Fund) simultaneously released guidance yesterday on the procedure for designating population census tracts as Qualified Opportunity Zones (QOZ). States must act quickly if they want to designate any QOZs, which will be eligible for federal tax incentives designed to encourage new capital investment in those areas.

The ability to designate QOZs was provided to States—which in this case also includes the District of Columbia and U.S. possessions—by The Tax Cuts and Jobs Act—enacted on December 22, 2017. In fact, the only formal role of a State in this process would be to submit its nomination of census tracts to be designated as a QOZ to the Secretary of the U.S. Department of the Treasury by March 21, 2018.

IRS Revenue Procedure 2018-13 provides a "safe harbor" for States that rely on the CDFI Fund's Opportunity Zone Information Resource, which identifies more than 41,000 population census tracts that are eligible for designation as QOZs. The Revenue Procedure also promises further information on the nomination process in coming weeks, including how States can access Treasury's online Nomination Tool for QOZs and how to request a 30-day extension of the nomination period, from March 21 to April 20, 2018. In the period before the submission deadline, a State can review the requirements for designation and compile its list for timely submission. (The CDFI Fund's information resource is available here.)

Continue reading.

by the Public Finance Group

January 9, 2018

Ballard Spahr LLP

Criteria FAQ: S&P Global Ratings' Approach To Rating U.S. Local Government Bonds Secured By Dedicated Limited Ad Valorem Tax Pledges.

On Jan. 22, 2018, S&P Global Ratings published its methodology "Issue Credit Ratings Linked To U.S. Public Finance Obligors' Creditworthiness" (Ratings Linked). These criteria include debt backed by an obligor's limited ad valorem property tax pledge, even if that pledge is dedicated for debt service.

Continue Reading

Feb. 5, 2018

S&P: Puerto Rico Court Ruling Supports Our View That Credit Fundamentals Remain Key To Ratings

NEW YORK (S&P Global Ratings) Feb. 5, 2018—S&P Global Ratings today said that the Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA) bankruptcy judge's recent decisions to dismiss bondholders' claim that their secured status entitles them to full and timely payment…

Continue Reading

Feb. 5, 2018

Six Things a 501(c)(3) Should Know About the Tax Cuts and Jobs Act: Squire Patton Boggs

With the flurry of news regarding how tax-exempt bonds were affected by the Tax Cuts and Jobs Act ("TCJA"), some of you may have missed what else was included in the TCJA. Here are six things a 501(c)(3) organization should know (other than that TCJA did not eliminate tax-exempt qualified 501(c)(3) bonds):

1. Fewer individuals will be claiming itemized deductions, so fewer people will get a tax benefit from making a charitable contribution, which could cause a decline in such contributions.
2. The estate tax exclusion amount is raised through 2025 to $10 million, so fewer people will have an incentive to make charitable bequests. Because of inflation adjustments, the actual dollar amount of the exclusion in 2018 is expected to be about $11 million.
3. There will no longer be a charitable deduction for college athletic seating rights. I suspect that Buckeye ticket sales will be unaffected.
4. Unrelated business taxable income ("UBTI") must now be calculated separately for each unrelated trade or business activity. Because losses from an unprofitable trade or business can't be used to offset income from a profitable one, the result will be more UBTI. Also, organizations will need to determine which unrelated trade or business activities are separate trades or businesses.
5. There is a 21% excise tax imposed on remuneration exceeding $1 million paid by tax-exempt employers to a "covered employee" or on "excess parachute payments." Covered employees are generally individuals who are or were one of the five highest paid employees, and excess parachute payments are certain large severance payments.
6. Colleges and universities with endowments exceeding $500,000 per student will generally owe an excise tax of 1.4% on their net investment income.

For more details, see this alert from our SPB colleagues.

By Alexios Hadji on February 8, 2018

The Public Finance Tax Blog

Squire Patton Boggs

State of California Launches New Bond Investor Platform Powered by BondLink.

BOSTON, Feb. 8, 2018 /PRNewswire/ — BondLink today announced that the State of California has launched a new, dedicated investor platform to provide additional transparency to bond investors. The new website, which can be found at www.BuyCaliforniaBonds.com, is part of the state's enhanced disclosure efforts.

"I am on a mission to make California government more transparent, accountable and responsive to the needs of the public through technological innovation," said Treasurer John Chiang. "By making the 'what, when and whys' about the state's finances, debt, and economic outlook available with a simple mouse click, I hope to entice more investors to finance projects of critical importance to our state, from transportation and clean water to schools and affordable housing.

"More data that is easy to access and slice-and-dice will translate into more investor interest. More investors mean more competition and – ultimately – better deals for California taxpayers," said Chiang.

The new website is powered by BondLink, a Boston-based financial technology company that provides investor outreach solutions to issuers in the municipal bond market. The company was co-founded by Colin MacNaught, a former issuer for the Commonwealth of Massachusetts.

"The new investor website validates the importance of disclosure, and the belief in the effectiveness of technology to improve disclosure. For an issuer the size and prominence of California to be using BondLink truly illustrates the State's commitment to expanding its investor base through enhanced transparency," said MacNaught, BondLink CEO. "We're proud to partner with Treasurer Chiang to improve the efficiency of the state's bond financings."

With more than 13,000 pages of data and documents, the corporate-style investor platform provides insight into the credit fundamentals behind California's outstanding bond ratings. This new tool is a free and open resource that provides a seamless online experience for both large institutional investors as well as smaller local bond investors including California residents.

The website consolidates the state's credit data and documents that are important to bond investors and rating agencies, providing quick and easy access to extensive financial information. The long-term goal of an investor platform like www.BuyCaliforniaBonds.com is to attract more investors to the state's bond program in order to increase demand for its bonds and diversify its investor base – ultimately to lower the cost of borrowing for public infrastructure and lowering the burden on taxpayers. Using a dedicated investor website for disclosure also follows best practices from government finance organizations such as the Government Finance Officers of America.

Reaction from Market Experts

"I think California's focus on enhanced disclosure is exactly what issuers should be doing," said Colleen Woodell, former Chief Credit Officer for S&P Global Ratings and past chair of the Municipal Securities Rulemaking Board. "Investors need more current disclosure and they need it through better technology. When an issuer shares more financial data, it enhances the investors' ability to make more accurate credit judgments and may improve the liquidity of the issuer's bonds."

"Research shows that better, more accessible disclosure can lead to lower bond yields for issuers and lower trading costs for investors," said Christine Cuny, Assistant Professor of Accounting at New York University Stern School of Business. "California's taxpayers and investors can benefit from easier access to the state's financial information."

About BondLink

Led by founders Colin MacNaught, CEO, and Carl Query, CTO, BondLink helps issuers in the $4 trillion municipal bond market attract more investors through better disclosure and enhanced technology. BondLink enables institutional investors to automate their credit surveillance of an issuer, and makes it easier for smaller investors, including individuals, to participate in public bond sales.

Since going live in 2016, BondLink's investor platform has helped states, counties, cities, school districts, universities, hospitals, public utilities and ports across the country improve their transparency to the bond market.

Headquartered in Boston, BondLink is backed by top investors, including Franklin Templeton Investments, one of the largest municipal bond fund managers in the country, Coatue and Accomplice.

For more information about the State of California's investor website or BondLink, please contact Colin MacNaught at 617-797-3632 or email colin@bondlink.com.

[S&P: Former Kansas Governor's Final Budget Proposal Shows Both Structural Imbalance And Revenue Growth]

Shortly before resigning last month, former Kansas Governor Samuel Brownback submitted his executive budget proposal for the 2018-2019 biennium. Despite projected higher revenues from recent tax increases adopted by the state legislature in 2017–over the governor's veto—S&P Global Ratings…

[Continue Reading]

Feb. 8, 2018

[S&P: Can Texas Local Governments Afford Their Pension Obligations?]

For the vast majority of local Texas issuers, pension pressures will remain manageable compared with those of peers across the country. Although Texas issuers typically have very weak debt and contingent liability profiles, this is often attributable to local governments having high overall net debt as a percent of market value…

[Continue Reading]

Feb. 9, 2018

[S&P: Everything's Bigger In Texas, Including Potential Pressure To Fund Pension Benefits.]

With its resilient and broad-based economy, favorable financial management practices, and low debt burden, Texas (AAA/Stable) is well positioned to weather potential budgetary headwinds related to growing Medicaid expenditures and a reduction in operating revenue as constitutionally required sales tax transfers to the State Highway Fund begin in fiscal 2018.

[Continue Reading]

Feb. 8, 2018

TAX - PENNSYLVANIA

[Bay Harbor Marina Limited Partnership v. Erie County Board of Assessment Appeals]

Commonwealth Court of Pennsylvania - January 10, 2018 - A.3d - 2018 WL 343816

Following board of assessment's denial of tax immunity and exempt status for marina lessees of port authority, lessees appealed and city and school district intervened.

The Court of Common Pleas granted summary judgment in favor of the board, city, and district. Lessees appealed, and appeals were consolidated.

The Commonwealth Court held that:

- Lessees had standing to challenge denial of tax immunity;
- Marina was not immune from taxation;
- Port authority was an indispensable or necessary party;
- Marina's use did not constitute public purpose; and
- Trial court, on remand, was required to determine if marina's public access areas were exempt.

Lessees of port authority had substantial, direct, and immediate interest in litigation regarding board of assessment's denial of lessees' tax immunity and exemption for leased property, and thus lessees had standing to challenge denials, where lessees, under terms of lease, were responsible for taxes imposed on leased property, board's denial triggered lease obligations, and lessees purportedly used leased property to further the port authority's authorized purposes.

Private gated marina leased from port authority operated for pleasure and recreational craft was not immune from taxation, since port authority's statutorily-mandated purpose did not expressly authorize operation of recreational marina.

Port authority was an indispensable or necessary party in action concerning tax immunity or exemption of marina port authority leased to private enterprise, although trial court removed port authority from case caption sua sponte, where port authority had joint interest in the subject matter of the action.

Private gated marina leased from port authority operated for pleasure and recreational craft did not constitute public purpose, and thus marina was not exempt from taxation, although marina had public access walking area and public boat launch, where marina inured to sole benefit of lessees and its subtenants who leased boat slips, public's limited access was mandated by zoning ordinance, and port authority had no control over marina.

Trial court, on remand, was required to examine each parcel and individual part of private gated marina leased from port authority operated for pleasure and recreational craft to determine if public access areas were exempt from taxation, since statute exempted public property used for public purposes.

Neighborly Insights: Pension Obfuscation Bonds, Contemplating Tolls in the Bay Area, UT and MN, Marijuana in VT.

Read the Neighborly Insights.

Posted 02/05/2018 by George Friedlander

Neighborly Insights

Neighborly Issuer Brief: A Volatile Stock and Bond Market Makes for a Difficult Space for Munis and Issuers.

Read the Neighborly Issuer Brief.

Posted 02/09/2018 by George Friedlander

Orrick: Tax Issues When Fixing Rate and Fee Adjusters in Tax-Exempt Loans.

The recently enacted reduction of the maximum federal corporate tax rate may trigger contractual provisions that provide for a significant increase in the interest rate on tax-exempt debt privately placed with a bank lender or require issuers or conduit borrowers to pay a significant fee. In each case, this adjustment is meant to compensate a bank lender for the reduction in after-tax return relative to a comparable taxable investment. We advise you to consult bond counsel before amending or allowing the waiver of any contractual provisions providing for interest rate increases or fees resulting from the change in the maximum federal corporate tax rate.

The recently enacted tax bill reduces the maximum federal corporate tax rate from 35% to 21%. This reduction increases the after-tax return on taxable investments currently held by bank lenders but does not affect the after-tax return on their tax-exempt investments. As a result, the change in law reduces the after-tax return on tax-exempt investments relative to the return on comparable taxable investments.

Most tax-exempt bank loans include "gross up" adjustment provisions crafted to deal with the adverse effect of corporate tax rate reductions on the relative return on such loans. The adjustments can take various forms, including a permanent, automatic, formula-based rate increase or a one-time fee determined by the bank lender to be adequate to compensate it for the reduction in the relative value of its tax-exempt investment. See the chart below for examples of two common "gross up" rate adjustment formulas.

Continue reading.

Public Finance Alert | January.25.2018

Orrick

Impact on Muni Bonds of New Accounting Guidelines for Local Governments.

New changes in accounting standards for state and local governments regarding retiree healthcare costs and underfunded pension liabilities could have a significant impact on the prices of municipal bonds issued by these entities.

These dynamics could, in turn, impact the risk-adjusted returns for investors holding municipal bonds as part of their overall portfolios.

Continue reading.

municipalbonds.com

by Justin Kuepper

Feb 08, 2018

Trendy Green Bonds Offer Little Beyond Feel-Good Vibes For Issuers, Investors

Although green bonds are growing in popularity in the municipal market, the largely unregulated structure may not amount to much more than a marketing tool to drive interest in an issuance.

Municipal green bond issuance totaled $11 billion in 2017, a record high and a 55% increase above 2016, according to the Climate Bonds Initiative (CBI). CBI expects that number to grow to $20 billion in 2018.

Green bonds rarely offer any distinction from traditional muni debt, financing the same projects and often without oversight to ensure the projects are green. While some issuers seek approval from CBI or Sustainalytics, there's no formal regulatory process to ensure the market avoids greenwashing, or applying the green label to projects that may not serve truly sustainable purposes.

As a result, the green label is not always limited to projects that make eco-friendly improvements. For example, a water system financing new pipes but not improving business practices to make them green, or a parking structure that offers battery chargers for electric cars are examples of projects not delivering on green benefits, an underwriter and portfolio manager told Debtwire.

But no investment is more fundamentally focused on improving people's lives than the municipal bonds. The explicit purpose of the $3.8 trillion municipal market is to function for the public good, with most issuances financing investment in our nation's infrastructure: building schools, hospitals, roads, public transportation, and utilities, including public power, water and sewer systems.

So why do municipal issuers bother with the green bond label? Ultimately, it's a marketing technique, used to generate interest in a new issuance and to attract interest from millennials or other investors searching for green and sustainable investments, according to market sources— an underwriter, portfolio manager and issuer—specializing in green bonds. More demand should, in theory, drive the cost of borrowing down, resulting in cost savings for the issuer. However, significant cost benefits as a result of issuing green bonds have not materialized, these sources said.

New York's Metropolitan Transportation Authority (MTA) is one issuer that's revised their strategy to favor green bonds. MTA began issuing green bonds in 2016, and in an interview with Debtwire, disclosed that they've determined that going forward, the majority of its debt will be issued as green bonds, in line with its function as a mass transit operator. Unlike some green bond issuers, MTA does pursue third-party certification for its issuances, verifying their "green-ness."

But the security structure—what pays off the debt—is no different than when MTA comes to market with traditional revenue bonds, supported by a pledge of transportation revenue, or sales tax-backed bonds, and that's the same for any issuer that decides to embrace a green strategy.

Savvy green bond investors should do their homework and learn about what they're purchasing to make sure there is something beyond the label.

Forbes

By Maria Amante

Feb 9, 2018

Maria Amante is a reporter for Debtwire covering stressed credits in New York, California, Alaska, higher education and continuing care retirement community sectors. She can be reached at Maria.Amante@acuris.com.

Multiple Factors Drive Upswing of Bankruptcies, Closures Among Rural Hospitals.

LOS ANGELES — The number of Chapter 9 bankruptcies by rural hospitals has climbed over the past five years as populations shrink and federal reimbursements decline.

In the last five years, not including this year's first filing, 13 hospitals have filed for Chapter 9, said Matt Fabian, a principal with Municipal Market Analytics.

With the distress in the sector trending up, Fabian said, it was no surprise that the first Chapter 9 bankruptcy filing of the year is a rural healthcare district.

Surprise Valley Health Care District, a 26-bed hospital in Cedarville, a small northern California town near the Nevada border, filed for Chapter 9 bankruptcy protection on Jan. 4.

The hospital district's board declared a state of fiscal emergency ahead of the filing, saying area residents' "health, safety and well-being" would be put at risk without the bankruptcy protection because it would be unable to meet its financial obligations within 60 days, according to bankruptcy documents.

The hospital, which has no bond debt, has asked the Eastern District U.S. Bankruptcy Court in Sacramento to authorize a $1.5 million debtor-in-possession loan from CadiraMD, a Denver-based medical testing company with which it plans to partner. The loan is contingent on a number of factors including the sale of the hospital.

Surprise Valley HCD is the second rural California hospital to file Chapter 9 bankruptcy in recent months.

In the Central Valley, Tulare Local Health Care District, with $84.1 million in general obligation debt and $13.6 million of outstanding revenue bonds, filed for bankruptcy in early October. Its Tulare Regional Medical Center closed Oct. 29 and a hearing on a motion for summary judgment in the bankruptcy is slated for March 21.

"Bankruptcy is unlikely to impair the district's GO bond payments, though risk is elevated given the challenges facing the district," Moody's Investors Service said in a report Thursday. "Payments on the $84.1 million in GO debt should not be affected given legal and structural features of the district's GO bonds, which shield bondholders from hospital operations.

Tulare missed a principal payment of its revenue bonds in November. “Revenue bondholders will remain at greater risk for additional defaults during the bankruptcy process,” according to Moody’s (MCO).

Last year, Atoka County Medical Center in Oklahoma, the Gainesville Hospital District in Texas and the Kennewick Public Hospital District in Washington also filed for Chapter 9 bankruptcy protection.

Since 2010, 83 rural hospitals – or eight to ten a year – have closed, said Mark Holmes, the director of the North Carolina Rural Health Research and Policy Analysis Center.

Though iVantage Health Analytics puts the number of rural hospitals at risk of closing around 600, Holmes said he believes the number is much smaller.

