Bond Case Briefs

Municipal Finance Law Since 1971

TAX - MAINE

Roque Island Gardner Homestead Corporation v. Town of Jonesport

Supreme Judicial Court of Maine - July 11, 2017 - A.3d - 2017 WL 2951692 - 2017 ME 152

Taxpayer, a nonprofit homestead entity that owned a 1,242-acre island with five houses and numerous outbuildings, sought review of town board of appeals' denial of its request for a municipal property tax abatement.

The Superior Court affirmed. Taxpayer appealed.

The Supreme Judicial Court of Maine held that application of a 200% economic obsolescence factor to taxpayer's property, which had the effect of raising its valuation, was not unjust discrimination.

Application of a 200% economic obsolescence factor to taxpayer's property, a 1,242-acre island with five houses and numerous outbuildings, which had the effect of raising its valuation, was treatment given to similarly situated properties, and thus it did not amount to unjust discrimination by town, as prohibited by the equal protection clause of the U.S. Constitution and the equal apportionment and assessment clause of the state constitution, despite argument that island structures were similarly situated to those on mainland property, to which the obsolescence factor was not applied. Structures on all developed islands in the town were subject to the obsolescence factor, and the higher assessment of island structures was due to their higher building costs.

TAX - MICHIGAN

Baruch SLS, Inc. v. Tittabawassee Township

Supreme Court of Michigan - June 28, 2017 - N.W.2d - 2017 WL 2818133

Taxpayer, which was nonprofit corporation that operated adult foster care facility, appealed decision of Tax Tribunal denying taxpayer charitable exemption from real and personal property taxes.

Court of Appeals affirmed in part and reversed in part. Taxpayer appealed.

The Supreme Court of Michigan held that taxpayer was not required to offer its services for free or to select its recipients using only arbitrary criteria to satisfy charitable institution test for real and personal property tax exemption.

Taxpayer, which was nonprofit corporation that operated adult foster care facility, was not required to offer its services for free or to select its recipients using only arbitrary criteria to satisfy charitable institution test for real and personal property tax exemptions, since excluding taxpayer from exemptions simply because it charged fees for its services conflicted with factor of charitable institution test that allowed taxpayer to charge amount for its services that was necessary to remain financially stable, requiring taxpayer to provide its charitable services entirely for free was unrealistic and unsustainable, and taxpayer could have restrictions that limited or selected who was entitled to receive its services, if such restrictions reasonably related to its charitable goal.

U.S. Infrastructure Renewal: Who Should Pay the Bill?

In recent years, pessimism about the U.S. infrastructure has been growing, notes Wharton real estate professor Gilles Duranton, a specialist in urban and regional development, transportation and local public finance. "More and more, it is said that the overall infrastructure is old and decaying, that bridges collapse and roads are full of potholes. Water poisons residents in some places like Flint, Michigan; electricity is not always reliable; airports and seaports are under strain; cellphone coverage is piecemeal."

How accurate is that picture? Although that image is sometimes exaggerated, "there is some truth to this," Duranton asserts.

From left-wing progressives to right-wing libertarians, nearly every faction in the American political spectrum agrees that the infrastructure in the U.S. desperately needs a rapid upgrade — not just as a mechanism to generate job growth but as a tool to improve the country's competitiveness. Yet when the Trump administration laid out its promised vision for a $1 trillion, multi-year national infrastructure plan on May 23, the plan sparked controversy about what kind of infrastructure deserved top priority, and how to finance it.

Continue reading.

Wharton

July 25, 2017

IRS Rules Against $26.5 Million Bond Sale for Downtown Dallas' Historic Statler Hotel.

An IRS ruling could imperil a move to fund part of the historic Statler Hotel renovations with a special bond sale.

Developers revamping the historic downtown Dallas hotel sold the city financial incentives for the project that were used to back tax-exempt municipal bonds.

The deal allowed builder Centurion American Group to access the funds years before they would normally have been paid.

The city of Dallas agreed to provide the developers $46.5 million in city incentives that would be paid through tax increment finance district funds. Those TIF funds were used to finance the sale of $26.5 million in bonds.

In a preliminary ruling, the IRS said that the bonds don't meet its requirements to be "excluded from gross income for federal income tax purposes."

The Wisconsin Public Finance Authority, which issued the bonds last August, said it will appeal the decision and will continue to negotiate with the IRS.

If the ruling stands, it could affect not only the Statler project but also dozens of other real estate developments that were contemplating a similar sale of their incentives.

The IRS decision is unlikely to affect the completion of the Statler redevelopment.

The Statler developers said it could be some time before the issue is resolved.

“We sold our rights to a portion of the TIF,” Centurion American’s spokeswoman said in a statement. “The Wisconsin Public Finance Authority (WPFA) and its legal counsel (Orrick, Herrington & Sutcliffe LLP) made determinations on all tax matters.

“We will follow whatever ruling is ultimately decided by the IRS,” the company said. “But, at this time the WPFA and Orrick are protesting the preliminary ruling of the IRS on this matter. They expect this to be a six- to 12-month process to reach resolution.”

The sale of the bonds is just part of the mix of funding developer Centurion American is using for the $230 million renovation of the 61-year-old Commerce Street hotel and the adjoining former Dallas Public Library building.

The 19-story midcentury modern hotel is being converted into a combination of apartments, hotel rooms and retail space.

Tenants have already begun moving into the rental units. And the Hilton Curio Hotel is scheduled to open in early 2018.

The Dallas Morning News is relocating its downtown offices to the former library this fall.

When the sale of the Statler bonds was disclosed last year, it was considered a creative way to provide funding for one of downtown Dallas’ largest historic renovation projects.

Since then, developers of other local real estate projects have said they plan to explore similar bond sales to help fund their deals. The IRS ruling, if it stands, could quash those efforts.

Investors who bought the bonds were motivated by the tax-free treatment of the income. Those bondholders could be required to pay back taxes on that income if the exemption is withheld.
The IRS did not contest the Wisconsin authority’s sale of the bonds, just the tax-free provision.

Tax increment finance grants are a popular way for cities to help developers pay for projects. The incentives designate funds from property taxes in the neighborhood to pay the builders for part of the construction.

The TIF grants are always paid after the development is complete and are typically given in payments over several years.

By selling the TIF incentive for bonds, the developers would be able to access needed upfront money for their projects.

Redevelopment of the landmark Statler Hotel is being financed with a combination of loans, funding from foreign investors and the sale of historic tax credits for the project.

Dallas News

By Steve Brown

L.A. City Council President Wants To Create A Municipal Bank For The Pot Industry.

Los Angeles City Councilmember Herb Wesson has proposed setting up a municipal bank to enable the recently legalized state cannabis industry to open accounts and secure loans.

“We cannot bury our heads in the sand on the issue of recreational and medical cannabis legalization, instead we must strive to reasonably regulate the emerging industry while creating opportunities for Angelenos,” Wesson said in the speech on Tuesday to the City Council, following his unanimous re-election as Council President.

When Californians passed Proposition 64 in November, it paved the way for legal recreational use of marijuana throughout the state (beginning in 2018). However, the legal complexities surrounding the sale profits still remain.

“It left significant questions unresolved,” John Chiang, Treasurer of California, told the Los Angeles Times. “How do you handle the taxation of cannabis dollars and the banking of billions of dollars of transactions that are going to take place here in California?”

The Times adds that the state’s cannabis industry saw $3.3 billion in sales for 2016, and that number is expected to hit $7.5 billion in 2018. Yet, large financial institutions refuse to take the industry’s money for fear of legal entanglement with federal regulations that still criminalize marijuana and list it alongside drugs like heroin and cocaine.

In his proposal to establish a municipal bank that would do business with the marijuana industry, Wesson noted that, currently, “[cannabis business owners] are going to go home tonight and sleep on a mattress that’s worth $2 million,” while others “have a million and a half dollars in cash buried in the backyard.” Wesson continued, “[w]e have to figure out a way to make this industry work.”

What further complicates the situation is that, though the city of Los Angeles accepts business tax payments in cash, the State Board of Equalization does not, reports the Los Angeles Daily News.

“We get lots of cash, and sometimes it has been washed — actually washed — because it had been buried out in the backyard,” said John Bartholomew, treasurer-tax collector for Humboldt County in Northern California, according to the Times.

“Right now, at the downtown [Los Angeles] office of finance, there’s a six-story parking structure 500 yards away. I have to walk through what is essentially a homeless encampment with a duffel bag full of cash, walk across the street, go through security and then sometimes stand in line,” said Jerred Kiloh, a dispensary owner in the Valley, while speaking on the complexities paying business taxes to the city. “No one comes in with the type of cash they come in with,” Todd Bouey, Los Angeles’ assistant director of finance, said of the marijuana industry. “ It was taking hours to get through one deposit.”

According to the Daily News, Councilman Herb Wesson is expected to introduce a formal motion for his municipal bank proposal to the City Council’s Budget and Finance Committee.

“[D]eposits could be used for public benefits including gap funding for affordable housing projects, but the Council President is awaiting further study from various city departments on the topic,” Vanessa Rodriguez, communications director for Councilman Wesson, told LAist.

"Should the Bank of Los Angeles proposal move forward, the Council President is committed to ensuring the city meets all banking guidelines set forth by both the Department of Justice and Department of Treasury."

LAIST.COM

BY OREN PELEG

JUL 26, 2017 11:18 AM

Transportation Deals Lead $8.9 bln of U.S. Muni Sales Next Week.

July 28 (Reuters) – The Bay Area Toll Authority plans to sell $1.1 billion of San Francisco Bay Area Toll Bridge revenue bonds, the largest bond deal of $8.9 billion municipal bonds and notes expected to come to the U.S. municipal market next week, according to preliminary Thomson Reuters data.

The Bay Area Toll Authority operates toll collections and finances improvements for seven state-owned bridges in the San Francisco Bay Area. The authority's traffic and toll revenue has steadily increased since 2010, according to bond documents.

Next week's issue will pay to refund the authority's outstanding bonds. The deal is divided into $550 million of senior bonds and $550 million of fixed rate subordinate bonds.

A number of other transportation-related bonds top the calendar next week. The Washington Metropolitan Area Transit Authority plans to sell $496.5 million of gross revenue transit bonds. Georgia's Metropolitan Atlanta Rapid Transit Authority plans to issue $252.8 million of sales tax revenue bonds. And Illinois' Regional Transportation Authority plans to sell $188.4 million of general obligation refunding bonds.

Among the notes slated for next week, the Commonwealth of Massachusetts plans to issue on Wednesday $1.5 billion of general obligation revenue anticipation notes with a maturity of June 2018.

Overall, municipal bond sales next week will be made up of $5.17 billion of bonds from the negotiated calendar and $1.69 billion from the competitive calendar.

(Reporting by Robin Respaut; Editing by James Dalgleish)

Denver Wants to Create an Office for Public-Private Partnerships, and City Council Fears Being Cut Out of the Process.

Denver Mayor Michael Hancock wants to create an office within city government that will screen, vet and shepherd public-private partnerships related to major city projects, like the redevelopment of the National Western Center and the Denver Center for the Performing Arts — and other projects the city might not even have anticipated yet.

Under the proposal, City Council would get to set the broad parameters of deals, but contracts would be finalized at the administrative level.

The effort is causing major concerns among some City Council members about what authority they'll give up if the idea goes forward. That concern is only exacerbated as they debate the contract for the Great Hall renovations at Denver International Airport, a public-private partnership that will see Ferrovial and its development partners get paid as much as $1.8 billion over a 34-year period for a $650 million to $770 million project.

[Continue reading.](#)

Denverite

Author: Erica Meltzer

Erica Meltzer covers government and politics. She's worked for newspapers in Colorado, Arizona and Illinois and once won a First Amendment Award by showing up in the wrong place at the wrong time. She served in the Peace Corps in Paraguay and can swear fluently in Guarani. She gets emotional about public libraries. Contact Erica Meltzer at 303-502-2802, emeltzer@denverite.com or @meltzere. View all posts by Erica Meltzer

---

Tobacco Bond Prices Weaker after U.S. Proposes Cigarette Nicotine Cut.

NEW YORK, July 28 (Reuters) – Tobacco settlement bond prices, part of the high-yield U.S. municipal bond sector, fell on Friday along with a drop in share prices for U.S. and UK tobacco companies after Washington D.C. proposed cutting nicotine levels in cigarettes.

The proposal announced by the head of the U.S. Food and Drug Administration (FDA) is a major regulatory shift to move smokers toward potentially less harmful e-cigarettes.

In response the S&P Municipal Bond Tobacco Total Return Index, a broad measure of tobacco settlement bond sector performance which also includes some investment-grade paper, fell 0.71 percent on Friday.

Municipalities have sold bonds backed by money from U.S. tobacco companies under a 1998 master settlement agreement to compensate 46 states, Washington and Puerto Rico for the cost of caring for sick smokers.

While the average yield of the bonds in the index only rose about 2 basis points to 5.00 percent, "directionally this could be the start of the sector letting some air out of the balloon," said James "J.R." Rieger, Head of Fixed Income Indices at S&P Dow Jones Indices.

Year-to-date, the index has returned 15.24 percent, he said. Tobacco bonds also make up nearly 16 percent of S&P's broader high yield muni bond index, which lost 1 basis point on Friday because of the cheapened tobacco sector.

Sales of conventional cigarettes in the United States has seen a steady decline in recent years, while the increasing popularity of e-cigarettes has intensified the financial pressure on these bonds which analysts have said for years are susceptible to default.

"Following the FDA's announcement to cut nicotine in cigarettes to non-addictive levels, tobacco bonds were traded/quoted at cheaper levels this afternoon," analysts at IHS Markit told Reuters on Friday.

“Based on discussions with market participants combined with observed trade and quote data, tobacco bond levels were cut between 10-15 basis points versus their evaluated levels yesterday. We saw bids primarily in the Ohio Buckeye space being quoted cheaper by 10 to 15 bps,” they said.

Among the more actively traded municipal tobacco settlement bonds, with deal sizes above $1 million which typically indicate institutional investors where commissions are smaller, prices on the 5.125 percent 2024 Buckeye Ohio bonds fell in the wake of the FDA news.

According to Municipal Securities Rulemaking Board data, a $2 million trade in the 2024 Buckeye bonds crossed at a price of 95, showing a yield of 6.027 percent. That is down from a similarly sized trade on July 21st that priced at 96.75, with a yield of 5.703 percent.

Reporting By Stephanie Kelly and Daniel Bases; Additional reporting by Hilary Russ in New York

---

Local Opposition Halts Planned Minor League Stadium Subsidy.

Another win for taxpayers as $35 million minor league ballpark proposal is canned by Prince William County.

County officials in Virginia have cancelled plans to build a minor league baseball stadium that could have ended up costing taxpayers as much as $35 billion, but the team might soon be looking for a hand-out somewhere else.

Art Silber, owner of the single-A Potomac Nationals, a minor league affiliate of the nearby Washington Nationals, asked Prince William County officials to withdraw the stadium proposal last week. A planned vote on the stadium deal never materialized in the face of opposition from local taxpayers and two members of the county board of supervisors, according to Inside NoVa, a regional online news platform.

Continue reading.

Reason.com

Eric Boehm | Jul. 29, 2017 11:01 am

House Committee Unanimously Approves Bill to Classify Municipal Bonds as High-Qualify Liquid Assets.

The House Financial Services Committee on July 25 unanimously voted to report the Municipal Finance Support Act of 2017, H.R. 1624, to the full House of Representatives for consideration. The legislation, introduced by Representative Luke Messer (R-IN), would allow large banks to count some of their municipal bond investments, including tax-exempt housing bonds, as high-quality liquid assets (HQLAs) under federal bank liquidity standards. NCSHA and several other state and local organizations supported the bill.

H.R. 1624 would modify a regulation the Federal Reserve, the Department of Treasury, and the Federal Deposit Insurance Corporation (FDIC) released in October 2014 to ensure that large banks hold enough liquidity to continue making payments during periods of financial stress. Under the rule, banks with at least $250 billion in assets (or $10 billion in foreign exposure on their balance sheet) must maintain a minimum liquidity coverage ratio (LCR) comprised of certain financial investments that are considered HQLAs. The rule took effect at the beginning of 2017.

A previous summary of H.R. 1624 by NCSHA can be found here.

The legislation has 18 cosponsors: Republicans Randy Hultgren (IL), Peter King (NY), Bruce Polquin (ME), Richard Hudson (NC), Carlos Curbelo (FL), and Dennis Ross (FL); and Democrats Carolyn Maloney (NY), Gregory Meeks (NY), Robin Kelly (IL), Terri Sewell (AL), Kyrsten Sinema (AZ), Eleanor Holmes Norton (DC), Gwen Moore (WI), Marc Veasey (TX), Brad Sherman (CA), Ron Kind (WI), Nydia Velazquez (NY), and John Delaney (MD).

There is a similar bill in the Senate introduced by Senators Mark Warner (D-VA) and Mike Rounds (R-SD), S 828. Though the bill has been referred to the Senate Banking Committee, the Committee has not scheduled action on it.

JULY 28, 2017

CPS Buys Short-Term Relief with Bonds that will Carry Costs for Decades.

Chicago Public Schools' latest long-term borrowing deal will buy the district a bit of financial breathing room through 2019 but comes at an immense cost to future generations.

By the time the $500 million loan is paid off, children now entering kindergarten will be in their mid-30s and the school district will have spent $850 million in interest costs alone — making the total expense of the bond issue a whopping $1.35 billion.

And only a small fraction of the money from the long-term bonds issued in July will be used for school construction or classroom improvements, which budget experts say should be the primary use for long-term debt. CPS is using the biggest chunk of the loan to reimburse itself for failed bond market deals the district previously covered with cash. Another large portion will be used to shave a few hundred million dollars off old debts — even as it extends those debts as much as 25 years.

In addition, the deal commits an enormous sum of state aid to bondholders through 2046, even as state funding remains at the center of an ongoing battle in Springfield. If state aid is ever not enough to cover bond payments, CPS has pledged to turn to property taxes to pay for the loan.

The loan adds to the mountain of interest costs CPS has taken on to deal with its ongoing cash crisis and lack of adequate reserves. The bonds were issued not long after the district took out short-term loans to cover delayed state grants that the Tribune reported cost CPS $70,000 a day in interest and cannot be repaid until the end of September at the earliest.

The district will pay what are high interest rates for a government bond of 6.75 to 7 percent. The deal is structured in a way that allows the district to avoid any significant principal payments on its new debt for the first 20 years. That exacerbates the cost of an already expensive financial maneuver.

Bobby Otter, budget director for the Center for Tax and Budget Accountability a nonprofit government research organization, said the district's continued use of debt to cover short-term budget gaps indicates the severity of the system's financial predicament.

Otter said his organization considers the CPS' recent borrowing "bad public policy and bad public finance."

"They are not getting the benefit of what you normally would when you bond out something," he said. "A new school building is probably the best example. You bond it out, but then the school is there for decades, and students and families are able to use it for that time. So the public good is there for a long time. In this, the public good is really only being used for a year."

Otter explained that as the payments on the bonds kick in, more money will be required to pay for these long-term debt costs soaking up resources from the classroom. Although CPS is granted a bit of breathing room, eventually the district will have to come up with more funds from the state and local taxpayers to afford the payments on the debt, he said.

An accounting loophole allows CPS to use $229 million from the long-term bond proceeds to recoup bond market losses paid for in previous years. In addition, the district will reimburse itself for $31 million in capital expenses previously paid for out of cash accounts. Finally, the loan will cover $200 million in old debt costs that date back as far as 1996.

Paying off the cost of old bonds by issuing new debt that extends the life of the old debt and increases long-term costs is a practice referred to as "scoop and toss." The method has long been used by various Chicago governments to cover up operating deficits.

Another expense of the borrowing are upfront discounts to initial buyers totaling $33 million, typically handed out to help increase demand for what the market considers risky bonds. The district also paid $6.7 million to consultants, bankers and lawyers.

Civic Federation President Laurence Msall described the costs of the district's bonds as "frightening," while comparing the district's financial tactics to easing "a portion of the credit card bill by taking out a second or third equity loan on the home."

"It's an enormously expensive way of operating," Msall said.

"The district has few options, if it is going to continue to operate and open the schools in September, than to seek creative borrowing techniques," he said. "But that doesn't mean there should not be the articulation of both a Plan A and a Plan B. … CPS desperately needs a long-term financial strategy."

Responding to questions about the district's borrowing practices, CPS replied with a statement saying it "will continue investing in students' education, because these students only get one chance at a good education."

"Along with downstate and suburban superintendents, we're supporting historic reform that will remove the stain of Illinois' worst-in-the-nation school funding system and put hundreds of districts on a stronger path in the future," CPS spokeswoman Emily Bittner said.

The district did not respond to questions about fiscal plans for the coming years outside of its support for a new state funding formula that includes payments similar to other districts to cover its burgeoning pension costs.

Bittner confirmed the future interest payments totaled $850 million but noted that, "dollar tomorrow is worth less than a dollar today," and that the inflation-adjusted cost of the interest on the loan was $405 million "on a present value basis."

The long-term loan comes at a pivotal time for CPS. District principals received budget plans last week that count on money from a state education funding bill that Republican Gov. Bruce Rauner has promised to veto and amend in a way that the administration says would reduce state funding to CPS by $145 million. Amid that uncertainty, district officials need to come up with an overall operating budget by the end of August.

Laurel Patrick, a spokeswoman for the governor's office, told the Tribune in an emailed statement that the governor understands that CPS pays for its teacher pensions while other school districts do not, but said Rauner does not believe state taxpayers should pay for legacy pension issues that occurred because of past CPS financial mismanagement.

"This is not about 'the governor versus Chicago,'" Patrick wrote in the statement. "Illinois is close to making historic change that will help poor children in Chicago and throughout the entire state of Illinois."

Rauner's threat to veto additional funding for CPS comes as the district is looking at another big budget hole.

Documents from the $500 million bond sale that closed July 13 told investors the district faces a deficit of $544 million. CPS also disclosed it expects to pay $99 million in "net salary and benefit increases" compared to its recently completed budget year. Members of the Chicago Teachers Union are set to receive a 2 percent across-the-board pay bump as part of their latest contract. Another $45 million in additional expected costs are related to health care, transportation and energy costs, and non-CTU salary increases.

To pay for these cost increases and to finance its ongoing budget deficits, the district continues to use debt practices that Mayor Rahm Emanuel has pledged to wring out of the city's budget.

Since 2012 the city has undertaken a plan to phase out the use of "scoop and toss" refinancing and to end its reliance on debt to pay its annual operating costs. However, no such reforms have taken hold at CPS.

Otter said the only way out of the cycle of borrowing to make ends meet seems to be more money from the state. But there remain questions as to whether the proposed long-term funding mechanisms in Springfield will be put into place.

Given that, Chicago's school leaders are digging deeper into more expensive sources of emergency cash.

Bad bets on toxic debt wiped out the last of the district's reserves nearly three years ago. With its latest bond issuance, CPS is using federal accounting rules to repay itself for losses from the termination of those deals in 2015 and 2016.

The bets CPS made were in the form of swap contracts. Swaps are agreements between the bond issuers, in this case CPS, and banks where each party makes a bet that various market indexes will go lower or higher than the amounts it has already pledged to pay to bondholders. The district, which bet mostly on higher interest rate environments than occurred, was on the losing side of these agreements. When the district's bond ratings dropped to junk status, it was disqualified from the deals. Based on the terms of the deals, CPS had to pay the negative value of the swaps contracts — $233 million — once they were terminated by the banks.

The termination payments sapped the remaining reserve funds after the district used nearly $1 billion from those funds in previous years to balance its budgets. Since then, school leaders have had to rely on costly short-term loans to paper over its budget gaps from year to year and cover periods before property tax payments are received.

By using bond proceeds to recover its losses, the deal triples the already eye-popping tab of the district's swaps losses. The district will not make any principal payments on the loan for 25 years while racking up interest costs of roughly $449 million by the time the debt is retired in 2046. Once the loan is paid off, the total cost of the bad swaps bets to the district, including interest and termination payments, will total $682 million.

The bond deal also finances a continuing "scoop and toss" strategy by using more borrowed money to repay $200 million in current loans and interest, stretching the life of those debts for decades. This will free up just under $100 million immediately, with the remaining savings coming through 2019. Again, these debt-based budget methods come at a huge cost. The scoop and toss adds nearly $300 million in interest through 2042 to debts and interest that would otherwise have been retired by 2020.

Some of the bonds costs being scooped and tossed are from debt originally issued in 1996 as part of a major school construction initiative undertaken shortly after CPS saw its ratings increase to triple-A that year. Those bonds were extended through scoop and toss loans in 2008, 2010 and 2016. Adding another layer of refinancing this year leads to a dizzying cycle of interest compounding on interest at an even higher rate.

The school district is currently rated as a junk credit at the bottom of the "B" level by all three major bond rating houses.

Msall repeated, the district has turned to the capital markets because of its own unwillingness to focus on its existing revenue plus instability at the state level.

"As the debate continues in Springfield as to whether there will be a rewriting of the school aid formula or whether the schools will receive their state appropriations this year, the immediate issues, which this borrowing demonstrates, is that CPS is paying an enormous penalty — an enormous cost for not having a long-range plan, for not having a plan that ratings agencies, borrowers or the general public can rely on as to what the Chicago Public Schools will do next," he said.

That raises the prospect, he said, of determining whether CPS should again fall under state financial oversight, referring to the Chicago School Finance Authority that was established when the district lost access to the capital markets during its 1980 fiscal crisis. However, despite the current bleak outlook, the school district says it expects to continue borrowing — albeit at an exorbitant price.

The district acknowledged its plight in a disclosure to investors associated with the deal.

"Although the Board believes that it has the capacity to borrow both in the short-term and the long-term credit markets, there can be no assurance as to the terms on which the Board will continue to be able to procure such funding, whether the Board's existing statutory borrowing authority will provide sufficient borrowing capacity, or if market access will continue to be available to the Board," the district said in bond documents.

by Juan Perez Jr. and Peter Matuszak

July 31, 2017

Chicago Tribune

jjperez@chicagotribune.com

pmatuszak@chicagotribune.com

- Improving Financial Disclosure by State and Local Government Borrowers.
- BDA Submits Comment Letter: Proposed Limited Safe Harbor from FINRA Debt Research Rules for Desk Commentary.
- New MSRB Fee to be Assessed on Underwriters to 529 College Savings Plans.
- INFRA Grant Program Encourages Use of P3s.
- Fitch: Illinois Legislation Gives Chicago New Financing Tool.
- MSRB Webinar: What to Expect from Your Municipal Advisor.
- *Assured Guaranty Corporation v. Madison County, Mississippi* – In action by bond guarantor against county, Court of Appeals holds that plain language of Contribution Agreement entered into between county and special-purpose district conditioned county's obligation to advance bond payments on district's continued performance of its obligation to reimburse county for any such payments within a period of two years.
- *Tennessee Republican Party v. Securities and Exchange Commission* – Court of Appeals upholds SEC rule limiting campaign activities of persons who advise city and state governments on issuing municipal securities.
- And finally, we ran across this little event and thought to ourselves, "Hey, maybe our fine readers would like to spend a week in Cambridge (so lovely in January) attending a week-long public finance seminar at the Kennedy School of Government. Fun for the entire family!" All for the low, low price of WHAT?! Should I ever elect to shell out $8,500 for a week's festivities, I'll be expecting the, uh, perks that JFK himself would have required and which cannot be further enumerated in a family publication such as this. Happy Birthday, Mr. President indeed.

ZONING & LAND USE - ALABAMA

Shoal Creek Land & Cattle, LLC v. City of Arab

Court of Civil Appeals of Alabama - July 14, 2017 - So.3d - 2017 WL 2991470

Purchaser of building in city's historic district appealed historic preservation commission's denial of its application of certificate of appropriateness after it replaced four windows in building.