The financial distress index that the North Carolina rural health policy center developed in 2015 estimates that 6% of the country’s 2,264 rural hospitals are at risk of closure, Holmes said.

Financial indicators such as operating margin, benchmark performance and retained earnings are the strongest indicators of financial distress, but hospital size and market poverty rates are also influential, Holmes said.

The North Carolina rural health policy center also looks at the size of the community, how far the hospital is from competitors, market share and the area’s unemployment rate, he said.

Fabian ticked off a list of challenges for rural hospitals that can make them a risky investment: They are small. They skew more toward reliance on reimbursement from the federal government and insurance, so they struggle with reimbursement rates. It’s harder to keep them fully staffed. The patient numbers are more inconsistent. And the long-term demographics show Americans are moving out of rural areas.

Rural hospitals in states that expanded Medicare under the Affordable Care Act like California are considered at less risk because they qualify for a higher rate of federal reimbursements for poor and elderly patients, but that is only one factor of many that are impacting small town hospitals, said Todd Sisson, a Wells Fargo (WFC) senior portfolio analyst for healthcare.

“I have been cautious about hospital investments in non-expansion states, and California is the poster child for expansion policies, but small hospitals just have a hard time,” Sisson said.

The Obama administration established a policy in which states that did not create ACA programs would not receive supplemental funding while states that did expand the number of poor and elderly served under their Medicaid programs do receive such funding.

The closures have been more heavily concentrated in southern states, but many factors that predate the ACA are pressuring those hospitals, Holmes said.

For more than 20 years, hospitals in the south have been less profitable than other areas of the country,” Holmes said. “They tend to have smaller market sizes. Medicaid tends to pay less, and cover few people, in those states and reimbursements from private insurers are less.”

In rural areas all over the country, population shifts have resulted in shrinking numbers and a high concentration of senior citizens.

Though older residents tend to use hospital services more, they make hospitals more dependent on reimbursement from the federal government, because many pay hospital bills with Medicare, Holmes said.

Holmes has taken note of the rural hospital bankruptcies in California, but his policy center has not studied what risk factors are specific to the state.

Technological changes are a factor pressuring rural hospitals everywhere. Medicare payments have shifted from a prospective system of fixed payments for a treatment to value-based payments tied to efficiencies and performance, Sisson said.

"You need more sophisticated technology systems to track metrics to qualify for value-based care and smaller hospitals don't have the balance sheet to pay for that," Sisson said. "That is why you are seeing a lot of hospitals trying to merge with larger providers that have more supportive IT systems."

That doesn't always work for all small rural hospitals, because often larger systems, interested in adding hospitals, want them to act as satellites focusing on outpatient care, he said.

ACA also has resulted in more private practice physicians migrating to larger hospital systems, because the billing and insurance is more complicated under the system, Sisson said.

"We have seen a ramp up in merger activity and we expect it to continue, because reimbursements are going to continue to be stressed," he said.

Changes in healthcare resulting in less time spent in hospitals and more treatments handled through out-patient procedures can also mean that rural hospitals have more beds than they need, Holmes said.

"My research indicates that the original purpose of healthcare districts was to encourage hospital facilities and healthcare in rural areas and allow them to borrow money through public finance and tax people," said Ron Winters, a managing director for Healthcare Management Partners, a consulting company that specializes in turnarounds.

That idea might not be as relevant as when it originated in the early 20th century, Winters said.

"When the financings were originally done, it was a different environment, rural hospitals could be expected to earn a certain amount of money and pay off the debt," Winters said. "Now, the life of the hospital could be shortened, so it doesn't match the lifespan of the debt."

As a municipal bond investor, Sisson said Wells Fargo (WFC) is more comfortable with larger, multi-state systems.

"We have high-yield funds, but we are cautious of rural hospitals in non-expansion states," Sisson said.

It's not just rural hospitals for which Municipal Market Analytics would throw down a caution flag, Fabian said, but also the cities that are served by the hospitals where they can be major employers and affect the local economy.

"Cities that are reliant on the rural healthcare provider should be seen as high risk," he said.

By Keeley Webster

BY SOURCEMEDIA | MUNICIPAL | 02/08/18 07:04 PM EST

California Treasurer Sees Event as a Spur for Green Bonds.

California State Treasurer John Chiang is ramping up his support for green bonds by co-hosting a Green Bonds Symposium in Santa Monica on **Feb. 27-28**.

The event is being put together with the Milken Institute, a Santa Monica-based public policy think tank, and Environmental Finance, a London-based publishing company that reports on green finance.

Chiang, who is running for governor, called the bond market, and more specifically green bonds, an essential tool for raising the $8 trillion needed in the U.S. to replace fossil-fuel power sources with low-carbon alternatives and the hundreds of billions needed in the state to replace and modernize crumbling roads, bridges, and water plants.

"With the U.S. already trailing China and Europe, California can fill the leadership void left by the current federal administration by facilitating the maturation of a domestic green bonds market that will pay for the new, less-polluting infrastructure we so desperately need to counter climate change," Chiang said in a letter.

Green bonds, or debt issued by corporations or government agencies to finance environmentally-friendly projects, were first introduced in 2008.

The U.S. green municipal bond market grew to $11.05 billion in 2017 up from $7.11 billion the previous year; and it's expected to reach $20 billion in 2018, according to a Climate Bonds Initiative report. New York edged out California in 2017 in green bond issuance pushing out $4.59 billion compared to California's $4.3 billion.

The first day of the event will consist of an invitation-only financial innovations lab hosted by the Milken Institute.

Researchers, policy makers, and others will work to generate market-based solutions to overcome challenges for green bonds during the innovations lab, according to the hosts. The focus will be on innovative structures, market function, investor interest, and market standardization issues to conquer the barriers to investment in green bonds in the United States. The same areas that the treasurer's office covered in its report, Growing the U.S. Green Bond Market, Volume 1, released in January 2017.

The treasurer's office plans to produce a second report in Spring 2018 on findings from the innovations lab.

The second day will be a general conference, open to everyone, with key note speakers, case studies and panels.

In 2016, Chiang said he conducted a multi-city listening tour meeting with three dozen investors, who control funds holding trillions of dollars, to discuss how to use bonds to encourage environmentally-friendly development.

"The need for a green bonds symposium grew directly out of my listening tour and the lagging performance here in this country," Chiang said.

By Keeley Webster

Illinois' Lousy Credit Rating: It's Contagious.

Illinois has a bond problem, and it's not just at the state level. While many Illinoisans know the state's financial troubles have led to the worst state bond rating in the country, what they may not know is that those problems are amplified on the local level. When the state sells municipal bonds, it has to pay investors more interest to take on increased risk—and the same thing happens at the local level, thanks to the state's problems. In the bond world, it's called a "contagion."

For counties, cities, schools, hospitals, airports and nonprofits across the state that sell municipal bonds to construct buildings or repair infrastructure, the Illinois contagion means they're all stuck paying investors more interest, too. They may not be able to afford to raise as much money, and will be burdened with higher debt payments in the future. One bond expert estimates that the "Illinois effect" results in the state's local issuers shouldering an additional billion dollars in annual debt payments.

The negative impact shows in Illinois issuers' average bond yield, which is higher than the national average. Even when their bond ratings are comparable to those of peers in other states, they pay a penalty.

Find out what the worst credit ratings in the country means for cities, suburbs and counties all over Illinois. Read more here.

CRAIN'S CHICAGO BUSINESS

By LYNNE MAREK

February 09, 2018

Munis Remain Attractive Despite Tax Changes.

Despite passage of the Tax Cuts and Jobs Act at the end of last year, municipal bonds can still be an attractive investment and reliable source of tax-free income.

Over the last seven years or so, we have seen significant increases in the holdings of municipal bonds by both banks and insurance companies.1 Within the insurance industry itself, while bond purchases by property and casualty ("P&C") companies have diminished, those by life insurers have increased. Although, with a reduction in the corporate tax rate to 21%, we may now see some reduction in demand from banks, whether the same holds true for life insurance companies remains to be seen.

When it comes to individual investors, however, the picture in the crystal ball becomes murkier. One thing that hasn't changed, though, is the nature of municipal bonds themselves and the attractiveness of their tax-exempt status. So, for those investors who live in states with high state and local taxes, perhaps there is, now, even more reason to look to munis to help mitigate their tax bills.

If history is anything to go by, tax reforms that have lowered personal taxes have led to no less interest in muni funds on the part of investors. Following the Tax Reform Act of 1986, signed into law by President Reagan on October 22 that year, investment in muni bonds by individuals did anything but fall.

Back then, of course, there were no muni ETFs. Now there are. While it remains to be seen, therefore, just what effect on inflows and outflows the latest tax reforms will have, the nature of neither munis nor muni ETFs have changed. The former still provide attractive tax-free income, and the latter provide diversification, trading flexibility, daily transparency, lower costs, and tax efficiency.

Seeking Alpha

Feb. 8, 2018

Detroit City Council Approves $55 Million Bond Repurchase Plan.

(Reuters) – Detroit will tap up to $55 million in surplus cash to retire some of the debt the city issued in 2014 as part of its exit from bankruptcy, under a plan approved on Tuesday by the city council.

With debt service on outstanding bonds expected to substantially increase in 2025 with the commencement of principal payments on various bonds, the city is taking steps to lower costs by allocating some of the $169 million unassigned budget surplus it has accumulated for debt repurchases.

John Naglick, Detroit's finance director, told the city council that pending final approval by a state oversight board, the money will be used to obtain financial recovery series B bonds, which carry a 4 percent coupon, at a discount, or series C bonds, which have a 5 percent coupon.

"By retiring them now, it's like paying off your mortgage early. You're going to save all that interest," he said.

The city ended what was then the biggest-ever U.S. municipal bankruptcy in December 2014 after shedding about $7 billion of its $18 billion of debt and obligations.

Michigan's biggest city is on track to end state supervision of its finances this spring after an audit released last week showed it completed a third-straight fiscal year with a balanced budget. One element of the city's federal court-approved bankruptcy exit plan was Michigan's creation of an oversight board.

The city reported another positive development on Monday — residential property values had a net increase for the first time in at least 17 years. Higher assessed values, which rose to $3 billion from $2.8 billion last year, could lead to more property tax revenue for Detroit.

By REUTERS

FEB. 6, 2018, 1:39 P.M. E.S.T.

(Reporting by Karen Pierog in Chicago. Editing by Matthew Lewis)

The Economy Is Full of Crypto (And Collective Delusion).

We have talked a few times around here about a socialist republic that has been hit hard by sanctions imposed by the U.S. government and that, in response, is planning to issue its own cryptocurrency to raise money. I mean Venezuela. Venezuela's government is the one that is planning to issue a cryptocurrency to replace money that it has lost due to the policies of the U.S. federal government. In other news:

> The City of Berkeley, one of the epicenters of liberal California, is considering a turn to cryptocurrency to reduce its reliance on federal funding in the Trump administration.
>
> Berkeley would become the first city in the US to hold an initial coin offering (ICO) — a type of crowdfunding campaign that's become popular in the past year. The city would raise funds by selling digital assets called "tokens" that are backed by municipal bonds, a type of security issued by the local government.

Continue reading.

Bloomberg View

By Matt Levine

February 11, 2018, 7:00 AM MST

Berkeley, Calif., Plans for First Muni Bond Issued on Blockchain.

Elected officials in the city are working with a startup and university faculty to try to revamp the municipal bond issuance process.

That slow-moving stalwart of investing, the old municipal bond, is about to meet the trendiest tech in the country right now: blockchain.

The mayor and one councilmember in Berkeley, Calif., announced this week that they are partnering with the startup Neighborly and the Blockchain Lab at the University of California, Berkeley to attempt the first-ever tokenized municipal bond. They hope to make the process faster, cheaper, more transparent and more accessible to community members.

Basically, they want to sell city debt the same way cities always have — to fund projects that the regular budget can't or won't cover — but they want to digitize the process and record it on the blockchain. That means recording it digitally in a public ledger constructed with mathematical proof backing up every transaction. The people behind the initiative want to open the bond to investors using both U.S. dollars and some as-of-yet-unspecified cryptocurrency.

Continue reading.

GOVTECH.COM

BY BEN MILLER / FEBRUARY 9, 2018

Berkeley to Use Blockchain Technology to Combat Homelessness.

The city of Berkeley may soon launch an “initial community offering” as part of an effort to use blockchain technology to combat homelessness and housing issues. This would make Berkeley the first city in the United States to sell digital “tokens” as part of a crowdfunding campaign, according to a Tuesday press release.

In the press release, Mayor Jesse Arreguín and City Councilmember Ben Bartlett announced the founding of the Berkeley Blockchain Initiative, through which the tokenized municipal offering will be hosted. The initial community offering is similar to an initial coin offering, which is a cryptocurrency fundraising system. However, the tokens distributed by the initial community offering will represent real security for a specific purpose instead of potential future values, according to Kiran Jain, chief operating officer and general counsel of Neighborly.

Neighborly, a technology firm aiming to modernize municipal finance, and UC Berkeley Sutardja Center’s Blockchain Lab will collaborate with the city on the initiative.

“We are always looking at new technology, trying to figure out how we can apply them in new ways to benefit our city,” Bartlett said.

City Council began exploring blockchain technology about a year ago as part of the city’s efforts to explore alternative methods of funding in anticipation of a possible decrease in federal funding from the Trump administration, according to Bartlett.

According to Jain, the project still has to receive official approval from City Council, along with other necessary approvals, which will likely happen about mid-May.

Jain said the process for conducting the initial community offering itself “is similar to what you’d see for a municipal bond” in terms of how the funds are raised. The official term for the process is a “tokenized municipal offering,” and it is akin to an initial coin offering, except it is “fully compliant with all U.S. regulations and for low-cost tax-exempt debt rather than equity or utility token.”

The initiative’s leaders intend to direct the proceeds toward affordable housing projects in Berkeley.

The money raised from the community offering “can be directed towards whatever the community wants to fund,” according to Bartlett. Buyers will purchase tokens backed by municipal bonds, and the proceeds can support housing projects and homelessness services.

Berkeley has a long history of combating housing issues through innovative measures, such as researching tiny homes as a possible response to the city’s housing crisis.

“Cities must look towards innovative funding mechanisms to solve our most intractable problems, especially in the face of diminished federal support,” Arreguín said in the press release. “Berkeley is proud to once again be leading the way.”

THE DAILY CALIFORNIAN

BY LUKE KOPETSKY | STAFF

LAST UPDATED FEBRUARY 8, 2018

Contact Luke Kopetsky at lkopetsky@dailycal.org and follow him on Twitter at @LukeKopetsky.

City of Berkeley Looks to Cryptocurrency to Raise Funds.

- **California city is mulling applying blockchain to public debt**
- **Investors could buy either a digital coin or municipal bond**

In what might be a first for the $3.8 trillion municipal bond market, Berkeley, California is mulling a proposal to apply blockchain technology to public finance as a way to raise funds for community projects.

Under the initiative, the city would go to market with a public initial coin offering, allowing investors a chance to purchase either monetized digital tokens or municipal bonds issued in U.S. dollars. Coupon payments would be the same for those buying the bonds as those investors who want the digital currency instead.

The city is still working out the details, such as figuring out if voter approval would be needed to borrow the money and what kind of projects should be financed. City councilman Ben Bartlett said funds could be used to help pay for affordable housing, a critical issue for the expensive San Francisco region.

“We thought we’d get creative and figure out a way to finance our needs to take care of our people,” Bartlett said in a telephone interview.

The municipal-bond market isn’t often associated with cutting edge technology. With a vast number of issuers and no central exchange, it has long been considered opaque in comparison to more easily traded investments like corporate debt and equities.

Lower Costs

Berkeley is working with Neighborly Corp., an online startup that says it raises money for civic projects though municipal bonds, as well as the UC Berkeley Blockchain Lab, a research center for cryptocurrency technology.

Applying blockchain — a platform that uses so-called distributed ledgers to allow digital assets to be traded securely — could lower costs for municipal borrowers, as well as make it cheaper and easier for local residents to invest, said John Crossman, principal at Neighborly Securities, the San Francisco-based company’s underwriting arm.

For investors, they can buy the Berkeley coin directly and with less risk of mark-ups from middle-men, he said. For municipalities, savings could come from needing less from lawyers and advisers and achieving standardized documents, he said.

Since the securities would be issued and paid out in U.S. dollars, volatility in cryptocurrencies would have little impact on them, and network fees would be minimal as well, he said.

“If we can deliver on our mission, this will be a very attractive alternative for other cities and states and counties,” Crossman said.

The Municipal Securities Rulemaking Board, which oversees the muni market, would have a role making sure regulations are followed in such offerings that involve market professionals such as financial advisers and underwriters, said executive director Lynnette Kelly by telephone.

"It's certainly novel, innovative and creative," she said of the initiative.

Bloomberg Technology

By Romy Varghese

February 8, 2018

[Airports Call for Infrastructure Investment and Regulatory Relief.]

Airports Council International – North America (ACI-NA) on Feb. 12, called on the Trump Administration and Congress to identify a clear funding mechanism to address the significant infrastructure needs of America's airports following the unveiling of the Rebuilding Infrastructure in America proposal by President Donald J. Trump.

"The infrastructure proposal put forward by President Trump addresses a number of regulatory burdens long identified by the airport industry as barriers to infrastructure development," said ACI-NA President and CEO Kevin M. Burke. "Airports will continue to pursue legislation that will not only provide meaningful regulatory relief but also a clear investment mechanism to meet the $100 billion in well-documented airport infrastructure needs across the country."

ACI-NA also released its own set of airport infrastructure principles that should be addressed by any infrastructure plan. By acting on these principles, Congress can provide airports with greater flexibility and local control to better serve their passengers and benefit their local communities now and into the future.

Modernize the Passenger Facility Charge Program

The Passenger Facility Charge (PFC) is a local user fee airports can use to upgrade their facilities, improving the passenger experience and spurring airline competition. Congress should give airports the locally controlled self-help they need to finance critical infrastructure projects by eliminating the outdated federal cap on the user fee and streamline the cumbersome application and approval process to reduce construction costs. Congress also has the opportunity to enhance airport security by expanding PFC eligibility to include all security projects that airports are responsible for funding.

Enhance the Airport Improvement Program

The Airport Improvement Program (AIP) – supported entirely by users of the aviation system with no general fund revenues used for AIP grants – finances crucial safety, security, and capacity projects at airports of all sizes. In order to continue to be a viable funding mechanism for airports, AIP needs to be updated by Congress. Needed updates to the program include an increase in the amount of money contributed annually to AIP and the creation of an airport terminal development grant program.

Relieve Costly Land-Use Regulatory Burdens on Airports

Reducing the regulatory burden on airports would empower them to act in a business-like manner that accelerates innovation, construction, and job growth. To reduce the unnecessary federal red tape that can slow airport-development projects, Congress should eliminate the requirement for FAA approval for airports to dispose, use, or lease non-airfield property purchased without federal funding. Congress should also eliminate the requirement that FAA approve non-aeronautical improvements.

Help Airports Finance Critical Infrastructure Projects with Bonds

Airports often turn to the bond market to help finance their infrastructure projects. To help lower airport borrowing costs, Congress should maintain the tax-exempt status of public purpose municipal bonds and private activity bonds to ensure that airports can continue to finance critical infrastructure projects. In addition, Congress should exclude interest earned on airport private activity bonds from the alternative minimum tax and Allow advance refundings on all municipal bonds.

Establish an Airport Security Grant Program

In accordance with an Aviation Security Advisory Committee recommendation, Congress should establish an airport security-focused grant program at TSA to support the deployment of perimeter, access control, automated screening lanes, and other security technology at airports. Airport operators have limited funding available that must be prioritized across a multitude of safety, security, and operational projects. While DHS's existing grant programs have dispensed billions of dollars for systems and technology to bolster state, tribal, and local security, very little, if any, has been allocated to airports.

aviationpros.com

As White House Prepares To Unveil Infrastructure Proposal, Nation's Mayors Outline Priorities To Get America Moving With A Cities-First Agenda.

USCM President Mayor Mitch Landrieu: "No credible plan can ignore America's cities."

Washington, DC— As the White House releases its infrastructure plan, it will begin a national debate on the improvements needed to shore up the foundation of the nation's economy and ensure the future growth and opportunity in cities and other communities. The bipartisan U.S. Conference of Mayors (USCM) today released its plan for what are essential components of a strategy to rebuild and modernize the nation's critical infrastructure. Mayors set forth priorities last June in the Mayors' Agenda for the Future with its updated infrastructure recommendations in January, proposals that can inform and support Congress and the Administration as they craft new infrastructure policy and investments.

"Leadership at all levels of government requires presenting bold ideas that are informed by the experts on the ground – in this case, the nation's mayors," said **Mayor Mitch Landrieu of New Orleans, President of the U.S. Conference of Mayors**. "Cities remain the country's economic engine, and as such mayors of both parties are looking for a plan that benefits all Americans where they live and takes full advantage of any additional infrastructure investments to build more equity in our economy, create a more inclusive workforce, and support financially distressed communities. No credible plan can ignore America's cities."

The U.S. Conference of Mayors' priorities include:

- Local government is the most trusted authority to appropriately allocate funding to meet needs: place cities first by going directly to where the jobs are and provide direct funding to local government as the most efficient investment strategy.
- A proven way to accomplish this outcome is to deliver resources directly to cities and counties through the CDBG (Community Development Block Grants) program and funds to local areas for surface transportation needs through the State and Local Block Grant Program.
- Increase funding to the State Revolving Fund to support additional no-interest, low-interest loans, loan forgiveness, and technical assistance grants to local governments and fully fund the Water Infrastructure Finance and Innovation Act (WIFIA).
- Enable a stronger partnership between federal and local governments to speed the transition to renewable, job-creating energy systems like wind and solar.
- Modernize our ailing waterways.By increasing investment in the Army Corps of Engineers and unlocking $9 billion dollars in the Harbor Maintenance Trust Fund, we can improve the way goods and people move around.
- Thirty million Americans lack access to broadband. Give local communities the power to own and operate public broadband networks.

"The number of Americans living in cities and towns is increasing every year and the optimal plan will make sure all of America benefits. We look forward to reviewing the White House's plan and engaging in productive, bipartisan conversations around legislation and funding priorities that cities can support with leaders in Washington."

At the 86th Annual USCM Winter Meeting last month in Washington, D.C., mayors of both parties participated in a thorough discussion with DJ Gribbin, Special Assistant to the President for Infrastructure Policy on the Council of Economic Advisors, on how the Administration's policies will affect local communities.

Trump Infrastructure Plan Wants to Stop 'Overreliance' on Federal Money.

The president's long-awaited infrastructure plan pushes state and local governments to spend more, but offers them a smoother path to getting federal regulatory approval.

State and local officials who have clamored for years for the federal government to increase spending on infrastructure projects like highways, transit and water systems won't get much new money under President Donald Trump's infrastructure package. But they could get help building those projects more quickly.

There are few surprises in the broad outline of Trump's long-awaited infrastructure plan, as described by a senior White House official this weekend and set for release Monday. That could be disappointing news for many state and local leaders who have been skeptical of the effort.

The administration wants state and local governments to pay more for infrastructure, and it wants the federal government to speed up its approval processes for those projects.

Continue reading.

GOVERNING.COM

BY DANIEL C. VOCK | FEBRUARY 11, 2018

Rep. John Katko Proposes $1 billion to Upgrade Water Infrastructure Systems.

A bill introduced by U.S. Rep. John Katko would provide $1 billion over five years for water infrastructure projects and streamline the application process to help states seeking funding for system upgrades.

The main objective of Katko's bill is to advance projects receiving funding through the State Revolving Fund. He also wants to preserve the Water Infrastructure Financing and Innovation Act, which has supported local water system improvements across the country.

The legislation sponsored by Katko, R-Camillus, would provide $200 million annually over a five-year period to support state revolving fund projects. It would waive a $100,000 application fee for states if projects are bundled.

Another change proposed in the bill is streamlining the federal approval process by allowing projects to receive funding without the Environmental Protection Agency needing to process more loan applications.

There are significant water infrastructure issues in Katko's district. The presence of harmful algal blooms in Owasco Lake, which provides drinking water to the city of Auburn and towns in Cayuga County, has spurred a multi-million dollar response to ensure the drinking water remains safe for residents.

Algal blooms have also been found in Cayuga and Skaneateles lakes, both of which are at least partly in Katko's district.

"In Central New York and communities nationwide, we need to focus on updating our water infrastructure systems to ensure safe, reliable drinking water is available," Katko said in a statement Friday.

Central New York elected officials backed Katko's effort. Oswego Mayor Billy Barlow said if the bill passes, it would provide a significant boost to his city's water infrastructure.

Onondaga County Executive Joanie Mahoney echoed that sentiment.

"(Katko's bill) will provide the additional funding needed to ensure that we can continue investing in our water systems for every resident and business," Mahoney said.

The legislation introduced by Katko is cosponsored by U.S. Rep. Earl Bluemenauer, an Oregon Democrat. The Senate version of the bill has bipartisan support, too. It was introduced by Republican U.S. Sens. John Boozman and James Inhofe and Democratic U.S. Sens. Cory Booker and Dianne Feinstein.

auburnpub.com

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Feb 3, 2018

House Dems Call for 5 Times More Infrastructure Spending Than What's Expected in Trump's Plan.

WASHINGTON — Democrats in the U.S. House on Thursday called for $1 trillion of federal infrastructure spending on public assets such as roads, railways, high-speed internet and schools.

A group of Democratic lawmakers made their pitch in advance of Monday’s slated White House release of “principles” for President Trump’s long-anticipated infrastructure proposal. Administration officials have indicated that the Trump plan will call for about $200 billion of direct federal spending over a decade.

“The president talks a big act, but then he proposes a small bill,” House Minority Leader Nancy Pelosi, of California, said at a press conference. She described the president’s approach to infrastructure as a “disappointment” and said it would shift burdens onto city and state budgets.

Continue reading.

Route Fifty

By Bill Lucia,
Senior Reporter

February 8, 2018

Tunnel Shows Risks of Trump Public Works Plan.

President Donald Trump’s war with his hometown over one of the nation’s priciest transportation projects shows the challenges ahead for his plan to upgrade crumbling public works by having locals pay more of the bill.

The $30 billion Gateway proposal, which includes a new rail tunnel under the Hudson River between New York City and New Jersey, has bogged down in an acrimonious fight with the states as Trump prepares to roll out his infrastructure plan on Monday.

Democratic senators from New Jersey and New York are blocking Trump’s transportation nominees until he commits federal funds to Gateway. The administration rejected an earlier deal to split the cost, saying it’s a local project — even though the tunnel would help bind the entire Northeast corridor to the New York area.

The president’s infrastructure plan is expected to propose spending at least $200 billion over the next decade, largely to spur states, localities and the private sector to provide the balance of at least $1.5 trillion.

State and local officials — loath to raise taxes or levy tolls — want more help. While Gateway is unique for its scope and gritty politics, standoffs with Washington could play out across the nation if Trump’s plan to shift the burden of financing improvement projects to states and local governments succeeds.

“What they’re going to be hearing from governors and mayors and people all over the country is, ‘We don’t have the money,’ particularly for projects of national significance, which the Gateway project is,” said Ray LaHood, a Republican and former transportation secretary under President Barack Obama.

Weakest link

The administration expects to release the president’s plan on Monday, the same day he submits his fiscal 2019 budget blueprint to Congress. Half of the new federal money would go toward incentives to spur non-federal entities that own most U.S. infrastructure to raise and spend their own funds, rather than for specific projects.

The needs are great, with the American Society of Civil Engineers estimating an additional $2 trillion is required by 2025 just to restore public works to a “B” grade level. But the Hudson tunnel dispute shows how hard it might be to conjure money for even the most crucial and high-profile projects.

Hurricane damage

The Gateway project includes a new $13 billion tunnel with two tracks that would supplement a decaying, century-old tunnel that’s failing because of its age and saltwater flooding from Hurricane Sandy in 2012. That tunnel provides the only direct train link between New Jersey and Manhattan for New Jersey Transit and Amtrak.

The Obama administration described the tunnel as the nation’s most urgent rail infrastructure need. It is critical to the Northeast corridor, which carries more than 750,000 passengers daily and serves a region that produces about 20 percent of the gross domestic product, according to Amtrak. A 2016 Amtrak report found that implementation of the full Gateway project could generate $3.87 worth of economic benefits for every $1 spent.

Mixed signals

After New Jersey Gov. Chris Christie killed an earlier tunnel plan in 2010, saying taxpayers would be on the hook, the project appeared to revive. The cost-sharing agreement with the Obama administration was announced in November 2015 by Christie, New Jersey Sen. Cory Booker, New York Gov. Andrew Cuomo and New York Sen. Charles Schumer.

The Trump administration has sent mixed signals about Gateway since the president took office. After Transportation Secretary Elaine Chao called Gateway “an absolute priority” in testimony before the Senate Environment and Public Works Committee last May, the department withdrew from the board overseeing the project, Democrats said.

Schumer and Senate colleagues from New York and New Jersey then began holding up the confirmation of Transportation Department nominees. Schumer cited “the lack of focus on infrastructure investment by the current administration, and the continued roadblocks the administration has erected in front of the Gateway project” in a Nov. 13 statement opposing Derek Kan as undersecretary of transportation.

On Dec. 29, the Federal Transit Administration sent a letter to New York state’s budget director saying “there is no such agreement” to finance half the cost of Gateway. Deputy Administrator K. Jane Williams also questioned “the responsibility for funding a local project where nine out of 10 passengers are local transit riders."

Senate slow-walk

"You get the feeling the feds just don't have any real funds for infrastructure, so they want to knock down this expensive project," said Tom Wright, president of the Regional Plan Association, a New York urban policy group.

The nominations and the Gateway project should be considered on their own merits, said Jeffrey Rosen, deputy Transportation secretary. He said it was particularly important to seat Ronald Batory to lead the Federal Railroad Administration after recent fatal derailments.

"From our vantage point, the nominations and those New York and New Jersey transit projects are totally separate issues, and we think they should have been kept separate," Rosen said in a telephone interview.

Democratic support

Wright said the administration needs Democratic support to pass an infrastructure bill, and Gateway could be a major negotiating chip. Williams' letter to New York pointed out that "Congress is poised to begin discussing infrastructure legislation in the coming weeks."

Democratic Sen. Kirsten Gillibrand of New York raised Gateway funding in "a pretty heated discussion" during a Jan. 9 meeting with Trump administration officials about their infrastructure proposal, according to Sen. Tom Carper of Delaware, the top Democrat on the Senate Environment and Public Works Committee.

Gillibrand became angry when Chao said there would be no funding because Democrats are holding up nominations, according to a source familiar with the meeting who requested anonymity to discuss a private gathering.

LaHood said that the Gateway battle could be seen as both a political struggle between two New Yorkers, Trump and Schumer, and a striking example of the philosophical change the administration is trying to establish over the role of the federal government.

There are many large projects across the U.S. for which states and cities just don't have the resources to build without federal help, LaHood said. It will be up to Congress, which will write and pass any infrastructure legislation, to decide whether Washington continues to play the role it has.

"The $64 billion question is, is Congress willing to change the philosophy on that?" he said.

The Associated Press

February 8, 2018

Trump's Infrastructure Plan May Ignore Climate Change. It Could Be Costly.

WASHINGTON — President Trump is expected to unveil on Monday a plan that would fulfill one of his signature campaign promises: a $1.5 trillion, once-in-a-generation proposal to rebuild, restore and modernize the nation's aging infrastructure.

“We will build gleaming new roads, bridges, highways, railways and waterways all across our land,” Mr. Trump said in his State of the Union address.

But while the proposal represents one of the administration’s main legislative ambitions, it could directly clash with one of its defining regulatory principles, which is to question the risk from global warming and roll back regulations addressing climate change.

Continue reading.

THE NEW YORK TIMES

By CORAL DAVENPORT

FEB. 10, 2018

Next Crisis in Finance May Be Public Pensions, $1.2 Trillion Asset Manager Says.

- **Municipalities, states are pressured by funding shortfalls**
- **Head of asset manager also sees equity markets being reshaped**

What’s on the list of concerns for a man who runs a $1.2 trillion asset manager? Swelling shortfalls in U.S. public pensions, according to PGIM Chief Executive Officer David Hunt.

“If you were going to look for what’s the possible real crack in the financial architecture for the next crisis, rather than looking in the rearview mirror, pension funds would be on our list,” Hunt said Friday in an interview. Pressure on municipalities and states will intensify in a downturn when local tax revenues decline and unemployment worsens, he said. “So we’re worried about those pension obligations.”

Lawmakers from New Jersey to Illinois to California are struggling to fill shortfalls. U.S. public pensions had 71.8 percent of assets required to meet obligations to retirees as of the fiscal year ended June 2016, according to a report by the Center for Retirement Research at Boston College.

PGIM, owned by Newark, New Jersey-based Prudential Financial Inc., counts 147 of the 300 largest global pension funds among its clients. Hunt said that corporate funds generally do a better job than their public counterparts.

Hunt acknowledged that it’s harder in the public pension space where lawmakers set the benefits and the fund managers are tasked with generating enough return to cover those promises. Still, he said he has advised public-pension clients to stop looking for the highest-return hedge fund and “start doing what the corporate folks have long been doing, which is to find ways to minimize the deficit and to take risk gradually off the table.”

Hunt joined Prudential in 2011 from McKinsey & Co. He’s doubled assets under management, renamed the business PGIM and bought a Deutsche Bank AG unit to expand in India.

In the interview, Hunt also said he’s seeing a shift in equities markets as more firms pursue private funding and initial public offerings “remain remarkably muted.” The number of publicly traded U.S. companies shrank from more than 8,000 in 1996 to about 4,300 in 2016, according to Ernst &

Young.

“More than any other period in our history we’re going to have companies that are owned by private equity rather than the public equity markets,” Hunt said. “The dynamism and growth of the economy is now more and more being captured privately and by institutions rather than actually available for you to own in your 401(k) account or for other public markets.”

Hunt said he doesn’t expect a wave of combinations among asset managers, even as some have predicted that fee pressure could provoke more tie-ups such as the merger of Janus Capital Group Inc. and Henderson Group Plc. Even as the equity business suffers, it hasn’t gotten bad enough to spur more mergers and acquisitions, he said.

“If you’re a modestly scaled equity business right now you’re having a hard time, but you’re not losing money yet,” he said. “You’re more likely to have what I’ve kind of called the field of zombies. You have these firms, they don’t disappear. They stop growing and maybe they’re even shrinking, but they carry on.”

Bloomberg Markets

By Katherine Chiglinsky

February 12, 2018, 2:00 AM PST

— With assistance by Amanda Albright, and Alex Barinka

Recent U.S. State Pension Reform: Balancing Long-Term Strategy And Budget Reality.