After a trial, the Circuit Court upheld denial. Purchaser appealed.

On application for rehearing, the Court of Civil Appeals held that commission could not deny certificate of appropriateness application on basis that windows did not conform to general character of historic district.

Historic preservation commission could not deny certificate of appropriateness application filed by purchaser of building in city's historic district after purchaser replaced four windows in building on basis that windows did not conform to general character of historic district. Building was classified as noncontributing building, meaning that it did not contribute to district, because exterior appearance of building had been substantially modified from its original condition, and commission's window-design standards did not apply to noncontributing buildings.

Municipal ordinances, placing restrictions upon lawful conduct or the lawful use of property, must, in order to be valid, specify the rules and conditions to be observed in such conduct of business, and must admit of the exercise of the privilege by all citizens alike who will comply with such rules and conditions, and must not admit of the exercise, or of an opportunity for the exercise, of any arbitrary discrimination by the municipal authorities between citizens who will so comply.

A historic preservation commission cannot deny a proposed change to a building within a historic district solely on the basis of its opinion that the proposed change conflicts with the general character of the historic district, which is too vague a standard; instead, the legislature intended that a historic preservation commission can deny a proposed change to a building within a historic district based only on specific uniform standards.

ANNEXATION - ARKANSAS

City of Tontitown v. First Security Bank

Court of Appeals of Arkansas, Division IV - May 24, 2017 - S.W.3d - 2017 Ark. App. 326 - 2017 WL 2266762

City brought action against adjacent city and bank to challenge the adjacent city's annexation of land owned by bank, which the bank had requested in connection with a dispute concerning the sufficiency of city's response to bank's request for municipal services.

After the addition of the purchaser of bank's land as a party and after granting bank's motion to dismiss, the Circuit Court dismissed entire case with prejudice. City appealed.

The Court of Appeals held that:

- City's service of process on bank was insufficient;
- Bank's joint motions for summary judgment and its motion denying city's demand for a jury trial did not waive bank's objection to the sufficiency of service of process;
- Savings statute did not apply to toll the 20-day limitations period so as to allow city to avoid dismissal with prejudice; and
- Annexation statute does not require the municipalities, the landowner who requested annexation, and a landowner who began owning land after the annexation request to be or remain parties in every lawsuit filed.

City's service of process on bank was insufficient in city's action challenging the adjacent city's annexation of bank's land, where city's counsel mailed a letter and a copy of the petition to bank's attorney, but the letter stated that a "courtesy copy" of the petition was enclosed.

Bank's joint motions for summary judgment and its motion denying city's demand for a jury trial did not waive bank's objection to the sufficiency of service of process in city's action challenging the adjacent city's annexation per bank's request of bank's land. Bank's denial of city's request for a jury trial and its joint motions for summary judgment were not requests for affirmative relief, and bank asserted in its answer lack of personal jurisdiction, insufficiency of process, and insufficiency of service of process.

Savings statute did not apply to toll the 20-day limitations period so as to allow city to avoid dismissal with prejudice for defective service of its action against bank regarding city's challenge to adjacent city's annexation per bank's request of bank's land, despite argument that city filed its petition within the 20-day limitations period to challenge an annexation. City did not complete any service on bank at all, and in order for the savings statute to apply, a party must have filed the complaint within the limitations period and completed timely service on the other party.

ZONING & LAND USE - CALIFORNIA

Lynch v. California Coastal Commission

Supreme Court of California, California - July 6, 2017 - P.3d - 2017 WL 2871762 - 17 Cal. Daily Op. Serv. 6565

Seaside homeowners filed petition for writ of mandate to challenge conditions which California Coastal Commission attached to permit for bluff protection and seawall reconstruction which precluded homeowners from rebuilding lower stairway section and which limited the permit's duration to 20 years.

The Superior Court granted homeowners' motion for judgment and issued writ. Commission appealed, and the Court of Appeal reversed. The Supreme Court granted review, superseding the opinion of the Court of Appeal.

The Supreme Court of California held that seaside homeowners equitably forfeited any objections to seawall construction permit conditions by accepting benefits of permit and proceeding with construction of seawall after filing administrative mandate petition, even if challenged conditions did not affect the design or construction of the seawall.

CONTRACTS - GEORGIA

City of Atlanta v. Hogan Construction Group, LLC

Court of Appeals of Georgia - June 7, 2017 - S.E.2d - 2017 WL 2463930

Contractor brought action against city for breach of contract and violation of the Prompt Pay Act arising out of a contract for the construction of a fire station.

The trial court denied city's motion for summary judgment. City applied for interlocutory appeal, which was granted.

The Court of Appeals held that:

- Contract did not exceed city's authority under city charter;
- City ordinance requiring approval of certain contract modifications did not excuse city from paying the outstanding balance allegedly owed to contractor;
- Triable issue existed as to whether city exercised good faith in the performance of its obligations under the contract; and
- Contractor was not entitled to interest under the Prompt Pay Act.

Contract between city and contractor for the construction of fire station did not exceed city's authority under city charter, and thus city was not excused from paying the outstanding balance allegedly owed to contractor for its work on the construction project on the ground that the contract was void. City council authorized mayor to enter into contract with contractor for the construction of fire station and an amendment to that contract, and the contract was approved as to form by the city attorney, approved by the city's chief procurement officer, and signed by the mayor, as required by city charter.

City ordinance requiring city council and mayor to approve contract modifications and change orders exceeding ten percent of the "not to exceed" cost of a construction project did not excuse city from paying the outstanding balance allegedly owed to contractor for its work constructing a fire station, even to the extent that payment of such balance would cause total payments to contractor to exceed the "not to exceed" cost of the project by more than ten percent. Ordinance did not specify when approval needed to be obtained, and city had an express contractual duty to consider any claims properly submitted by contractor and an implied duty to consider such claims in good faith.

Genuine issue of material fact as to whether city exercised good faith in the performance of its obligations under contract with contractor for the construction of a fire station, including its obligation to consider any claims for additional payment that would cause payments to contractor to exceed the "not to exceed" cost of the project by more than ten percent, for which city ordinance required the approval of the city council and mayor, precluded summary judgment on contractor's breach of contract claim seeking payment of the outstanding balance allegedly owed to it for its work on the project.

Contractor that contracted with city for the construction of a fire station was not entitled to interest under the Prompt Pay Act on any allegedly late payments by city, where contract included a provision addressing when progress payments were to be made and providing for interest based on the prime rate for failure to issue progress payments within 60 days of approval, and provision specifically stated that it superseded the Prompt Pay Act.

ANNEXATION - MICHIGAN

Clam Lake Township v. Department of Licensing and Regulatory Affairs/State Boundary Commission

Supreme Court of Michigan - July 3, 2017 - N.W.2d - 2017 WL 2853480

Two townships sought review of decision by State Boundary Commission that found townships' agreement under Intergovernmental Conditional Transfer of Property by Contract Act invalid and that granted landowners' annexation petition.

The Circuit Court upheld Commission's decision. Townships appealed. As Commission proceedings were ongoing, landowners brought action against townships seeking declaration that townships' agreement was invalid or void as against public policy. The Circuit Court found agreement void. Townships appealed. The Court of Appeals affirmed. Townships appealed and appeals were consolidated.

The Supreme Court of Michigan held that:

- Agreement preempted landowners' annexation petition concerning same land;
- If a relevant agreement under the Act is "in effect," or operative, the Commission must find any annexation petition concerning the same property preempted, overruling *Casco Twp. v. State Boundary Comm.*, 243 Mich.App. 392, 622 N.W.2d 332; and
- Agreement was not void as against public policy.

Agreement between two townships to conditionally transfer landowners' undeveloped land under

Intergovernmental Conditional Transfer of Property by Contract Act preempted landowners' annexation petition that was before State Boundary Commission concerning same land, since agreement was in effect at time Commission considered landowners' petition, in that townships' agreement was properly filed with county clerk and Secretary of State, Commission lacked power under Act to make any determination as to agreement's validity.

Townships' argument that State Boundary Commission had primary jurisdiction to review townships' agreement under Intergovernmental Conditional Transfer of Property by Contract Act, in landowners' action seeking declaration that agreement was invalid, did not judicially estop townships from arguing that Commission's review of agreement was limited by Act to determining whether agreement was in effect, or operative, in their action seeking review of Commission's decision finding agreement invalid, since there was nothing inconsistent in townships' arguments, in that both arguments concerned scope of Commission's examination.

If a relevant agreement under the Intergovernmental Conditional Transfer of Property by Contract Act is "in effect," or operative, the State Boundary Commission lacks the power to make any further determination of the agreement's validity and must find any annexation petition concerning the same property preempted; overruling *Casco Twp. v. State Boundary Comm.*, 243 Mich.App. 392, 622 N.W.2d 332.

Agreement between two townships to conditionally transfer landowners' undeveloped land under Intergovernmental Conditional Transfer of Property by Contract Act was not void as against public policy for impermissibly contracting away acquiring township's zoning powers, since provision in Act stating that agreements could provide for "adoption of ordinances" did not expressly exclude zoning ordinances, it authorized townships to include zoning provisions in their agreement, including provisions governing content and substance of proposed zoning ordinances.

BOND INSURANCE - MISSISSIPPI

Assured Guaranty Corporation v. Madison County, Mississippi

United States Court of Appeals, Fifth Circuit - May 31, 2017 - Fed.Appx. - 2017 WL 2372641

In July 2005, Parkway East – a Mississippi special-purpose government entity – issued $27,770,000 of special assessment bonds. Parkway East subsequently entered into a Contribution Agreement Madison County to help Parkway East market the bonds at a lower interest rate.

Section 3 of the Contribution Agreement, which is at issue in this case, describes three obligations by which the County and Parkway East are bound. The parties disagree about the following portions of Section 3: (1) a promise that the County advance funds when Parkway East cannot make bond payments if the County is satisfied with Parkway East's performance of its obligations under the Contribution Agreement, and (2) a requirement that Parkway East reimburse the County for such advances within two years of when they are made.

In connection with its issuance of bonds, Parkway East also purchased a bond insurance policy from Assured Guaranty. As bond insurer, Assured only makes bond payments if a shortfall remains after applying funds from special assessment collections and any contribution made by the County.

Following the failure of the underlying commercial development, the County advanced bond payments four times before refusing to make any further advance payments because Parkway East had failed to reimburse the County within two years, an obligation the County alleged had to be fulfilled before the County was required to make advances. Assured then began advancing funds to cover any bond payment deficiencies.

On November 1, 2013, Assured sued the County, seeking a declaration finding the Contribution Agreement valid and obligating the County to advance bond payments regardless of whether Parkway East reimbursed the County within the two-year period described in the contract.

The District Court held in favor of Assured, finding that the County was obligated to advance payments so long as the bonds remained outstanding, regardless of whether Parkway East reimbursed the County within two years. County appealed.

The Court of Appeals reversed, finding that the plain language of the Contribution Agreement conditioned the County's advancement obligation on Parkway East's performance of its reimbursement obligations.

The parties agreed that the Contribution Agreement is unambiguous, but disagreed about the import of Part 3. The County argued that Part 3's reimbursement provision is a condition precedent to its obligation to advance funds for bond payments. In other words, the County contended that if Parkway East failed to reimburse it for bond-payment advances within two years of when the advances were made, it was no longer required to make any future advance payments. Assured, however, argued that Part 3's reimbursement provision is separate and removed from any conditional language in Part 1 and accordingly that reimbursement is not a condition precedent to the County's obligation to make advance payments under Part 1. Thus, Assured posited that the County was obligated to make bond-payment advances as long as the bonds remained outstanding, regardless of whether Parkway East ever reimbursed the County. Section 12 of the Contribution Agreement provides that the agreement shall last for "the duration of any Bonds issued by Parkway East."

"Given that the plain meaning of "notwithstanding" is "in spite of," logic dictates that the word "notwithstanding" implies some contradiction regarding what it refers to. Thus, Assured is only correct that the reimbursement covenant in Part 3 is carved out from the remainder of the provision at issue if Part 3 contradicts both Parts 1 and 2. However, only Part 2—requiring immediate reimbursement by Parkway East under certain circumstances—conflicts with the two-year reimbursement requirement of Part 3. Part 1, on the other hand, is wholly consistent with Part 3. There is no tension between a requirement that the County advance bond payments when Parkway East is unable to make them if Parkway East satisfies its obligations under the Contribution Agreement (Part 1) and a requirement that Parkway East reimburse the County for such advances within two years of when they are made (Part 3). Accordingly, we find that the language "notwithstanding the above" does not carve out Parkway East's obligation to reimburse the County from the obligations referred to in Part 1."

SPECIAL ASSESSMENTS - NORTH DAKOTA

Paving District 476 Group v. City of Minot

Supreme Court of North Dakota - July 12, 2017 - N.W.2d - 2017 WL 2962825 - 2017 ND 176

Landowners brought action against city, seeking judgment declaring that assessments to their properties for proposed street improvements were invalid due to improper notice.

The District Court dismissed. Landowners appealed.

The Supreme Court of North Dakota held that:

- Limitations period of 30 days set forth in statute of repose for actions based upon defects and irregularities in the creation of improvement districts began to run when city council adopted resolution awarding sale of warrants to finance the improvements;
- City's alleged failure to give to landowners required statutory notice of the full extent of proposed street improvements did not violate the landowners' due process rights; and
- Public purpose requirement for due process was satisfied, and thus, city's proposed street improvements did not violate state constitution's gift clause.

Limitations period of 30 days set forth in statute of repose for actions based upon defects and irregularities in the creation of improvement districts began to run on landowners' cause of action, seeking to invalidate assessments to their properties for proposed street improvements based on improper statutory notice by the city, when city council adopted resolution awarding sale of warrants to finance the improvements.

City's alleged failure to give required statutory notice of the full extent of proposed street improvements to landowners, whose properties were liable to be specially assessed for the improvements, did not violate the landowners' due process rights. City's decision to create assessment district and make improvements did not deprive landowners of property rights, any violation of statutory notice requirements was purely statutory violation, and landowners did not argue that they did not receive notice and opportunity to be heard before assessments became final.

Due process requirement that public funds derived from taxation be for public purpose was satisfied, and thus, city's proposed street improvements for which landowners' properties were specially assessed did not violate state constitution's gift clause, where city created paving district for the improvement of streets open to public use.

TAX - PENNSYLVANIA

Green Acres Contracting Company, Inc. v. Commonwealth

Commonwealth Court of Pennsylvania - June 13, 2017 - A.3d - 2017 WL 2544298

Taxpayer sought judicial review of decision of the Board of Finance and Revenue (BFR) that rejected taxpayer's challenges to an assessment of state use taxes on certain items purchased and used by taxpayer in its business.

The Commonwealth Court affirmed in part and reversed in part. Taxpayer filed exceptions.

The Commonwealth Court held that nuts, bolts, washers, and guardrail blocks were guardrails exempt from sales and use taxes as building machinery and equipment (BME).

Term "guardrails" referred to the entire guardrail system, with the exception of guardrail posts, which were specifically excluded, and, as such, nuts, bolts, washers, and guardrail blocks, which were necessary for the construction of the guardrails, constituted building machinery and equipment (BME) exempt from sales and use taxes. Definitions and common usage of the term "guardrails" referred to more than the horizontal elements and included the entire guardrail system as it was constructed and installed along a road and/or highway.

MUNICIPAL ADVISORS - TENNESSEE

Tennessee Republican Party v. Securities and Exchange Commission

United States Court of Appeals, Sixth Circuit - July 13, 2017 - F.3d - 2017 WL 2979166

Political parties from three states petitioned for review of Securities and Exchange Commission's (SEC) amendment to rule limiting campaign activities of persons who advised city and state governments on issuing municipal securities. Following consolidation, SEC moved to dismiss.

The Court of Appeals held that:

- Injury was not self-evident, as would render proof required for Article III standing superfluous;
- Mere allegations that one individual suffered injury as a result of original rule was insufficient to demonstrate injury stemming from rule's amendment;
- Speculative injury was insufficient for Article III standing; and
- Petitioners lacked organizational standing.

Injury resulting from Securities and Exchange Commission's (SEC) amendment to rule limiting campaign activities of persons who advised city and state governments on issuing municipal securities was not self-evident, as would render proof of injury required to demonstrate Article III standing superfluous. Since petitioners challenging final agency action could put forth evidence of individual municipal advisor professionals who were affected by the rule amendments, there was no inability to specifically identify their injury as would make it self-evident.

Mere allegations that one participant in the municipal securities market stated that he would contribute more than $250 to an official in a future election if Securities and Exchange Commission's (SEC) amendment to rule limiting campaign activities of persons who advised city and state governments on issuing municipal securities did not apply to him, was insufficient to demonstrate injury, as required for Article III standing in political party's suit seeking review of agency's actions, absent evidence that participant was not constrained from contributing to candidates or soliciting contributions for a political party before the amendment became effective.

Political parties petitioning for review of Securities and Exchange Commission's (SEC) amendment to rule limiting campaign activities of persons who advised city and state governments on issuing municipal securities failed to demonstrate Article III standing through citations to the administrative record, or affidavits or other evidence attached to their opening brief, since the only allegations of injury they made concerning their ability to marshal their forces stemmed from effects of the original rule, rather than from the amendments to the rule, which they challenged.

Political party's allegations, that they expected an amendment to Securities and Exchange Commission's (SEC) rule limiting campaign activities of persons who advised city and state governments on issuing municipal securities to cause more individuals to refrain from contributing to their party, were merely speculative, and thus insufficient to demonstrate injury necessary for Article III standing in suit seeking review of agency action; instead, party was required to attest that the amendment had caused or would imminently cause injury to the party.

ZONING & LAND USE - TEXAS

Five Aces/SA, Ltd. v. River Road Neighborhood Association

Court of Appeals of Texas, San Antonio - July 12, 2017 - S.W.3d - 2017 WL 2960399

Neighborhood association sought review of city board of adjustment's (BOA) approval for developer's renovations and new construction of historic residence.

The District Court granted summary judgment in association's favor. Developer and BOA appealed.

The Court of Appeals held that developer's removal of additions to original historic residence did not require demolition application.

Developer's proposed removal of additions to original historic residence was part of "restoration," "rehabilitation," or "alteration" of the residence within meaning of city's unified development code (UDC), making separate application for demolition and determination of "non-contributing status" unnecessary. Project was limited to partial removal of non-historic, "noncontributing" additions to original historic residence.

EMINENT DOMAIN - WISCONSIN

International Union of Operating Engineers Local 139 v. Schimel

United States Court of Appeals, Seventh Circuit - July 12, 2017 - F.3d - 2017 WL 2962896 - 209 L.R.R.M. (BNA) 3245

Labor union brought action against state officials challenging Wisconsin's right-to-work law, which prohibited union-security agreements that required employees to pay dues, fees, or assessments to a labor organization, as a taking in violation of the Fifth Amendment and as preempted by the National Labor Relations Act (NLRA).

The United States District Court granted judgment on the pleadings in favor of state officials. Union appealed.

The Court of Appeals held that takings claim was ripe for adjudication.

Labor union's claim alleging that Wisconsin's right to work law, prohibiting union-security agreements that required nonmembers operating under collective bargaining agreements to pay dues, fees, or assessments to a labor organization, violated the Fifth Amendment's takings clause was ripe for adjudication. Although union had not sought just compensation in state courts, the union's claim amounted to a facial challenge to the law, as it challenged the law as it affected all unions, and sought injunctive relief.

Public Financial Management in a Changing World: Harvard Kennedy School

Public Financial Management in a Changing World

Session Dates: January 14, 2018 – January 19, 2018
Application Deadline: November 14, 2017
Program fee: $8,500

Every country around the world has embraced public financial management reforms over the last two decades. Many have not met expectations.

Yet the demand for reform is great, particularly after 2008, as countries came under greater pressure to pursue austerity measures but still deliver government services.

Public Financial Management in a Changing World is an executive program providing a rigorous, evidence-based approach to public financial management. It brings together officials in charge of implementing reforms in their countries along with leading experts from multilateral organizations to examine the challenges associated with successful systemic reform.

Going Beyond the Numbers

This one-week public finance management executive program goes far beyond traditional approaches that have yielded decidedly mixed results. Harvard faculty and expert practitioners will lead you through a deep examination of what constitutes effective reform. They will also focus on political and organizational change, with an emphasis on national traditions, capacities and needs.

Public Financial Management will provide you with:

- An empirical understanding of the elements of reform agendas that typically succeed versus those that do not, and an analytical framework for interpreting how and why this differs by country
- Evidence-based insights about the connection between the quality and the outputs of systems in functional areas such as budgeting, accounting, auditing and procurement
- Approaches for strategic engagement of stakeholders in reforms and change management
- A lasting global network of colleagues who share a common understanding of the challenges of reforming public financial management systems

Request Brochure

Apply

Let’s Talk Municipal Finance – Municipal Lease Purchase Agreements.

In the last installment of Let’s Talk Municipal Finance, I discussed municipalities and governmental entities that issue bonds, a form of municipal debt. An alternative to incurring municipal debt and less onerous option for a municipality that is, for example, looking to purchase a new piece of equipment, is a municipal lease purchase agreement.

Like ordinary lease purchase agreements, municipal lease purchase agreements require payments for a set number of years to lease a piece of equipment. While some agreements are strictly lease agreements with no option to purchase, more commonly the agreements provide an option to purchase the equipment outright for a nominal price at the end of the term. While a municipality may enter into a lease purchase agreement without a vote of the residents, the allocation to pay the annual lease payments is included as a line item on the annual budget approved by the residents. In addition to the annual appropriation, the agreement must also be duly authorized by the municipality, which commonly means certain resolutions or ordinances must be adopted by the municipality’s governing body authorizing entrance into the agreement by certain officers of the municipality.

Since payment of the lease is subject to annual appropriation in the municipal budget, municipal lease purchase agreements must contain a provision allowing for termination in the event that the residents fail to approve the appropriation for the following year’s annual principal and interest payments. This allows the municipality to terminate the lease without penalty. Lending institutions are willing to enter into municipal lease purchase agreements because interest on the annual lease payments is tax exempt as a result of factors such as the municipality's status as a governmental unit and the use of the equipment being purchased for a municipal or public purpose.

Municipalities must also consider, however, that the administrative costs of issuing a municipal lease purchase agreement are often greater than those of issuing a bond, primarily because the process is less standardized. The municipality must negotiate individually with a lending institution. Further, the municipality's legal counsel must review and draft documents and governing body authorizations that are acceptable to the municipality's chosen lending institution and necessary to issue the opinion of legal counsel, which opines on issues such as due authorization and tax matters. For these reasons, if you are considering entering into a municipal lease purchase agreement, it is best to retain legal counsel at the very beginning of the process to ensure each of the documents and authorizations conforms to the necessary requirements.

JD SUPRA

BY: Preti Flaherty

July 20, 2017

William Blair Exits Muni Bond Business.

One of Chicago's biggest financial firms is getting out of the municipal bond business, an industry where the city once was a national leader.

William Blair said in a statement that as a result of exiting the business, it is cutting 40 employees, or about 3 percent of its workforce.

The firm's leadership decided the business "did not align with its core businesses and did not adequately complement the firm's existing platform of products and services," the statement said, noting that muni bond sales and trading accounted for less than 3 percent of revenue last year.

Chicago once was crowded with muni bond players, including Nuveen, First Chicago and Harris Bank, but the industry is increasingly dominated by a handful of major Wall Street banks that compete fiercely, especially when bond issuances flag, as they have this year. Today, William Blair is one of the smaller competitors, even among remaining Chicago-area firms, though it had been trying to expand nationally in recent years.

"The intensity of the competition in the public finance business has narrowed the profit margins in the industry and made it more difficult for smaller investment banks to produce the level of margins that they can get in other lines of banking," said Richard Ciccarone, CEO of muni bond research firm Merrit Research Services in Chicago.

William Blair had been in the muni bond business for more than 50 years and as recently as last year was announcing additions, hiring muni bond bankers in Ohio, for instance, as it sought to build up its national presence. The privately held, employee-owned company had 11 offices across the country serving its muni bond business, including one opened in Los Angeles in 2014.

TOUGH MOVE

Moving into other, larger markets outside the Midwest was probably difficult because William Blair would have faced more competition from big national firms and other regional players, said Michael Belsky, executive director of the Center for Municipal Finance at the University of Chicago's Harris School of Public Policy.

"Profit margins on municipals have continued to decline, and the business may not be as strong relative to other sectors where (William Blair) is active, such as wealth management and corporate finance," Belsky said.

Bank of Montreal, parent of Harris Bank, also dropped out of the muni bond market last year with a sale of its Chicago-based business to Piper Jaffray.

William Blair's share of the muni bond market had declined so far this year to about a third of 1 percent, from about two-thirds of 1 percent last year, ranking it sixth among regional players and dropping it below Mesirow Financial, which has about half a percent, according to a Bloomberg ranking, based on fees for long-term muni bonds.

BIG PLAYERS REMAIN

The biggest player in the region is Robert W. Baird, with a 2.5 percent share, followed by Loop Capital Markets, and a rising Ziegler in third place, according to rankings. Bank of America Merrill Lynch is the biggest nationwide this year, as it was last year, with 15 percent share.

In the statement, William Blair CEO John Ettelson said the firm will remain in the related fixed-income sales, trading and underwriting business.

William Blair, which has nearly $1 billion in annual revenue, has grown in recent years in its merger and acquisition advisory and investment management businesses. As of the end of March, the firm oversaw assets of about $84 billion for institutional, high-net-worth and mutual fund clients.

William Blair's decision to leave the muni bond market was reported yesterday by Bond Buyer.

CRAIN'S CHICAGO BUSINESS

By LYNNE MAREK

July 19, 2017

Why a Border Adjustment Tax Would Be a Bad Deal for States and Localities.

It would slam the insurance industry, bringing downturns in the bond market and tax revenues.

State and local governments are no strangers to dealing with the unintended side effects of federal policies. This year's congressional tax-reform efforts could leave them scrambling again.

That's because a central part of the House Republicans' expected proposal, a "border-adjustment tax" (BAT), would deal a heavy financial blow to states' and localities' single largest source of municipal bond and other long-term debt funding as well as to one of their most substantial sources of tax revenue: the insurance industry.

It isn't that a BAT would directly force financial hardship on state and local governments. Rather, it would raise the cost and constrict the supply of insurance products in ways that would be expected to lead to downturns in the muni bond market, real-estate investments and tax revenue while adding to pressure for increased spending on social services.

According to a recent study by the R Street Institute, the costs of typical life insurance and annuity policies would rise by $59 billion, which would lead to a $24.6 billion drop in sales of these products over the next two decades. Separate research by the Brattle Group finds similarly large effects for the property and casualty insurance industry, with a $5 billion increase in the cost of insurance and an annual reduction in sales of $9.3 billion.

The trouble with the BAT comes from the way in which it is likely to be structured. It's a system that taxes imports but not exports, in a fashion designed to favor domestic production and supply. Yet when it comes to risk, international diversification is a vital tool to keep insurance prices down and policy coverage broad.

If financial services like insurance were subject to a BAT, the supply of international capital available to U.S. insurers in the form of reinsurance — essentially insurance for insurance companies — would become more limited and therefore more expensive. The immediate effects would be higher premiums for the 60 percent of Americans who hold life insurance policies.

But for states and municipalities, even more significant effects would follow. U.S. life insurers invest about 75 percent of every new premium dollar in fixed-income debt markets, and often are the only buyers for some kinds of bonds, particularly long-term debt. In fact, municipal bonds are among insurers' most significant long-term investments: Property and casualty insurers held $326.8 billion in municipal bonds at the end of 2012, according to the National Association of Insurance Commissioners, while life insurers tripled their muni holdings from $47.1 billion in 2008 to $131.2 billion in 2012.