Lethargic economic recovery, weak investment returns, and assumption changes have weighed heavily on states’ required pension contributions, in S&P Global Ratings’ view. For the weakest pension funds, relatively high pension burdens stem from years of underfunding or deferring payments through back-loaded amortization methods and poor assumptions, combined with…

Continue Reading

Feb. 9, 2018

Could Oil Firms be Forced to Pay for Climate Change? California Cities Hope So.

The Bay Area city of Richmond recently made an unlikely move that got the attention of its largest employer and taxpayer, Chevron.

It followed other municipalities and counties across California that have filed lawsuits against oil companies, alleging that the energy giants knowingly contributed to climate change and should begin paying for it. Literally.

Employing the legal strategy that brought states major payouts from tobacco companies decades ago, the plaintiffs are demanding that oil interests begin writing checks to protect Californians against rising seas, crippling drought and harmful air.

The legal viability of the lawsuits is unclear; the cases are in early stages. But if any succeed, the implications are profound: The state is already spending hundreds of millions of dollars to shore up coastlines, protect infrastructure and retrofit roads and bridges in response to rising seas. And if companies are persuaded to drill and refine less oil, California has a much better chance of reducing greenhouse-gas emissions on the schedule it has set.

Besides Richmond, plaintiffs include the cities of Imperial Beach, Oakland, Santa Cruz and San Francisco and the counties of Marin, San Mateo and Santa Cruz. The Los Angeles City Council is considering its own suit.

The state has not joined in, something environmental groups say is a failure of leadership.

“Accountability is critical,” said Kassie Siegel, director of the Climate Law Institute at the Center for Biological Diversity. “The state of California can and should file a case seeking money damages and also an injunction against ongoing activities.”

The California Department of Justice has sued the Trump administration two dozen times over policies that include several related to the environment. Asked whether the state would join the cities and counties or consider filing its own suit against the oil companies, the Justice Department declined to comment about potential future action.

The city-county suits began six months ago when Imperial Beach, in southern San Diego County, sued a handful of oil companies. Richmond, surrounded on three sides by water and imperiled by rising seas, joined the fight Jan. 22. Its city council voted unanimously to sue 29 oil producers, even if it meant taking on Chevron, whose tax payments—$45 million in 2016—account for 25 percent of the city’s general fund.

“They are a pretty important corporate citizen,” said Richmond Mayor Tom Butt.

However, “we are a waterfront city—Richmond has 32 miles of shoreline on the Bay. Part of our city is vulnerable to sea-level rise: our transportation systems, neighborhoods and commercial areas and thousands of acres of waterfront park.”

Among those vulnerable venues is Chevron’s refinery, which sits at the edge of San Francisco Bay. Completed in 1902, this refinery, the state’s largest, was immediately dubbed “the colossus.” The facility today employs more than 3,400 people.

Leah Casey, the spokeswoman for Chevron’s Richmond refinery, said in a statement that lawsuits like the local ones “will do nothing to address the serious issue of climate change. Reducing greenhouse-gas emissions is a global issue that requires global engagement.”

Butt said the city sued “out of frustration, because I know that these fossil fuel companies are aware of the long-term costs and damage of the widespread consumption of fossil fuel.” He said Richmond was already planning for the sea’s rise but had not yet calculated mitigation costs.

The suits are filed in state court under California’s public-nuisance law, which allows legal actions against activities that are “injurious to health.”

New York City filed a similar claim against five of the world’s largest oil companies in federal court, asking that the cost of mitigating damage done by the companies as a result of their contribution to climate change be charged to them.

The legal challenges also assert that the oil industry has known for decades that burning fossil fuels accelerates climate change. The Richmond complaint states, "The industry has known for decades that business-as-usual combustion of their products could be 'severe' or even 'catastrophic.'

"Companies were so certain of the threat that some even took steps to protect their own assets from rising seas and more extreme storms," the complaint goes on, "and they developed new technologies to profit from drilling in a soon-to-be-ice-free Arctic. Yet instead of taking steps to reduce the threat to others, the industry actually increased production while spending billions on public relations, lobbying, and campaign contributions to hide the truth."

The slow unraveling of the decades-long industry cover-up of the medical harm from cigarettes turned the tide in the tobacco cases, according to Ann Carlson, an environmental law professor at the Emmett Institute on Climate Change and the Environment at the University of California, Los Angeles, School of Law.

Carlson, who is advising some of the plaintiffs' lawyers, said that courts will take into account the oil-industry-funded campaign to discredit climate science.

"That matters in California," she said. "If you can show evidence that a defendant engaged in a campaign to obfuscate, it's more than just a nice detail. Evidence helps."

With much at stake, oil companies are pushing back hard. ExxonMobil has responded with a demand to depose lawyers representing the California cities and counties.

The company says it is a victim of a conspiracy and cities and counties are being disingenuous: When they issue municipal bonds, they portray risk from climate change as unpredictable, not the fault of oil firms, as the lawsuits claim.

The companies have also filed motions to move the cases to federal courts, where they believe there are precedents more favorable to them.

The number of the legal claims intended to monetize the consequences of a warming planet is growing. Carlson said greater scientific certainty about attributing climate change impacts to specific industries and companies has created a legal opening.

"The courts were uncomfortable that they couldn't trace the harm," she said.

California is the epicenter of so-called climate-attribution science, said Peter Frumhoff, director of science and policy for the Union of Concerned Scientists.

"There's really a quite robust ability to characterize the extent to which climate change impacts have worsened," he said.

Further, by collating data taken from oil companies' annual accounting and national and international energy agencies' reports, "one can then connect the dots and assign a cost. That tees up the question, 'Who is responsible and who should pay?' " Frumhoff said.

"This is where the science is taking us, with increasing specificity and confidence."

calmatters.org

By Julie Cart | Feb. 5, 2018 | ENVIRONMENT

Group Urges SEC Probe of California, Cites Climate Hypocrisy.

California officials are downplaying the risks of climate change to bond investors while citing those same risks as the basis for a lawsuit against oil companies, according to a conservative think tank that has asked securities regulators to investigate.

The Washington-based Competitive Enterprise Institute sent a letter to the Securities and Exchange Commission, urging it to investigate a group of cities and counties in California for making contradictory claims about climate risks.

“In these lawsuits 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,” says the letter, dated Feb. 1. “In our view, this inconsistency raises serious questions of municipal bond fraud.”

The accusations by CEI mark the latest twist in a legal fight that began last July, when a group of city and county governments in California filed a lawsuit against 37 oil companies for their role in global warming. The suit claimed that the companies, which include Chevron Corp. and Exxon Mobil Corp., contributed to sea-level rise, and so should be forced to pay part of the cost of protecting coastal California communities against the problem.

Last month, Exxon launched a suit of its own, arguing that those same cities and counties had failed to disclose climate risks when it sold municipal bonds to investors.

CEI’s letter cites San Francisco, which said in the lawsuit against Exxon and other oil companies that it expects “0.3 to as much as 0.8 feet of additional sea level rise by 2030.” But when San Francisco sold $173 million in bonds in January 2017, it told investors that it was “unable to predict whether sea-level rise or other impacts of climate change or flooding from a major storm will occur, when they may occur.”

“Either the City can predict such sea-level rise, as it tells the court, or it cannot, as it tells investors,” CEI wrote to the SEC.

A spokesman for the San Francisco city attorney’s office, John Cote, called the letter “deceptive,” adding that the city “has been disclosing climate change as a risk factor since at least 2014.”

He cited an October, 2017 issuance that noted “substantial increases in sea level rise are projected due to climate change over the coming century” and could put critical infrastructure at risk.

“The assertion that the city does not disclose this risk factor to investors is false,” he said in an email.

Sam Kazman, general counsel for CEI and one of the letter’s authors, said in an interview that his organization is “quite skeptical” about cities’ claims that they face a threat from climate change. “I think they’re quite overblown,” he said of those warnings.

Still, Kazman said, the SEC ought to investigate the “very clear inconsistency between what these entities are saying in their bond offerings and in their court filings.”

The odds of legal sanctions are slim, according to Michael Gerrard, director of the Sabin Center for Climate Change Law at Columbia University.

Even under President Barack Obama, the SEC took no enforcement action against cities or companies for failing to disclose climate risk, Gerrard said Monday. He said that's unlikely to change under President Donald Trump, who has disputed the science of climate change.

An SEC spokesman, Ryan White, declined to comment.

But that doesn't mean the letter won't have any effect. Barbara VanScoy, head of Alpha Impact Investors, said she expects that the letter will encourage cities and investors to take climate risks more seriously. She added that cities' financial officers also need to talk more to the staff who work on resilience. "If offices remain siloed, nothing will change," she said by email.

Shalini Vajjhala, a former Obama official who now advises cities on adapting to climate risks, said the charges leveled by CEI could spur those conversations across different parts of local government.

"It might create some uncomfortable conversations between the CFOs office and the offices that are focused on generating the suits against big oil companies," Vajjhala said. "I think this is a smart move that will cause some thinking and introspection within some cities."

Insurance Journal

By Christopher Flavelle | February 7, 2018

Climate Change is Either Upon Us or it Isn't. California Cities Want it Both Ways.

If you live in Oakland, brace yourself. In the city's lawsuit with six other California municipalities and counties against petroleum companies, Oakland states that man-made global warming is an ongoing threat that will culminate in 66 inches of sea level rise by century's end, threatening the local economy with as much as $38 billion in property damage.

But if you are an investor looking to buy Oakland's municipal bonds, the outlook is sunnier. Oakland's municipal bond offering tells prospective investors the city cannot predict when "sea rise or other impacts of climate change or flooding from a major storm, could occur, when they may occur, and, if any such events occur, whether they will have a material adverse effect on the business operations or financial condition of the city or the local economy."

San Mateo County is another plaintiff seeking compensation from petroleum companies in advance of storms to come. San Mateo tells us to expect a precise "93 percent chance that the county experiences a devastating three-foot flood before the year 2050, and a 50 percent chance that such a flood occurs before 2030."

But if you're an investor interested in San Mateo's bonds, relax. The county is "unable to predict whether sea-level rise or other impacts of climate change or flooding from a major storm will occur," and if they do, whether they will impact the local economy.

San Francisco's lawsuit says that the city faces "an imminent threat of catastrophic storm surge flooding," requiring long-term upgrades of up to $5 billion, while assuring investors that the city is unable to predict if such events will happen at all, or what they would cost, if anything.

From the filings of several jurisdictions, including Santa Cruz city and county, the story is much the same. They've joined together to sue "Big Oil" for projected injuries caused by global warming, while calming investors by assuring them such occurrences might not happen.

With no apparent sense of unease, officials who signed off on the lawsuits are often the same ones who signed off on the statements to investors.

When I served as attorney general of California, one of my duties was to assure the accuracy of representations about state bonds. I took this job seriously because it was my signature that affirmed the truthfulness of the claims being put before investors. To obtain my signature, a bond had to meet the budget guidelines of the California Constitution, and have a plan to be paid off within the specified term.

I also made sure claims did not contradict other claims being made by a state agency. I did this because the language in a bond offering amounts to a financial disclosure.

The factual disparities made by these California cities and counties are as wide as the Golden Gate. These contradictory statements open these jurisdictions to lawsuits from investors who can now credibly claim diminution of their investment.

Lawsuits against these municipalities could lead to judgments that impact local budgets, raising taxes or cutting services to their citizens. Furthermore, local officials who sign off on these lawsuits and the bond offerings presumably do so under penalty of perjury.

Whatever your beliefs about climate change, you don't have to dismiss the idea of human-induced global warming to see the cities' lawsuit approach as misguided. The intent of these suits is to portray petroleum companies as the new Big Tobacco. I oversaw California's tobacco litigation. I can tell you these lawsuits are nothing like those against tobacco. There exists no viable substitute today that could completely and easily replace the central role played by hydrocarbons.

Worse, the lawsuits are an attempt to mount fishing expeditions for internal documents from scientists who held robust arguments about the possibility of global warming in decades past. The goal, of course, is to selectively take statements out of context that would liken oil companies to tobacco companies.

This is just another example of activists trying to replace the power of the people and their elected representatives with the decision-making of the courts in an area in which judges have no particular expertise.

Whatever their intentions, these cities demonstrate a true legal risk – to their own city budgets and their citizens, rather than to oil companies.

Climate change is either upon us or it isn't. California cities want it both ways

The Sacramento Bee

by Dan Lungren

February 07, 2018 04:00 AM

Understanding Costs and Benefits: Leases

Read the GASB article.

New MSRB MuniEdPro® Course: Upcoming Mark-Up Disclosure Requirements and Determination of Prevailing Market Price.

Learn the fundamentals of upcoming mark-up disclosure requirements and determination of prevailing market price in a new MuniEdPro® course from the MSRB.

Click here to learn more.

MSRB Arizona Town Hall.

MSRB Arizona Town Hall: Hosted in coordination with the National Association of Bond Lawyers' 16th Annual Tax & Securities Law Institute

February 21, 2018
4:00 PM – 6:00 PM MT

Join the MSRB, in coordination with the National Association of Bond Lawyers, for a Town Hall meeting in Phoenix, AZ. 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.

- Tax Reform Incentives for Investments in LI Communities: Holland & Knight
- Understanding the Investing in Opportunity Act: CDFA Webinar
- S&P: Dark Store Tactic By Big-Box Retailers Could Pressure U.S. Municipal Budgets And Credit Quality.
- Assessing and Managing the Risks Posed by Climate Change to State and Local Governments: A Brookings Institute Webinar
- GASB Request for Comment: Revenue and Expense Recognition.
- MSRB Holds Quarterly Board Meeting.
- SIFMA U.S. Municipal Issuance Report.
- *In re Lombard Public Facilities Corporation* – Bankruptcy Court holds that bankrupt public facilities corporation that was formed by village to obtain financing for and construct a convention

center within village limits – and which had issued bonds – was not a "governmental unit," of the kind ineligible for Chapter 11 relief.
- And finally, Adventures in Environmental Irony is brought to us this week by *Smokebrush Foundation v. City of Colorado Springs*, in which the city rained down toxic airborne asbestos particles on the adjoining business while dismantling a coal gasification plant. And that business? You guessed it: a "wellness center." We realize that burning sage is a traditional purification ritual, but ya' might want to consider something just a tad bit stronger this time around.

IMMUNITY - COLORADO

Smokebrush Foundation v. City of Colorado Springs

Supreme Court of Colorado - February 5, 2018 - P.3d - 2018 WL 700096 - 2018 CO 10

Landowner brought action against city for negligence, nuisance, and other tort claims relating to contamination by asbestos and coal tar from an adjacent property owned by the city on which city had dismantled a gas department building and on which a coal gasification plant and a natural gas plant used to operate.

The District Court denied city's motion to dismiss for lack of subject matter jurisdiction. City appealed. The Court of Appeals reversed and remanded with instructions. Landowner petitioned for certiorari.

The Supreme Court of Colorado held that:

- City did not waive its sovereign immunity under the Colorado Governmental Immunity Act (CGIA) as to landowner's injuries that purportedly resulted from airborne asbestos contaminants during demolition of the gas department building, but
- As a matter of apparent first impression, coal gasification plant that used to sit on the city-owned property was a "public gas facility" within the meaning of the CGIA.

City did not waive its sovereign immunity under the Colorado Governmental Immunity Act (CGIA) for injuries to owner of land adjacent to city-owned land that purportedly resulted from airborne asbestos contaminants during building demolition activities on the city-owned land; in the context of CGIA's provision waiving sovereign immunity for injuries resulting from a dangerous condition of any public building, CGIA defined a "dangerous condition" as one that was proximately caused by the negligent act or omission of the public entity in constructing or maintaining a facility, and demolishing a building in its entirety was the opposite of "constructing" it.

Coal gasification plant that used to sit on city-owned land was a "public gas facility" within the meaning of the Colorado Governmental Immunity Act (CGIA), and thus the city waived its sovereign immunity as to adjacent landowner's negligence, nuisance, and other tort claims against city for injuries related to purported contamination of adjacent landowner's property by subsurface migration of coal tar pollutants created by historical coal gasification operations on the city-owned land, despite argument that the injury-causing conduct must have occurred before the CGIA's effective date; the migration of the contaminants at issue was ongoing and continued after the CGIA's enactment.

ANNEXATION - MINNESOTA

In re Matter of Dahlgren Township

Court of Appeals of Minnesota - December 18, 2017 - N.W.2d - 2017 WL 6418228

City and township appealed portions of Office of Administrative Hearings' (OAH) orders that limited the amount of tax reimbursement to which the city and township could agree as condition of annexation of real property from township to city and imposed OAH's costs on city and township.

The District Court vacated both of the challenged provisions. OAH appealed.

The Court of Appeals held that:

- Statute, which required order approving annexation to provide reimbursement from municipality to town for taxable property annexed as part of the order unless otherwise agreed to by the parties, did not prevent city and township from agreeing to tax-reimbursement rate of $500 for each acre of real property that was to be annexed to city, even if that amount was more than what order approving annexation would have provided in the absence of their agreement;
- Statute, requiring costs of administrative proceedings in municipal boundary adjustments to be allocated on equitable basis if parties did not agree to division of costs before commencement of hearing, did not authorize OAH to assess its costs to city and township; and
- Issue of whether city and township had the authority to charge property owner for tax reimbursement under their orderly annexation agreement did not involve genuine conflict in tangible interests, and thus, issue did not present justiciable controversy over which Court of Appeals could exercise jurisdiction.

LIABILITY - GEORGIA

Mayor of Garden City v. Harris

Supreme Court of Georgia - January 29, 2018 - S.E.2d - 2018 WL 575988

Parents, individually and on behalf of their minor daughter, brought action against city, alleging premises liability, negligence, and negligence per se.

City moved for summary judgment. The State Court denied motion. City appealed. The Court of Appeals affirmed. Certiorari was granted.

The Supreme Court of Georgia held that under Recreational Property Act, landowner remains free from liability to any person injured on property who has been allowed to use property for recreational purposes free of charge.

BANKRUPTCY - ILLINOIS

In re Lombard Public Facilities Corporation

United States Bankruptcy Court, N.D. Illinois, Eastern Division - December 18, 2017 - B.R. - 2017 WL 6507097

United States Trustee, along with creditors, filed motions to dismiss Chapter 11 case on ground that debtor, a public facilities corporation, was a "governmental unit" and thus ineligible for Chapter 11 relief.

The Bankruptcy Court held that:

- Bankrupt public facilities corporation that was formed by village to obtain financing for and construct a convention center and hotel facility within village limits was not a "governmental unit," of kind ineligible for Chapter 11 relief, and
- Statements that Chapter 11 debtor, a public facilities corporation formed by village to obtain financing for and construct a hotel and convention center, had previously before taxing authorities in proceeding to determine tax-exempt status of its bonds were not binding on it.

Bankrupt public facilities corporation that was formed by village to obtain financing for and construct a convention center and hotel facility within village limits was not a "governmental unit," of kind ineligible for Chapter 11 relief, though village appointed the debtor's five-member board of directors and required debtor to observe the Illinois Open Meetings Act, the State Gift Ban Act, and conflict of interest statute, where debtor raised funds by selling tax-exempt bonds that were not back-stopped by the village treasury, conducted its corporate meetings separately from village meetings, and was not dependent on village for its day-to-day activities; while debtor's conduct in operating hotel and convention center might serve public purpose, it was not a core government function.

Statements that Chapter 11 debtor, a public facilities corporation formed by village to obtain financing for and construct a hotel and convention center, had previously before taxing authorities in proceeding to determine tax-exempt status of its bonds were not binding and did not prevent it, at hearing on motion to dismiss its Chapter 11 case on theory that it was a "governmental unit" ineligible for Chapter 11 relief, from taking position that it was not "governmental unit"; debtor, in making statements before taxing authorities, was not acknowledging that it was "governmental unit" ineligible for relief Chapter 11 of the Bankruptcy Code, but was making statements for completely different purpose of asserting that its bonds were tax exempt under completely different legislative scheme.

EASEMENTS - COLORADO

City of Lakewood v. Armstrong

Colorado Court of Appeals, Div. II - December 28, 2017 - P.3d - 2017 WL 6614122 - 2017 COA 159

After private landowners obstructed public easement on their land, city brought action for quiet title, declaratory judgment, prescriptive easement, trespass, reformation of deed, and injunctive relief.

The District Court entered summary judgment for city, finding that easement was valid. Landowners appealed.

The Court of Appeals held that:

- Deed validly conveyed easement from county to city, despite failing to specifically describe easement's location;
- Deed's failure to expressly describe dominant estate did not prevent it from validly conveying easement;
- Landowners had constructive notice of easement at time of purchase;

- Trial court properly reviewed extrinsic evidence in determining validity of deed conveying easement;
- Reverter clause was not triggered by zoning of dominant estate for commercial use; and
- County had authority to purchase easement.

EMINENT DOMAIN - NORTH DAKOTA

Brandt v. City of Fargo

Supreme Court of North Dakota - January 22, 2018 - N.W.2d - 2018 WL 493947 - 2018 ND 26

Property owners appealed city's resolution of necessity after city commission passed resolution related to construction of a flood protection project.

The District Court dismissed property owners' appeals, and property owners appealed to the Supreme Court.

The Supreme Court of North Dakota held that district court did not have jurisdiction over appeals from property owners who sought to challenge city's resolution of necessity after city commission passed resolution related to construction of a flood protection project; city's determination to exercise the power of eminent domain for an authorized public use was a legislative question which was not subject to judicial review, and no statute authorized owners' appeal.

INCORPORATION - SOUTH DAKOTA

Lippold v. Meade County Board of Commissioners

Supreme Court of South Dakota - January 24, 2018 - N.W.2d - 2018 WL 547466 - 2018 S.D. 7

Neighboring city and county residents appealed order of county board of county commissioners approving incorporation of proposed city and setting election for voters to decide whether to assent to incorporation.

The Circuit Court issued judgment declaring that the board's order was invalid and that election was a nullity. Board appealed.

The Supreme Court of South Dakota held that proposed city operated at minimum as de facto corporation, and thus, statute, requiring that any action challenging the regularity of acting municipality's organization be brought by the State, deprived neighboring city and county residents of standing to appeal board's order.

Putative city operated at minimum as de facto corporation, and thus, statute, requiring that any action challenging the regularity of acting municipality's organization be brought by the State, deprived neighboring city and county residents of standing to appeal order of county board of county commissioners approving incorporation of putative city and setting election for voters to decide whether to assent to incorporation; putative city was governed by acting board of sworn trustees and was engaged in acts of municipality, including taking out loans and obtaining licenses and sales-tax exemptions.

ZONING & LAND USE - WASHINGTON

City of Union Gap v. Printing Press Properties, L.L.C.

Court of Appeals of Washington, Division 3 - January 25, 2018 - P.3d - 2018 WL 545756

City, which designed, constructed, and maintained boulevard, filed action against owner of commercial property abutting the boulevard, alleging breach of development agreement and seeking to obtain injunction precluding owner from cutting curbing along the boulevard and building driveway to access the boulevard.

The Yakima Superior Court granted owner's motion for summary judgment. City appealed.

The Court of Appeals held that:

- City's action arose independently of other city's decision to issue permits for owner's driveway, and thus, city's failure to appeal other city's decision under Land Use Petition Act (LUPA) did not bar the action;
- Development agreement between city and owner precluded owner from directly accessing the boulevard from its property without permit from city; and
- Declaratory judgment, stating that owner would violate development agreement with city by cutting curb along boulevard to gain direct access from its land to boulevard without permit from city, was warranted as remedy.

Tax-Exempt Bond Update: 2017 Year In Review.

Tax Reform

In by far the biggest tax news of the year, the tax reform bill, commonly known as the Tax Cuts and Jobs Act (Tax Act), was passed by Congress and signed by the President on December 22, 2017. Municipal finance participants, who had expected that all tax-exempt bonds would be "safe" under any tax reform legislation, were thrown by the initial version of the Tax Act released on November 2, 2017, which proposed to eliminate the tax-exemption for all private activity bonds, advance refunding bonds and certain stadium financings. What followed was an intense six weeks of hand-wringing, lobbying and rushing to close transactions at risk of losing their tax-exempt status if issued after December 31. In addition, issuers of tax credit bonds (such as build America bonds) were concerned that the projected increase in the federal deficit caused by the Tax Act could trigger a 100% reduction (beyond the now typical, annually announced sequestration levels that already affect direct pay bonds under the Budget Control Act of 2011) in the federal subsidy payments paid with respect to tax credit bonds under the provisions of the "Pay-As-You-Go Act of 2010" (PAYGO Act). In the end, Congress waived the PAYGO Act with respect to the Tax Act and avoided 100% sequestration.

The final version of the Tax Act:

- Repeals the authority to issue tax-exempt advance refunding bonds after December 31, 2017.
- Repeals the authority to issue tax credit bonds such as Qualified Zone Academy and Clean Renewable Energy Bonds after December 31, 2017.
- Retains the authority to issue private activity bonds (PABs), including 501(c)(3) bonds.
- Retains the authority to issue tax-exempt bonds to finance professional sports stadiums, in certain

situations.
- Preserves the Low Income Housing Tax Credit (LIHTC).

In addition, the Tax Act:

- Lowers the corporate tax rate to 21%.
- Repeals the corporate alternative minimum tax (AMT).
- Retains seven individual tax brackets but changes both rates and income thresholds.
- Retains the individual AMT but raises the exemption and phase-out levels.
- Limits the deductibility of state and local taxes for individuals to $10,000.
- Lowers mortgage interest deduction cap to $750,000.

Most market participants expect to see a short term decrease in the issuance of tax-exempt bonds resulting from the rush to market that occurred in December 2017 and the elimination of advance refunding bonds (which have typically accounted for approximately 20% of new bond issues). The Tax Act did not provide transition rules for outstanding bonds that would have been eligible for tax-exempt advance refunding. As a result, market participants are exploring alternatives to tax-exempt advance refundings, such as forward delivery bonds or taxable advance refundings. For newly issued bonds, the market may react to the elimination of tax-exempt advance refunding bonds with new financing structures and revised call features, but these potential fixes may not be without cost to issuers. While the long-term effects of the Tax Act on the public finance market are not known at this time, it is possible that the lower corporate tax rate will reduce the appetite of banks and insurance companies for tax-exempt debt, and the number of bond issues directly placed with banks may decrease.

Proposed TEFRA Regulations

On September 28, 2017, the Internal Revenue Service (IRS) published proposed regulations with respect to the public approval requirements for private activity bonds under Section 147(f) of the Internal Revenue Code, commonly known as TEFRA requirements. A 90-day public comment period followed publication of the proposed regulations, but issuers may elect to apply the proposed regulations in whole (but not in part) to bond issues with a public approval that occurs on or after September 28, 2017.

The proposed regulations retain the 14-day notice requirement for a public hearing, but expand the permitted methods of providing notice to include the issuer’s website. The proposed regulations also clarified the information required to be included in the public hearing notice. In addition, the proposed regulations provide additional guidance on what constitutes an “insubstantial deviation” and the ability to cure substantial deviations in limited circumstances. The proposed regulations also address where a hearing may occur, and include special rules for mortgage revenue bonds, qualified student loan bonds, qualified 501(c)(3) bonds issued for working capital expenditures, and pooled financings for 501(c)(3) bonds.

Updated Management Contract Guidelines

Although private business use can occur when a service provider uses bond-financed facilities pursuant to a management contract, the IRS has long provided “safe harbors” for management contracts that meet certain conditions. With the release of Revenue Procedure 2017-13 on January 17, 2017, the IRS made the safe harbor conditions more flexible and less formulaic. In general, management contracts must provide for reasonable compensation and must not give the service provider a share of net profits or impose on the service provider the burden of sharing net losses. The safe harbor conditions also limit the deferral of compensation, the term of the contract, transfer of the risk of loss, control over rates and other provisions. The new safe harbor conditions apply for all management contracts entered into (or modified or extended by mutual option) on or after January 17, 2017.

IRS: Reorganization, Audits and Guidance

In May 2017, the Tax Exempt & Government Entities Division of the IRS underwent a major reorganization. The tax-exempt bond (TEB) office was combined with the office of Indian tribal governments (ITG) to form a new ITG/TEB office within the Tax Exempt & Government Entities Division. As of May 1, 2017, there is no longer a TEB director, and the new ITG/TEB office is chaired by Christie Jacobs, who was previously director of ITG. Prior to taking the position, Jacobs did not have any experience with municipal bonds. Field operations, the unit responsible for bond audits, is now led by Telly J. Meier. Meier is also an ITG specialist without previous municipal bond experience. Allyson Belsome, the previous head of field operations for TEB, is now manager of the group that is responsible for the voluntary closing agreement program, technical support, and the development of ongoing outreach programs.

In recent years, staffing for TEB field operations (i.e. audits) has reduced dramatically (from 60 agents in 2009 down to an expected 19 agents in 2018). As a result, the IRS has adopted a more streamlined and data driven approach to tax-exempt bond audits. The 2018 work plan lists five focus areas for audits this year: arbitrage of tax-advantaged bonds with guaranteed investment contracts and/or qualified hedges as well as bonds with investments beyond a temporary period; acquisition financing involving private activity bonds to determine whether the rehabilitation requirement was satisfied; non-qualified use in the disposition of financed facilities and/or excessive private business use; bonds issued with a deep discount; and private activity bonds with excessive weighted average maturities.

Each year, the IRS issues a work plan setting priorities for guidance (in the form of proposed or final regulations, revenue procedures, etc.). For 2017-18, the work plan for ITB/TEB prioritizes: remedial actions for tax-credit bonds, private activity bonds, rebate overpayment, reissuance and TEFRA (as described above, proposed regulations were released in 2017, but have not yet been adopted in final form). Of course, the work plan was prepared before the Tax Act was proposed or signed into law and does not take into account any potential infrastructure legislation. The IRS may have to adjust its priorities to provide for implementation of the Tax Act or a possible infrastructure bill.

Commentary: Continued Risks to Private Activity Bonds

Conduit issuers, and housing issuers in particular, dodged a bullet at year end that would have come near to killing the affordable housing industry. Earlier in the year, the outlook was rosy: there was strong bipartisan support for increasing the low income housing tax credit, and a proposed bill that would have granted the increase and provided numerous improvements to the program. Then, in November, the House proposed a tax cut bill that eliminated private activity bonds, which include housing bonds subject to the state volume cap limits. The magic of those bonds – commonly referred to as “volume cap bonds” – is that their issuance provides an “automatic” housing tax credit, which attracts private investment in affordable housing. The tax credit program has enjoyed strong bipartisan support because of its ability to provide much needed affordable housing infrastructure through a true partnership between government and the private sector. It is a well-regarded and tested program that has produced millions of affordable housing units in its thirty year existence. The charitable view is that the drafters of the tax proposal were unaware of the role volume cap bonds play in the tax credit program. Any other interpretation is frightening because it demonstrates a disregard for the challenges cities across the nation face to address the housing needs of their residents.

The House version of the tax reform bill also threatened 501(c)(3) bonds that are used to finance nonprofit schools, hospitals, social service agencies, universities, museums and art institutions. Elimination of tax-exempt 501(c)(3) bonds would have increased the borrowing costs for institutions, which could result in fewer projects being completed or in increased costs being passed on to nonprofit users and clients.

Fortunately, the Senate version of the tax bill prevailed in this regard and the repeal of private activity bonds did not occur, thanks in significant part to bipartisan support for affordable housing. However, significant risks to this industry sector remain based upon reported statements by Kevin Brady, the chair of the House Ways and Means Committee and a critic of private activity bonds. He has suggested that private activity bonds should be "focused on infrastructure projects that help build and enhance the national infrastructure because they're receiving national subsidies from every taxpayer in America." Conduit issuers, nonprofit borrowers and affordable housing developers should brace themselves for the possibility that any upcoming infrastructure legislation could seek to redirect the benefit of private activity bonds to large, national infrastructure projects and away from "local" improvements, such as housing and nonprofit facilities.

Article by Alison Benge, Deanna Gregory, Jon Jurich, Stacey Lewis, Faith Li Pettis, Jay Reich and Will Singer

February 1 2018

Pacifica Law Group LLP

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

In the Sports-Subsidy Game, Taxpayers Always Lose.

Few events unite our diverse country and bring people together like sports. No matter where we are from, which team we root for, or even if we don't care about the game itself, the highlights of Sunday's Super Bowl match-up will soon become part of our cultural lexicon and the shared American experience. Because of its role in maintaining our national identity, people may think of professional athletics like a common good, worthy of public investment. But, as personally meaningful and enjoyable as the big game may be, neither football nor any other professional sport is a public service: they are all for-profit enterprises that generate billions in private wealth for franchise owners.

This Sunday, we will watch athletes who earn an average annual salary of nearly $3 million compete to become champion of a league that makes more than $14 billion a year in revenue – in between commercials that cost $5 million for 30 seconds of airtime.

Big league sports do not need to be subsidized by taxpayers.

Continue reading.

Inside Sources

by Michelle Minton

February 02, 2018

Record $11Bn In Green Munis In 2017 Across U.S.; MTA In The Lead

Record $11bn in Green Municipal Bonds in 2017 across US; New York beats California as top issue; $20bn investment forecast for 2018

London 31/01/2018 15:00 GMT: Annual US green municipal bond issuance reached a new record in 2017, passing the symbolic $10bn mark with New York retaking the lead from California and becoming the US state with the highest 2017 issuance of municipal green bonds and the highest cumulative issuance.

Climate Bonds Initiative is forecasting $20bn of green municipal issuance in 2018 as US cities and states ramp up climate action.

The latest Climate Bonds Initiative analysis of US municipal green bond market finds the December 31st 2017 total stood at an annual record of $11.05bn, up from $7.11bn in 2016. New York reached a total of $4.59bn, followed by California's $4.32bn for the year.

Continue reading.

ValueWalk

by VW Staff

January 31, 2017

Column: Proposed $107 Billion Bond Isn't the Cure for Illinois' Public Pension Crisis.

A big, bold plan to save the state's debt-strapped public pension funds is being floated this week in Springfield. But don't get your hopes up.

It's not the cure to Illinois' festering financial crisis.

An influential state employee advocacy group, the State Universities Annuitants Association, is urging Illinois to issue $107 billion in bonds to pay off shortfalls in the state's five leading pension funds.

Yep, that's a whopping $107 billion — backed by taxpayers who will be on the hook, especially if this deal goes bad. And the odds of that occurring look pretty good.

"It's a big gamble," says Howard Cure, director of municipal bond credit research for Evercore Wealth Management in New York.

While full details of this plan are expected to be unveiled Tuesday before a state panel, bond and public finance experts are already highly skeptical. They’re concerned it will add to Illinois’ pension burdens — now estimated at $130 billion in unfunded liabilities and growing — and further hinder the state’s sorry overall financial health.

Let’s start with the bond market.

At $107 billion in 27-year fixed-rate bonds, it would be the largest amount of debt the state ever sought from investors. Bond experts wonder if Illinois — with its record of political dysfunction, inability to pay its bills in a timely way and $25 billion in general obligation debt — will attract enough hungry investors.

One way to lure wary backers is to spice up the bonds and sell them at above-market interest rates. Such a premium would likely attract risk-taking investors, probably from overseas funds, or deep-pocketed individuals hoping to make a killing.