By driving down insurers' bond investments, a BAT would harm the ability of state and municipal governments to borrow long-term. Other budget problems could stem from how reliant states are on the gross premium taxes paid by insurers, which totaled $19.2 billion in 2016. These taxes are among some states' top five sources of revenue and are often levied as an alternative to income taxes.

Finally, a BAT would further stretch limited state and local resources because it would push financial-planning products such as insurance beyond the reach of many of those teetering on the brink of public assistance. While the federal government might be called upon to support some of those needs, most of that extra load would need to be carried by state and local authorities.

While the political destiny of tax reform in Congress is uncertain, the policy effects of a BAT are already known. State and local governments have a stake in this debate because they have lots to lose.

Governing.com

By Ian Adams | Contributor
Associate vice president of the R Street Institute

JULY 17, 2017

[Improving Financial Disclosure by State and Local Government Borrowers.]

State and local government financial reporting is regulated more lightly than that of corporations, but recent enforcement actions taken by the Securities Exchange Commission alleging fraud and other developments have sparked an effort to promote better financial disclosure by state and local government borrowers.

This has raised several questions. What benefits do better disclosures produce? And do these benefits outweigh the costs? Two papers to be presented at the sixth annual Municipal Finance Conference address these questions.

The first, "When transparency pays: The moderating effect of reporting quality on changes in the cost of debt," begins with a simple intuition: improved reporting on a municipal government's finances should reduce uncertainty about its ability to service its debts, which, in turn, should reduce the cost of borrowing. "Higher quality, timelier, more transparent reporting means less information asymmetry between the issuer and its bondholders and less uncertainty about the issuer's changing default risk," Christine Cuny and Svenja Dube from the Stern School of Business at New York University write. However, much empirical research on the subject doesn't adequately account for an important fact– risky issuers tend to have weak reporting quality. The authors address this concern. They ask: are issuers with stronger reporting quality less likely to be downgraded and more likely to be upgraded than similar issues with weaker reporting quality?

Cuny and Dube match issuers with the same beginning credit rating that are exposed to the same drop in house prices; house prices are used by rating agencies as an indicator of local economic conditions. They then examine how the issuers with stronger disclosure fared relative to those with weaker disclosure. They find that a one standard deviation improvement in reporting quality lowers the probability of a ratings downgrade by 46% and raises the probability of an upgrade by 31%, all else equal. The impact of reporting quality is greater when adverse local housing conditions persist for more than one year, supporting the notion that that reporting quality reduces uncertainty about default risk. Overall, these results suggest that reporting quality can indeed lower municipal borrowing costs.

The second paper, "Regulatory Disclosure interventions in Municipal Securities Secondary Markets: Market Price Effects and the Relative Impacts on Retail and Institutional Investors," examines the impact of steps the Municipal Securities Rulemaking Board, a self-regulatory agency that oversees the municipal bond market, has taken to require more disclosure by broker-dealers. In 2008, seeking to reduce concerns that institutional investors were getting better prices for municipal bonds than individual investors, the MSRB launched an online disclosure portal–the Electronic Municipal Market Access (EMMA). EMMA provides public access to municipal bond disclosure documents and near real-time data on market trade prices. Komla Dzigbede of the State University of New York at Binghamton uses the EMMA intervention to examine two questions: 1) What is the impact of the EMMA on secondary market pricing of municipal securities? and 2) has EMMA changed institutional investors' usual trade price advantage over retail investors?

Dzigbede compares daily price differentials and volatility in prices of California state general obligation bonds traded before and after the implementation of EMMA, accounting for factors relating to individual bond trade, bond characteristics underlying the trade, and market factors influencing the trade. He then compares these effects between individual and institutional investor segments. He finds that EMMA enhanced the efficiency of trade pricing – that is, the interventions decreased the average daily price differential and trade price volatility. But he also finds that the benefits effects of regulatory interventions were greater for institutional investors than for individual investors. Institutional investors' pricing advantages persist after the regulatory interventions. These results suggest that regulators should look for policies that more effectively counteract disparities in information flow to equalize opportunities for retail investors, he says. "Overall, regulatory policy in the municipal bond market contexts must stretch beyond interventions and enforcement of disclosure rules to emphasize, to a greater extent, other supportive mechanisms […]" to address the information disparity, Dzigbede concludes.

The Brookings Institute

Vivien Lee and David Wessel

Monday, July 17, 2017

Editor's Note: The papers discussed in this post were presented at the 2017 Municipal Finance Conference on July 17 and 18 at Brookings.

TAX - WISCONSIN

Voters with Facts v. City of Eau Claire

Court of Appeals of Wisconsin - May 31, 2017 - N.W.2d - 2017 WL 2349163 - 2017 WI App 35

Taxpayers brought declaratory judgment action against city, seeking declaratory judgment invalidating city's creation and amendment of tax increment districts (TID) to finance redevelopment.

The Circuit Court granted city's motion to dismiss on the basis that taxpayers lacked standing. Taxpayers appealed.

The Court of Appeals held that:

- Taxpayers failed to sufficiently allege that city failed to follow statutory requirements when approving creation and amendment of TID;
- Statute governing creation of TID precluded taxpayers' claim that TID area was not blighted;
- Taxpayer's challenge was cognizable on certiorari, rather than as a declaratory judgment claim;
- Taxpayers failed to sufficiently allege that city funds related to TID were used to pay for demolition of historic buildings;
- Taxpayers failed to sufficiently allege that reimbursements to developer violated uniformity clause of Wisconsin constitution; and
- Taxpayers failed to sufficiently allege that city's resolutions violated the public purpose doctrine.

Taxpayers failed to sufficiently allege that city failed to follow statutory requirements when approving creation and amendment of tax increment districts (TID) to allow tax increment financing (TIF) for redevelopment, as required to establish standing to assert declaratory judgment claim against city. While taxpayers alleged that city was incorrect in finding blight to support of creation of TID, statutory language merely imposed procedural hurdles to TIF use, which included approval of a TID by a democratically-accountable body who asserts the requisite findings.

Statute governing creation of tax increment districts (TID) by municipalities precluded taxpayers' declaratory judgment claim against city, based upon taxpayers' allegation that area city established as a TID was not blighted. City's determination as to whether area was blighted was a matter of its legislative discretion, a challenge to this finding in a declaratory judgment action would have resulted in factfinder substituting its judgment for that of city, and even if "blight" had been defined by an objective standard, language used in tax increment financing (TIF) statute did not require court to determine whether area was in fact blighted.

City's decision to establish tax increment district (TID) in area it concluded was affected by blight was cognizable on certiorari, rather than as a declaratory judgment claim. While city asserted that its legislative acts were immune from judicial review, statute governing creation of a TID did not expressly bar review, and certiorari review would have prevented lengthy and detailed discovery, constituted a speedy alternative to a declaratory judgment action, and would have prevented improper transfer of legislative power from city to courts.

Taxpayers failed to sufficiently allege that city funds related to tax increment district (TID) were used to pay for demolition of historic buildings, which was prohibited by statute, as required to establish that they had standing to bring declaratory judgment claim against city. Taxpayers' complaint did not allege anything unlawful had occurred, or was likely to occur, and alleged no facts connecting any past or future payment to the developer's action in demolishing historic buildings.

Taxpayers failed to sufficiently allege that city's reimbursements to developer performing project in tax increment district (TID) constituted an advance tax rebate or credit in violation of the Wisconsin constitution's uniformity clause, as required to establish standing on their declaratory judgment claim that city's expenditures were unlawful. Statute under which payments were made limited them to reimbursement for "project costs," which were defined to be those associated with a public work or improvement, so reimbursements did not require taxpayers to pay disproportionate amounts of taxes, nor did it change individual tax burden by granting a partial exemption, as taxpayers' allegations did not support characterizations of payments to developer as unlawful tax rebates or credits.

Taxpayers failed to sufficiently allege that city's resolutions, establishing and amending tax increment districts (TID), violated the public purpose doctrine, and thus taxpayers lacked standing to prosecute that constitutional claim in declaratory judgment action. While taxpayers asserted that establishment of TIDs did not serve to eliminate blight so they served a private rather than public purpose, tax increment law, and city's resolutions on their face, had a valid public purpose.

NFMA Fugiel Scholarship.

The NFMA is accepting applications for the Fugiel Scholarship. The scholarship is available for award to a full-time student in an accredited academic program in a field that would serve as preparation for a career in municipal finance. This annual scholarship awards one student with a stipend to cover the registration fees and travel costs associated with attending the NFMA's Introduction to Municipal Bond Credit Analysis Seminar traditionally held each fall in Philadelphia. The scholarship also includes a one-year student membership.

To access the application, including information on eligibility requirements, click here. The 2017 Introduction to Municipal Bond Credit Analysis will be held on November 16-17 at Le Meridien Philadelphia.

[SIFMA Submits Tax Reform Recommendations to Senate Finance Committee .]

Washington, DC, July 18, 2017 – SIFMA submitted recommendations for tax reform to the Senate Finance Committee in response to Chairman Orrin Hatch's (R-UT) request for comments issued on June 16, 2017.

"SIFMA strongly supports tax legislation that will enhance economic opportunities for individual Americans, promote savings and encourage investment, and lower the tax rate for American businesses that compete in a global marketplace," said Kenneth E. Bentsen, Jr., SIFMA president and CEO. "SIFMA commends Chairman Hatch, his staff, and the members of the Senate Finance Committee for making tax reform a priority. We look forward to working with the Committee to improve the climate for economic growth and prosperity for all Americans,"

SIFMA's recommendations include:

SIFMA Supports Pro-Growth, Comprehensive Tax Reform:
SIFMA supports movement to a territorial tax system that recognizes the unique characteristics of the financial services industry, that is fair and equitable for U.S. financial services companies and investors, and has tax rules for inbound investment that encourage foreign investment in the U.S. and does not discriminate against non-U.S. financial services companies seeking to compete in U.S. markets.

International Tax Reform:
The U.S. is one of the only remaining countries that continue to tax its residents on income derived from the active conduct of a foreign business. Most of our trading partners have moved toward a more competitive exemption or partial exemption system, under which business income earned by foreign subsidiaries is taxed primarily in the country where it is earned and anti-base erosion regimes serve to protect the home country tax base. SIFMA believes that a well-crafted exemption system, with appropriate safeguards against base erosion, would be strongly beneficial to the United States economy.

Federal Tax Exemption for Municipal Bond Interest:
State and local governments benefit from the tax exemption through significantly lower borrowing costs. Municipal bonds are used to finance a wide variety of infrastructure like schools, roads, bridges, airports, water and sewer systems, hospitals and many others. The tax exemption lowers the cost of financing these projects and encourages more infrastructure investment. The tax exemption is better than direct subsidies for infrastructure investment because bonds must be repaid, forcing a market test of the project's viability.

Tax Incentives for Retirement Savings:
Because of their tax-deferred status, retirement plans may come under scrutiny as a way to reduce the deficit. SIFMA participates in a coalition of service providers, plan sponsors and HR professionals – the Coalition to Protect Retirement – with the goal of preserving the tax incentives that are critical to encouraging Americans to save for retirement and to businesses sponsoring plans for employees.

Capital Gains and Dividends:
SIFMA and its members consistently have advocated for low federal income tax rates on savings and investment and supports low capital gains rates and parity between the rates for capital gains and qualified dividends. We believe that these preferential rates provide a necessary and powerful

incentive for investments that benefits retail investors and strengthens the U.S. economy, and that Congress and the Committee should be mindful of preserving these incentives as discussions about tax reform unfold.

Financial Transaction Tax:
SIFMA is opposed to the imposition of any financial transaction and encourages lawmakers to consider the lessons of past efforts to implement FTT laws in other nations. SIFMA believes an FTT would raise the cost of capital needed by businesses and would amount to a new sales tax on retirees and middle-class investors.

The full document submitted to the Senate Finance Committee can be read here.

Release Date: July 18, 2017
Contact: Carol Danko, 202-962-7390, cdanko@sifma.org

Supreme Court Review for Local Governments: June 2017.

In the last month of its term (June), the Supreme Court often issues opinions at a dizzying pace. Below is a very brief summary of the cases decided last month affecting local governments.

When it comes to big cases, the Supreme Court's last term was the quietest in recent memory. For local governments, though, the Court's term was business as usual. In June, and throughout the term, the Court decided a number of police and First Amendment cases which affect local governments directly and indirectly. Local governments were named parties in a number of cases this term.

Continue reading.

National League of Cities

June 18, 2017

BDA Submits Comment Letter: Proposed Limited Safe Harbor from FINRA Debt Research Rules for Desk Commentary.

BDA Comment Letter Summary

- BDA believes the best solution to help facilitate the timely flow of commentary to investment managers would be a clear interpretation of "research report" that demonstrates that the vast majority of desk commentary is not fundamental research
- If and when FINRA proposes rule text for the safe harbor, it should provide clarity on desk commentary content

Recent BDA Actions

- **BDA Comment Letter:** On July 14th, BDA submitted a comment letter in response to FINRA's request for comment on a proposed safe harbor for desk commentary. The letter is here.

- **Morgan Lewis Memo:** In May, Amy Natterson Kroll of Morgan Lewis joined BDA's conference call to discuss the proposed safe harbor. A memo on the proposal authored by Ms. Kroll can be read here.
- **FINRA Proposal:** FINRA has requested comment on a proposed safe harbor from the debt research rule specifically for desk commentary distributed to certain institutional customers.

Bond Dealers of America

July 17, 2017

Fitch Releases U.S Public Finance and GIG Transition and Default Study.

Fitch Ratings-New York-19 July 2017: The positive rating trend for U.S. public finance, which began in earnest in 2014, continued through 2016, according to a new Fitch Ratings study. Upgrades continued to outpace downgrades, mirroring the year-earlier pace. However, actions, both upgrades and downgrades, increased year-over-year.

The share of U.S. public finance security ratings upgraded reached 9.3% in 2016, which exceeded the 3.7% upgraded in 2015. Meanwhile, downgraded security ratings (4.2%) topped the 1.6% downgraded in 2015.

Fitch recorded a single U.S. public finance security rating default in 2016 – Puerto Rico's GO bonds. The resulting U.S. Public Finance annual default rate was 0.03%.

The report also includes information on Global Infrastructure and Project Finance (GIG) transition and default performance. Overall, GIG security rating activity was positive in 2016 with total upgrades nearly doubling downgrades. GIG securities affected by upgrades (6.5%) exceeded downgrades (3.4%).

The new study provides transition and default analysis on the performance of U.S. public finance and GIG in 2016 and over the long term period. The report provides summary statistics on the year's key rating trends.

The full report, 'U.S. Public Finance and Global Infrastructure and Project Finance 2016 Transition and Default Study' is available at 'www.fitchratings.com'.

Contact:

Charlotte Needham
Manager
Ratings Performance Analytics
+1-212-908-0794
Fitch Ratings, Inc.
33 Whitehall St.
New York, NY 10004

Jessalynn Moro
Managing Director
+1-212-908-0608

Olivier Delfour
Managing Director
+33 1 44 29 91 21

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

Additional information is available on www.fitchratings.com

[Fitch: "Healthy" Rest of 2017 Awaits U.S. Transportation Infrastructure Sector.]

Fitch Ratings-New York-17 July 2017: The outlook for U.S. transportation infrastructure remains quite healthy for the rest of this year despite a lack of clarity around the Trump administration's plans for beefing up infrastructure spending, according to Fitch Ratings in its midyear outlook report.

Fitch views near-term U.S. economic trends favorably with modest 2.1% GDP growth this year even amid slower-than-expected first-quarter growth and fiscal easing. Low fuel prices should keep travel costs affordable, while large transportation enterprises will still need to borrow debt at least for the foreseeable future in order to help provide congestion relief and serve ongoing infrastructure renewal needs. Longer term, however, in just what manner U.S. economic and fiscal policies materialize make the outlook more uncertain.

Growth in passenger traffic at U.S. airports remains solid though it will level off somewhat in the coming months. "Large-hub airports are still the strongest performers in the aggregate, though smaller regional airports are now showing stronger performance as well," said Seth Lehman, Senior Director. Volume growth should continue to mirror that of GDP for U.S. ports for rest of the year. That said, "shipping company mergers, changing alliance structures and fluctuating freight rates will shift volumes, which could alter contractual protections for select ports," said Emma Griffith, Director.

The growth outlook is more moderate for U.S. toll roads for the second half of 2017. Inflationary toll increases should lead to stronger revenue growth, with much of the greenfield development still emanating from managed lanes. "Toll roads still face political risk, including federal funding uncertainty and state tolling opposition," said Tanya Langman, Director. A more cautious growth trajectory remains in the cards for public private partnerships (P3s) as well. More state and local governments are exploring P3 financing models, though "there remains a scarcity of funding and a lack of understanding around the P3 structure, meaning most infrastructure needs will continue to be financed via more traditional means," said Scott Zuchorski, Senior Director.

Fitch's '2017 Midyear Outlook: U.S. Transportation Infrastructure' report is available at '[www.fitchratings.com]'.

Contact:

Stacey Mawson
Director
+1 212 908-0678
Fitch Ratings, Inc.

33 Whitehall Street
New York, NY 10004

Seth Lehman (Airports)
Senior Director
+1 212 908-0755

Emma Griffith (Ports)
Director
+1 212 908-9124

Tanya Langman (Toll Roads)
Director
+ 212 908-0716

Scott Zuchorski (P3s)
Senior Director
+ 212 908-0716

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

Additional information is available on www.fitchratings.com

Bloomberg Brief Weekly Video - 7/20

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

Watch video.

Bloomberg

July 21, 2017

Washington Outsiders Learn Hard Way That Swamp Is Alive And Well.

- **Bond advisers went to capital to promote infrastructure idea**
- **Six-figure lobbying bills and proposed donation prompt 'pivot'**

Larry Kidwell and Robbi Jones didn't agree on the 2016 election. But the two financial advisers found common ground over President Donald Trump's pledge to rebuild America's aging highways, bridges and airports.

In the weeks following Trump's victory, they decided to go to Washington to push a bold idea for funding the president's infrastructure program: The federal government could package some $2 trillion in student loans and other debt it keeps on its books and sell it to Wall Street investors. They hope to profit, too, as advisers on the transactions.

“This is something that I think Donald Trump would understand in two-tenths of a micro-second,” said Kidwell, a Republican from Brentwood, Tennessee. He’s known Jones, a Houston Democrat, for years through their work in the municipal bond business.

Instead of quick results, the pair have gotten a sobering lesson in the slow, tedious and expensive way Washington works. The out-of-towners have been eagerly embraced by Washington pros touting Trump connections, but after seven months they have little to show for their efforts except for some meetings and a six-figure lobbying bill.

Kidwell and Jones, who have spent decades helping state and local governments finance sewer systems, hospitals and other major projects, thought their experience could help provide a market-based fix for a big problem. They were also motivated by the notion that Trump was draining the swamp, ushering in a new era that would empower small-business owners like themselves.

“We thought it would be easier,” Jones said.

Tough Sell

In reality, it’s no simple task to get any idea into the hands of congressional leaders and top White House officials, and even harder to persuade them to get behind it. Kidwell and Jones’s notion would seem a particularly tough sell, since it calls to mind the disastrous securitized mortgages that fueled the 2008 financial crisis. Some lawmakers would certainly be wary of giving private investors control over government loans and enriching the big banks that would handle the deals.

The proposal “seems catastrophically stupid, and it seems ripe for abuse,” said Kevin DeGood, director of infrastructure policy at the left-leaning Center for American Progress. “I don’t see it going anywhere.”

In January, Kidwell and Jones hired K&L Gates lobbyist Daniel Crowley, a former general counsel for House Speaker Newt Gingrich, to help them make contacts in the capital. Crowley and Kidwell knew each other from the 1990s when they were in the leadership of the Young Republican National Federation.

Crowley, an equestrian and fox hunting enthusiast, added another six of his firm’s lobbyists to the project, including two ex-congressmen, according to federal filings. They charged $20,000 a month.

$1 Trillion

The K&L Gates team wrote talking points for Kidwell and Jones and set up meetings with lawmakers, congressional staff and administration officials.

The pitch went like this: The government directly lends money to students, farmers, veterans, small business owners and others. Those loans could be pooled and sold to pension, hedge and mutual funds. Even at a discount, because the loans are considered riskier, sales could raise about $1 trillion, Kidwell and Jones estimated. That would be enough to pay for Trump’s infrastructure plan without adding to the national debt or raising taxes.

They’d also install safeguards to protect borrowers, such as giving them a chance to pay off their loans at a discount before the debt is sold. And while the idea may seem novel, it isn’t entirely new. In the late 1980s, Congress passed legislation requiring the sale of various government loans to pay for some of President Ronald Reagan’s tax cuts.

‘No-brainer’

“This is one of those ideas that is literally a no-brainer, it just needs oxygen and room to grow,” said Jones.

Over the course of several months, Kidwell and Jones have met with officials from the Office of Management and Budget, leadership aides in the House and Senate, senior staff of the budget committees and outside interest groups. While many saw the benefits of packaging and selling the debt, they had different ideas about how the proceeds should be spent. Often it had nothing to do with infrastructure.

One lawmaker, for example, thought it would be a good way to get the government out of the student loan business; others thought the plan could be used to fund tax cuts. Kidwell and Jones also met with Grover Norquist, the anti-tax crusader, who was very enthusiastic but told them they should use the money to pay down the national debt, they said. Norquist declined to comment. In all, they’ve had about a dozen meetings across Capitol Hill, but nobody has signed on.

“We had no problems getting to see people. We had no problems informing people,” Jones said. “We ran into problems identifying a champion.”

‘Loss Leader’

In an interview, Crowley said the firm had made significant progress for Kidwell and Jones. He said he understands their frustration, but pushing such an ambitious proposal through Congress and the administration could easily take two years. Still, he said he thinks it’s a great idea and is optimistic they can get it done.

“These things take a while to socialize, particularly big ideas coming from Main Street like this,” he said. He said the $20,000 monthly fee was more than reasonable, and with all the hours the firm has logged, the account is “clearly a loss leader for us.”

To generate interest in the idea, Crowley counseled his clients to form a coalition with like-minded firms.

Crowley called it “Great Again,” an acronym for Government Refinancing Enabling Alternative Transactions And Generating American Income Now, and gave it a star and stripes logo. The full name was so long it didn’t fit on the lobbying registration form.

Kidwell and Jones tried to persuade Wall Street’s biggest banks and the Securities Industry and Financial Markets Association to join their group. The firms, they said, privately endorsed the idea but took a pass on becoming part of the Great Again coalition, concerned their public support would be politically damaging.

Other potential champions were available, but at a cost.

Think Tank

A think tank called the Alliance for Innovation and Infrastructure was willing to educate lawmakers and administration officials on the plan. The backing, it noted in a three-page proposal in June, would include “a well-written white paper, a roundtable discussion at the U.S. Capitol and strong media outreach.”

The document touted the think tank’s chairman Brigham McCown and his work advising Transportation Secretary Elaine Chao. It said he was one of the “core infrastructure policy architects” for the Trump transition, “frequently quoted by all Tier-1 media outlets.” The proposal, which was written on the group's letterhead, suggested a $125,000 donation to fund the work. Kidwell and Jones haven't taken up the offer.

In an interview, McCown said the memo was prepared by an outside contractor and it wasn't approved by anyone at the organization before it was sent to Kidwell. The non-profit doesn't take donations in exchange for work, McCown said. "We don't do pay-to-play white papers."

Making Changes

Now, after seven months in Washington, Kidwell and Jones say they're frustrated but not giving up. They are making some changes.

They told Crowley and the K&L Gates team to stop billing them at the end of May. Kidwell said he is re-evaluating the arrangement. Jones last week formally cut ties with the firm.

Meanwhile, the two have been getting advice on alternative approaches from Michael Williams, a Democrat who has deep roots in the bond industry. Williams, who's not formally lobbying on their behalf, has told them to be open to Congress using their idea for other policy initiatives, like tax reform, that could come before an infrastructure deal.

"It's a great idea, but there are a lot of great ideas that have never been implemented in D.C.," Williams said. "They need to be flexible."

Kidwell and Jones have also ditched the Great Again coalition and the attempt to align with Wall Street firms. They're going it alone for now, relying on their small business bona fides and on-th--ground expertise.

"There's obviously been some learning as we go along here," Kidwell said. "We're pivoting."

Bloomberg Politics

By Robert Schmidt

July 21, 2017, 1:00 AM PDT

The Biggest Loser From Full Employment? Government.

Unemployment is low. State and local budgets are tight. Expect shortages of public servants.

There's room to quibble about whether the U.S. has reached "full employment." Yes, the unemployment rate is and has been low. But labor-force participation remains subdued, and some measures of wage growth are stunted.

If the U.S. is not at full employment, it's certainly getting closer. That's worse and worse news for government, as it will struggle to hire and retain workers.

For a variety of reasons, the government employment cycle lags behind the overall cycle. Partly that's because government revenue rises after the private sector heats up, not simultaneously. Income taxes are paid only after companies have hired workers. Before corporate profits can be taxed, they have to be earned. Tax revenue from capital gains can flow into the public coffers many months after assets have been sold.

Tax revenue from ordinary economic activity is volatile as is, but the unusual nature of the nationwide housing downturn in the 2008 recession had a profound impact on local tax streams. The run-up in housing prices during the boom years led to higher appraised values and increased property tax revenue for municipalities to spend. The bust led to lower appraised values and budget deficits that had to be closed, in many cases via spending cuts and layoffs, as the private sector was going through the worst recession in 80 years. While home prices have recovered to varying degrees around the country, appraisals often occur with a multiyear lag, which has constrained local budgets during the economic recovery.

The financial accounting of when tax revenue is earned and can be spent is one thing, but the governing philosophies of politicians during this economic cycle are another. Elected officials who came into office in the aftermath of the great recession were mostly focused on shoring up budgets. In part this was because the electoral wave in 2010 following the recession was dominated by austerity-focused Republicans, but it affected Democrats as well. Big city mayors, who tend to be Democrats, had to balance their budgets, and it's hard to get people to agree to tax hikes to fund services when unemployment is high. Rainy day funds needed to be built up, and in some cases, pension costs needed to be addressed.

Even though that 2010 electoral wave was seven years ago, it continues to be a powerful movement. Eighteen governors currently in office were elected in 2010. Most of them are term-limited in 2018, but until then … it's difficult to get people who came into office promising to cut spending to then turn into stimulus mavens late in their tenures.

In the same way that overhiring during the boom years came back to bite governments, underhiring now is going to increasingly lead to pain when governments are inevitably forced to catch up. Government payrolls didn't hit bottom until January 2014, nearly five years after the technical end of the recession. They are back to their level from December 2007, when the recession began. By comparison, over that same time frame, private sector payrolls have increased by 8 million workers.

While it would be nice to think that government has gotten dramatically more efficient over the past decade, the combination of tight budgets and recession-scarred governing mentalities means that public sector employment is short of where it needs to be to return to pre-recession levels of service. To get North Carolina back to prerecession student-to-teacher ratios, the state would need to hire more than 5,000 teachers.

Funding isn't the only obstacle to a recovery in government services. The labor market is also newly tight. Atlanta Mayor Kasim Reed noted it was much easier hiring police officers when the local unemployment rate was 10.5 percent.

For the country as a whole, to get the ratio of private sector to public sector workers back to its December 2007 level, we would need to hire an additional 1.6 million public sector workers. That won't be quick; to increase government employment by 1.6 million in the 1990s took eight years.