But higher rates are tougher to pay off and investors’ bond payments must be paid on time, says Evercore’s Cure. Missing a debt payment means riling angry bondholders, who could quickly sue the state or take other legal actions to recoup their investments, he adds.

Laurence Msall, president of the Civic Federation — a nonpartisan government research group — says his organization has “serious concerns and reservations” about the proposed bond effort too.

On top of the gargantuan amount, the bond is limited to pensions and not linked to any comprehensive financial plan for improving state finances, Msall asserts. The bond’s size could also impede the state’s ability to seek borrowing or bond financing for infrastructure or other basic needs, he says.

Despite these somber concerns, no one should be beating up on the State Universities Annuitants Association, which represents more than 200,000 current and retired employees, for leading this charge.

The group believes many initial concerns will be addressed when it reveals the details of its plan to the General Assembly committee exploring public pension matters. It will argue that its refinancing proposal will lop $103 billion off state pension costs through 2045 while increasing the pensions’ funding levels to 90 percent.

Rep. Robert Martwick, the Chicago Democrat who heads the House pension committee, has no position on the bond plan but wants it to become part of a larger pension reform debate. In the coming weeks, the $107 billion initiative will be fully discussed by finance experts, labor and taxpayer advocates, he stresses.

Of course, when it comes to Illinois’ public pension crisis, there’s no shortage of issues to chew over.

Government leaders have been doing that for way too many years with few results, mainly because of state underfunding of pensions, feisty union opposition and a provision in the state constitution that prohibits any structural changes to the funds or benefits.

Those who want to totally dump public pension plans haven’t had any better luck getting around that provision.

It’s a nasty trick bag because, in the meantime, the amount of public pension liabilities keeps stacking up and strapped taxpayers are increasingly responsible for paying more.

It's a mess.

But this big, bold but flawed bond plan isn't the solution to the public pension crisis.

We can't be that desperate.

Chicago Tribune

by Robert Reed

January 31, 2017

KBRA Comments on Federal Tax Reform's Impact on Public Finance Credit.

NEW YORK–(BUSINESS WIRE)–Kroll Bond Rating Agency (KBRA) has released an analysis on the impact of federal tax reform on public finance credit.

KBRA believes that the tax code modifications will affect the public finance sector over time in a number of important ways. The most immediate effect is the elimination of the tax exempt status of advance refunding bonds. The curbing of unlimited state and local tax income and property tax deductions, and the doubling of the standard income tax deduction will contribute to a more challenging environment for certain municipal entities. In KBRA's view, the impacts of federal tax reform on the public finance sector will evolve over time.

To view the report, please click here.

MSRB Holds Quarterly Board Meeting.

Washington, DC –The Board of Directors of the Municipal Securities Rulemaking Board (MSRB) met January 24-25, 2018, where it discussed industry implementation of the mark-up disclosure rule, facilitating compliance with MSRB rules and other measures aimed at regulatory efficiency.

The Board discussed its mark-up disclosure rule scheduled to take effect May 14, 2018 under which municipal securities dealers will be required to disclose to retail investors their compensation on certain transactions, as part of a broader fixed-income market initiative that has been a coordinated effort with the Securities and Exchange Commission (SEC) and the Financial Industry Regulatory Authority (FINRA). The Board discussed the MSRB's ongoing efforts to address challenges associated with industry implementation of the rule, including such topics as vendor readiness, systems development, systems integration and the role of testing and validation. The MSRB is preparing additional guidance following its prior publication of a set of FAQs, and the Board agreed to continue to coordinate with the SEC and FINRA to support compliance with the mark-up rule.

A strategic goal of the MSRB is to provide additional assistance to its regulated entities in complying with its rules. At its meeting, the Board discussed the work of its Compliance Advisory Group and the importance of ensuring that MSRB compliance resources are useful and reflect the needs of regulated entities. The MSRB established the advisory group in October 2017 to provide expertise and input to the Board to help inform the organization's goal to facilitate industry understanding of and compliance with MSRB rules. In addition, the MSRB is currently seeking public and industry comment on how the MSRB can best support regulatory compliance. The comment period remains open until February 9, 2018.

“We are committed to listening and incorporating feedback from both our advisory group and market participants,” said MSRB Executive Director Lynnette Kelly. “We encourage general feedback in the current request for comment and recognize that in some cases, formal public comment on specific compliance materials may further benefit their usefulness.”

One way the MSRB supports compliance is by providing interpretive guidance on its rules, which is also used by entities that enforce MSRB rules. The Board agreed that it will consider changes to its policy on interpretive guidance that could better promote industry understanding of and compliance with MSRB rules while continuing to maintain an effective enforcement coordination program.

The Board also began to discuss comments received on its concept proposal regarding current practices in the primary offering of municipal securities that stems from its retrospective rule review. The MSRB will continue to consider ideas provided by commenters, but the Board agreed to prioritize an efficiency initiative discussed in the concept release related to data collected from underwriters by the MSRB on Form G-32. The Board directed staff to prepare a request for comment on a proposal to auto-populate Form G-32 with additional data that is currently submitted by underwriters into the Depository Trust & Clearing Corporation’s New Issue Information Dissemination Service (NIIDS) but that is not currently required on Form G-32. The request for comment will also seek input on including additional information on Form G-32 that is not currently submitted to NIIDS but that could support additional market transparency.

In another efficiency measure that developed out of the retrospective review of MSRB rules, the Board agreed to publish a request for comment on the proposed consolidation of MSRB requirements related to transactions in discretionary accounts into a single rule. The proposal also would establish limited, new requirements for other uses of discretion in customer accounts to provide clarity on dealer obligations and create greater consistency with similar rules of other financial regulators.

The Board also discussed MSRB professional qualification standards that it has determined to revise because of the October 2018 release of FINRA’s Securities Industry Essentials™ (SIE) examination. As previously announced, the MSRB will propose changes to the SEC to MSRB Rule G-3 to require the SIE as a prerequisite to qualification as one of four types of municipal securities representatives. The rule filing will also seek to update certain provisions of Rule G-3 to harmonize them with FINRA’s professional qualification standards.

The Board concluded its meeting acknowledging that both municipal securities dealers and municipal advisors are continuing to adapt to new market regulations and agreed that the timing of new requests for comment will be carefully calibrated to allow commenters to provide meaningful feedback as they accommodate new regulatory requirements.

Date: January 29, 2018

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

Reminder: Applications for the MSRB Board of Directors are due February 16, 2018

The MSRB is accepting applications for its Board of Directors from January 8, 2018 through February 16, 2018. The MSRB Board of Directors includes 11 members who are public and 10 members who are representatives of MSRB-regulated broker-dealers, banks and municipal advisors. All individuals must be knowledgeable about the municipal market. MSRB Rule A-3, "Membership on the Board," discusses the nomination and election process, including provisions about eligibility and membership requirements.

The Board of Directors' Nominating and Governance Committee publicly announces the solicitation of applicants for vacant positions on the Board that begin in October, which is the start of the MSRB's fiscal year. The committee accepts applications for at least 30 days through the online Board of Directors Application Portal; the beginning and end dates are specified in the announcement(s). Any interested individual with knowledge of the municipal securities market may apply or submit recommendations to the Nominating and Governance Committee.

MSRB staff conducts an initial review of applicants' materials to confirm their status as a public or regulated representative and ensure that all necessary information and documentation is provided.

At the end of the application submission period, the Nominating and Governance Committee reviews all applications and selects candidates for interviews during the third and fourth quarter of the fiscal year. Additional documentation, including the Board Member Candidate Questionnaire and consent to a background check are required for applicants who are interviewed. After completion of the interview process, the Nominating and Governance Committee nominates selected candidates to the full Board of Directors for election. This occurs during the fourth quarter of the fiscal year and is concluded by September 30. Upon election, the new Board members are publicly announced and the complete list of applicants is published on the MSRB's website.

Questions about the application process should be directed to MSRB staff at 202-838-1349.

Reminder: There's Still Time to Comment on the MSRB's Approach to Providing Compliance Support.

Read the Request for Comment.

GASB Request for Comment: Revenue and Expense Recognition.

GASB is looking for public feedback on its **Invitation to Comment, Revenue and Expense Recognition**, which involves the development of a comprehensive revenue and expense recognition model for state and local governments.

Additional information is available in the following press links.

- News Release
- Invitation to Comment

NFMA's 35th Annual Conference.

Registration has commenced for the **National Federation of Municipal Analyst's 35th Annual Conference** to be held at the Hotel del Coronado, Coronado, CA, on **May 30-June 1, 2018**.

Click here to learn more and to register.

SIFMA U.S. Municipal Issuance Report.

Monthly, quarterly or annual municipal bond issuance volumes and breakdowns for the U.S. municipal market. Volumes broken out by GO/Revenue, coupon type, callable/noncallable, new financing/refunding, and average maturity.

Read the Report.

January 2, 2018

SIFMA U.S. Municipal Securities Holders Report.

Quarterly or annual breakdowns of municipal outstanding by bond holder type.

Read the Report.

February 2, 2018

Illinois's Magic Pension Trick.

Close your eyes, issue 27-year bonds and watch liabilities disappear.

Democratic politicians in left-leaning states have been brainstorming ideas to avoid serious pension and tax reforms. The creative financial geniuses in Illinois have come up with a doozy: a magic bond that would save the state as much as it borrows.

Democrats in the state House have proposed issuing $107 billion in bonds to backfill the state's pension funds, which are short $129 billion. Annual state pension payments are projected to increase to $20 billion in 2045 from $8.5 billion—not including interest on $17 billion in debt the state previously issued to pay for pensions.

At the request of state retirees, a University of Illinois math professor performed a crack analysis showing how the state could use interest-rate arbitrage to shave its pension costs. Under the professor's math, the state could sell 27-year, fixed-rate taxable bonds and invest the proceeds into its pension funds. This would supposedly stabilize the state's pension payments at $8.5 billion annually, save taxpayers $103 billion over three decades and increase the state retirement system's funding level to 90% from 40%. Can the mathemagician make House Speaker Michael Madigan disappear too?

The professor based his analysis on pension obligation bonds issued under former Gov. Rod Blagojevich in 2003 with a 5.05% coupon that have earned on average 7.62% in the pension system. But that period included two bull equity markets, and even the state pension funds project only a 7% long-term return.

Illinois's borrowing costs have also increased as its credit rating has slipped to a notch above junk from double-A. Last year the state's taxable bonds due in 2035 traded at yields up to 7.2%. Investors may demand even higher rates because of the substantial interest-rate and credit risk given rising rates and the length of the 27-year bonds.

These magic bonds wouldn't carry the state's "full faith and credit" protection, for whatever that's worth nowadays in Springfield. In effect, public workers' pensions would be the bond security.

Two relevant precedents are the cities of Detroit and Stockton, California. Both borrowed to finance pensions and then later defaulted. Creditors had no recourse when the cities went bankrupt. States can't file for bankruptcy under federal law, but Illinois lawmakers could seek to extend maturities or reduce interest payments on the bonds. Good luck to creditors in court.

The real goal with these bonds is to shift the pension-liability risk from public workers and retirees to investors and taxpayers. This would liberate politicians to spend more and remove any incentive unions have to reform pensions. After borrowing for pensions in 2003, state lawmakers skipped payments, increased spending and scrapped retirement reforms for new workers.

Republican Gov. Bruce Rauner won't fall for this ruse. But if a Democrat defeats him this fall, unions may pull this magic bond out of their bag of political tricks.

The Wall Street Journal

By The Editorial Board

Feb. 4, 2018

Climate Change Could Swamp Your Muni-Bond Portfolio.

California localities warn of disaster when suing oil companies. So how come they don't tell investors?

By the end of this century Oakland, Calif., will be experiencing a "100-year flood" every week. At least that's what the Oakland city government argued last year, when it filed a lawsuit against several oil companies for contributing to climate change. The city forecasts that rising water levels in the San Francisco Bay will threaten the sewer system and other property "with a total replacement cost of between $22 billion and $38 billion."

Suppose you hold some of Oakland's municipal bonds. This climate apocalypse sounds like a serious risk, right? Yet a recent prospectus for Oakland's general-obligation bonds shrugs off the threat. "The City is unable to predict when seismic events, fires or other natural events, such as sea rise or other impacts of climate change or flooding from a major storm, could occur," the prospectus states. And even if such events occur, the city can't be sure "whether they will have a material adverse effect on the business operations or financial condition of the City or the local economy."

Other California localities have told courts one thing and investors another regarding climate change. In a similar lawsuit, San Francisco claims it faces "imminent risk of catastrophic storm surge flooding." But in a bond offering last year, the city said it is "unable to predict whether sea-level rise or other impacts of climate change or flooding . . . will occur." San Mateo County claims in another suit that there is a 50% chance that a "devastating three-foot flood . . . occurs before 2030." The county uses boilerplate similar to San Francisco's to play down such risks in its communications to bondholders.

These jarring inconsistencies have led Exxon Mobil , a target of the lawsuits, to seek judicial relief. In a petition to a Texas court, the company states: "The disconnect . . . indicates that the plaintiff municipal governments do not actually believe the allegations in their complaints and that the allegations were not made in good faith." Exxon is also asking for permission to depose the lead plaintiff's lawyer, along with 15 California officials involved in filing the lawsuits.

It is possible the California officials were truthful in their attestations about their forecasts. But that means they seriously misled their investors, hoping they could ding deep-pocketed oil companies while continuing to borrow cheaply in the municipal bond markets.

This is not an uncommon practice. As a longtime investor in sovereign bonds, I can attest to the "flexibility" politicians demonstrate when approving prospectuses and agreeing to bond covenants. Reneging on contracts and explaining away misrepresentations are standard operating procedure for the political class in localities, states, countries and territories such as Puerto Rico.

Investors are relatively powerless in the face of such government dissembling. Besides selling their bonds, their only recourse is the courts. And because politicians readily spend taxpayer money to draw out the legal process, this option is generally too lengthy and unpredictable to be worthwhile.

But this case may be different thanks to the astonishing presence of contemporaneous, and directly contradictory, legally binding statements. This could prompt the Securities and Exchange Commission to abandon its hands-off approach and require state and local governments to disclose to investors risks arising from climate change, rather than allowing them to equivocate.

States and municipalities facing climate-change-associated risks would suffer a significant blow to their credit ratings, according to a Moody's Investors Service report issued in November 2017. Municipalities that sought big paydays from major oil companies may end up with a bitter second prize—more disclosure and higher borrowing costs.

Plaintiffs' lawyers probably never intended that their war on the fossil-fuel industry would end up shining a light on the perilous state of local public finances. But wars have a funny way of creating unintended consequences. If the unqualified statements made in court about the impact of climate change are even half true—regardless of the cause—the finances of many of California's coastal cities could soon be underwater.

The Wall Street Journal

By Jay Newman

Feb. 2, 2018

Mr. Newman is a former hedge-fund manager who specialized in sovereign debt.

FINRA Proposes Changes to the Securities Industry Essentials Examination.

To eliminate duplicative testing of general securities knowledge on the current representative-level qualification examination, FINRA has recently filed with the Securities and Exchange Commission a proposed rule change to restructure its representative-level qualification examination program. View the notice here.

When the rule proposal is officially filed with the SEC and published in the Federal Register a 21-day comment period will begin. The BDA will submit a comment letter and will reach out to membership about a comment letter draft.

The proposed rule change, which is set to become effective on October 1, 2018, will restructure the examination program so that all new representative-level applicants must pass both the Securities Industry Essentials (SIE) examination and a revised representative-level qualification examination, such as the revised General Securities Representative (Series 7) examination, appropriate to their job functions at the firm with which they are associating before their registrations can become effective.

The **implementation date of October 1, 2018**, is set to coincide with the implementation of the restructured representative-level examination program.

The rule change also proposes that the SIE be divided into the following four sections:

- Knowledge of Capital;
- Understanding Products and their Risks;
- Understanding Trading, Customer Accounts and Prohibited Activities; and
- Overview of the Regulatory Framework.

The number of questions on the SIE examination will be 75 scored multiple-choice questions and candidates will have one hour and 45 minutes to complete the examination.

The SIE content outline will be made available on FINRA's website no later than April 1, 2018.

February 1, 2018

Bond Dealers of America: 2017 Year in Review

Read the BDA Report.

Fitch: US Tax Bill Could Pressure Power Sector.

Fitch Ratings-New York-30 January 2018: The Tax Cuts and Jobs Act will pressure participants in the US power sector in different ways in the short run, Fitch Ratings says. Passing federal income tax reductions and returning excess accumulated deferred income taxes (ADIT) to customers through lower investor-owned utility rates could raise competitive pressures for public power and cooperatives, and be a credit negative for some corporate power issuers, including regulated utilities and utility holding companies.

The trend toward lower customer rates has already begun. Investor-owned utilities and their respective rate regulators in Illinois, Massachusetts and Oregon have already announced plans to direct their savings from the lower corporate taxes to ratepayers, rather than shareholders. This week, regulators and some state attorneys general sent a letter to the Federal Energy Regulatory Commission asking FERC to make a similar change.

We believe public power and cooperative utilities could face competitive rate pressure in some markets. However, that is not likely to be a material credit factor. Service areas with direct competition or where regional sensitivity to investor-owned utility rates exists will be the most exposed.

In general, the growth in US household income has made electricity costs a more affordable portion of a consumer's budget, easing rate pressures for most public power and cooperative issuers. Going forward, favorable operating conditions (including low natural gas prices and interest rates) and modest economic growth (Fitch forecasts at 2.5% in 2018 and 2.2% in 2019) should help sustain the public power and cooperative sector trend of improving financial metrics.