Every month that passes in which government doesn't start to address its hiring shortfall means that more teachers and police officers retire and aren't replaced. It means quality government workers who are desired by the private sector become more tempted to leave their government jobs for higher pay elsewhere in a tight labor market. And it means fewer people bother to apply for government jobs during a period with lingering hiring freezes and compensation packages that haven't caught up with where we are in the economic cycle. If politicians think voters are upset by debt and deficits, wait until we have widespread shortages of police officers and teachers.

Bloomberg View

By Conor Sen

July 18, 2017, 4:00 AM PDT

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

To contact the author of this story:
Conor Sen at csen9@bloomberg.net

To contact the editor responsible for this story:
Katy Roberts at kroberts29@bloomberg.net

MSRB Webinar: What to Expect from Your Municipal Advisor.

Date: Thursday, August 10, 2017
Time: 3:00 p.m. – 4:00 p.m. ET

During this free educational webinar, staff from the Municipal Securities Rulemaking Board (MSRB) will provide information aimed at helping issuers of municipal securities better understand what to expect from their municipal advisor. Participants will learn about MSRB rules that regulate the activities of municipal advisors and hear about the standards of professional qualifications for municipal advisors—including the Municipal Advisor Representative Qualification Examination (Series 50 exam).

Register Now.

By September 12, 2017, municipal advisors must pass the Series 50 exam to engage in municipal advisory activities.

MSRB Announces Topics to be Discussed at July Board Meeting.

The Board of Directors of the Municipal Securities Rulemaking Board (MSRB) will meet July 26-27, 2017 in Washington, DC, where it will discuss the upcoming municipal advisor professional qualification deadline, public and user feedback on its Electronic Municipal Market Access (EMMA®) website and other rulemaking and policy topics.

View the MSRB Board of Director's meeting discussion items.

New MSRB Fee to be Assessed on Underwriters to 529 College Savings Plans.

The Municipal Securities Rulemaking Board (MSRB) today filed with the Securities and Exchange Commission (SEC) amendments to MSRB Rule A-13, on underwriting and transaction assessments for brokers, dealers and municipal securities dealers, to assess a new annual fee on dealers acting as underwriters to 529 college savings plans. The amendments are effective immediately. The new fee is based on a percentage of total aggregate plan assets as of December 31 each year, as required to be reported by an underwriter on MSRB Form G-45. The MSRB will invoice for the new underwriting fee beginning in May 2018.

A key strategic priority of the MSRB is the financial sustainability of the organization, facilitated by the fair and equitable assessment of fees across all regulated entities. The new underwriting fee will defray the MSRB's costs of operating and administering its rulemaking, market transparency and educational activities concerning dealers acting as underwriters to 529 college savings plans.

View the SEC filing.

Local Governments Using a Software That Russia May Be Using for Espionage.

Local and state government agencies from Oregon to Connecticut say they are using a Russian brand of security software despite the federal government's instructions to its own agencies not to buy the software over concerns about cyberespionage, records and interviews show.

The federal agency in charge of purchasing, the General Services Administration, this month removed Moscow-based Kaspersky Lab from its list of approved vendors. In doing so, the agency's statement suggested a vulnerability exists in Kaspersky that could give the Russian government backdoor access to the systems it protects, though they offered no explanation or evidence of it. Kaspersky has strongly denied coordinating with the Russian government and has offered to cooperate with federal investigators.

The GSA's move on July 11 has left state and local governments to speculate about the risks of sticking with the company or abandoning taxpayer-funded contracts, sometimes at great cost. The lack of information from the GSA underscores a disconnect between local officials and the federal government about cybersecurity.

Interviews suggest that concerns in recent months from Congress and in the intelligence community about Kaspersky are not widely known among state and local officials, who are most likely to consider purchasing the Russian software. Those systems, while not necessarily protecting critical infrastructure, can be targeted by hackers because they provide access to troves of sensitive information.

U.S. intelligence chiefs in May told a Senate panel that they wouldn't use the company's software during a broader hearing investigating Russia's alleged meddling in the U.S. presidential election. It was not the first time Congress had heard that message: A former U.S. official told The Washington Post that congressional staff was advised by law enforcement in late 2015 to stop meeting with Kaspersky representatives over national security concerns.

"People need to know that they can trust software updates," said Joseph Lorenzo Hall, chief technologist at the Center for Democracy and Technology, a digital advocacy group. About the GSA's decision, he said: "We need more public information."

In the weeks since Kaspersky's delisting, The Post found that it continues to be used on government computers in jurisdictions ranging from Portland, Ore., to Fayetteville, Ga., where an official said they have a year-to-year contract.

View Full Story From The Washington Post.

GOVERNING.COM

July 24, 2017

States Get Creative on Pension Funding.

The latest plans in California and New Jersey have observers asking: creative solution or accounting gimmick?

Most states have enacted some type of reform over the past decade to shore up their pension funds for the future. But such changes have typically done little to make a dent in the liabilities that governments already have on the books.

As those liabilities increase, states and localities are turning to more creative solutions to ease the burden.

California and New Jersey are moving forward with plans that would boost respective pension assets, dramatically decrease unfunded liabilities and reduce payouts for the immediate future. But critics of the plans say the two states are doing nothing more than moving numbers around on paper.

In New Jersey, the state is pledging its lottery — which an outside analysis determined was valued at $13.5 billion — as an asset to state pension funds. The action would reduce the pension system's $49 billion unfunded liability and improve its funded ratio from 45 percent to about 60 percent, according to State Treasurer Ford Scudder. The roughly $1 billion in annual lottery proceeds, which currently go to education and human services, among other programs, will now be divvied up among state pension funds. The largest share — nearly 78 percent — will go to the teachers' pension fund.

Although unions grumbled about the plan, it passed with little public debate as lawmakers were preoccupied by budget negotiations. Gov. Chris Christie and Scudder have hailed the lottery legislation as a foolproof way to immediately boost the health of the pension fund. But others have been less enthusiastic about the plan.

Municipal Market Analytics' Matt Fabian dubbed it an accounting scheme, noting it also places a roughly $970 million burden on New Jersey's general fund budget to pay for the programs formerly covered by the annual lottery proceeds. "We believe that, at best," Fabian wrote, "this transaction delays honestly confronting the pension liability problem."

The move hasn't impressed credit rating agencies, either.

In recent years, they have repeatedly lowered New Jersey's rating in part because of its increasing unfunded pension liabilities. "It's not a cash infusion," says S&P Global Ratings analyst David Hitchcock. What's more, he says, the state runs the risk of assuming its assets "are better than what they really are."

The ratings agencies have a more positive view of California's proposed pension funding plan.

Developed by Gov. Jerry Brown and State Treasurer John Chiang's offices, California will borrow $6 billion from its Surplus Money Investment Fund to pay down a portion of its $59 billion unfunded pension liability. The surplus fund account typically earns less than 1 percent interest because it is invested for very short periods so that it can be quickly accessed for payment. Brown and Chiang say the money in the surplus fund could be put to better use in the state's pension fund, where it can be invested for the long-term and earn a higher interest rate.

The state is making its full pension payment this year in addition to depositing the loaned money. That will result in a nearly $12 billion boost to the fund this year. The cash infusion would immediately help lower the state's annual pension bills. California would pay back its surplus fund — plus interest — over the course of a decade.

Moody's Investors Service has called the idea a credit positive one because it "suggests the state will aggressively counter a projected rise in its unfunded pension liabilities." Some governmental organizations, such as the California Budget and Policy Center, have also offered positive reviews, comparing the move to a refinancing of debt without the risk and exposure associated with owing money to bondholders.

But David Crane, a frequent critic of Brown and a Stanford University public policy lecturer, is skeptical the $6 billion infusion into the state's pension system will generate the 7 percent annual earnings that officials project. In addition, given the recent income tax revenue shortfalls, he cautions that the surplus fund may be needed before the state has paid it back. "Circumstances change and the state's principal responsibility is to provide services," he wrote in an op-ed.

With both of these approaches, much of their success depends on how well the pension investments perform. But no matter how that plays out, more governments are likely to follow with their own creative funding solutions.

"There's always going to be a temptation when budgets are strained to look for a way to reduce pension funding," says Hitchcock. "When a government tries to do so as a gimmick as opposed to real reform or real pension funding, [it's not] seen as a positive."

GOVERNING.COM

BY LIZ FARMER | JULY 19, 2017

The Week in Public Finance: Alaska Downgraded, Low Income-Tax Revenues and Congress Meddles in Online Sales Taxes Again.

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

BY LIZ FARMER | JULY 21, 2017

GOVERNING.COM

Back in the Black, Without the Feds to Thank.

Cities that faced bankruptcy not long ago have made remarkable recoveries — all on their own.

When the Great Recession created a wave of bankruptcies, the federal government responded by bailing out large for-profits and quasi-federal corporations, such as Fannie Mae. But there was no such help for insolvent cities or counties. Nevertheless, from the nation's smallest troubled cities, such as Central Falls, R.I., to large, iconic ones, such as Detroit, there have been remarkable fiscal recoveries. Today, for the first time in a generation, no U.S. city or county is in bankruptcy. This is a testament to the tenacity of state and local leadership.

Look at what's happening in Detroit. Four years ago, it was the nation's largest-ever Chapter 9 municipal bankruptcy. Now Jamie Dimon, J.P. Morgan chairman and chief executive, says the giant financial institution will expand its initial investment in the city to a total of $150 million by 2019 — some two years ahead of schedule. Dimon credited the bank's decision — and the city's economic progress — to strong collaboration between civic, business and nonprofit leadership.

What Dimon is talking about is that city leaders, the governor and state legislators had worked with foundations and the private sector to cobble together a "grand bargain" to stabilize the city pension plans, to negotiate repayment plans with city creditors and to work with three counties to set up a new regional water and sewer authority. The state also provided continuing fiscal advice and oversight via a financial review commission.

In New Jersey, Atlantic City has experienced a reprieve. It had teetered on the edge of bankruptcy after a 50 percent drop in the city's casino revenues. In 2014, nearly half of the casinos closed, with a loss of 10,000 jobs, which in turn triggered a massive spike in home foreclosures that imperiled the city's fiscal outlook.

But the state came to the city's aid. Working together, city and state officials took steps to "make the changes which have long been discussed: reducing costs and modifying service levels and workforce size in order to meet the city's needs today given its new and evolving economy," says Marc Pfeiffer, the assistant director of the Bloustein Local Government Research Center in New Jersey. While solutions to many long-term problems are still a challenge, the city has started to recover: Casinos are turning profits; the city's credit rating has been upgraded; and plans have been announced to renovate and reopen defunct properties, such as the Trump Taj Mahal hotel and casino. In addition, Stockton University broke ground on a satellite campus, and a luxury apartment complex, the first to be constructed in Atlantic City in decades, is underway.

From a governance perspective, Pfeiffer notes, the steps toward recovery were effective in part because the state managed to keep negotiations far from the public spotlight — perhaps depriving the public of critical information, but ultimately facilitating fiscal progress by avoiding what was once deemed certain municipal bankruptcy.

From Central Falls to California's San Bernardino to Alabama's Jefferson County, troubled localities are back in the black. This emergence is doubly remarkable in that these cities and counties had to recover without the help of a federal governance scheme — namely general revenue sharing and oversight by an advisory commission of federal and state leaders that was initiated by President Richard Nixon and passed by Congress in 1972. Congress has long since disposed of those initiatives — they petered out in 1987. Today local governments are left to sink or swim on their own. The whole idea of federalism no longer appears to be a topic of interest in Washington. The task of recovery from fiscal catastrophe has fallen on those who serve at the local level. They have taken responsibility and moved their cities or counties forward.

Governing.com

By Frank Shafroth | Columnist
Director of the Center for State and Local Government Leadership at George Mason University

July 2017

MBFA Submits Comment Letter to SFC Chair Hatch on Tax Reform.

On Monday, July 17th, the Municipal Bonds For America Coalition submitted its comment letter and policy recommendations in response to Senate Finance Chairman Orrin Hatch's (R-UT) request for expert and stakeholder input on tax reform. You can view MBFA's letter here.

The comments that the MBFA submitted were endorsed by local leaders from Utah including, Mayor Ben McAdams (Salt Lake County), Deputy Mayor Darrin Casper (Salt Lake County), and Amy Rowland (Utah Director – National Development Council).

Live Webcast: Request for Comments: U.S. and Canadian Not-for-Profit Transportation Infrastructure Enterprises.

Jul. 27, 2017 | New York, NY

Please join S&P Global Ratings on **Thursday, July 27, 2017 at 1:30 p.m. Eastern Time** for an interactive, live Webcast and Q&A. S&P Global Ratings is requesting comments on proposed criteria for U.S. and Canadian Not-For-Profit Transportation Infrastructure Enterprises.

Register For This Webcast.

Municipal Market Snapshot.

Read the Snapshot.

Hutchinson, Shockey, Erley & Co. | Jul. 17

The Benefits of Private Financing for Public Works.

President Trump has announced the outlines of an ambitious $1 trillion agenda to rebuild America's crumbling roads and bridges, outdated water systems and dilapidated public buildings. While the general goal of investing in infrastructure has broad bipartisan support, Mr. Trump's call for relying heavily on private financing has come under fierce criticism. As consultants and advocates for such public-private partnerships, we believe those attacks are wrongheaded.

Critics assert that public-private partnerships enrich investors at taxpayers' expense, are more expensive and less accountable, lead to public bailouts and do little to help rural areas. But this ignores strong evidence to the contrary in states like Pennsylvania, New York, Florida, Colorado, North Dakota and California.

The private sector is already involved in building our infrastructure, but usually with public funds. President Trump would allow private investment in those projects for a good reason: private funds increase accountability. As a partner in a public project, the private sector is on the hook for cost overruns and delays and may be contractually obligated to pay hefty fines or other penalties when the results are lackluster.

If a project is behind schedule or over budget, private companies pay a hefty fee and make up the difference, since they financed that project. If a project isn't maintained and operated according to strict standards throughout the contract, the private sector could pay substantial fines. The same is often not true of purely publicly financed projects.

There is a widespread perception that most public-private transportation projects sell off assets or give private companies the authority to collect tolls. But this is not usually the case. Of the 18 public-private transportation projects advanced since 2010, only eight involved transferring toll or revenue risk to the private sector. Most projects involve contracts that pay companies based on performance, not toll collection.

In 2015, an official from the Congressional Budget Office testified that there is "little evidence that public-private partnerships provide additional resources for roads." But this assertion ignores the ways private financing increases fiscal discipline and accountability by shifting the risk of cost increases, delays and revenue performance from the public onto private investors.

La Guardia Airport, often mocked for its antiquated facilities, is today completely overhauling its central terminal, thanks to a public-private partnership. Almost 80 percent of the $8 billion design and construction costs will be paid for by private financing and existing passenger fees. The risk of cost overruns or construction delays is transferred from the Port Authority to a private consortium.

Project owners of such partnerships estimate that their projects have saved taxpayers on average about 25 percent, including on the construction of the PortMiami Tunnel and the expansion of Denver's mass transit system. A public-private partnership is on track to deliver the Interstate 4 highway expansion in Florida with an estimated $1.4 billion in savings, faster than originally projected.

We believe public-private partnerships can help rural America and would urge skeptics to consider that in Pennsylvania, 558 deficient rural bridges are being replaced at least 10 years early through a $1 billion public-private project. In Merced, Calif., the University of California system is doubling the size of its campus — which mostly serves rural students — with a $1 billion public-private project. And in Fargo, N.D., a public-private partnership is working with the Army Corps of Engineers on a $2 billion project to alleviate flooding.

Criticism of these projects has also been directed at a few projects that have gone bankrupt, as evidence that they hurt taxpayers. One such project, the South Bay Expressway in San Diego, earned lower-than-projected revenue because of the Great Recession and the Southern California housing market collapse. But no state funds were used for the project, and taxpayers were largely protected in the bankruptcy. The regional authority purchased the rest of the project for significantly less than the private partner's construction cost.

We simply can't waste billions of dollars on delays and cost overruns if we are to deliver more than

$4 trillion in much-needed infrastructure repairs and expansion. Business as usual is simply not an option. Projects like the Big Dig in Boston (which was an estimated $12.4 billion over budget) are occurring every day at taxpayer expense. It costs more to build new transit systems in the United States than in most other developed nations.

Critics of partnerships have one fact right: Private financing can never fully replace the need for federal and state funding. Private investment, however, can help leverage limited but essential public dollars into successful projects that are completed ahead of schedule, at lower cost and with greater accountability.

When Congress begins considering an infrastructure plan, members should seriously explore President Trump's idea of using private financing as a catalyst. Private funds are not going to single-handedly solve our nation's huge infrastructure needs, but they must be a critical piece of the equation.

THE NEW YORK TIMES

By MARY E. PETERS and SAMARA BAREND

JULY 17, 2017

Mary E. Peters, the secretary of transportation from 2006-09, is the principal in Mary Peters Consulting Group. Samara Barend, is a senior vice president at AECOM, an engineering and construction firm.

Study Finds EMMA has Reduced Price Volatility, Price Differentials.

WASHINGTON – The Municipal Securities Rulemaking Board's introduction of EMMA and its subsequent requirements for dealers to disclose near-real time information on the system has narrowed measures of market inefficiencies like price volatility and price differentials but has not eliminated the advantage institutional investors have over retail investors, according to a study from Komla Dzigbede.

The paper was one of several chosen to be presented as part of the Brookings Institute's annual Municipal Finance Caucus here. Dzigbede, an assistant professor at Binghamton University, was invited to present the paper during one of the conference's sessions.

The study, published this month, explores secondary market trade data on California state general obligation bonds issued between 2005 and 2014. That period of time was chosen to cover the span before EMMA was launched in March 2008 as well as the time after the MSRB's 2009 introduction of requirements for dealers to report information to the new system. The requirements touched on, among other things, auction rate securities disclosure and all-electronic official statement dissemination standards. They also included mandatory disclosure of trade information on a near real time basis to EMMA.

EMMA and the establishment of the subsequent disclosure requirements to the system have helped investors by giving those in the market more information to use as they carry out transactions, Dzigbede said.

Regulators "must respond more effectively to counteract disparities in information flow and rent-seeking behavior, which creates unequal opportunities for the retail investor segment of the market," said Komla Dzigbede, assistant professor at Binghamton University.

Average daily trade prices rose in the post-regulatory period while trade price differentials decreased by an average of $0.18. Dzigbede said that the trade price rise may be attributable to investors' gradually demanding increased yields as more information on bonds became available because of the increased disclosures. That increase in information may also be the underlying cause of the trade price differential decline as investors were more able to assess the value of bonds, he said.

Trade volatility, which Dzigbede said is generally associated with an inefficient market, declined by 0.26% in the post-EMMA regulation period, according to the data. While that is good news and shows the regulations were effective, Dzigbede said that the data shows that institutional investors benefited more from the changes, seeing a higher margin of decline for volatility than retail investors.

He said that finding confirms "evidence on the inequities in trade pricing that tend to favor large investors over small investors in municipal securities secondary markets."

So while the regulation was generally good for the market and "should give renewed impetus" to such regulatory efforts, there is still work to be done to lessen the advantage institutional investors have, Dzigbede said.

He added that regulators "must respond more effectively to counteract disparities in information flow and rent-seeking behavior, which creates unequal opportunities for the retail investor segment of the market." One way to do that, according to Dzigbede, is to identify spaces within the market that are attractive to retail investor trades and target protective regulatory schemes there.

He also said it is important for the MSRB and Securities and Exchange Commission to help educate investors, especially small ones, about things like complex, sophisticated debt instruments and the mechanics of trading portfolios and the risks associated with them.

Karol Denniston, a partner with Squire Patton Boggs in San Francisco who specializes in bankruptcy matters who was chosen to comment on Dzigbede's paper, said that the market is "never going to be an even playing field" between institutional and retail investors.

Institutional investors have "more information, bigger purchases, and better access to the market," Denniston said. "I'm not sure if we're ever going to see a level of disclosure that is going to balance out" retail and institutional investors.

She agreed with Dzigbede that regulators need to focus more on promoting and ensuring strong disclosure in the municipal market but said the enforcement of the disclosure provisions is particularly important right now as states like California deal with funding pensions and other post employment benefits.

"The premise of the paper is good, disclosure will make the market more efficient," Denniston said.

"[But] there needs to be some mechanism to enforce [disclosure regulations] so people take it seriously. We need some teeth."

Her comments are drawn from experiences she has had while working with troubled entities. She said that she sees some issuers having financial troubles that are reluctant to report them because they want to try to keep up appearances. That lack of disclosure is especially problematic as states and municipalities confront a variety of fiscal challenges like pensions, she said.

The Bond Buyer

By Jack Casey

Published July 18 2017, 11:13am EDT

[New Public Finance Funding Sources Spark Transparency Concerns.]

WASHINGTON- A decreased reliance on bonds to finance capital investments has created a need for more municipal market research tools to analyze alternative forms of public financing, according to industry experts.

New issue bonds fell 25% between 2005 and 2016 in nominal dollars, according to the Mergent Fixed Income database presented at the Brookings Institution's sixth annual municipal finance conference Monday.

Daniel Bergstresser, associate professor of finance at Brandeis University's International Business School, noted that despite a "significant" decline in new issuance during the last decade, municipalities are still undertaking major capital projects through other funding sources like public-private partnerships and bank loans. He said as a result risk exposure can often be challenging to gauge for state and local governments because of municipal market participants not having adequate access for differing financing strategies due to less disclosure requirements.

Brandeis University professor Daniel Bergstresser spoke at the Brookings Institute's Municipal Finance Conference Monday.

"We're not comfortable that there is total transparency with the risks issuers are taking on," said Bergstresser, who co-authored a paper about changes in the municipal market since the Great Recession with Martin Luby, an assistant professor of public afairs at the University of Texas at Austin's Lyndon B. Johnson School of Public Affairs. "We think it's important for academics to keep a focus on transparency in this changing world."

Bergstresser also noted during the conference how the economic downturn in 2008 has decreased the floating rate bond market, with fixed rate debt rising from 78% of the market in 2007 to around 90% today.

Colin McNaught, CEO of BondLink and former Massachusetts assistant state treasurer for debt management, urged public finance experts to examine in dollars how issuers could have capitalized on floating rates given how low interest rates have stayed in recent years.

"That is billions of dollars of mispricing," he said.

The Bond Buyer

By Andrew Coen

Published July 18 2017, 11:14am EDT

[CDFA Submits Tax Reform Recommendations to U.S. Senate.]

—Submission Defends Development Finance Industry Interests —

Columbus, OH – The Council of Development Finance Agencies (CDFA) has submitted tax policy recommendations to the Senate Committee on Finance as the Committee takes its initial steps toward comprehensive tax reform. The submission of recommendations comes following a request from Committee on Finance Chairman Orrin Hatch for advice and suggestions on ways to improve the U.S. tax code from tax policy stakeholders.

"We're thankful that the Finance Committee offered national organizations like CDFA a chance to weigh in on tax reform," stated Toby Rittner, President & CEO of CDFA. "It's been more than 30 years since the last major tax overhaul, and we need to ensure that any future tax system enables the development finance industry to flourish."

Senator Hatch (R-UT) requested in a June 16 release that interested stakeholders and policy experts submit recommendations that address any or all of four key issue areas. The issue areas outlined by Senator Hatch are:

1. Providing much-needed tax relief to middle-class individuals and families through reforms to the individual income tax system.
2. Strengthening businesses – both large and small – by lowering tax rates and broadening the relevant tax base in order to put the economy on a better growth path and create jobs.
3. Removing impediments and disincentives for savings and investment that exist in the current tax system.
4. Updating our international tax system in order to make our nation more competitive in the global economy and preserve our tax base.

The recommendations submitted by CDFA follow the proposals outlined in the Administration Transition Paper, and the 2017 CDFA Policy Agenda. The recommendations consist of four carefully crafted, actionable items that are borne out of CDFA's 35 years as a leader in the development finance industry. The recommendations are:

1. Preserve and Protect Tax-Exempt Bonds
2. Reform Manufacturing Bonds through the Modernizing American Manufacturing Bonds Act
3. Permanently Authorize and Fund the New Markets Tax Credit Program
4. Launch a Federal Urban Tax Increment Finance Program

CDFA wishes to thank Senator Hatch for the opportunity to submit recommendations for comprehensive tax reform. CDFA will be working hard over the coming months to protect development finance industry interests as the tax reform debate continues in Congress. Development finance agencies are encouraged to let their voice be heard on tax reform by working with CDFA. To get engaged and learn more about CDFA's work, contact Tim Fisher.

The Council of Development Finance Agencies is a national association dedicated to the advancement of development finance concerns and interests. CDFA is comprised of the nation's leading and most knowledgeable members of the development finance community representing public, private and non-profit entities alike. For more information about CDFA, visit www.cdfa.net.

July 20, 2017

[Howard County Courthouse P3.]

Key project features

Howard County, Maryland ("County") is implementing a public-private partnership for the design, construction, and operation of a new courthouse. A bidding process would be used to secure a private consortium to execute a single P3 Contract with County covering the required services. A combination of public and private financing would fund design and construction costs. The County issued a Request for Expressions of Interest "EoI" which indicates a procurement schedule leading to statements of interest being submitted in September, with short-listed respondents being selected in October, to receive an RFP in November.

Background

Located halfway between Washington D.C. and Baltimore, the County is a bedroom community for those cities and is also a major commercial center for the region. It is one of the state's fastest growing counties; since 1983 its population has increased over 140%. It is the third wealthiest county in the nation. The County's general obligation bonds are rated "AAA" by Moody's Investor's Service, Aaa by S&P Global Rating and "AAA" by Fitch Ratings.

Courthouse Status

The existing County courthouse is over 170 years old and cannot accommodate a cost effective expansion. The project would provide a modern and secure circuit courthouse to meet current and future judicial requirements. The estimated capital costs of the project are US$138,730,000.

Schedule

In 2016, a Circuit Courthouse Program of Requirements and master plan were established. Project research and analysis was undertaken by the Spending Affordability Advisory Committee, a group comprised of Howard County citizens, organizations, and government officials.

In March 2017, the approval of Resolution No. 27-2017 confirmed support of the project from the Howard County Council and County Executive.

General obligation bond issuance has been approved to cover anticipated milestone payments, as well as procurement and preparatory costs. Financial, legal, and technical advisors have been contracted.

Following the issue of the RFP in November (as indicated above) the schedule will be as follows:

— Dialogue with the top three shortlisted bidders will be used to further develop the RFP Proposal Responses in November to December 2017

— Interim submittals due in January 2018

— Final proposals due in April 2018

— Selection of preferred proposer in September 2018

— Commercial and financial close in November 2018

County Powers

Howard County is a charter county with express home rule powers granted under Maryland law. Its charter was adopted under Article XI-A of the Maryland Constitution, which is known as the Home Rule Amendment. Under the Express Power Act (now codified at Article 10 of the Local Government Article of the Maryland Code), the General Assembly has endowed charter counties with a wide array of legislative and administrative powers over local affairs. Maryland courts have characterized the Express Powers Act as an expansive grant of authority and liberally construed these powers. The Express Powers Act explicitly grants the power to establish and maintain courthouses and confers broad powers over county property. Under the County Charter, the County may enter into multi-year contracts for services.

The P3 Contract is likely to be subject to annual appropriations to avoid being characterized as debt. Given the County's stellar credit a "subject to annual appropriation" clause in the P3 Contract should not impair the bankability of the project. The Court has already entered into equipment leases with these clauses.

Since general obligation bond financing is part of the proposed delivery model, the P3 Contract term would be limited to 30 years to comply with the IRS management contract rules applicable to tax-exempt debt.