The impact on corporate ratings could be mitigated if state regulators balance the aim to lower rates for customers with the creditworthiness of utilities in their purview. The impact on corporate ratings will also depend on the amount of headroom an issuer has to absorb the leverage creep. Holding companies are more vulnerable given the elevated leverage profile for many driven by past debt-funded acquisitions.

Over the long run, the tax change's impact on public power issuers is likely to be negligible as the potential competitive pressures are only likely in the short term. The tax change could also be mildly positive for corporate issuers over the long run. We do not anticipate a long-term impact on the public power and cooperative sector.

Fitch: US States' Economic Growth Diverges from Revenue Growth.

Fitch Ratings-New York-29 January 2018: The contrast of broad U.S. economic growth versus tepid state revenue growth and uncertain budget outlooks highlights a rising risk to some states' long-term credit profiles says Fitch Ratings. Weak revenue growth already took a toll on some states' fiscal results. We expect this trend to continue in the coming fiscal years.

The Bureau of Economic Analysis reported last week that quarterly real state GDP grew in every state in 3Q17 for the first time since it began reporting the data in 2005. State tax collections grew slower and less consistently through 3Q17, according to the US Census Bureau.

The budget issues are indicative of long-term credit challenges posed by revenue growth that lags economic growth. States have typically used growing revenue in economic expansions to restore structural budget balance, fund new priorities and build up reserves. A permanent decoupling of this link could gradually pressure the typically robust state revenue frameworks. A state's revenue framework is one of four key factors driving Fitch's credit analysis – the strongest frameworks show growth potential above national GDP and reflect revenue systems best positioned to capture economic growth. Despite widespread economic growth, the National Association of State Budget Officers (NASBO) reported that 22 states made mid-year budget cuts in fiscal 2017 and mid-year budget reports and executive budget proposals released to date indicate some will report deficits for the current and upcoming fiscal years.

Real GDP growth in 3Q17 (annualized) varied from a low of 0.5% for South Dakota to a high of 5.7% in Delaware, and the median across all states was 3.0%. Similarly, real national GDP growth also accelerated in recent years reaching 3.2% in 3Q17. Fitch estimates full-year US GDP growth to be 2.3% in 2017 and forecasts 2.5% in 2018 and 2.2% in 2019.

Real yoy growth in state tax collections was just 0.4% in 3Q17 and lagged real yoy national GDP growth since 2016. Previously, state tax collections and national real GDP growth were more correlated with state tax collections typically growing or shrinking more aggressively. Individuals and corporations that anticipated federal tax reductions may have played a role in the more recent decoupling. Policy adjustments by individual states may skew results from year to year.

State fiscal results and plans indicate the toll the trend has had on budgets. The 22 states NASBO reported on made mid-year cuts in fiscal 2017. This was the highest number since fiscal 2010 when nearly all states were managing the Great Recession's repercussions – the $3.5 billion of cumulative deficits in fiscal 2017 was much lower than the roughly $20 billion in fiscal 2010, indicating less severe but widespread fiscal challenges. Declines in states' fiscal 2017 year-end total balances reflect this revenue weakness as 31 states reported lower balances to NASBO than the prior year. Total balances were $72 billion at the end of fiscal 2017, or 9% of spending, down from $81 billion, or 10% of spending, in 2016. The 2017 levels were also below the pre-recession peak of 12% of spending.

Revenue uncertainty and budget tension will continue in the current and future budget years. Some states have reported modest current year deficits. Rhode Island's $60 million shortfall, just 2% of the budget, is one. However, projected budget holes for upcoming years appear more significant. Kentucky's roughly $2 billion gap for the upcoming biennium, to address a ramp up in pension funding, would be 10% of the budget. Federal tax changes and related shifts in taxpayer behavior will also cloud the revenue picture for states.

Municipal Bonds Head to Worst Rout Since Trump's Win.

- **State, local government debt tumbled along with Treasuries**
- **'We could still see a slow and steady grind up in yields.'**

U.S. state and local government bonds headed toward their biggest weekly drop since President Donald Trump's election, joining a selloff in the Treasury market amid speculation that a pickup in hiring may cause the Federal Reserve to raise interest rates more aggressively.

The yield on top-rated 30-year debt climbed 5 basis points Friday to 3.03 percent, the highest since May, after the Labor Department reported that payrolls grew in January at a faster-than-expected pace. Those yields have risen about 18 basis points this week, marking the steepest rise since Trump's victory raised concerns that inflation would accelerate.

The rout for municipals was driven by the global bond selloff, said Dawn Daggy-Mangerson, a managing director at McDonnell Investment Management, which has been selling shorter-term debt and buying bonds maturing in 10 to 15 years. The rise in yields was in line with the jump in those on Treasuries this week.

Municipals are “not going to be able to withstand this big of a move,” said Daggy-Mangerson, whose firm holds about $7.5 billion of state and local debt.

While analysts have predicted that municipal bonds would benefit from a drop off in supply this year, the market’s slide since January has upended some short-term forecasts. Jonathan Law, vice president and portfolio manager for Advisors Asset Management, which oversees about $325 million in municipals in separately managed accounts, said he thinks the decline may not be over.

“You have to wait for things to play out,” he said. “I think we could still see a slow and steady grind up in yields.”

Bloomberg Markets

By Amanda Albright

February 2, 2018, 12:15 PM PST

Municipal Bond Sales Hit Seven-Year Low.

- **Issuance fell to $16 billion, down 50 percent year-on-year**
- **Municipal market delivers negative return of about 1.1 percent**

Municipal-bond analysts’ forecasts for January were half right.

Widespread predictions that sales of new debt would tumble were prescient, with issuance sliding to about $16 billion, half what it was a year earlier. But they were wrong that the slowdown — coupled with a surge of cash looking to be reinvested — would deliver solid returns. Pulled down by the Treasury market’s selloff, state and local government bonds are poised for their first January loss since 2011 and the biggest for the month since at least 1981, according to the Bloomberg Barclays index.

It “took a lot of people by surprise, including me,” said Gary Pollack, the head of fixed income trading and research at Deutsche Bank AG’s private wealth division, who was among investors who snapped up bonds in December, anticipating that they’d fare well because provisions in the federal tax overhaul promised to reduce tax-exempt debt sales.

“I think this could continue, and that is my fear,” he said. “It wouldn’t be pretty, it would be a continuation of ugly performance.”

The selloff in the Treasury market turned a usually winning month into a losing one, with the municipal market delivering negative returns of about 1.1 percent. January returns have typically been driven by a drop in new issues just as investors receive interest and principal payments.

This year, the slowdown was exaggerated by a record-setting wave of bond deals last month, as state and local governments rushed to borrow before the federal tax overhaul blocked them from selling tax-exempt debt for advance refundings, a key type of refinancing. January’s issuance was the slowest start to a new year since 2011, when long-term issuance was $13.6 billion.

Citigroup Inc. analyst Vikram Rai said the expectations for strong monthly performance were upset by speculation about rising interest rates, diminished buying by banks and insurance companies and concern among some buyers about the consequences that the federal tax changes would have on high-tax states.

"We are bullish on munis — it just takes time for these factors to take effect," he said. "There's cash on the sidelines but they're holding back because of current fears. But once those fears dissipate, they will invest again."

Bank of America Corp. was the top underwriter in January, managing more than 27 percent of the volume so far this year. RBC was the runner up, at 12.6 percent, according to Bloomberg LEAG tables.

School districts topped general obligation bond sales, comprising 21.5 percent of new issuance, led by a $219.6 million sale by Fairfax County, Virginia. Topping the revenue bond sector were gas contract bonds, with deals by Main Street Natural Gas in Georgia and Kentucky Public Energy. The two deals alone accounted for 10 percent of all new offerings.

The competitive market accounted for about 32 percent of issuance volume. By comparison, the competitive sales made up about 23.6 percent of the long-term municipal market in all of 2017.

Empire State Dominates

New York issuers lead 2018 issuance helped by MTA and Port Authority Sales

Analysts broadly anticipate that bond issuance will fall this year, though it's possible that provisions of President Donald Trump's infrastructure plan may seek to spur borrowing by states and cities. Given December's borrowing binge, though, analysts previously forecast that new muni-debt sales could fall by more than a third this year.

"The muni market is a market that runs on supply," said Pollack. "The supply factor is an important one for the muni market and supply was actually stronger in January than I thought."

Bloomberg Markets

By Danielle Moran and Zachary Hansen

January 31, 2018, 5:25 AM PST

Bloomberg Brief Weekly Video - 2/1

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

Watch video.

Bloomberg

February 1st, 2018

[The Week in Public Finance: Nassar Scandal Could Prompt MSU Downgrade, Tax Reform in the States and Green Bond Growth.]

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

GOVERNING.COM

BY LIZ FARMER | FEBRUARY 2, 2018

Tax Reform Moves to the States: State Revenue Implications and Reform Opportunities Following Federal Tax Reform.

Key Findings

- States incorporate provisions of the federal tax codes into their own codes in varying degrees, meaning that federal tax reform has implications for state revenue beyond any broader economic effects of tax reform.
- Because the base-broadening provisions of the new federal tax law often flow through to states, while the corresponding rate reductions do not, most states will experience a revenue increase. The vast majority of filers will receive a tax cut at the federal level, but they could easily see a state tax increase unless states act to prevent one.
- Eighteen states and the District Columbia have "rolling" conformity with the Internal Revenue Code, meaning that they will conform to relevant provisions of the new federal law automatically, while nineteen must update their fixed-date conformity statutes to adopt the new provisions. The remaining states only conform selectively.
- The largest revenue increases will be in states which conform to the now-repealed federal exemption, either directly or by linking their own personal exemptions to the number of exemptions claimed at the federal level. States which conform to both the standard deduction and the personal exemption will also experience a revenue increase.
- Six states will incorporate the new 20 percent deduction for pass-through business income unless they decouple from the provision or change their income starting point from federal taxable income to federal adjusted gross income.
- Unless they act, most states will not conform to an important pro-growth element of federal tax reform, the provision providing for immediate expensing of investments in machinery and equipment. The additional revenue from base broadening elsewhere may provide an opportunity to conform to this provision.
- States which include Subpart F income, a component of income for multinational businesses, in their base may receive a repatriation windfall, but should avoid building this one-time revenue into their budget baseline.
- States anticipating additional revenue should view this as an opportunity to make their tax codes more competitive. In the past, federal tax reform has initiated a round of state tax reform as well.
- State fiscal offices have an obligation to provide critical revenue estimate information to legislators during the 2018 legislative sessions.

Continue reading.

Tax Foundation

January 31, 2017

3 States Plan to Sue Over New Tax Law. Here's Why They Might Lose.

Connecticut, New York and New Jersey say that GOP tax policies unduly punish their populations. Some doubt whether their claims would stand up in court.

Governors from three Northeast states have announced plans to sue the federal government for discriminating against their taxing structure. But tax experts say their legal justification for doing so seems dubious at best.

The heads of state of Connecticut, New Jersey and New York have announced plans to file a joint lawsuit claiming that the federal government's new cap on deductions for state and local taxes, put in place by the Republican tax overhaul plan signed into law last month, is unjust because it targets wealthier states. Although no legal strategy has been announced, statements made by New York Gov. Andrew Cuomo suggest the lawsuit could use the U.S. Constitution's equal protection clause and the 10th Amendment protecting states' rights.

But that argument — that the law is unconstitutional because it affects different states in unequal ways — is a weak one, says Tax Foundation expert Jared Walczak.

Practically everything Washington does impacts states unevenly. For example, Florida and other states with higher retiree populations get more federal Medicare and Social Security dollars that other places. Meanwhile, the alternative minimum tax, which is designed to keep wealthy taxpayers from using loopholes to avoid paying taxes, targets a lot of residents in places like California, Connecticut and New York.

"And no one has suggested that the alternative minimum tax is unconstitutional," Walczak says. "[Cuomo's statements represent] a very novel argument and not one that is usually credited to the equal protection clause."

Capping the state and local tax deduction to $10,000 was one of the ways Congress tried to offset the cost of lowering federal income tax rates under tax reform. The cap, combined with new limits on the mortgage interest deduction, is expected to generate an additional $668 billion over the next 10 years, according to the Joint Committee on Taxation. Although Republican and Democratic lawmakers in states with higher taxes fought unsuccessfully against the cap, the policies were generally seen as disproportionately impacting more liberal-leaning states.

"It has nothing to do with sound policy," New Jersey Gov. Phil Murphy said while announcing the impending lawsuit. "It is clear: It is punishment."

But Congress has nipped and tucked the state and local tax deduction before.

When the federal income tax was first instated in 1913, all state and local taxes not directly tied to a benefit were deductible against federal taxable income. Then in 1964, Congress limited deductions to property, income, sales and motor fuel taxes. Fourteen years later, motor fuel taxes were eliminated from qualifying. And in 1986's tax reform, sales taxes were eliminated from deductibility — a move that disproportionately impacted taxpayers in states with no income tax. In 2005, Congress reinstated the sales tax deduction but only allowed taxpayers to deduct either income taxes or sales taxes (not both).

"So, over the years, Congress has apparently felt like they could narrow the deductibility," says Thomas Gais, director of the Rockefeller Institute of Government. "I'd assume they imagine they can get rid of the whole thing if they wanted to."

Where the states might have a more credible argument, Gais says, is in Cuomo's statement that the new federal tax law destroyed a century-old tax structure between the federal government and the states.

"The feds and the states share responsibility," says Gais. "[States] need to be able to raise money, especially when there are healthcare proposals that would limit Medicaid expenditures and probably other budget cuts coming at the federal level."

Indeed, no one is disputing the fact that capping how much taxpayers can deduct in state and local taxes from their federally taxable income makes it harder for high-tax states to raise taxes in the future. But Walczak and Gais both said they doubt that amounts to a 10th Amendment violation of a state's right to govern itself. They note that if anything was going to crowd out states' ability to raise taxes, it would have been during the 1950s and '60s, when the federal top marginal income tax rate was 91 percent.

In fact, Walczak says, high-tax states' uproar over capping the deduction is in conflict with the argument often heard within those states that tax rates play a minor role in businesses' and individuals location decisions.

"New Yorkers may favor a larger government and if they want to pay for it, that's a New York decision," Walczak says. "So maybe what we're hearing is that New Yorkers aren't as willing to subsidize that as leaders have been saying."

GOVERNING.COM

BY LIZ FARMER | JANUARY 30, 2018

Tax Benefits of Investing in O-Zones.

Read the report.

Economic Innovation Group | Feb. 1

Opportunity Zones: A New Tool for Community Development .

Read the report.

Novogradac & Company | Feb. 1

"Investing in Opportunity Act" A New Community Resource.

Read the report.

Nixon Peabody | Feb. 1

[Tax Reform Incentives for Investments in LI Communities: Holland & Knight]

[Read the report.]

Holland & Knight | Feb. 1

[Understanding the Investing in Opportunity Act: CDFA Webinar]

Thursday, February 15, 2018 | 1:00 PM Eastern

Overview

Around the country American communities are experiencing highly uneven economic development, resulting in large, regional pockets of disinvestment and unemployment. The recently enacted Investing in Opportunity Act aims to correct the aforementioned economic imbalances by incentivizing groups – through the temporary deferral of a tax on capital gains – to invest in distressed areas. In this CDFA webinar, learn from our expert panelists how the Investing in Opportunity Act works, when the program will begin, and a host of other important details essential to understanding this new federal program.

Register in advance to confirm your participation and receive login information. Registration is free and open to all interested stakeholders.

[Click here] to learn more and to register.

[Credit FAQ: S&P Global Ratings Clarifies Its Rating Action And Display Of Ratings Following Various Credit Enhancement Rating Withdrawals.]

Recently, S&P Global Ratings withdrew various credit enhancement program ratings. In this report, we address frequently asked questions we have received from market participants to provide greater clarity on how we proceeded with the withdrawals.

[Continue Reading]

Jan. 29, 2018

[S&P: Dark Store Tactic By Big-Box Retailers Could Pressure U.S. Municipal Budgets And Credit Quality.]

Household name big-box retailers and home improvement stores such as Lowe's, Home Depot, Sam's Club, Wal-Mart, Target, and Kohl's have begun using a controversial new legal tactic to appeal their assessed valuations and reduce their property tax bills in several states across the U.S.

Continue Reading

Jan. 29, 2018

Diagnosis – Unhealthy Financials Cause Another 501(c)(3) Hospital To Lose Its Favorable Tax Status.

A few months ago, I wrote a blog post about a hospital that had its Section 501(c)(3) status revoked by the IRS. In that case, the IRS found that the hospital had committed willful and egregious violations of the Patient Protection and Affordable Care Act (the "ACA"). For example, the hospital was not conducting a community health needs assessment every three years as required by the ACA, and was not shy about telling the IRS that the hospital had neither the financial wherewithal nor the employees to conduct a needed assessment every three years.

Continue Reading

The Public Finance Tax Blog

By Cynthia Mog on January 30, 2018

Squire Patton Boggs

New Tax Law Means Fighting Over Unfunded State Pension Plans is About to Get Worse.

The recently enacted U.S. tax law restricts federal deductions for state and local taxes (SALT) to $10,000 — including local property and sales taxes as well as local income taxes. While this new restriction will have many implications, it will have a particularly draconian impact on states with large unfunded liabilities for pension benefits and retiree health care, in particular the residents of Illinois, Kentucky, Connecticut, and New Jersey.

Unless states can implement effective ways to circumvent the SALT restriction, they will face much higher political barriers to meeting their unfunded benefit obligations through increased tax revenues. Instead, states will be forced to severely cut spending on public services and/or adopt major reforms of their benefit plans.

A state has payment obligations from three main sources — interest on its outstanding bonds, unfunded liabilities for pension benefits, and unfunded liabilities for health care payments to state retirees (before Medicare at age 65). The interest on outstanding state bonds is relatively easy to estimate; the total outstanding amount of all state bonds was $500 billion in 2016. With the advent of improved accounting rules, it is now possible to compute the unfunded pension and retiree health care liabilities of each state.

Continue reading.

The Brookings Institute

Robert C. Pozen

Thursday, January 11, 2018

Assessing and Managing the Risks Posed by Climate Change to State and Local Governments: A Brookings Institute Webinar

Climate change poses substantial risks and challenges to state and local economies and their governments. How do credit rating agencies assess and manage these risks? Do municipal bond markets take them into account if at all? Should they? Do rating agencies and bond markets give credit for building resilience? How should state and local governments gauge the risks posed by climate change? How urgent is this? Who is leading the way and what can we learn from them?

Join us on **February 13, 1:00-2:30 pm EST** for a webinar on these topics. We'll begin with presentations by Kurt Forsgren (Managing Director and Sector Leader for Infrastructure in U.S. Public Finance, Standard & Poor's), Tim Coffin (Senior Vice President and Director of Sustainability, Breckinridge Capital Advisors), Joyce Coffee (LEED AP, Founder and President, Climate Resilience Consulting) and additional speakers to be announced. The presentations will be followed by Q&A with webinar participants.

The Municipal Finance Conference is sponsored by the Hutchins Center on Fiscal and Monetary Policy at Brookings, the Rosenberg Institute of Global Finance at Brandeis International Business School, the University of Chicago Harris School of Public Policy and Olin Business School at Washington University in St. Louis. The 2018 conference will be held at Brookings on July 16-17, 2018.

Register for the webinar

The Brookings Institute

Are SLGS Needed Now That Tax-Exempt Advance Refunding Bonds are Banned?

WASHINGTON – Municipal market demand for state and local government series securities is certain to plummet in the wake of tax law changes that halted tax-exempt advance refundings after Dec. 31.

The vast majority of SLGS were purchased for advanced refunding escrows, municipal bond market experts say. Unlike open-market Treasuries, the maturities of SLGS can be especially tailored to match the maturities of bonds in advance refundings so yield restrictions are not violated.

The exact percentage is unknown because Treasury officials don't keep track of what SLGS are to be used for at the time of purchase.

"There is a self-certification that the funds being used for the purchase fall within the definition of ‘eligible source of funds,’” Brad Benson, spokesman for Treasury’s Bureau of Fiscal Services, said in an email.

Overall SLGS usage is tracked by Treasury. As of Dec. 29, there were 21,015 outstanding SLGS (bonds and notes) valued at $94.4 billion.

Dave Erdman, director of the Wisconsin State Capital Finance Office, estimates that 90% to 95% of the SLGS his state has purchased have been used in connection with advanced refundings.

One might question whether the SLGS program is still needed.

Treasury won’t comment, but its plans may become clearer when the time comes to reopen the window on SLGS purchases.

That should happen soon. Congress faces a Feb. 28 deadline to raise or suspend the debt ceiling before Treasury exhausts its extraordinary measures, which include haling SLGS sales.

Treasury closed the SLGS window on Dec. 8 when the department began taking extraordinary measures to avoid breeching the nation’s debt ceiling.

“Based upon available information, Treasury expects to be able to fund the government through the end of February,” Treasury Assistant Secretary for Capital Markets Clay Berry said in a statement Wednesday. “Treasury urges Congress to act promptly on this important matter.”

Normally Treasury reopens the window on purchasing SLGS immediately after Congress raises or suspends the debt limit.

Erdman, who is a member of the Government Finance Officers Association debt committee, said there are good reasons for keeping the SLGS program.

“I have other transactions that I do that I need to use SLGS that are not related to an advanced refunding,” he said.

Rich Moore, treasurer of the National Association of Bond Lawyers, echoed that sentiment.

“Anytime there are yield restrictions, SLGS are the correct bond issue,” Moore said, citing acquisition financing and equity defeasance of tax-exempt bonds as two examples.

“I hope they don’t discontinue it,” said Moore, a partner in the San Francisco office of Orrick, Herrington & Sutcliffe.

Erdman said the current low investment yields may make it look like lower yielding SLGS aren’t needed. “But I’ve been doing this long enough that when the investment rate increases pretty soon you are at or exceeding bond yield restrictions that you need to comply with,” he said. “While the current market may not point to it, historically we had had, and we will have, markets where instruments like SLGS are necessary.”

“Even if I was going to use cash to defease some bonds, I have to be cognizant of the yield restrictions and in order to meet those yield restrictions, I often use SLGS,” Erdman said. “There are other needs out there for SLGS over and beyond escrows that are funded with tax exempt refunding transactions.”

GFOA considers its discussions with Congress on reinstating advance refundings “to be very much alive," said Emily Brock, director of GFOA's federal liaison center.

The outline of the Trump administration's infrastructure plan recently leaked to the media would allow advanced refundings of tax-exempt private activity bonds used for infrastructure.

"I think that signaled that the White House and the administration understand that advance refundings are a policy tool that can be used to free up capital for more infrastructure spending Brock said.

Sam Gruer, managing director of the New Jersey office of Minneapolis-based Blue Rose Capital Advisors, said Treasury may weigh the cost of keeping a reduced SLGS program with the benefit of providing a public service that helps state and local governments comply with tax laws on arbitrage.

"I don't believe any municipality will be catastrophically harmed if the SLGS program is discontinued," Gruer said. 'It will be more expensive for the smaller issuers. For the larger issuers, often they don't use the SLGS program any way."

By Brian Tumulty

BY SOURCEMEDIA | MUNICIPAL | 01/31/18 07:09 PM EST

Trump's Faux-Populist Infrastructure Plan.

President Trump campaigned on — and continues to promise — a populist agenda, most recently in his State of the Union address, in which he called on Congress to pass a trillion-dollar infrastructure package. But if his rubbing shoulders with Davos elite last week weren't enough to dispel any hopes of him delivering on his populist posturing, the emerging details of that infrastructure plan surely is.

Mr. Trump's budget proposal and infrastructure "principles" released last May, and an outline of the plan leaked last month, point to a pro-privatization approach that his pals in Davos would celebrate but would endanger basic services, enrich the private sector and force everyday people to foot the bill. The leaked plan would be a bonanza for giant corporations, prioritizing projects that raised revenue (toll roads, higher water rates) and giving very little weight to a project's social benefit.

In his address Tuesday, Mr. Trump called for $1.5 trillion for infrastructure, yet his top adviser on the project, DJ Gribbin, has maintained that the plan wouldn't include any new federal revenue. That means funds will come from elsewhere, like existing transportation budgets. Because revenue, not need, would be prioritized, cities could be forced to turn to so-called public-private partnerships — a less politically charged rebranding of privatization — that has often led to higher user fees. And that focus makes sense, since this administration is full of with champions of privatization, including Mr. Gribbin, Vice President Mike Pence and Gary Cohn, the National Economic Council director.

Infrastructure privatization raises costs for basic services, undermines transparency and is frequently used to keep government costs "off the books." Disastrous examples in the United States include a deal by the water company Suez and the private equity firm Kohlberg Kravis Roberts to privatize the water system in Bayonne, N.J., which has left some residents in danger of losing their homes after skyrocketing water rates.

Although business executives, national officials and other global financiers and deal-makers may disagree with Mr. Trump on trade, they are with his administration on infrastructure privatization.

The World Bank, to take a prominent example, has a long history of pushing the privatization of people's most basic infrastructure need — water. Perhaps the best-known example is Cochabamba, Bolivia, where popular opposition to the privatization of the water system forced a return to a publicly run system in 2000. In another failed privatization, this time branded as a public-private partnership, residents of Manila face unreliable access, infrastructure neglect and rates that are unaffordable for many.

While the World Bank claims to have no preference between public and private infrastructure, promoting public-private partnerships remains its bread and butter. At a 2016 training event, bank staff learned "how to promote water P.P.P. projects" and convince government officials "of the interest of the P.P.P. approach." What's more, bank leadership is now evangelizing what it calls the "Cascade" approach, which prescribes the bank to "first consider private investment for projects; then public-private partnerships; and if the first two are not available then, only then, consider public finance."

The budget of the World Bank's International Development Association, which advances the bank's development priorities in the lowest-income countries, recently added $2.5 billion to provide corporations with risk insurance, guarantees, loans and equity investments.

The Trump administration and World Bank leadership clearly have shared interests, despite Mr. Trump's threat of deep cuts to development funding. The bank's president, Jim Yong Kim, has raised eyebrows by offering bank staff members to advise Mr. Trump on infrastructure policy. At a World Bank conference last October, Treasury Secretary Steven Mnuchin praised what he called the Cascade approach's key pillar: that the World Bank "will not provide financing if the private sector is able to do so." Perhaps this shared pro-corporate vision is why Mr. Trump has proposed funding the World Bank at levels close to the Obama-era budget last year.

As Puerto Rico's dire situation proves, the United States, like much of the rest of the world, has critical infrastructure problems to fix. But the privatization solution promoted by the Trump administration and popular among global elite is not the answer. Already, the toll that privatization takes has provoked resistance from Pittsburgh to Lagos.

Lawmakers at every level must take a stand by refusing a privatization agenda, whether from the Trump administration or the World Bank, and calling for renewed and expanded public funding. We need a plan that increases public investment, especially federal funding, not one that yields control to profit-maximizing and unaccountable corporations.

THE NEW YORK TIMES

By KELLE LOUAILLIER

FEB. 2, 2018

[Who pays for Trump's $1.5T public works plan?]

President Donald Trump wants $1.5 trillion for infrastructure. All he needs is a way to pay for it.

Lawmakers from both parties and industry representatives say they're still waiting for key details months after Trump promised a plan to restore the nation's roads and bridges. They're also skeptical about prospects for legislation that doesn't include robust federal contributions for projects and specific financing sources.

Trump urged Congress in his State of the Union speech Tuesday night to put forward a $1.5 trillion bipartisan infrastructure bill that envisions greater reliance on local and private-sector money. His request left even some Republicans searching for more details.

While leveraging public dollars is a good start, “the question is, how are you going to pay for it?” John Cornyn of Texas, the No. 2 Senate Republican, said after the speech.

In a speech to lawmakers last year, the president mentioned a $1 trillion infrastructure figure. That was increased to $1.5 trillion after his team met with state and local officials who showed enthusiasm for the plan and its incentives, a White House official said. The administration has proposed contributing at least $200 billion in federal funds over 10 years to spur spending by states, localities and the private sector.

A fact sheet released along with the State of the Union address said half of the funds would go toward generating state and local investments in infrastructure. That would be achieved by offering grants with preference given to applicants that generate their own revenue for projects, administration officials have said.

The White House said Wednesday it plans to send detailed principles to Congress in the coming weeks, after the legislative calendar and a government shutdown caused a delay in the public rollout of the plan.

Republican lawmakers will be discussing infrastructure at their policy retreat Thursday in West Virginia, said Rep. Cathy McMorris Rodgers of Washington, the chairwoman of the House Republican Conference. Trump is spoke to the group Thursday, and Transportation Secretary Elaine Chao and National Economic Council Director Gary Cohn will participate to discuss the administration’s proposal, McMorris Rodgers said.

“If we could find a way to pay for it, I believe that the Republicans and the Democrats would love to be able to move forward and deliver a major infrastructure package for the country,” McMorris Rodgers said a news conference. “The question is, how do we pay for it?”

Republican Charlie Dent of Pennsylvania, a retiring member of the House Appropriations Committee, also said that financing is the big question. “We’re going to need a recurring source of revenue on infrastructure,” he said after Trump’s speech.

The administration has pointed to unspecified budget savings to account for the $200 billion federal contribution, saying it’s open to conversations about other funding sources or a larger figure, but wants to negotiate those details with lawmakers.

“Without real federal funding to address the huge backlog of desperately needed improvements to the nation’s roads, bridges, public transit, airports, water systems, and other critical assets, it’s an empty promise,” Dave Raymond, president and chief executive of the American Council of Engineering Companies, said in a statement.

Congressional hurdles

Key Congressional Democrats Trump needs to pass a bill have already said $200 billion from the federal government isn’t enough. They doubt Republican leaders will approve more spending in a mid-term election year after passing the $1.5 trillion tax overhaul, which didn’t allocate money for infrastructure.

"The only way there will be funding for infrastructure will be by a very strong push for it by the White House," said Rep. Peter DeFazio of Oregon, the top Democrat on the House Transportation and Infrastructure Committee.

Some governors and mayors also say they're already doing their fair share, and that they need a more reliable federal partner. Twenty-six states have raised or adjusted their motor-fuel tax rates and other fees during the past five years, and voters in 20 states approved $4.25 billion in new and continued financing for infrastructure in Nov. 7 ballot issues alone, according to the American Road & Transportation Builders Association.

"The cities are doing most of it now in terms of the existing infrastructure that we've got," Little Rock Mayor Mark Stodola, president of the National League of Cities, said at an event in Washington on Jan. 18.

Industry groups are focused on stabilizing the Highway Trust Fund, which uses federal fuel taxes to pay for transportation and transit projects. Congress has kept the fund solvent with transfers from other sources, and it is projected to become insolvent by 2021 without additional money, according to the Congressional Budget Office.

Organizations including the U.S. Chamber of Commerce are calling for an increase in the gas tax — which hasn't been raised since 1993 — as the most efficient way to raise more money, though the idea still faces Republican opposition in Congress.

Rep. Bill Shuster of Pennsylvania, chairman of the House Transportation and Infrastructure Committee, told reporters he brought up the gas tax at the Republican policy retreat and the response was mixed.

"Nobody wants to raise any taxes, but this is something that's understandable and efficient," Shuster said. "If you did 15 cents — that's a cup of coffee a week or two bottles of water."

Shuster said one concept being explored is asset recycling, which involves selling or leasing airports and other public facilities to the private sector to raise money for projects, a concept Democrats generally oppose. Australia had such a program, and officials from that country have pitched the idea in the U.S.

The American Trucking Associations has proposed a 20-cent-per-gallon fee on all transportation fuels at the wholesale level over four years to generate as much as $340 billion in highway funding over 10 years. A funding source will be needed to get a bill through Congress, said Chris Spear, the group's president and chief executive officer.

"It really comes down to, do you want to make a statement, or do you want to win?" Spear said "To win, you have to put real money on the table."

Bloomberg News

February 1, 2018

Vermont's Push to Match Local Bond Investors with Local Projects.

The Vermont Municipal Bond Bank wants retail investors to play an integral role in tackling some of the state's infrastructure needs.

The agency announced Thursday the approval of six new loans totaling around $7.8 million for capital projects across Vermont that will be funded through its first-ever offering of local investment bonds. Executive Director Michael Gaughan said the local investment bond designation allows the bank to expand its reach with individuals able to purchase the bonds in smaller increments as low as $1,000.

"Our local investment bonds are definitely part of a growing effort by many issuers to get more people to invest locally," said Gaughan, a former public finance director at PNC Capital Markets (PNC), who began his role with the Vermont Bond Bank on Jan. 2.

The Vermont Bond Bank is planning to sell $8.2 million of the series 1 bonds during the week of Feb. 12 in a deal underwritten by lead managers Morgan Stanley (MS) and Citi. The transaction is rated AA-plus by S&P Global Ratings and Aa1 by Moody's Investors Service.

Vermont's local investment bond sale comes nearly a year after the City of Cambridge, Mass. offered its first minibond issuance featuring $2 million of general obligation bonds to finance local infrastructure projects such as school renovations and street repairs.

Gaughan said the new offering was inspired by the State of Vermont's citizen bonds, which are available only to Vermont residents also in $1,000 denominations.

"The difference with our bonds is that we also wanted to recognize the high impact of the loans we fund through our pooled program," said Gaughan. "Many of our borrowers are small towns and villages where an infrastructure upgrade can have a relatively out-sized impact versus a major metropolitan area."

The local investment bond designation is aimed at highlighting the community impact from the transaction targeting improvements to the municipalities of Swanton, Enosburg Falls, Grand Isle, Williston and St. Albans, along with Green Mountain Union High School. Gaughan said planned outcomes from the transaction such as producing 47,000 megawatt hours of renewable energy annually and nearly 12,000 linear feet of streetscape improvements are highlighted in the offer sheet in hopes of attracting investors interested in "impact investing."

By Andrew Coen

BY SOURCEMEDIA | MUNICIPAL | 02/02/18 07:11 PM EST

Webcast Replay: S&P 2018 U.S. Not-for-Profit Charter School Outlook

Jan. 31, 2018 | New York

S&P Global Ratings U.S. Public Finance held an interactive, live webcast on Wednesday, January 31, 2018 at 2:00 p.m. Eastern Time for a discussion on the U.S. Not-for-Profit Charter School sector outlook.

View The Webcast Replay

Webcast Replay: S&P 2018 U.S. Infrastructure Outlook

Jan. 30, 2018 | New York

S&P Global Ratings U.S. Public Finance held an interactive, live webcast on Tuesday, January 30, 2018 at 2:00 p.m. Eastern Time for a discussion on the U.S. Public Power, Transportation and Water and Wastewater sector outlooks.

View The Webcast Replay

Webcast Replay: S&P 2018 U.S. Not-for-Profit Higher Education Outlook

Jan. 25, 2018 | New York, NY

S&P Global Ratings U.S. Public Finance held a live, interactive webcast on Thursday, January 25, 2018 at 2:00 p.m. Eastern Time for a discussion on the U.S. Not-for-Profit Higher Education sector outlook.

View The Webcast Replay