P3 Evaluation Process

The County's Spending Affordability Advisory Committee evaluated alternative delivery methods (including a conventional County procurement of design and construction services) using a comparison of life cycle costs in order to determine the optimal value for money. The Committee balanced costs, risks, and completion certainty, among other factors.

The Committee singled out several advantages of a P3 over conventional approach. A long-term P3 contract structure incentivizes lowest life cycle costs by allowing the P3 developer to make trade-offs with a long-term, lifecycle cost interest in mind. Conventional contract structures (often using a series of contracts) instead focus competition on lowest capital costs and are likely to result in higher lifetime costs.

Contractual structure allows for innovation through output-based specifications which permit more creative solutions than conventional contract structures, which stifle innovation through input based specifications.

Transferring risks to the private sector is likely to lead to better risk management by the private sector than conventional contract structures which leave risks with the public sector.

It was recognized that the cost of private financing in the selected model is inherently more expensive than general obligation bonds, so general obligation bond proceeds will fund a significant part of the capital costs.

The Committee concluded that the selected delivery model provides incentives for the private partner to "achieve cost savings, improve quality, and effortlessly transfer risks." The delivery model provides more cost certainty for the lifetime cash flow. The delivery model provides earlier completion than a conventional procurement.

Hybrid P3 Model

The selected delivery model was characterized as a "Hybrid P3"; it provides for a design, bid, build, operate, and maintain P3 Contract using public and private financing to fund construction costs. The County would issue 30 year general obligation bonds to fund the milestone payment to be made on completion of the project. The EoI states that this payment will be in the order of US$90 million. That milestone payment will only cover part of the construction costs and a selected contractor would fund the rest through private financing. The goal of the private funding is to assure that the contractor have "money at stake" in relation to the whole-life operation of the courthouse.

Once the project is complete and accepted by the County, the indication is that the County plans to take a more or less conventional approach to making periodic availability payments under the P3 Contract to the private contractor, with deductions being made for suboptimal performance (falling short of "non-availability") and larger deductions for non-availability. Under the P3 Contract, "availability" would be expected to be limited to the elements that are the most important to overall provision of the specified services.

The P3 contract is also expected to take a conventional approach to handback requirements consistent with: (1) the specified design life requirements and the useful life standards; and (2) the private contractor having met its contractual obligations for the operating services.

The full Howard County Courthouse EoI can be found here.

Hogan Lovells – Mike Matheou and Edward C. Sledge

USA July 19 2017

Associate Attorney - Sunny, Sunny Tampa FL

Nabors, Giblin & Nickerson, P.A., a leader in public finance law in the State of Florida, is seeking an associate attorney with experience in corporate and/or real estate transactions for its Tampa office. Competitive compensation and benefits package and no billable hours.

More information about the firm can be found at www.ngnlaw.com.

Please direct inquiries in confidence to Chris Traber at ctraber@ngn-tampa.com.

INFRA Grant Program Encourages Use of P3s.

The U.S. Department of Transportation (USDOT) has revised and renamed a federal grant program that provides federal financial assistance to highway and freight projects of national or regional significance to support projects that use funding from the private sector or other non-federal sources.

The Infrastructure for Rebuilding America (INFRA) grant program—which provides dedicated, discretionary funding for projects that address critical issues facing our nation's highways and bridges—will use updated criteria to evaluate projects to ensure that they meet economic goals and encourage the use of non-federal funding and innovation in the delivery and permitting processes.

Grants through INFRA—formerly known as Fostering Advancements in Shipping and Transportation for the Long-Term Achievement of National Efficiencies (FASTLANE)—will create opportunities at all levels of government and the private sector to fund infrastructure by using innovative methods to improve the necessary processes for building significant projects, and by increasing accountability for the projects that are constructed.

USDOT is specifically focused on projects in which the local sponsor is significantly invested and is positioned to promptly proceed to construction. Projects eligible for funding may include reconstruction, rehabilitation, property acquisition, environmental mitigation, construction contingencies, equipment acquisition, and operational improvements that affect system performance.

According to a July 5 Federal Register notice, the Fixing America's Surface Transportation (FAST) Act of 2015 authorizes funding of the INFRA program at $4.5 billion for fiscal years (FY) 2016 through 2020—including $850 million for FY 2017 and $900 million for FY 2018. Grants will be awarded by USDOT on a competitive basis to projects that meet statutory requirements.

Under the program, USDOT will distribute grants to large and small projects. Each large project selected for funding will receive at least $25 million; each small project will receive a minimum of $5 million. Ten percent of available funds will be reserved for small projects and 90 percent of available funds will be reserved for large projects each fiscal year of funding.

Ballard Spahr's P3/Infrastructure Group advises on public-sector transactions and public-private partnerships (P3s). Attorneys in the Group resolve legal issues—related to public and project finance, real estate, procurement, public policy, labor relations, bankruptcy, tax, and environmental conditions—that arise in these complex transactions. We have a proven track record of working in partnership with government as well as private concessionaires and lenders to bring projects to fruition.

July 12, 2017

by Steve T. Park and Jayne Mariotti Hebron

The Latest Attack on Stadium Financing – Keeping the Debate Honest.

On June 13, 2017, U.S. Senators Cory Booker (D-NJ) and James Lankford (R-OK) introduced the latest bill (S. 1342) ("Senate Bill") intended to end tax-exempt financing of professional sports stadiums. The Senate Bill mirrors the bill (H.R. 811) introduced by Rep. Steve Russell (R-OK) on February 1, 2017, reported in this blog by Johnny Hutchinson (link). Tax-exempt financing of professional sports stadiums has long been a controversial subject and was the subject of my post on

April 14, 2016 (link). The debate prompted by the introduction of legislative bills is a healthy exercise. However, arguments that are misleading or inaccurate don't further but impede that debate. When the bills' advocates get off track of a productive and thoughtful debate, the misleading arguments need to be called out. That is the subject of today's post.

Continue Reading

The Public Finance Tax Blog

By Bob Eidnier on July 18, 2017

Squire Patton Boggs

Reverse Property Assessment Appeals: Commercial Properties Owners Have A Friend In The Pennsylvania Supreme Court.

In a landmark case titled Valley Forge Towers Apartments N, LP, et al. v. Upper Merion Area School District & Keystone Realty Advisors, LLC, No. 49 MAP 2016, issued July 5, 2017, the Pennsylvania Supreme Court (the "Court") constitutionally curbed the rights of taxing jurisdictions to file selective appeals often called reverse tax appeals under Pennsylvania's Consolidated County Assessment Law. This law is applicable to all counties in the commonwealth except Allegheny and Philadelphia Counties. At issue in Valley Forge was the practice of a number of Pennsylvania school districts to exercise their tax assessment appellate rights solely against large commercial properties, while excluding from reverse appeal all residential properties within the same jurisdiction. Typically under this practice, the school districts employ a third-party tax consultant who selects the commercial property targets and receives compensation based on a percentage of the increased tax revenue gained under the reverse appeal.

In Valley Forge, a group of apartment owners filed a declaratory judgment action seeking to establish that the Upper Merion Area School District's practice of exclusively targeting high-value, commercial properties selected by their tax consultant, Keystone Realty Advisors, LLC, violated the Uniformity Clause of the Pennsylvania Constitution. The trial court dismissed their complaint. The apartment owners saw another setback in the Pennsylvania Commonwealth Court. That court reasoning that the school district's economic desire to increase taxes provided a rational and lawful basis for exercising its appellate rights selectively against commercial taxpayers.

The apartment ownership group then appealed to the Pennsylvania Supreme Court. In Court, both sides sought out other interested parties to file briefs in support of their positions. Reed Smith represented a client supporting the apartment owners.

The Court unanimously reversed, finding that under the Uniformity Clause, all real property within a taxing jurisdiction of the commonwealth of Pennsylvania is a single class, and the Uniformity Clause does not permit the taxing jurisdictions, including school districts, to treat different real property sub-classifications within their jurisdictions in a disparate manner. The Court found that the Commonwealth Court misapplied the law in allowing taxing jurisdictions to disparately treat sub-classifications of real property if a rational basis for such treatment existed. The Court clarified that prohibition against disparate treatment of any sub-class of real property applies to any intentional or systematic enforcement of the tax laws and is not limited to wrongful conduct, as the Commonwealth Court had previously suggested. The Court agreed with the apartment owners that a Uniformity

Clause violation exists if the taxing jurisdiction intentionally or systematically subjects only commercial property within its jurisdiction to a reverse tax assessment appeal. The Court also held that a taxpayer aggrieved by such conduct is not limited to raising the constitutional violation as a defense to an appeal. Rather, a taxpayer may bring an affirmative action to curb the unlawful conduct of a taxing jurisdiction.

This is big. Under this decision, a number of taxing jurisdictions in Pennsylvania are in violation of the Uniformity Clause, as they have also targeted large commercial properties for reverse appeals. For property owners in Allegheny and Philadelphia Counties, it is likely that the rationale of Valley Forge will be equally applicable.

This decision doesn't mean that taxing jurisdictions are giving up their efforts to raise tax revenue from commercial properties. The Court left open the possibility that a taxing jurisdiction may set a monetary threshold applicable to all classes of real estate for filing a reverse appeal. That said, a monetary threshold that disparately impacts a sub-classification of real property, such as large commercial properties, may be equally suspect under the Uniformity Clause. Still, the decision reached by the Pennsylvania Supreme Court is a victory for fairness in assessments, an area where that term is often found lacking.

Last Updated: July 7 2017

Article by Jeffrey G. Wilhelm and Brittney Wozniak

Reed Smith

This article is presented for informational purposes only and is not intended to constitute legal advice.

U.S. Supreme Court Establishes New Test For Evaluating Property Rights Under The Takings Clause.

HIGHLIGHTS:

- In *Murr v. Wisconsin*, the U.S. Supreme Court addressed "one of the critical questions" in the law of regulatory takings: how to define the unit of property that is the subject of the alleged taking.
- The *Murr* decision arose in the context of Wisconsin's lot merger rules and upheld the Wisconsin Supreme Court's ruling against the common owners of two contiguous lots who were prohibited from using or selling their contiguous lots as separate lots, despite their having been acquired as separate lots.
- In addressing this question, the Court majority articulated a new standard that moves beyond the limitations of state and local law. The majority stated that courts also must consider other factors, such as the land's physical characteristics and prospective value, as well as "whether reasonable expectations" would lead the land owner to expect that its holdings would be treated as one parcel.

Continue reading.

Last Updated: July 10 2017

Article by Charles L Coleman III, David Preiss and Bradley B. Brownlow

Fitch: Illinois Legislation Gives Chicago New Financing Tool.

Fitch Ratings-New York-19 July 2017: An amendment to the Illinois Municipal Code (65 ILCS 5) included in the state's fiscal 2018 budget agreement provides a structure by which Chicago and other home rule entities in the state can create entities to issue debt that would not be constrained by the Issuer Default Rating (IDR) assigned to the local government by Fitch Ratings. If properly applied by a home rule entity, the structure could result in ratings higher than and without regard to the IDR.

This type of structure has significant precedent including a number of New York state financings. The structure could not be employed directly by the Chicago Board of Education, whose IDR is 'B+'/Outlook Negative, as it is a non-home rule entity.

Separation from Local Governments' Operating Risk
The legislation allows for the establishment of a limited purpose entity to issue obligations for the benefit of the transferring unit (a home rule unit such as the city of Chicago). The entity could then issue bonds secured by revenues received from a state entity that have been conveyed by the transferring unit under an assignment agreement. The revenues would then become property of the issuing entity rather than the transferring unit. Fitch would look for any bond documents prepared for such financing to make clear that the assignment is irrevocable and that the transferring unit gives up its right, title and interest in or to the transferred receipts needed to repay the issuing entity's obligations.

Since operating risk resides with the transferring unit rather than the issuing entity, the issuing entity debt would be rated without consideration of operating risk, as represented by the IDR. The legislation's provision that the assignment agreement may provide for the transfer of receipts after payment of debt to the transferring unit does not alter Fitch's view of the separation of operating risk from the issuing entity. This is consistent with Fitch's general treatment of dedicated tax securities in cases in which the issuer has no meaningful operations.

The statutory lien provisions of the legislation provide additional protection to bondholders by eliminating the incentive to challenge the ownership of the revenues in a bankruptcy of the transferring unit, as the bankruptcy code provides that bondholders would have a right to the continuation of the lien in a bankruptcy.

Separation from State Credit Risk
The legislation includes non-impairment language related to the state's obligations that Fitch views as important to reducing the impact of the state's credit quality on the debt. The state pledges not to alter the power of the State Comptroller, Treasurer or Department of Revenue to transfer receipts to the issuing entity. The state also pledges not to change the basis on which the pledged revenues are derived.

To separate the bonds' rating from the state's, the transfer of the revenues must be outside the state's discretion. Therefore they cannot be subject to state appropriation. In Illinois, pledged sales tax revenues could be rated above the state's IDR since they are not subject to state appropriation, but pledged motor fuel tax revenues, which are subject to state appropriation, would be capped at the state's appropriation rating (currently 'BBB-'/Outlook Negative).

Different from Special Revenue Analysis
In contrast, when issued directly by a local government, sales tax revenue bonds are capped at the entity's IDR because Fitch does not believe pledged sales taxes would be considered pledged 'special revenues' under the definitions in section 902(2) of the U.S. bankruptcy code. Fuel tax revenue bonds are not capped by the issuer's IDR, since Fitch believes fuel taxes clearly fit the definition of special revenues described in section 902(2)(B) of the code.

Chicago's dedicated tax ratings provide an illustration of Fitch's rating methodology for different types of pledged revenues. Fitch rates the city's sales tax revenue bonds 'BBB-'/Outlook Stable, reflecting the city's IDR cap. The city's motor fuel tax bonds are rated 'BBB-'/Outlook Negative, equal to the state's current appropriation rating, one notch below its IDR of 'BBB'/Outlook Negative. The motor fuel tax bond rating would not be capped by the city's IDR if it were lower than the state's appropriation rating.

Similar to New York Structures
Fitch views this structure as similar to those of several authorities created by New York state to allow for debt issuance by state-created authorities for the benefit of cities and counties throughout the state. These include the New York City Transitional Finance Authority, the Nassau County Interim Finance Authority, The Buffalo Fiscal Stability Authority, and the Erie County Fiscal Stability Authority, all rated 'AAA'/Outlook Stable by Fitch. The ratings are without regard to the benefiting governments' IDRs. The enabling legislation for each of the New York authorities creates a bankruptcy-remote entity with a first perfected security interest in the pledged revenues and includes covenants prohibiting action that would impair bondholders. Pledged revenues are remitted to the state comptroller, who remits them directly to the issuers.

Contact:

Amy Laskey
Managing Director
+1-212-908-0568
Fitch Ratings, Inc.
33 Whitehall Street
New York, NY 10004

Arlene Bohner
Senior Director
+1-212-908-0554

Thomas McCormick
Managing Director
+1-212-908-0235

Media Relations: Elizabeth Fogerty, New York, Tel: +1 (212) 908 0526, Email: elizabeth.fogerty@fitchratings.com.

Additional information is available on www.fitchratings.com

Illinois Dodges Downgrade to Junk.

- **A rating cut is still possible as state has negative outlook**

- **Price of Illinois bonds rallied to highest since September**

The Illinois State Capitol Building, in Springfield. Photographer: Raymond Boyd/Getty Images
Illinois avoided becoming the first junk-rated U.S. state after Moody's Investors Service opted to leave its grade unchanged, pushing the price of the state's bonds to the highest since September.

Moody's on Thursday confirmed the state's Baa3 rating, the lowest investment grade, after lawmakers overrode Governor Bruce Rauner's veto this month to enact the first budget in two years. While that eased the immediate threat of a downgrade, the outlook is still negative, signaling that another cut is possible to its $32 billion of debt.

The enacted spending plan "alleviates immediate liquidity pressures, moves the state closer to fiscal balance and should keep pension and other fixed costs at manageable levels at least in the near term," Moody's said in a statement on Thursday. "While budget passage alleviates immediate threats to the state's credit, long-term challenges remain."

Illinois's bonds have rallied since the legislature acted to raise taxes and end a long-running standoff that left the state with a record backlog of unpaid bills as it kept spending more than it brought in. The lawmakers were prodded in part by the threat of further downgrades if they failed to act, a step that would have rattled investors and left some mutual funds unable to buy its bonds.

On Thursday, Illinois's taxable pension bonds due in June 2033 rose to an average of 97.3 cents on the dollar, the highest since September 2016 and up from 96.5 cents Wednesday, according to data compiled by Bloomberg. That pushed down the yield on the securities, the state's most-actively traded, to 5.35 percent from 5.43 percent.

"The Moody's affirmation should help the spread on the bonds tighten a little bit," said Dennis Derby, a money manager in Menomonee Falls, Wisconsin, at Wells Fargo Asset Management, which holds Illinois bonds among its $40 billion of municipal debt. "It shows that the revenue increases have had a positive effect on investor sentiment as well as the rating agencies."

Moody's is the last of the major credit rating companies to wrap up its review of Illinois since the budget was enacted. S&P Global Ratings affirmed Illinois's BBB- rating on July 12 and Fitch kept the state at BBB on July 17.

Illinois is still the worst-rated state and is struggling with more than $129 billion of unfunded pension liabilities. The $36 billion spending plan approved by the Democrat-led legislature with the help of some Republicans includes income-tax increases to ease chronic budget deficits.

Under the new budget, the state is authorized to sell as much as $6 billion of long-term bonds to help pay down the bill backlog. If the state comes to market and the backlog keeps growing, that would be "problematic," Wells Fargo's Derby said. Moody's noted that could lead to a downgrade.

"It does give investors a little bit of breathing room," Derby said. "And then they'll have to wait to see what the state does with the new debt issue and how they manage."

Bloomberg

By Elizabeth Campbell

July 20, 2017, 2:25 PM PDT

KBRA Affirms Ratings to the City of Chicago Sales Tax Revenue Bonds.

Kroll Bond Rating Agency (KBRA) has affirmed the long-term rating of AA+ with a Stable Outlook on the City of Chicago Sales Tax Revenue bonds.

This rating is based on KBRA's U.S. Special Tax Rating Methodology. This methodology defines special tax revenue bonds as bonds that are secured by a lien on revenues derived from the levy of a tax or fee on the sale of goods and services or other specifically defined revenue streams.

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

City of Chicago Sales Tax Revenue Bonds

If you have any difficulties accessing the report, please contact info@kbra.com or visit www.kbra.com.

Fitch: California Cap/Trade Bill Lowers Public Power Reg. Risk.

Fitch Ratings-New York-18 July 2017: California's extension of its cap-and-trade legal framework through 2030 will reduce regulatory risk for the state's public power utilities by giving greater clarity on the legal framework beyond 2020, says Fitch Ratings. This in turn will allow for better resource planning decisions.

California's public power utilities have been successful at managing the state's numerous and ambitious environmental rules by recovering higher costs from ratepayers and maintaining financial margins. We expect this trend to continue and public power credit quality to remain strong through the second decade of California's environmental transformation.

California's cap-and-trade auction platform is the largest of its type in the US. Its original goal was to set an emissions limit equivalent to 1990 levels by 2020. Regular carbon auctions began in November 2012 by introducing hard emissions caps on electricity generators and large industrial sources. The program's scope was expanded to cover transportation fuels, natural gas, propane and fossil fuels in 2015. The program included free allocations of carbon allowances in the initial years, and gradually phased those allowances out, providing utilities with a runway to downsize carbon emissions over time.

The original 2006 legislation did not address what would occur with the program beyond 2020, creating uncertainty for market participants. Utilities that expected to continue to have excess allowances after 2020 could not be certain a market would exist on which to resell those allowances. Utilities requiring more time during the transition toward cleaner generation may have needed to accelerate resource investments if the market framework was not extended.

The recently approved legislation allows for carbon allowances to be banked indefinitely, reduces the amount of carbon offsets to a maximum of 6% from 2025 to 2030, includes provisions for price ceilings, and allows for the provision of allowances to support industry efforts to comply with the law and minimize cost disruptions. The target for the extended program is to reduce state wide greenhouse gas emissions to 40% of 1990 levels by 2030.

Public power utilities owned much of the coal-fired generation when the cap-and-trade program began. Since coal-fired generation emits roughly double the amount of greenhouse gases as natural gas-fired generation, downsizing coal-fired generation became a priority. Most public power issuers sold coal-fired generation or are in the process of doing so. This includes the Navajo Generating Station (formerly owned by Los Angeles Department of Water and Power), the San Juan Generation Station (with ownership interests being divested by members of MSR Public Power) and the Southern California Public Power Authority (SCPPA) and plans to repower the Intermountain Power Project in Utah by 2026 (owned by members of SCPPA).

Contact:

Matthew Reilly, CFA
Director, U.S. Public Finance
+1 415 732-7572
Fitch Ratings, Inc.
650 California Street, 22nd Floor
San Francisco, CA 94108

Kathy Masterson
Senior Director, U.S. Public Finance
+1 512 215-3730

Dennis Pidherny
Managing Director, U.S. Public Finance
+1 212 908-0738

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

Media Relations: Alyssa Castelli, New York, Tel: +1 (212) 908 0540, Email: alyssa.castelli@fitchratings.com.

On Infrastructure, California Goes Back to Basics.

The state's transportation chief calls a new $54 billion transportation package monumental. But the projects it funds will be more mundane than monumental

For the first time since 1989, California lawmakers this year passed a gas tax hike. The increase — by 12 cents a gallon on gasoline and 20 cents a gallon on diesel — will pay for a decade-long building program that will cost $54 billion.

California is one of many states this year to raise its fuel taxes, but the state's sheer size makes the new transportation funding law significant. The Trump administration, by comparison, has broadly outlined a $1 trillion investment in infrastructure over a decade — only $200 billion of which would come from the federal government.

In other words, over the next decade, California will spend a quarter of what the federal government would spend on the entire country under Trump's plan.

Continue reading.

GOVERNING.COM

BY DANIEL C. VOCK | JULY 18, 2017

California Developers Test New State 'Certificated' Credits.

The new approach is expected to bring higher prices for state housing tax credits.

Several affordable housing developers are working to close the financing on their latest projects using new "certificated" credits in California.

They will be the first to use the financing tool after California leaders made changes to the law to allow for the certification of state low-income housing tax credits (LIHTCs) under a three-year pilot. The move aims to help nonprofit developers receive higher pricing for their state credits and ultimately raise more equity for their projects.

State credits in California have recently sold for about 65 to 75 cents per dollar of credit, but officials think that the certificated credits could generate 90 to 95 cents per dollar of credit. That could result in about $20 million in additional equity to California projects and ultimately more affordable housing being built.

Under the program, participating developments must receive at least 80 cents per dollar of credit.

"From the prior floor to 80 cents is a 23% increase," says Brian D'Andrea, senior vice president of housing at Century Housing. "Our hope and expectation is that we'll be able to achieve at least that."

Century Housing affiliate, Century Affordable Development, has chosen to use certificated credits to raise equity to build Beacon Pointe, a 121-unit affordable housing development for seniors in Long Beach, Calif. Sixty-one apartments will be set aside for seniors who have been homeless. The California Tax Credit Allocation Committee (CTCAC) recently reserved the project nearly $11 million in state credits.

It's one of the first five developments electing to certificate credits. These initial developments received reservations for about $30.2 million in state credits. California has an annual state credit ceiling of about $94 million.

"We're very pleased to have received the allocation, and we're working toward a closing later this year," says D'Andrea.

The Cesar Chavez Foundation, Coachella Valley Housing Coalition, National Housing Corp., and PATH Ventures are the other developers that received reservations for certificated credits from CTCAC.

How it worksTraditionally, LIHTCs are allocated to developers, who then sell them to an investor, usually in the form of a limited partnership interest. Certificated credits differ in that they are sold outright to investors who take no ownership interest in the development. This eliminates the impact of the state credits on an investor’s federal tax liability, allowing an investor to offer higher pricing.

CTCAC reserves certificated credits in the name of the nonprofit partner in a development. The nonprofit can then sell the credits to one or more investors, with the law allowing each initial investor to resell the credits one additional time.

The California Housing Partnership Corp. (CHPC) and state treasurer John Chiang co-sponsored and helped draft the legislation by state Sen. Jim Beall (D-San Jose) that opened the doors for the program. Supporters were working on the certificated credit program long before the recent turmoil in the LIHTC market.

Federal LIHTC prices dropped sharply after the November election as the prospects of tax reform increased with Donald Trump in the White House and Republicans in control of the House and Senate. Trump has called for slashing the business tax rate from 35% to 15% while members of Congress will likely be eyeing a rate in the 20% to 25% range. While a change in the tax rate does not affect the value of the tax credits themselves, it can impact depreciation and other tax losses that are part of the investment.

The uncertainty around tax reform caused some investors to pull out of funds or offer lower prices for LIHTCs, creating funding gaps in a number of affordable housing deals. As a result, the opportunity to get more value from the state credit comes at an ideal time.

“Everyone was interested in a way to get more bang for the buck out of the state’s existing program,” says David Dologite, senior housing finance consultant and policy counsel at CHPC. “It doesn’t involve the state spending any more money. The amount of tax credits that investors are receiving is the same. It increases the value of the credit and the price that sponsors are able to receive.”

Developers need to make an irrevocable choice upfront on whether to certificate when they apply for credits. The reason for that is CTCAC’s underwriting depends on what credit price developers use in their proposals.

Under the program, investors who buy certificated credits must have participated in state or federal tax credits previously, according to the state Treasurer’s Office. At least in the pilot stage, this ensures that participants are sophisticated, historic investors.

If the program is successful, supporters hope it will become permanent, Dologite says.

California leaders looked to other states in creating the new program, including Massachusetts, which has been a leader in the certification of housing credits. Other states have also used the approach for historic and economic development credits.

Housing leaders have high expectations for the program in California, with more developers expected to secure reservations for certificated credits in the second allocation round this year.

Affordable Housing Finance

by Donna Kimura

July 17, 2017

ABOUT THE AUTHOR

Donna Kimura is deputy editor of Affordable Housing Finance. She has covered the industry for more than a decade. Before that, she worked at an Internet company and several daily newspapers. Connect with Donna at dkimura@hanleywood.com or follow her @DKimura_AHF.

National Public Finance Guarantee Corporation Takes Legal Action to Lift the PROMESA Stay to Seek the Appointment of a Receiver and Compel a Rate Increase in Accordance with Puerto Rico law and PREPA's Trust Agreement.

PURCHASE, N.Y.–(BUSINESS WIRE)–National Public Finance Guarantee Corporation ("National"), an indirect subsidiary of MBIA Inc. (NYSE:MBI), today announced that National, along with the Ad Hoc Group of PREPA bondholders, Assured Guaranty Corp., Assured Guaranty Municipal Corp. and Syncora Guarantee Inc. ("the Creditor Group"), has filed a motion in the U.S. District Court for the District of Puerto Rico to lift the PROMESA stay to seek to enforce its right to compel the appointment of an independent receiver in order to pursue increased rates and to oversee certain operations of the Puerto Rico Electric Power Authority ("PREPA").

"As PREPA's single largest creditor, we worked tirelessly for several years with all stakeholders on a comprehensive restructuring that the Oversight Board forced off the table in violation of PROMESA. As a result of the default precipitated by the Oversight Board's unlawful action, we now have little option but to enforce our legal and contractual rights, and to ensure PREPA sets rates and charges that are sufficient to meet its financial obligations," said Bill Fallon, CEO of National Public Finance Guarantee Corporation. "We cannot allow PREPA to continue to ignore its obligations under Puerto Rico law and the terms of our Trust Agreement. Given PREPA's lengthy history of mismanagement and cronyism and the inherent conflicts of interest ignored by the Governor and the Oversight Board, an independent receiver will provide much-needed protection for PREPA, the citizens of Puerto Rico and its creditors. It is imperative that the rule of law is recognized and that the political manipulation of PREPA is halted. We continue to support the utility's long-term viability and access to the capital markets."

Puerto Rico law and the PREPA Trust Agreement require PREPA to set electricity rates at amounts sufficient to enable PREPA to pay its debts, which include approximately $8.3 billion of outstanding bond debt. Accordingly, today's motion seeks to lift the stay under the Puerto Rico Oversight, Management, and Economic Stability Act ("PROMESA") so that the Creditor Group can enforce their rights under Puerto Rico law and the Trust Agreement following the payment default by PREPA earlier this month.

Bondholders holding at least 25 percent in principal amount of the PREPA bonds outstanding have a statutory right to the appointment of a receiver following an event of default. National, along with rest of the Creditor Group, represent almost 70 percent of the outstanding bonds.

In addition, National has filed an amended complaint in its lawsuit against the Oversight Board in the U.S. District Court for the District of Puerto Rico, asking the court to award National damages for the Oversight Board's unlawful rejection of the RSA.

Forward-Looking Statements

This release includes statements that are not historical or current facts and are "forward-looking statements" made pursuant to the safe harbor provisions of the Private Securities Litigation Reform Act of 1995. The words "believe," "anticipate," "project," "plan," "expect," "estimate," "intend," "will likely result," "looking forward" or "will continue," and similar expressions identify forward-looking statements. These statements are subject to certain risks and uncertainties that could cause actual results to differ materially from historical earnings and those presently anticipated or projected, including, among other factors, the possibility that MBIA Inc. or National will experience increased credit losses or impairments on public finance obligations issued by state, local and territorial governments and finance authorities that are experiencing unprecedented fiscal stress; the possibility that loss reserve estimates are not adequate to cover potential claims; MBIA Inc.'s or National's ability to fully implement their strategic plan; and changes in general economic and competitive conditions. These and other factors that could affect financial performance or could cause actual results to differ materially from estimates contained in or underlying MBIA Inc.'s or National's forward-looking statements are discussed under the "Risk Factors" section in MBIA Inc.'s most recent Annual Report on Form 10-K, which may be updated or amended in MBIA Inc.'s subsequent filings with the Securities and Exchange Commission. MBIA Inc. and National caution readers not to place undue reliance on any such forward-looking statements, which speak only to their respective dates. National and MBIA Inc. undertake no obligation to publicly correct or update any forward-looking statement if it later becomes aware that such result is not likely to be achieved.

National Public Finance Guarantee Corporation, headquartered in Purchase, New York is the world's largest U.S. public finance-only financial guarantee insurance company, with offices in New York and San Francisco. Please visit National's website at www.nationalpfg.com.

July 18, 2017 02:42 PM Eastern Daylight Time

Creditors of Puerto Rico Utility Demand a Receiver.

Bondholders seek installation of a receiver following utility default

Wall Street investors asked a court to place Puerto Rico's indebted public electric monopoly under receivership, escalating a standoff over reforming the U.S. territory's dilapidated power infrastructure.

Financial creditors filed court papers on Tuesday demanding the appointment of a receiver at the power utility known as Prepa following the collapse of a proposed debt restructuring agreement last month.

Hedge fund bondholders Angelo Gordon & Co., BlueMountain Capital Management and Marathon Asset Management LLC joined in Tuesday's request alongside mutual funds Franklin Resources Inc. and OppenheimerFunds Inc., as well as bond insurers Assured Guaranty Ltd. and MBIA Inc.

Prepa, one of the largest U.S. utilities, is a flashpoint in Puerto Rico's financial crisis. The federal board installed to revive Puerto Rico's economy placed the public corporation under bankruptcy protection this month to write down $9 billion in utility debt.

The seven-member oversight board had vetoed a proposed restructuring designed to avert bankruptcy, saying the financial settlement would have left too much debt outstanding and thwarted Prepa's transition from a public monopoly to a modern, regulated utility model.

Creditors have argued that restructuring Prepa's debts voluntarily would bolster its creditworthiness and attract private partners. A federal rescue package empowered the oversight board to write down Puerto Rico's $73 billion in municipal bond debt either through negotiated settlements or through binding, court-supervised proceedings.

Board members and local officials are searching for private investment capital to upgrade outdated power plants and lower electricity costs with the goal of jump-starting the Puerto Rican economy after nearly a decade of recession.

Meanwhile Puerto Rico's governor, Ricardo Rossellò, has consolidated control over Prepa, recently firing an independent board of directors installed under his predecessor. Creditors on Tuesday criticized the governor for "re-politicizing" the utility board to avoid what they called necessary rate increases on Prepa customers.

"The politicization of Prepa has only grown worse under the current administration," the court motion said. "This has resulted in a giant step backwards for Prepa."

The collapse of the proposed settlement was an unwelcome development for creditors, since a judge could impose larger losses than those they had agreed to accept. Prepa's bankruptcy also roiled some Republican members of Congress who wanted the deal quickly blessed as a model for consensual settlements of Puerto Rico's other debts.

Yet planned increases in electricity rates to repay creditors made the deal politically toxic in Puerto Rico, even after the governor obtained additional debt concessions in March to mitigate the hit to consumers. Costly, unreliable utility service remains a drag on family incomes and quality of life in Puerto Rico, where last year a massive blackout left Prepa customers without power for three days.

The Wall Street Journal

By Andrew Scurria

July 18, 2017 3:31 p.m. ET

Write to Andrew Scurria at Andrew.Scurria@wsj.com

Puerto Rico's Bondholders File First Suit Against Uncle Sam.

Hedge funds seeking compensation from U.S. for potential losses

Hedge funds holding Puerto Rico bonds sued the U.S. government, the first time creditors have tried to put federal taxpayers on the hook for losses suffered in the island's debt crisis.

A bondholder group represented by the Jones Day law firm filed suit in the U.S. Court of Federal Claims, the Washington tribunal that handles claims against the federal government. Creditors have been suing Puerto Rico since early last year over an escalating series of debt defaults, but never before has a group targeted Uncle Sam directly for damages.

Plaintiffs including Glendon Capital Management LP and Oaktree Capital Management LP are facing possible losses on bonds issued in 2008 to prop up Puerto Rico's struggling pension fund. Their lawsuit, filed Wednesday, blames the federal oversight board that was installed by Congress to dig the island economy out from its $73 billion debt load. The seven-member board placed Puerto Rico's largest public retirement fund under bankruptcy protection in May to restructure those $3 billion in pension bonds.

“Because the oversight board is so clearly a part of the federal government, its actions are themselves the actions of the United States,” the complaint says.

Preventing a taxpayer bailout for Puerto Rico’s financial woes was a priority for House Speaker Paul Ryan (Wis.) and congressional Republicans who designed Puerto Rico’s rescue package. That law, known by its acronym Promesa, “isn’t a bailout,” according to a statement from Mr. Ryan’s office last year. “It preserved that critical principle of protecting taxpayers.”

A spokesman for the oversight board didn’t immediately respond to a request for comment.

Promesa empowered the oversight board to write down Puerto Rico’s massive pile of municipal debt consensually through negotiated deals, or through court-supervised proceedings if negotiations failed. After a decadelong recession punctuated by high unemployment and poverty rates, the U.S. territory is desperate to stem the migration of its residents to the U.S. mainland.

Like many municipal governments, Puerto Rico has long struggled to keep its pension systems healthy. Proceeds from the pension bonds were supposed to help the Puerto Rico Government Employees Retirement System continue paying benefits until elderly pensioners died off and younger public employees began retiring with less-generous benefit packages. Instead, the value of the system’s investments cratered during the financial crisis, bringing the pension system to the brink of insolvency today.

The bonds are payable from the pension contributions paid by public employers toward their workers’ retirements. Bondholders thought they would be paid first, but the oversight board last month adopted legislation to move the contributions outside the pension system and beyond creditors’ grasp.

The plaintiffs asked for a court order declaring that maneuver an illegal taking of private property under the U.S. Constitution, as well as “compensation equal to payment of the principal amount of the [Employees Retirement System] bonds.”

Creditors were optimistic the oversight board would quickly approve consensual settlements and avoid prolonged bankruptcy proceedings, but now that hope is dwindling. Deals to restructure the island’s general obligation bonds and its electric utility debt have met the board’s veto, despite prodding from congressional Republicans to honor restructuring deals negotiated with local officials.

The Wall Street Journal

By Andrew Scurria

July 20, 2017 5:46 p.m. ET

Write to Andrew Scurria at Andrew.Scurria@wsj.com

Puerto Rico’s Troubles Create New Opportunities for Investors.

Puerto Rico entered its own form of bankruptcy in early May, and the financial crisis there is still getting worse. But even as the restructuring process devolves into more lawsuits, defaults, and downgrades, some ripple effects are creating surprising opportunities for investors.

Consider what's going on with MBIA the parent of bond insurer National, which insures about $4 billion in par value of Puerto Rico bonds. (That's about $8.5 billion in total debt exposure, including all scheduled interest payments and principal.) MBIA's business plans were torpedoed by a two-notch rating downgrade by S&P Global Ratings in late June. The firm laid off employees and said it would give up trying to write new business, as bond insurers have to be rated higher than municipalities for the insurance to add any value.

Yet, MBIA's shares have been rising ever since. On Tuesday, management told investors to expect shareholder-friendly moves, such as more stock buybacks and perhaps a special dividend—even as it had to increase accounting for losses related to Puerto Rico. Executives say the firm, which has the ability to pay claims equal to $4.6 billion, is now "unshackled from most of the limitations imposed by the rating agencies," by not writing new business. The stock has risen to $10 from $8 in the past two months.

Investors expect MBIA to be acquired by fellow bond insurer Assured Guaranty. Deal speculation has fueled the gains. CreditSights analyst Josh Esterov thinks it will be challenging for the two companies to reach a deal, but calls the logic behind it "sound."

Such special situations aren't normally the purview of municipal-bond investors. But the bonds insured by MBIA and Assured may be. Richard Daskin of RSD Advisors believes that investing in insured Puerto Rico paper can be a good opportunity, even though he qualifies that it "should probably be done with professional help."

Mark Taylor, portfolio co-manager of the Alpine High Yield Managed Duration Municipal fund, has recently added to his fund's stake in insured Puerto Rico munis, raising his allocation to 6% from about 5%. He won't touch uninsured Puerto Rico paper, and he keeps maturities to within five years. For example, he owns some general-obligation bonds maturing in 2020 that now yield 3%, equivalent to a 5% taxable yield for investors in a high tax bracket.

Mr. Taylor was surprised by MBIA's downgrade, which he calls "draconian." He believes the firm has adequate reserves for at least the next several years. Plus, if MBIA is sold, the bonds it insures would climb in price, he says.

Other muni-fund managers are avoiding Puerto Rico bonds altogether. "I think the ultimate outcomes will be significantly worse than where the bonds are trading now," says Nicholos Venditti of Thornburg Investment Management. While Puerto Rico's GO bonds are trading at about 60 cents on the dollar, he believes they could ultimately be worth as little as 25 cents. And if Assured, which has higher reserves than MBIA does, has to pay out large amounts in claims, it could get downgraded.

"These entities live and die by their credit ratings," Mr. Venditti says. Yet if bond insurers get through Puerto Rico's restructuring, pay all their claims, and don't get downgraded, they could have a great sales pitch to boost their business, he notes.

Puerto Rico's road to restructuring is going worse than expected for creditors so far. "The judge is the one picking winners and losers, and that isn't a good place to be," says Mr. Taylor. But for owners of insured Puerto Rico bonds—and even shareholders of beleaguered MBIA—things may turn out just fine.

The Wall Street Journal

By Amey Stone

July 17, 2017 12:05 p.m. ET

Write to Amey Stone at amey.stone@barrons.com

Fitch Downgrades Puerto Rico Pension Bonds to 'D'

Fitch Ratings-New York-20 July 2017: Fitch Ratings has downgraded the rating on the following bonds issued by the Employees Retirement System of Puerto Rico (ERS) to ‘D’ from ‘C’ and removed from Rating Watch Negative, to reflect the failure to make timely payment of interest on its due date:

–Senior pension funding bonds, series 2008A, 2008B, 2008C.

As a result of the application of the automatic stay in the ERS’ Title III bankruptcy-like proceedings under PROMESA, the ERS missed the scheduled July 1st interest payment, but will make the payment pursuant to a stipulation approved by an order from the U.S. District Court Judge overseeing the Title III proceeding. The ‘D’ rating reflects the failure to make payment on the scheduled due date under the contractual terms of the obligation. The stipulation requires payment of monthly interest from certain “pre-petition” funds through Oct. 1st. The stipulation further provides that the Commonwealth will cause certain amounts to be deposited on certain agreed-upon dates into a “post-petition” account, and the distribution of those amounts will be subject to the judge’s future orders regarding the validity, perfection and enforceability of the ERS bondholders’ liens.

The Commonwealth’s Issuer Default Rating (IDR) remains ‘RD’, indicating that the issuer has defaulted on a select class of its debt.

RATING SENSITIVITIES
The ratings on the bonds have reached the lowest level on Fitch’s rating scale. Fitch expects to re-examine the commonwealth’s credit profile once debt restructuring plans become more clear.

Contact:

Primary Analyst
Karen Krop
Senior Director
+1-212-908-0661
Fitch Ratings, Inc.
33 Whitehall Street
New York, NY 10004

Secondary Analyst
Laura Porter
Managing Director
+1-212-908-0575

Committee Chairperson
Marcy Block
Senior Director
+1-212-908-0239

Media Relations: Elizabeth Fogerty, New York, Tel: +1 (212) 908 0526, Email: elizabeth.fogerty@fitchratings.com.

Additional information is available on www.fitchratings.com

Top Adviser to Puerto Rico Governor Resigns,' in No Way Pressured'

NEW YORK — Elias Sanchez, Governor Ricardo Rosselló's liaison to Puerto Rico's financial oversight board who has been criticized over his financial disclosures, resigned on Thursday.

Sanchez, a trusted adviser to Rosselló who was effectively the face of the Puerto Rican government on issues concerning the U.S. territory's massive debt restructuring, said in an interview that he wanted to focus on opportunities in the field of law.

Rossello appointed Christian Sobrino Vega, president of Puerto Rico's Government Development Bank (GDB), as Sanchez's replacement on the board. In a statement, the governor called Sobrino "instrumental in the success of our administration."

Puerto Rico is in a historic economic crisis, with $72 billion in debt it cannot repay, a 45 percent poverty rate, and insolvent public pensions. Its finances are under the oversight of a federal board that has been given the task of helping the island craft and follow a blueprint for its fiscal turnaround.

As Rosselló's delegate on the board, Sanchez, a former lobbyist, had become a favorite target of investors unhappy with potential cuts to debt repayment.

Specifically, Sanchez was disparaged for his financial disclosure forms – a requirement of all board members. According to critics, he did not provide enough information on the forms about his sources of income and potential conflicts of interest related to his role on the board.

Espacios Abiertos, a Puerto Rico-based nonprofit promoting transparency in government, said in a report this month that Sanchez's disclosures were more deficient in those areas than any of the other seven board members.

One adviser to a major Puerto Rico creditor group said many stakeholders "found it extremely concerning that his disclosures were so sparse."

"Not only does that undermine the board and Governor Rosselló's commitment to transparency, but it raises many questions when you've been in the lobbying sector," said the adviser, who spoke on condition of anonymity.

Sanchez, who had worked as a lobbyist in Puerto Rico, did not say whether he planned to return to lobbying.

"Right now I'm evaluating every alternative that I might have," in Puerto Rico and Central and South America, Sanchez said in a phone interview on Thursday morning.

Sanchez insists the decision to resign was his alone. "In no way was I pressured by anyone," he said, adding that while he may have come under attack, he is "very comfortable with everything" he did on the board to represent the best interests of the people of Puerto Rico.

In a statement issued in Spanish, Rossello praised Sanchez's "great professional skills."

"I wish to thank (Sanchez) for his willingness to serve Puerto Rico, his commitment to our administration and, on a personal level, our respect and esteem," Rossello said.

As a non-voting member on the board, Sanchez did not have a direct role in board decisions. However, he acted as the governor's eyes, ears and voice on the board, helping him form positions on financial matters, and communicating them to the board and the public.

Jose Carrion, the chairman of the oversight board, said Sanchez "was always available, committed and dedicated to represent with determination the governor's postures before the Board."

ALWAYS ENVISIONED LEAVING

The liaison position is unpaid, and Sanchez was technically not a government employee.

A spokesman for the governor said Sobrino will continue as president of the GDB, the island's now-defunct fiscal agent, which is being wound down as part of a liquidation agreement with creditors.

Sobrino, a lawyer, worked as a compliance officer for drug company AbbVie before his appointment to the GDB last December.

In May, Puerto Rico filed the largest bankruptcy in U.S. municipal history, sparking hard-fought litigation between the board and Puerto Rico's creditors over the fates of the island's agencies and the loans that back them.

The oversight board, created under the federal 2016 Puerto Rico rescue law dubbed PROMESA, certified a turnaround blueprint for Puerto Rico in March.

Sanchez said he had always envisioned leaving once the plan was in place.

The board and Rossello's administration have not always seen eye to eye, with the governor resisting some of the board's proposed austerity measures.

Sanchez attributed the tension to "growing pains associated with a new framework."

"Puerto Rico had never had something like [PROMESA] before," he said. "Were we not aligned in certain circumstances? Yes … In the net, it's been a positive experience."

By REUTERS

JULY 20, 2017, 1:12 P.M. E.D.T.

(Reporting by Nicholas Brown in New York; Editing by Jeffrey Benkoe and Daniel Bases)

Factories or Runways? Municipal Airports Face Economic Pressure.

DETROIT — Coleman Young International Airport was once one of the nation's busiest airports and a thriving piece of Detroit's economy. But like so much else in the city, it festered for decades after the action moved to the suburbs.

Now local officials want to reinvigorate the 264-acre plot. The question is whether that means it will survive as an airport or be remade for other purposes.

The City Council this month is expected to select a firm to start studying options for the site, including using the land for a half-dozen new factories or other industrial uses. Unless the city uses the site for an economic development purpose, Mayor Mike Duggan’s administration says, Detroit will soon run out of wide-open, city-owned spaces that can be offered to companies looking to build manufacturing or other commercial facilities here.

Many council members, however, have said that the city should reinvest in the airport, saying it could be an economic engine as well.

The debate in Detroit is not unusual. Cities across the nation are reconsidering the value of municipal airports in the era of superjumbo jets and budget cuts. The Aircraft Owners and Pilots Association estimated the nation loses 50 public-use airports a year.

Almost all are general-aviation airports, ones that cater primarily to owners of private planes, and most have operating deficits that the cities must make up for in their budgets. Detroit, for instance, faces a $1.3 million operating loss in the 2017 fiscal year for Coleman Young, which averages just 30 landings a day. The main airport for the region is Detroit Metropolitan, a Delta Air Lines hub about 20 miles west of the city limits.

Jed Howbert, the director of Mr. Duggan’s team overseeing jobs and the economy, said Coleman Young’s location, close to numerous freeways and a railroad spur, makes the site particularly appealing.

“We may certainly figure out that it’s worth keeping as an airport and investing more in the airport,” he said, “or we may decide there’s better opportunity and might have a better impact on Detroit as a manufacturing and logistics center or some other thing we just haven’t thought about.”

Closing it presents real risk. In other cities, the anticipated development has yet to occur, as with Bader Field in Atlantic City and Meigs Field in Chicago. That is partly because decommissioning airports with the Federal Aviation Administration is an expensive, yearslong process, and political and economic winds shift quickly in the interim.

Plans to redevelop Bader Field, located within walking distance of Atlantic City’s casino district, faltered when the city’s economy collapsed at the onset of the most recent recession. In the process, tourist-dependent Atlantic City lost a key transportation amenity just as it desperately needed more visitors.

“Any pilot who flies over Bader Field just kind of looks at it wistfully like, ‘I wish I could land there but I can’t,’” said Paul Freeman, a private pilot and aerospace engineer who manages a website tracking the history of more than 2,000 former airfields in the United States.

He said there were many cases of airports being closed “and then some municipal bonds didn’t happen or some business venture didn’t happen and the end result is, 10 years later, the property’s still there, the airport’s still not running, it’s deteriorating and it ends up benefiting nobody.”

There are success stories, though. Austin, Tex., and Denver are examples of how a region can reap decades’ worth of benefits from the redevelopment of former airports. Both cities shut theirs down in the 1990s and replaced them with modern suburban facilities, and both have realized billions of dollars in mixed-use, master-planned development on the old sites that continues to unfurl.

Closing the Austin airport “magically released land in the center city,” said Pam Hefner, redevelopment project manager for Austin. “That doesn’t happen. It’s so rare and it’s such an incredibly valuable resource.”

Many communities salivate over just that opportunity. In Kennewick, Wash., for instance, the tiny and money-losing Vista Field closed in 2013, and the regional planning agency is in the process of finishing a master plan for the now-vacant 103 acres.

The community of about 210,000 residents along the Columbia River in southeastern Washington has struggled to keep its young people from leaving to pursue careers elsewhere. Skip Novakovich, president of the Port of Kennewick Commission, a three-person panel that oversees the area, said the commission was planning a new core with walkable neighborhoods and a mix of residential and commercial spaces.

“It’s been expensive, but it’ll put $400 million on tax rolls,” said Mr. Novakovich, referring to the project, which will require an investment of about $500 million. “It’s probably the largest economic development project ever for this region. The only thing I’m nervous about is if we develop it to what the public said they wanted and they say, ‘Nope that’s not what we wanted.’”

Advocates for revitalizing old airfields rather than closing them say they empathize with the communities looking for new economic development. Still, they worry that the reduction of airfields will hurt the overall American aviation system, which is built partly for travel but also to ensure ubiquitous landing sites in the event of national security events or natural disasters.

“I’ve always believed that each of the individual institutions that own and operate these airports are making reasonable and genuinely rational decisions in terms of what affects them locally,” said Thomas Thatcher, an architect and planner who wrote a 2011 report sponsored by the F.A.A. called “A Guidebook for the Preservation of Public-Use Airports.” “But when you take all of those individual good-faith decisions and accumulate them over a 10- or 20- or 30-year period across the nation, we might realize, Oh dear. On a collective basis, it created a terrible problem.”

In Detroit, the fact that many City Council members began the study process disposed toward keeping Coleman Young bodes well for preservationists.

Scott Benson, a councilman who represents the district that contains the airport and is a city planner by trade, views the property as an untapped gem whose value will only rise in this era of drones and internet shopping deliveries. Closing the airport, Mr. Benson argued, is a one-way street because shuttered airfields will not reopen and cities rarely find other sites that are as convenient. A new airport would also have to go through the rigors of passing environmental and community requirements, which are more stringent than when the original airports were founded.

“Having a 260-acre international airport within the borders of a large city is an extremely unusual asset to have,” Mr. Benson said. “You can’t just drop a city airport anywhere in the country. I have a really hard time thinking that the airline industry, the logistics industry, the aerospace industry is not salivating over the opportunity to get in there and invest.”

With tens of thousands of abandoned homes being taken over and bulldozed by the city, many are baffled by the contention of the mayor’s administration that there is no other land available for new industrial facilities.

But Mr. Howbert, the city official, noted that those vacancies were a patchwork, not a large contiguous piece of land. For that, he said, Detroit has just one option right now for the areas — 30 contiguous acres or more — needed for factories.

“This began,’’ Mr. Howbert said, “when we realized we’re essentially out of large-scale parcels that are suitable for manufacturing or other large job-creating, industrial-type investments.”

THE NEW YORK TIMES

By STEVE FRIESS

JULY 18, 2017

New York, Seattle Lead U.S. Muni Supply Next Week.

(Reuters) – New York City is planning to issue $800 million in tax-exempt, general obligation bonds on Wednesday, the biggest deal of a week featuring $4.65 billion of new bonds and notes in the U.S. municipal market.

The New York issuance, underwritten by Bank of America Merrill Lynch, is part of a total sale of $860 million, which includes $60 million of taxable fixed-rate bonds that will be offered competitively.

The debt will refund around $700 million in bonds that are currently callable, said Tyrone Stevens, a spokesman for New York City Comptroller Scott Stringer.

Another big deal on tap for next week comes out of the northwest, where the Port of Seattle, Washington, will issue $608 million in a trio of intermediate lien refunding bonds, underwritten by Citigroup.

The port, which owns and operates the Seattle-Tacoma International Airport, will use the money to fund capital improvements to the airport, and to refund a 2009 bond issuance, according to bond documents.

The port is undertaking a handful of capital projects over the next five years, including building a new arrival facility for international passengers, revamping the baggage claim system, and addressing seismic concerns in one of its terminals.

Next week’s biggest competitive bond deal comes from Alexandria, Virginia, which plans to sell some $95 million of GO capital improvement bonds. The South Carolina Association of Governmental Organizations will provide the biggest sale of notes, offering $52 million in certificates of participation.

Municipal bond yields have fallen lately, generally down more than 10 basis points over the last week or two, a trend Barclays municipal credit analyst Mikhail Foux attributed to the similar fall in U.S. Treasury yields.

Foux added he expects municipal debt trading to continue to be slow next week, though he is keeping an eye on the U.S. Federal Reserve, which “could have some effect on rates.”

“The market expects the Fed to stay put, but maybe we’ll get some clarity on their thinking,” Foux said.

Reuters

by Nick Brown

July 21, 2017

Reporting by Nick Brown; Editing by Chris Reese

New Brookings Report Reveals Challenges and Opportunities in Modernizing Government's Approach to Land Use and Transportation Data.

Washington, D.C. — A new report from the Brookings Institution Metropolitan Policy Program explores why, even with the availability of ever-increasing sets of sophisticated geo-coded data and rapidly developing computing capacity, governments lack critical systems, processes, and regulatory flexibility to use them effectively for public transportation and land use planning.

The substantial penetration of connected devices into everyday life—from smartphones in individual pockets to fixed equipment in public spaces—offer untold potential to understand how people move and where they do business on a daily basis. However, most public agencies cannot leverage all the data the marketplace produces.

To address this wide-ranging public sector problem, Adie Tomer and Ranjitha Shivaram have published Modernizing Government's Approach to Transportation and Land Use Data: Challenges and Opportunities, a report which outlines the structural, but surmountable, challenges governments experience integrating new data and techniques into decisionmaking processes.

This report is an early step in designing a data-focused playbook for public agencies to consider the next stage of planning and investment in local built environments, adjustments which will require modernized regulatory approaches to data procurement and use. The report includes one of the clearest catalogs of emerging data sources related to transportation and land use. Based on interviews with other experts, it also describes the challenges to integrating new datasets and proposes policy reforms to address them.

"In a world increasingly filled with geospatial sensors, practically every action and movement we make throughout our day is tracked," says Adie Tomer, lead author. "While private industry continues to develop innovative data products at an unprecedented rate, the public sector has been playing catch-up in collecting and using all that data effectively. There is reason for optimism, however, with an understanding that the door is open for government agencies to upgrade their approaches, helping to elevate their communities through new forms of public-private data partnerships and modernized policy frameworks."

- GASB Issues Exposure Draft, Certain Disclosures Related to Debt, including Direct Borrowings and Direct Placements.
- MSRB Provides Guidance on Duties of Non-Solicitor Municipal Advisors in Conduit Financing Scenarios.
- MSRB Provides Implementation Guidance on Mark-up Disclosure.
- SIFMA Asks SEC to Reject 'Inefficient' MSRB Account Transfer Proposal.

- SIFMA Submits Comments to the IRS on Proposed Regulations Defining Political Subdivisions.
- Treasury: Proposed Political Subdivision Regulations are "Burdensome," Issue Price Regulations are "Insignificant."
- *Missouri-American Water Company's Request for Authority to Implement a General Rate Increase for Water and Sewer Service Provided in Missouri Service Areas v. Office of Public Counsel* – Court of Appeals holds that Public Service Commission's consolidation of water systems into three districts for setting rates did not grant an undue or unreasonable preference or advantage to one locality over another.
- And finally, We here at BCB may not know much, but we're gonna go out on the proverbial limb here and aver that any story containing the statement, "He also threw out his shirt, soiled with feces, which struck Pool in the chest and hands." is not going to end well. (See *Hicks-Fields v. Harris County, Texas*)

UTILTIES - ARKANSAS

City of Tontitown v. First Security Bank

Court of Appeals of Arkansas, Division IV - May 24, 2017 - S.W.3d - 2017 Ark. App. 33320 - 17 WL 2274525

Property owner filed action for declaratory judgment alleging that city failed to take substantial steps to provide requested municipal services to property.

Following a bench trial, the Circuit Court entered judgment in favor of property owner. City appealed.

The Court of Appeals held that:

- Circuit Court had subject-matter jurisdiction;
- Services were not already available to property, such that city was required to take substantial steps to provide services to property; and
- City failed to take statutorily required substantial steps to provide municipal services to property.

Circuit Court had subject-matter jurisdiction over property owner's declaratory judgment action against city alleging that city failed to take substantial steps to provide requested municipal services to property, where statute that property owner alleged city had violated expressly provided that Circuit Courts had exclusive jurisdiction to hear all matters related to statute.

Services were not already available to property, and therefore city was statutorily required to take substantial steps to provide municipal services to property upon request by property owner. Although water and sewer services had been provided to the improved portion of the commercially zoned property, they had not been provided to the rest of the property, and development plans would have had to have been submitted in order to extend water and sewer service to rest of property.

City failed to take statutorily required substantial steps to provide municipal services to property upon request by property owner; although city made request for more definite statement from property owner, city did not inquire about development plans or explain what it needed from property owner.

ZONING & LAND USE - CALIFORNIA

Park At Cross Creek, LLC v. City of Malibu

Court of Appeal, Second District, Division 3, California - June 21, 2017 - Cal.Rptr.3d - 2017 WL 2665935 - 17 Cal. Daily Op. Serv. 6072

Developers petitioned the trial court for a peremptory writ of mandate to have a local initiative declared invalid.

The Superior Court granted petition. City and proponents appealed.

The Court of Appeal held that:

- Ordinance requiring a specific plan for every new commercial development over 20,000 square feet was not a proper exercise of legislative power;
- Zoning ordinance requiring planning commission's approval of specific chain retail establishments illegally restricted transferability of conditional use permits;
- Voter approval requirement for commercial specific plans was not volitionally severable; and
- Zoning ordinance illegally discriminated against chain retail establishments.

A non-charter city's initiative ordinance requiring every proposed commercial or mixed-use development project in excess of 20,000 square feet to be identified in a specific plan approved by the city council was not a valid exercise of legislative power, since the requirements imposed by the ordinance were adjudicative. Even though the ordinance allowed multiple projects to be covered by a single specific plan, and even if the provision requiring voter approval of the specific plan could be severed, the ordinance set no substantive policy or standards for the specific plan, it created a "new power" in requiring the specific plan, and it limited the city's exercise of its police power.

A non-charter city's zoning ordinance imposed an illegal restriction on the transferability of conditional use permits, and thus was invalid, in requiring conditional use permits for "formula retail establishments" to include the planning commission's approval of the specific chain retailer that would operate on the property based on a finding that the establishment would not promote a "predominant sense of familiarity or sameness," even though the permits were transferable, since the permits could not be used to operate chain establishments not approved by the planning commission, and the ordinance's distinction between approved and unapproved chains was "not grounded in the use of the land."

Even assuming that the illegality of a city voter initiative restricting planning approvals for large commercial establishments and retail chains could be cured by severing the provision requiring voter approval for the specific plan covering any new commercial development over 20,000 square feet, that provision was not volitionally severable and thus the initiative was invalid in its entirety, even though the initiative included a severability clause, where the title of the initiative referred to the voter approval provision by including the words "Your Decision," and the initiative's preamble stated that its purpose and intent were to ensure "planning by requiring preparation and voter approval of specific plans for large commercial or mixed-use projects."

A non-charter city's zoning ordinance was invalid because it discriminated against chain retailers in violation of the principles governing conditional use permits in California, in requiring conditional use permits for such "formula retail establishments" to include the planning commission's approval of the specific chain that would operate on the property based on a finding that the establishment would not promote a "predominant sense of familiarity or sameness," even if a provision subjecting subsequent transferees to the same restrictions as the original recipient of the permit could be severed from the ordinance, since the ordinance based eligibility for the permit on the nature of the applicant as a chain rather than on general categories of land use such as “hamburger joints” and “coffee shops.”

PENSIONS - CONNECTICUT

Maturo v. State Employees Retirement Commission

Supreme Court of Connecticut - July 11, 2017 - A.3d - 326 Conn. 160 - 2017 WL 2841626

Retired firefighter appealed from decision of the State Employees Retirement Commission suspending his receipt of disability retirement pension benefits while he served as mayor.

The Superior Court affirmed and dismissed appeal. Firefighter appealed.

The Supreme Court of Connecticut held that:

- Firefighter accepted “employment” by accepting nonparticipating position of mayor for a participating municipality and was an “employee” of the town, for purposes of the provision of the Municipal Employees’ Retirement Act governing members of the retirement system who, having retired and begun to collect a retirement pension, again accepted public employment in the state, which provided that “[s]uch member shall receive no retirement allowance while so employed,” and
- Act did not contact legislative intent to preclude a member from continuing to receive a retirement pension only while reemployed in a participating, as opposed to a nonparticipating, position.

LABOR & EMPLOYMENT - CONNECTICUT

Spiotti v. Town of Wolcott

Supreme Court of Connecticut - July 11, 2017 - A.3d - 326 Conn. 19020 - 17 WL 2859969

Town police officer brought action against town, alleging that she was retaliated against for bringing previous sex discrimination action and for engaging in protected speech.

The Superior Court granted in part and denied in part town’s motion for summary judgment. Town appealed.

The Supreme Court held that factual determination made in arbitration proceeding did not have preclusive effect on officer’s statutory and constitutional employment retaliation claims.

Factual determination made in arbitration conducted pursuant to collective bargaining agreement (CBA), that town did not retaliate against police officer for her prior discrimination complaint or protected speech, did not have preclusive effect on officer’s statutory and constitutional employment retaliation claims against town, based on state statute providing that no employee shall be denied right to pursue cause of action under state or federal Constitution or under state statute solely because the employee was covered by a CBA.

DEDICATION - ILLINOIS

[J & A Cantore, LP v. Village of Villa Park]

Appellate Court of Illinois, Second District - May 31, 2017 - N.E.3d - 2017 IL App (2d) 160601 - 2017 WL 2351270

Landowner brought action against city, seeking ejectment of city from a disputed strip of property and an injunction against city prohibiting it from using the property.

City moved to dismiss. The Circuit Court granted the motion. Landowner appealed.

The Appellate Court held that:

- Proprietor of the plat of addition effected a statutory dedication of disputed strip for public use; City demonstrated possession of disputed strip, and thus acceptance of dedication for public use; and
- Disputed property was for public use, and therefore, claim of adverse possession against the property would not lie.

Proprietor of the plat of addition effected a statutory dedication of disputed strip for public use, despite fact that plat did not use terms such as "public" or "hereby dedicated." Unmistakable intent of the proprietor, evidenced by layout of surrounding streets and naming of disputed strip, was to dedicate disputed strip to city as a public street, and plat fulfilled the technical requirements of sections of the Plat Act in effect at time of recording.

City demonstrated possession of disputed strip, and thus acceptance of dedication for public use. City eventually annexed the territory including the disputed strip, giving rise to a presumption of acceptance in light of acceptance of other platted streets, city expressly vacated other platted streets by ordinance but not the street located on disputed strip, fact that property remained unimproved did not rebut the possession, property had been leased to park district for over 30 years, and there was no evidence that dedicator or its successors withdrew or revoked the dedication prior to acceptance.

Disputed property owned by city was for public use, and therefore, claim of adverse possession against the property would not lie, despite fact that city had leased property to park district. Property was dedicated and accepted as a public street, lease provided city with right of reentry, and property, which was part of a pedestrian and bicycle trail running through 12 municipalities and extending some 30 miles in length, was open to all persons of the state.

ZONING & LAND USE - INDIANA

[John C. & Maureen G. Osborne Revocable Family Trust v. Town of Long Beach]

Court of Appeals of Indiana - May 30, 2017 - N.E.3d - 2017 WL 2333703

After protesters filed administrative appeals of building permits which allowed homeowners to construct seawalls, and stop work orders were issue halting seawall construction, homeowners and contractor filed complaint for declaratory and injunctive relief against town, town council, town building commission, town advisory plan commission, town board of zoning appeals, and protesters.

The Superior Court denied defendants' motion to dismiss, and later issued order denying motions for injunctive relief and declaratory judgment. Homeowners and protesters both appealed, and appeals were consolidated.

The Court of Appeals held that:

- Order denying homeowners' "Motions for Injunctive Relief and Declaratory Judgment" constituted a final appealable judgment, and
- Homeowners' failure to fully participate in town board of zoning appeals administrative decision appeal process required dismissal for failure to exhaust administrative remedies.

Order denying homeowners' "Motions for Injunctive Relief and Declaratory Judgment" in action regarding seawall construction disposed of all claims as to all parties and thus constituted a final appealable judgment, although it was styled as a denial of a motion and referred to preliminary injunction standard of review. Order, along with accompanying order denying certification to appeal denial of anti-SLAPP motions to dismiss as "irrelevant," indicated that the trial court intended to address and deny the claims of the homeowners' complaint, not the relief sought in their application for preliminary injunction and temporary restraining order.

Due to failure to exhaust administrative remedies, homeowners' failure to fully participate in town board of zoning appeals administrative decision appeal process required dismissal of subsequent action for declaratory and injunctive relief regarding right to construct seawalls, which had been halted after protesters had filed administrative appeals of homeowners' building permits; protesters' appeals were not an improper collateral attack on earlier view variances obtained by homeowners, which were not at issue, protesters had complied with process for appealing zoning board decisions, and purported conflicts of interest in the part of board members did not render any administrative appeal futile.

UTILITIES - MISSOURI

[Missouri-American Water Company's Request for Authority to Implement a General Rate Increase for Water and Sewer Service Provided in Missouri Service Areas v. Office of Public Counsel]

Missouri Court of Appeals, Western District - May 30, 2017 - S.W.3d - 2017 WL 2333056

Office of Public Counsel (OPC) sought judicial review of Public Service Commission's (PSC) report and order adopting PSC staff's proposed plan, consolidating water corporation's systems into three districts for purpose of setting rates.

The Court of Appeals held that:

- Consolidation of water systems into three districts for setting rates did not grant an undue or unreasonable preference or advantage to one locality over another;
- Evidence supported PSC's finding that proposed consolidation into three districts grouped systems that shared similar sources for their water;
- PSC's finding, that annual cost to serve a residential customer was fairly consistent across eight water districts existing at time rate case, was filed was reasonable;
- PSC's finding, that fragmentation of water systems created affordability problems that could have been resolved by consolidated tariff pricing, was reasonable; and
- PSC's finding, that federal and state regulations imposed a heavy burden on small water systems, was reasonable.

INDUSTRIAL DEVELOPMENT AGENCIES - NEW YORK

Madison County Industrial Development Agency v. State Authorities Budget Officer

Supreme Court, Appellate Division, Third Department, New York - June 29, 2017 - N.Y.S.3d - 2017 WL 2800840 - 2017 N.Y. Slip Op. 05303

Industrial development agency (IDA) and local development corporation incorporated by IDA brought article 78 proceeding to review a determination of county agency refusing to recognize corporation as a subsidiary of IDA and requiring corporation to file separate financial reports.

The Supreme Court, Albany County, denied petition. IDA appealed.

The Supreme Court, Appellate Division, held that under the Industrial Development Agency Act, it was not necessary for IDA to create subsidiary to exercise its statutory power to accept grants, and thus IDA and corporation were required to file separate financial reports.

Under the Industrial Development Agency Act, an industrial development agency (IDA) was not statutorily authorized to create subsidiary to shield IDA from liability, such that it was not necessary for IDA to create a subsidiary to exercise its statutory power to accept grants, and thus IDA and local development corporation incorporated by IDA were required to file separate financial reports. Allowing IDA to create a subsidiary would have effectively eviscerated or otherwise rendered meaningless specific powers detailed in remaining subdivisions.

LIABILITY - TEXAS

Hicks-Fields v. Harris County, Texas

United States Court of Appeals, Fifth Circuit - June 26, 2017 - F.3d - 2017 WL 2729081

Family members of detainee who died after jail official punched him in face brought action against county, asserting claims under the Texas Tort Claims Act, Texas Wrongful Death Act, and § 1983, alleging that county failed to properly train jail personnel in use-of-force and rendition of medical aid.

The United States District Court for the Southern District of Texas adopted report and recommendation of United States Magistrate Judge and entered summary judgment in county's favor. Family members appealed.

The Court of Appeals held that:

- Family members failed to establish pattern of unconstitutional behavior, and
- Family members failed to establish failure to train jail officials in use-of-force or rendition of medical aid.

Alleged constitutional deficiencies discussed in Department of Justice's (DOJ) report on county jail were not sufficiently similar to alleged violations of detainee's due process rights in family members' § 1983 action against county, arising from incident in which detainee, who had history of schizophrenia, died after jail official punched him in face, and thus report was insufficient to establish pattern of unconstitutional behavior as required to support family members' claim for municipal liability based on county's alleged negligent implementation of policy on securing mentally ill criminal offenders.

United States Department of Justice's (DOJ) report on county jail conditions was insufficient to establish that jail officers were not properly trained in use of force or rendition of medical aid, and thus was insufficient to support § 1983 Monell claim against county, asserted by family members of detainee with history of schizophrenia, who died after jail official punched him in face. DOJ's criticisms of county jail regarding excessive force largely centered on improper training regarding restraining prisoners and cell extraction techniques, neither of which were directly at issue in family members' action, and criticisms regarding medical aid training merely addressed training in the use of fire safety equipment.

Seattle Passes Municipal Income Tax; It is Almost Certainly Illegal.

Washington is one of the seven states that goes without an individual income tax, and most residents are pretty proud of that. In fact, voters in the state have voted down a constitutional amendment to allow a graduated income tax five times.

That could change though, as the Seattle City Council this week passed a local ordinance to enact an income tax on Seattle residents. The tax, which is 2.25 percent on income above $250,000 for single filers and above $500,000 for married filers, was unanimously adopted by the council on Monday.

The only problem is that the tax is almost certainly illegal under the state constitution and under state statute. As my colleagues Jared Walczak and Kari Jahnsen wrote in June, the tax would face some "serious legal hurdles":

1. ***The Constitutional Uniformity Clause.*** Article VII of the Washington constitution stipulates that all taxes must be "uniform upon the same class of property," and adopts an unusually broad definition of property that has been held to include income. The constitution also imposes a maximum combined rate of 1 percent. Seattle officials do not deny that their ordinance conflicts with current caselaw; the municipal income tax is seen as a test case to challenge the current interpretation of the uniformity clause.
2. ***A Ban on Local Net Income Taxes.*** Further compounding the city's challenges, there is a statutory prohibition against Washington localities adopting taxes on net income. The "net income" terminology was likely to exclude the local B&O gross receipts tax from the prohibition. But advocates of a Seattle municipal income tax argue that by imposing the tax on gross income rather than adjusted gross income, it cannot be said to fall on net income. This is arguably a strained interpretation of the statute. Net income is undeniably a subset of gross income, and thus subject to tax under the proposed ordinance.
3. ***Restrictions on Creating Local Taxes Not Expressly Authorized.*** The courts have held that localities must have an express grant of authority to levy a given tax, and of course, no statutes specifically authorize a local income tax. The Seattle City Council justifies the proposed income tax under statutory authority to establish licenses and permits, which may be too novel for the courts, not least because it is unclear that a right of residency could be subject to a licensing process.

For now, this tax looks to be a signaling stunt, as the Seattle Times reports that "proponents say the measure was intended to open a broader discussion about tax fairness." Councilmember Kshama Sawant even seems to recognize the unsteady legal footing of the measure, telling supporters, "If we need to pack the courts, will you be there with me?"

It of course goes without saying that purposefully enacting an illegal tax is poor policy. But as the Washington Policy Center notes, it is also likely to be an expensive exercise as the city will have to spend revenue defending the policy in court.

So, in the textbook sense, enacting an illegal tax violates the public finance principle of stability because you are creating business uncertainty about future tax burdens. But even on a more basic level, this charade invites some head-slapper questions like: if you say you need more revenue for government programs, why would you willfully set yourself up to spend revenue on a legal battle?

Tax Foundation

by Scott Drenkard

July 14, 2017

Wells Fargo Lost 'Tens of Millions' in Muni and State Deals After Scandal.

- **Illinois, New York City among clients that halted dealings**
- **CEO Shrewsberry says bank wants to 'win their business back'**

Wells Fargo & Co. has lost "tens of millions of dollars" in revenue from municipal and state clients since a sales scandal in its consumer bank erupted 10 months ago, Chief Financial Officer John Shrewsberry said.

Shrewsberry said the decline isn't material to Wells Fargo's earnings, but added the company is working to regain the business. Ancel Martinez, a spokesman for the San Francisco-based lender, said the lost revenue is expected to be $20 million to $30 million for 2017.

"I don't want to downplay it," Shrewsberry said Friday in a telephone interview. "If we've irritated those customers, we want to compete and demonstrate to them how we've made things better and win their business back."

California, Illinois and cities including New York, Chicago and Seattle halted some dealings with Wells Fargo, such as using the bank to sell municipal bonds, after it agreed Sept. 8 to pay $185 million to resolve claims that employees sought to meet sales targets by opening accounts without customers' permission. The Department of Justice and the Securities and Exchange Commission are investigating.

The former head of Wells Fargo's public finance business, Peter Hill, left in April to take a similar position at UBS Group AG. Nancy Feldman, who previously led transportation public finance, took over as the interim leader after Hill's departure.

The bank doesn't break out revenue generated by its government and institutional business unit. But during a presentation at Wells Fargo's investor day in May, the company said the group generated 4 percent — or about $1.14 billion — of the wholesale division's $28.5 billion in revenue in 2016. About half the unit's total comes from government clients, one of the presentations showed.

New Business

Most government clients, including those "where somebody says, 'We're mad at Wells Fargo,'" still do some business with the bank, Shrewsberry said.

“The economics of it haven’t really changed all that much,” he said. “It’s not like the whole relationship moves.”

Wells Fargo’s wholesale division reported a 4.6 percent drop in revenue in the second quarter, according to a statement Friday. The company said business with government agencies picked up in the later half of the quarter, leading to $1.1 billion in new loan balances.

The lender recently loaned California $500 million despite sanctions the state had placed on the bank, Chief Executive Officer Tim Sloan told analysts Friday on a conference call. In April, Nevada agreed to extend its banking agreement through 2021, Wells Fargo said in a statement.

Bloomberg

By Laura J Keller

July 14, 2017, 12:37 PM PDT

What Does a Rate Hike Mean for Muni Bonds?

When the Federal Reserve raises interest rates, it’s a signal that economic growth is accelerating and needs less handholding from the nation’s central bank. For example in June, the Fed announced it was raising interest rates by one quarter of a percentage point and cited a strengthening labor market and moderately growing economic activity.

But what does that hike, which raised short-term interest rates to a range of 1.00 percent to 1.25 percent, mean for the municipal market?

It can be tempting for investors to think that a rate increase will have a wide-ranging effect, but in reality it usually has a muted impact. Variable-rate debt and other short-term bonds might see a slight uptick in interest rates. Still, rates are near historic lows which means a rate hike shouldn’t dampen governments’ bond refunding activity.

Meanwhile, rates on long-term debt shouldn’t see much of a change. That’s because the yield curve eventually flattens — so a slight change in short term rates typically won’t dramatically influence longer term rates.

In fact, experience has shown that a hike in short-term rates can actually cause a downward tick in long-term rates. For example, between 2004 and 2006, the Fed raised the short-term rate from 1 percent to 5.25 percent. During that time, the rates on a 10-year Treasury bond only went up a half percentage point. Meanwhile, yields on the 30-year bonds ticked slightly down. Why? Because when short-term interest rates are increased, it actually dampens the impact of inflation, which is what plays the larger role in setting long-term interest rates.

Long-term bonds, however, are vulnerable to other federal policy decisions. For example, in late 2016, long term interest rates saw a temporary uptick as financial markets began to price in some fiscal stimulus from the incoming Trump administration.

Lastly, good old-fashioned supply-and-demand also has a more direct impact on the muni market’s long-term rates. Although last year’s total issuance – more than $445 billion – was the highest in several years, this year’s total is on pace to be below that. As long as demand for munis outweighs supply, interest rates for most quality issuers should remain relatively low.

Neighborly

07/14/2017 by Liz Farmer

The Safe Haven of Bonds Made Riskier by ETFs.

Bonds have always appealed to conservative investors looking for a safe place to park some money while still receiving a steady and predictable return.

Yet a growing number of investors are steering away from buying individual bonds due to the research required and the high cost of diversifying a portfolio. Instead, they are putting their money in bond exchange traded funds, which invest in many bonds.

Some financial advisers believe that might be a riskier move.

The value of a bond ETF goes up and down throughout the trading day like a stock and can be traded like a stock. Investors also could lose their principal.

“The challenge with bond ETFs is you are buying the debt in a bond ETF with little regard to the creditworthiness of the underlying bond issuers,” said Matthew Helfrich, president of Waldron Wealth Management in Bridgeville.

“If you have bond issuers who are already drunk on debt, you could — by buying their ETF — be giving them another drink.”

What makes bond ETFs more risky than individual bonds, which typically sell for a par value of $1,000 each, is that individual bonds have a fixed date at which they mature and investors get their $1,000 back.

Bond ETFs never mature because additional bonds are continually being bought and sold, therefore they can never offer the same protection for an investor’s initial investment.

And just by investing in the exchange traded fund, investors can be reducing the issuer’s creditworthiness, Mr. Helfrich said, adding that investors are adding money to a pool of funds that will be used by companies that may not be as creditworthy as buyers would prefer.

“Bond ETFs can be worthwhile for broad exposure to the bond market and the flexibility to trade, but you have to know exactly what you are doing,” Mr. Helfrich said.

With the Federal Reserve on course to continue raising interest rates for the foreseeable future, fixed-income investments, such as bonds, will be vulnerable. As interest rates rise, the value of existing bonds paying lower yields will fall as new bonds paying a higher yield gain value.

But owners of individual bonds will still receive all of their principal when a bond matures, regardless of how high rates have climbed.

The risk of losing money has not stopped investors from embracing bond ETFs. Data from the Washington, D.C.-based Investment Company Institute show the total net assets in bond mutual funds and bond exchange traded funds grew from $57 million in 2008 to $490 million as of May

2017.

“The good news is that bond ETFs provide diversification, which is crucial. But the bad news is there are hidden landmines in bond ETFs … ,” said Andrew Stoltmann, a securities lawyer based in Chicago. “It’s very hard to do your due diligence on the quality of the bonds inside the bond ETF because there are so many.”

The same advantages and disadvantages apply to bond mutual funds, which are actively managed and often charge higher fees than bond ETFs.

Bond ETFs, which charge expenses of less than a half a percent, have grown at a significantly faster rate than bond mutual funds, which usually charge fees of about 1 percent.

Bond ETFs, like bond mutual funds, come in a variety of flavors from treasuries to municipal and corporate bonds. Both pay regular dividends to investors. In addition to being cheaper, bond ETFs are more tradable and often more transparent than bond mutual funds.

Pittsburgh financial adviser Robert Fragasso, chairman and CEO of Fragasso Financial Advisors, Downtown, said his firm uses bond ETFs in client portfolios while recognizing that all of them are not created equal.

Many exchange traded funds will disclose to the public their holdings every day, in addition to the quarterly disclosure required for all mutual funds.

The challenge, Mr. Fragasso said, is that there could be dozens of bonds in an ETF with varying maturity dates and credit qualities, which require portfolio managers to devote considerable research before selecting a fund for clients’ portfolios.

“The future value of a bond ETF is contingent on knowing the dynamics of the bonds inside the ETF,” he said. He said investors need to understand the maturity or the credit quality of the bonds in the fund.

“So, later on when they’ve lost 20 percent of the value of the investment, they will cry that it’s a lousy product when in fact the fault lies squarely on the buyer who didn’t understand what they bought,” he said. “There are hundreds of bond ETFs out there, all with different profiles and different purposes. The [average retail buyer] is usually unaware of the differentiation.”

The Associated Press

Thursday July 13, 2017 09:02 AM

[Privatization Is Changing America's Relationship With Its Physical Stuff.]

Turning more and more infrastructure projects over to outside companies makes citizens more like customers.

Last month, paddlers in New York state floated their kayaks and canoes in the Erie Canal to celebrate the waterway’s 200th birthday. Workers first dug their shovels into the ground to start the construction of the ditch in 1817. Eight years later, over 300 miles opened for business, making it one of America’s first big gifts to itself.

There was no apparent connection between the anniversary and the promotion, days earlier, by the White House of “Infrastructure Week,” but the timing does invite some meditation. The spotlight event of the weeklong initiative took place on the banks of the Ohio River in Cincinnati, where President Trump gave a speech that left locals underwhelmed and infrastructure experts wondering if there really was a plan to rejuvenate America’s sorely lagging works.

Continue reading.

CITYLAB

BRIAN ALEXANDER JUL 12, 2017

Granof, Luby: P3s Won't Fix Funding Gap that Ails U.S. Infrastructure Needs.

President Donald Trump hasn’t fully outlined his prescription for making American infrastructure great again, but he has called for a major dose of public-private partnerships – known as P3s. These P3s, he promises, provide “better procurement methods, market discipline and a long-term focus on maintaining assets.”

True enough in some cases, but P3s are no cure-all for every public project. Despite the hype, the public-private approach does not provide new funding sources to communities, nor does it work for all types of public projects.

Most of us have seen a P3 at work in our community. The government contracts with a private company to finance, build and maintain a project – a road, for example. The company finances construction by borrowing money from banks or investors, or by issuing shares of stock. After some period, the company will turn over the road to the government. In the meantime, the company collects tolls on the road and is responsible for maintaining it. The tolls are expected to cover the maintenance, interest and principal on the debt and to enable the company to profit.

By contrast, in the more conventional arrangement, the government contracts with a private company to construct the road and finances the project by selling tax-exempt municipal bonds or pays for it with existing funds. The government is responsible for maintaining the road and for servicing the debt. It expects to cover its costs through taxes or tolls.

Think about what happens in both approaches. In both cases, a private company is contracted to do the work with financing from private-sector capital, and all of us bear the burden of cost, either through tolls or taxes. There is no “new” funding source.

P3s rearrange the risks and rewards of infrastructure projects. Under the P3 arrangement, the government does not appear to be incurring these costs, because it does not have to write the checks to pay for them. However, it is sacrificing the toll revenue collected.

The private-sector “owner” of the road bears the risk that tolls will not cover the costs, and it reaps the benefits if tolls exceed anticipated costs. But if the owner incurs major losses and is forced to declare bankruptcy, it falls upon the government to take back the project and ensure that it continues.

This situation is exactly what happened in Indiana recently when a private operator’s bankruptcy filing threatened to cause significant construction delays on a partially completed road. Something similar happened in Texas with the Texas 130 toll road connecting San Antonio and Austin. Toll revenues did not meet expectations.

But P3s are not without their benefits. They can often launch without the lengthy procedures mandated by government. P3 debt is not subject to debt limitations that the government may face and does not appear on its balance sheet. In some circumstances, the private owner of the project may, in fact, be capable of operating it more efficiently and effectively than a government can.

But ease does not equal abundance. In fact, the P3 approach does nothing to solve the fundamental infrastructure funding challenge faced by governments at the local, state and federal levels. According to a 2013 analysis by the American Society of Civil Engineers, the U.S. has more than a $1 trillion gap between current funding and estimated needs for surface transportation, airports, water, wastewater, inland waterways and other infrastructure projects. In the end, it is the public that must provide the funding, regardless of the structure of the project.

Even P3 enthusiasts will admit that many of the nation's infrastructure needs are for projects that do not generate direct revenue that would make them attractive P3 candidates. Road repaving, bridge and building maintenance, school construction, and telecommunication system expansions are common projects that may not generate revenue streams collectible through tolls or other means. The conventional government infrastructure approach is probably the only viable option for these public works.

American infrastructure needs rebuilding, and P3s belong in the mix of remedies available to the government. However, clear heads realize that P3s are not a blanket cure for the nation's infrastructure ills, but rather a targeted remedy with limited effect on the larger problem – a lack of funding.

Houston Chronicle

By Michael Granof and Martin Luby

July 11, 2017

Granof is the Ernst & Young Professor of Accounting at the University of Texas at Austin. Luby is an assistant professor in the LBJ School of Public Affairs at UT-Austin.

'Unshackled' from Rating Agencies, MBIA Seems Ready to Return Capital to Shareholders.

Bond insurer MBIA may be sold; meantime, it's buying back shares and may also issue a special dividend, say analysts.

Shares of bond insurer MBIA (MBI), which saw its business plans torpedoed by a two-notch credit rating downgrade late last month, were rising Wednesday after management indicated some shareholder-friendly moves are coming, even as it had to increase accounting for Puerto Rico-related losses.

In a letter to shareholders sent late Tuesday, MBIA's CEO Jay Brown and President & COO Bill Fallon wrote:

> As we no longer have the primary objective of maintaining a specific rating on our operating company, we are unshackled from most of the limitations imposed by the rating agencies.
> The stock was up 3.34% to $9.90 by 11 a.m. ET after some positive analysts comments.

MKM Partners Harry Fong suspects a special dividend may be in the offing. He wrote Wednesday:

> The company is still saying that it will not seek a special dividend from its New York regulator until it sees more clarity on the Puerto Rican debt situation. However, as it no longer needs to be concerned over maintaining a double-A rating at National Public Finance, we would expect the company to repurchase shares with the excess capital that resides in the unit. Recall that under the S&P triple-A capital model, National calculates that it has about $1.7 billion of excess capital.

Fong's view of the shares:

> We believe the potential for significant return of capital from MBIA make its shares an excellent short- and long-term investment opportunity, and we reiterate our Buy recommendation with a price target of $15, based on a multiple of about 0.5x our 2018 adjusted book value estimate of about $33.70.

MBIA insures municipal bonds, including ones issued by Puerto Rico, now in a form of bankruptcy. Bond insurers have to be rated higher than municipalities for the insurance to add any value. After the downgrade by S&P Global Ratings to single-A, it said it would no longer attempt to write new business.

It laid off worksers, cut costs and announced a new $250 million share buyback program. In the letter, it pre-announced its expected losses due to Puerto Rico and raised its loan loss reserves.

Analysts Mark Palmer and Giuliano Bologna of BTIG thinks MBIA will be sold eventually. They have a Buy rating and $14 price target. They write Wednesday:

> We continue to believe that with its new business prospects dashed at this point, MBI is likely to sell itself, with industry peer Assured Guaranty (AGO, Buy, $49 PT) the natural buyer. We also think both parties may look for a somewhat greater degree of clarity around the range of MBI's losses on its insured exposures to Puerto Rico's debt before pushing forward with negotiations.

Barron's

By Amey Stone

July 12, 2017 11:41 a.m. ET

Congress Will Rethink Investing in Cities.

Congressman Dan Kildee (D-MI 5th District) announced today that he is starting a new congressional forum to rethink how national policymakers invest in cities.

"My hometown of Flint has captured many newspaper headlines in recent years," he said in a recent release. "But even before the water crisis, Flint faced unique challenges as an older, industrial city: population loss, the outsourcing of jobs and rampant blight. Flint isn't an anomaly; a whole subset of America's cities and towns face similar challenges. There are places in every region of the country, like my hometown, that face similar stressors."

Kildee's new initiative, titled "The Future of America's Cities and Towns," will include policy discussions with local, state and federal elected officials to focus on the challenges facing older, industrial communities like Flint. The first roundtable, "The Current State of America's Cities and Towns," is planned for Wednesday and will feature Financial Services Committee Ranking Member Maxine Waters (D-CA 43rd District), and Karen Freeman-Wilson, mayor of Gary, Indiana, as well as representatives from The Brookings Institution, National League of Cities, and Center for Community Progress.

Federal and state investment in municipalities is a topic of central importance to Kildee.

"Having a municipal finance system that is not so completely dependent on only locally generated tax revenue is really important," he told Gordon Young in a Next City interview last year.

He added:

> My research over the years has pointed to a system of municipal finance that doesn't in the aggregate cost us all anymore than the current system. It probably costs less. It's sort of a German system where the federal government has a certain responsibility for funding municipal government; the state or regional governments have a certain responsibility; and the local tax base also has a certain responsibility.
>
> It's far more sustainable, and it allows us all to ride out the ebb and flow of the economy in ways that don't increase the cost of public services by having concentrated poverty and the loss of public services — all the things we see in a place like Flint.
>
> There was an element of this in place in the United States just a few decades ago. There was federal revenue sharing for cities and, of course, there was state revenue sharing for cities. So it's based on a concept that I remember from my time serving in local government. It was eliminated as part of what was once called "New Federalism" and is now a brand of the federalism that we have. Local municipalities are just out there on their own.

NEXT CITY

BY RACHEL DOVEY | JULY 11, 2017

Rachel Dovey is an award-winning freelance writer and former USC Annenberg fellow living at the northern tip of California's Bay Area. She writes about infrastructure, water and climate change and has been published by Bust, Wired, Paste, SF Weekly, the East Bay Express and the North Bay Bohemian.

Electronic Trading: Strengthening Best Execution in the Muni Market.

In preparing the municipal bond market in late 2015 for a new order-handling standard, the Municipal Securities Rulemaking Board took note of an important trend. "As the availability of electronic systems that facilitate trading in municipal securities increases," the MSRB wrote, "dealers need to determine whether these systems might provide benefits to their customer order flow."

The MSRB's guidance underscored a development seen in other markets and asset classes when electronic trading takes hold. As regulators move to raise execution standards, electronic trading comes to play a significantly more important role in the compliance process.

That is especially the case in a market as complex and fragmented as municipal bonds. Though about half the size of the U.S. corporate bond market in value, the muni market features about 20 times the number of securities and about 10 times the number of issuer entities, by one researcher's estimate. Those totals include a complicated variety of coupons and structures, as compliance officers can attest. It's not surprising that a large number of muni issues trade rarely.

Electronic trading proves especially valuable in markets such as municipal bonds, where liquidity is highly dispersed and discontinuous. Market participants gain the power to conduct price discovery efficiently across a broader range of potential counterparties, identifying trading opportunities not available to them through typical voice and messaging channels. Adding to the power of electronic trading in the municipal bond market in the last several months is the emergence of an "all-to-all" marketplace, in which dealers as well as asset managers can interact with one another on an anonymous basis.

In helping solve the muni market's liquidity puzzle, electronic trading has, in effect, raised the bar on best execution. Market participants who embrace fully integrated electronic trading strengthen their ability to achieve and validate best execution. Overall, electronic trading puts them in a better position to assess market quality across multiple sources of liquidity, audit their activities, measure their outcomes, fine-tune their policies and practices, manage operational risks and respond to customers.

Rule G-18's Execution Standard

Reflecting the muni market's complexities and its over-the-counter status, regulatory views on best execution have evolved slowly. It was only last year when the Municipal Securities Rulemaking Board put into effect its first explicit rule for best execution.

MSRB Rule G-18 creates "an order-handling and transaction-execution standard." The rule requires dealers to exercise "reasonable diligence" to determine the best market in the security it seeks to trade on behalf of a customer. Then dealers must buy or sell securities in that market so that the resulting price to the customer "is as favorable as possible under prevailing market conditions."

In its guidance, MSRB instructed dealers to establish policies spelling out how they meet the standards, and to review these annually in light of changes in market conditions and market structure, among other factors. The standard does not apply to investors with at least $50 million in assets as long as they affirm that they meet the MSRB definition of "sophisticated municipal market professionals," or SMMPs. Also excluded are inter-dealer trades, though customer trades cleared through another dealer are covered by the standard.

It was in the context of identifying the "best market" that the MSRB took note of the growing importance of electronic trading in its guidance in late 2015.

Since then, the emergence of the "all-to-all" electronic marketplace has begun to change the context for addressing the MSRB's standard. By bringing together bids and offers of major national and regional dealers as well as institutional investment managers, the "all-to-all" environment provides a previously unavailable, dynamic view of market quality and conditions incorporating a wide range of liquidity sources. Potential buyers and sellers see not only levels offered by dealers, but those offered by investment managers as well.

Operational Benefits

With these pricing and liquidity insights come a number of significant operational advantages. At the pre-trade stage, pricing history and current quotes are easily viewed, as well as evaluative data from two widely used sources. Pre-trade and post-trade integration with order management systems helps manage exposures and reduce operational risks. Rounding out these efficiencies is automated settlement.

Of prime importance to the compliance process is the detailed audit trail generated by electronic trading. This gives compliance staff a record of market conditions and levels available at the time of the trade. Audit trails open the way for post-trade analysis and provide relevant data for the annual reviews of dealers' policies and procedures required by Rule G-18. For investment managers, the audit trail can help them assess the quality of execution they are receiving.

As has been seen in other fixed-income categories, electronic trading starts slowly and then adoption rates over time tend to accelerate. Though in its early stages, all-to-all trading is poised to become a more important factor in the consolidation of muni market liquidity as investment managers grow more comfortable "making" prices as well as "taking" them. In that scenario, best execution — how to achieve and validate it efficiently and credibly — looks likely to remain among the leading factors driving increased adoption of electronic trading in the muni market in the months and years ahead.

The Bond Buyer

By Hardy Manges

July 10 2017, 9:00am EDT

Hardy Manges is Head of Municipal Dealer Sales at MarketAxess, responsible for new business development and strategy, training, and relationship management with dealers in the institutional municipal market.

2017 NMTC Progress Report.

Below find the NMTC Coalition's 2017 NMTC Progress Report, our annual report documenting the impact of the NMTC program.

WASHINGTON, June 7, 2017 — The New Markets Tax Credit Coalition today released its 2017 New Markets Tax Credit (NMTC) Progress Report the thirteenth edition of the report—providing a survey of NMTC activities in 2016. As in the past, the report documents the flexibility and impact of the NMTC in meeting the needs of the distressed communities where it is deployed and helping to create jobs and grow business opportunities, from more traditional industry and community sectors to new and cutting-edge technology. Projects which benefitted from the Credit in the past year include rural and urban incubators, small business loan funds, main street tourism, health clinics, manufacturing, schools and even robotics.

“Maybe it was the breathing room provided by the five-year NMTC extension enacted in December of 2015, or maybe it is the stiff competition for NMTC allocation,” said Robert W. Davenport, NMTC Coalition president and special advisor at National Development Council, “but last year’s crop of NMTC projects bests any previous year.”

The report was prepared for the NMTC Coalition, a national membership organization of Community Development Entities (CDEs) and investors organized to advocate on behalf of the NMTC. Every year since 2005, the NMTC Coalition surveys CDEs on their work delivering billions of dollars to businesses, creating jobs, and rejuvenating the parts of the country that have been left behind. The annual NMTC Progress Report presents the findings of the CDE survey and provides policymakers and practitioners with the latest trends and successes of the NMTC.

“The Coalition’s annual survey asks CDEs to report on the deployment of their allocation, investor trends, and a variety of community impact metrics,” said Coalition spokesperson Bob Rapoza. “The findings clearly demonstrate that the NMTC continues to deliver capital to the communities left behind by the changing economy, with 76 percent of projects in severely distressed communities in the last year—far exceeding statutory requirements. Moreover, the program is delivering a significant ‘bang for the buck’ for taxpayers in terms of the jobs, amenities, community facilities, and tax revenue it generates.”

Eighty-seven CDEs participated in the 2017 survey and provided data on their progress raising capital, lending, and investing in 2016 with the NMTC. Survey participants ranged from large, mission-driven national nonprofits to locally-focused community development organizations. The survey findings show that competition for credits continues to drive gains in efficiency. The data collected shows that CDEs used $1.8 billion in NMTC allocation in 2016 to financed 171 NMTC projects, amounting to $3 billion in total project costs, which created over 36,000 jobs in areas with high rates of poverty and unemployment.

“When Congress enacted the NMTC back in 2000, the purpose of the program was simple: to deliver private sector investment to low income communities,” added Rapoza. “Nearly two decades later, the NMTC has unleashed an unprecedented amount of investment in areas struggling with high unemployment and poverty, but more than that, it has created economic opportunity in every corner of the nation.”

Further demonstrating support for the NMTC, some 2,000 businesses, nonprofit organizations, banks and community leaders signed a letter in support of the NMTC that was delivered to the House and Senate tax-writing committees in early February of this year. A week later, Senators Roy Blunt (R-MO) and Ben Cardin (D-MD) introduced legislation in the Senate (S. 384), and Representatives Pat Tiberi (R-OH), Richard Neal (D-MA), and Tom Reed (R-NY) introduced a companion bill the House (H.R. 1098). The legislation provides a permanent authorization for NMTC, increases annual credit authority with inflation adjustments in future years, and exempts NMTC investments from the Alternative Minimum Tax. For examples of how the NMTC is making an impact in each state, see the NMTC Coalition’s NMTC at Work in Communities report or check out its Project Profile Map.

About New Markets Tax Credit Program
The New Markets Tax Credit was enacted in 2000 in an effort to stimulate private investment and

economic growth in low income urban neighborhoods and rural communities that lack access to the patient capital needed to support and grow businesses, create jobs, and sustain healthy local economies. The NMTC is a 39 percent federal tax credit, taken over seven years, on investments made in economically distressed communities. Today due to NMTC, more than $75 billion is hard at work in underserved communities in all 50 states, the District of Columbia, and Puerto Rico.

Contact: Ayrianne Parks
ayrianne@rapoza.org
(202) 393-5225

U.S. Municipal Debt Sales Estimated at $8.26 bln Next Week.

July 14 (Reuters) – U.S. states, cities, schools and other issuers will sell $8.26 billion of bonds and notes next week as debt issuance so far in 2017 lags the same period in 2016, according to Thomson Reuters estimates on Friday.

Year-to-date supply in the U.S. municipal bond market totaled $195 billion, a 14 percent drop from the $226.4 billion sold last year.

Barclays this week increased its 2017 supply forecast to a range of $380 billion to $400 billion from a range of $360 billion to $380 billion based on an expected uptick in refundings of outstanding bonds.

“As long as rates remain stable, we expect refunding activity to increase and to be driven by the strong new-money issuance of long-dated bonds a decade ago,” Barclays said in its weekly municipal report.

The coming week features several transportation-related deals.

The New Jersey Turnpike Authority will sell $597.7 million of revenue bonds through Loop Capital Markets on Tuesday. Bank of America Merrill Lynch will price $353 million of bonds backed by federal highway funds for Georgia’s State Road and Tollway Authority on Wednesday.

Federal grants also back $230 million of Chicago Transit Authority revenue bonds scheduled to price on Tuesday through Morgan Stanley.

The San Diego County Regional Airport Authority has $310 million of subordinate revenue bonds pricing on Tuesday through Morgan Stanley. About half of the bonds are subject to the alternative minimum tax.

In competitive bidding, New York state’s Dormitory Authority will sell nearly $1.35 billion of state sales tax revenue bonds on Tuesday. The four-part deal, rated AAA by S&P, includes $72.7 million of taxable bonds.

U.S municipal bond funds reported net outflows for a second straight week of $172.5 million for the week ended July 12, according to Lipper, a unit of Thomson Reuters.

(Reporting by Karen Pierog; Editing by Jonathan Oatis)

When the Trump Agenda Loses Steam, Muni Bonds Gain Momentum.

Municipal bonds were supposed to be among the biggest losers under a Trump presidency.

Shortly after the November election, muni bonds — issued by states, municipalities and local agencies to finance government projects — faced a "triple whammy," said Terri Spath, chief investment officer at Sierra Investment Management.

First, there was a sharp rise in market interest rates late last year in anticipation of the new Trump policies boosting economic growth. And rising rates are a headwind for bonds in general. Then there was the president's pledge to lower income tax rates, coupled with concerns that he might eliminate the tax-exempt status of muni income.

And finally, President Trump has promised to increase infrastructure spending by possibly $1 trillion — which, if it happens, could flood the muni market with additional supply, weighing on the price of existing muni securities.

But it hasn't turned out that way so far.

"Here we are, several months later, and the administration has had problems getting anything done," said Nicholos Venditti, a portfolio manager who helps run several municipal bond funds at Thornburg Investment Management. "There's been no health care reform yet, no tax reform and no clarity on spending."

Meanwhile, concerns about a slow-growing economy have resurfaced, pushing the yield on 10-year Treasury notes back down to 2.3 percent at the end of June, from as high as 2.62 percent in March. And the Treasury secretary, Steven Mnuchin, recently told the Senate Finance Committee that the Trump administration supported preserving the muni bond tax exemption.

The result of all of these developments is that muni bond mutual and exchange-traded funds have enjoyed a surprisingly good run this year.

For instance, the SPDR Nuveen Bloomberg Barclays Municipal Bond ETF, whose biggest holdings include revenue bonds issued by the California State University system as well as the University of California, has generated total returns of 3.6 percent this year and 2.2 percent in the recently ended quarter.

Even before investors factor in the tax break (muni income is exempt from federal taxes and, in some cases, state taxes as well), that performance compares favorably with the 2.3 percent returns for the Vanguard Total Bond Market ETF this year and the 1.6 percent gains in the last quarter.

Going forward, though, navigating the muni bond landscape will get a whole lot trickier, money managers say.

Even if Mr. Trump cannot produce annual growth of greater than 3 percent, which has eluded the economy lately — or the 4 percent rate that the White House promised earlier this year — the administration is still planning to move forward on its efforts to cut taxes.

Ultimately, how much income tax rates eventually come down, if at all, will help determine the direction of muni bond prices. But the tax cut debate itself is likely to create short-term volatility for these investments.

What’s more, muni investors are largely following a conservative strategy.

“You can see where investors are hiding out,” says Mark R. Freeman, co-manager of the Westwood Income Opportunity Fund. “Everybody is bunched up at the short end of the curve,” he said, referring to muni debt with a maturity of no more than five years.

That demand for shorter-term munis has made it harder to find great values. In fact, it has compressed the so-called yield spread — the gap between what short-term muni bonds are paying and what similarly dated Treasuries yield.

For example, the average high-quality two-year municipal bond is paying 1.06 percent, according to Bloomberg, while two-year Treasuries are paying considerably more: 1.36 percent.

By comparison, 30-year munis are paying virtually the same as Treasuries before the tax benefit is factored in: 2.87 percent before the tax break, versus 2.92 percent for equivalent Treasuries. And for someone in the 25 percent tax bracket, that 2.87 percent is actually the equivalent of a 3.83 percent taxable yield.

To be sure, long-dated bonds are susceptible to larger drops in price should interest rates rise. And with the Federal Reserve lifting short-term rates, taking on that much so-called duration risk by buying extremely long-dated bonds does not seem to make sense, money managers say.

Gregg S. Fisher, founder of the investment management firm Gerstein Fisher, says investors should remember a big reason for buying muni and other core bonds in the first place: “For the certainty that they present,” he said.

That’s why he suggests investors play it relatively safe for the foundation of a muni portfolio, by sticking with bonds that are from high-quality issuers with investment-grade ratings (reducing the risk of a default) and that mature in less than five years.

“Our preference for any client, no matter what state they live in, would not be to buy 100 percent of their bonds issued in any one state,” he said. “You should diversify across the country,” he added, even if doing so forgoes some state tax breaks.

Ajay Thomas, head of municipal securities at William Blair, agrees that investors should mostly be considering investment-grade municipal bonds. But he points out that as investors venture out to the lower end of the high-quality bond universe and the higher end of the low-quality world, they may start to see better opportunities.

“You’re not necessarily seeing a big difference in yields if you go from a AAA-rated bond to a AA bond,” he said. “But if you go below A, there’s clearly some spread.” He noted that there were some decent opportunities among munis related to health care and higher education in this category.

Ms. Spath of Sierra Investment Management also said that higher-yielding munis are worth a look.

Sierra sold all its muni holdings shortly after the presidential election last year, amid mounting pressures weighing on these investments, Ms. Spath said.

But in early January, as some of the reaction to the Trump victory subsided, the firm moved back into muni bonds.

Today, Sierra’s municipal bond exposure is entirely in high-yield muni funds, she said.

“High-yielding municipals are currently yielding roughly the same as high-yield corporate bonds, and that doesn’t make sense,” she said, noting that many investors are totally overlooking the tax benefit these securities provide.

She said the firm preferred investing in munis through a fund, in part because of the diversification advantage but also because institutional buyers can often obtain better prices.

Among Sierra’s top muni holdings is Nuveen High Yield Municipal Bond fund, with an average credit quality of BB, which is at the upper end of noninvestment grade bonds.

Nearly one third of that fund’s holdings are in debt tied to health care or education and civic organizations. Among its top holdings recently were B-rated debt issued by the Chicago Board of Education at a coupon of 7 percent and AA-rated debt issued by the University of Kansas Hospital Authority with a coupon of 5 percent.

THE NEW YORK TIMES

By PAUL J. LIM JULY 14, 2017

TAX - CALIFORNIA

Jacks v. City of Santa Barbara

Supreme Court of California, California - June 29, 2017 - P.3d - 2017 WL 2805638

Utility consumers, who incurred one percent surcharge on their electricity bills collected by electric company and remitted to city, filed class action complaint against city, seeking order declaring that surcharge was invalid as a tax imposed without voter approval, enjoining city from further collection of surcharge, and requiring city to repay revenues already collected.

The Superior Court granted city summary judgment. Consumers appealed. The Court of Appeal reversed and remanded with directions. City petitioned for review. The Supreme Court granted review, superseding the opinion of the Court of Appeal.

The Supreme Court of California held that city’s surcharge on electric company’s gross receipts was compensation for use of government property rather than a tax subject to voter approval, if it bore a reasonable relationship to the value of the property interest.

Sums paid for the right to use a jurisdiction’s rights-of-way are fees rather than taxes under the Right to Vote on Taxes Act, but to constitute compensation for the value received, the fees must reflect a reasonable estimate of the value of the franchise, and fees are taxes to the extent the fees exceed a reasonable amount in relation to the benefits or costs underlying their imposition.

City’s surcharge on electric company’s gross receipts was compensation for use of government property rather than a tax subject to voter approval under the Right to Vote on Taxes Act, if it bore a reasonable relationship to the value of the property interest, even though the electric company passed the surcharge on to customers by including part of it in the rates paid by customers and separately stating the rest on the bill, since the surcharge was a payment made in exchange for a property interest that was needed to provide electricity to city residents.

TAX - CALIFORNIA

926 North Ardmore Avenue, LLC v. County of Los Angeles

Supreme Court of California - June 29, 2017 - P.3d - 2017 WL 2806261

Single member limited liability company (LLC) apartment building owner brought action for tax refund after it was required to pay a documentary transfer tax, based on the value of the apartment building, when its single member partnership sold approximately 90% of its partnership interests to two trusts.

The Superior Court entered judgment for county. LLC appealed, and the Court of Appeal affirmed. The Supreme Court granted review, superseding the opinion of the Court of Appeal.

The Supreme Court of California held that:

- Transfer tax is not a fee paid in connection with the recordation of deeds or other documents evidencing transfers of ownership of real property, but rather is an excise tax on the privilege of conveying real property by means of a written instrument, disapproving *City of Cathedral City v. County of Riverside*, 163 Cal.App.3d 960, 210 Cal.Rptr. 60;
- Written instrument conveying an interest in a legal entity that owns real property may be taxable under the Documentary Transfer Tax Act, even if the instrument does not directly reference the real property and is not recorded; and
- Transfer was subject to documentary transfer tax.

Apartment building owned by limited liability company (LLC) had changed ownership when partnership interest were transferred and thus was subject to documentary transfer tax. Building initially was owned by trust beneficiary, who maintained beneficial interest when building was transferred to trust, trustees established LLC, with trust as sole member, to acquire and hold building, trust transferred its membership interest in LLC to partnership and divided partnership interest among four subtrusts established for beneficiary’s benefit such that beneficiary maintained beneficial interest, but three of those four subtrusts subsequently transferred their interests to trusts maintained for beneficiaries sons such that they obtained an interest in building.

SIFMA Submits Comments to the IRS on Proposed Regulations Defining Political Subdivisions.

SIFMA provides comments to the Internal Revenue Service (IRS) on proposed regulations defining political subdivisions. The Proposed Regulations provide guidance re-defining the definition of political subdivision for purposes of entities that may qualify as issuers of tax-exempt bonds under section 103 of the Internal Revenue Code of 1986.

Read the comments.

May 23, 2016

Market Groups Likely to Urge Agencies to Scrap Political Subdivision Rules.

WASHINGTON – Municipal market participants will most likely recommend the Treasury Department and the Internal Revenue Service scrap their controversial proposed rules that seek to redefine which political subdivisions can issue tax-exempt bonds, several attorneys said on Monday.

The rules were listed among eight tax regulations that were either proposed, issued as temporary, or finalized between Jan. 1, 2016 and April 21, 2017 and found by Treasury to be significant and to warrant abandonment or major modifications under an executive order President Trump issued on April 21.

The list of eight was announced by the IRS on Friday in Notice 2017-38, which is to be published in the Internal Revenue Bulletin on July 24. Treasury asked market participants to submit public comments to it by Aug. 7 on whether the regulations "should be rescinded or modified."

The political subdivision rules were proposed in February 2016 by Treasury and the IRS to redefine what constitutes a political subdivision that can issue tax-exempt bonds.

Under longstanding federal law and rules, an entity is a political subdivision that can issue tax-exempt bonds if it has the ability to exercise a substantial amount of at least one of three sovereign powers – taxation, eminent domain and policing.

But Treasury and the IRS, which became concerned that some political subdivisions were controlled by private developers, proposed adding two more requirements to that definition. They said a political subdivision must also be governmentally controlled and serve a governmental purpose "with no more than an incidental private benefit."

"I think that practitioners will be happy to see that rule withdrawn," said Dee Wisor, a lawyer at Butler Snow in Denver. "Practitioners would prefer to go back to what the rule was."

Both the National Association of Bond Lawyers and the American Bar Association's Taxation Section have urged Treasury and the IRS to withdraw the proposed rules. The ABA group warned the proposed rules are over-reaching, ignore congressional intent, run counter to decades of practice, and cast doubt on many legitimate entities that currently issue tax-exempt bonds.

Tom Vander Molen, a lawyer with Dorsey & Whitney in Minneapolis who heads NABL's tax law committee, said the notice on the eight regulations was "a positive development" and that he expects NABL to reiterate its call for Treasury and the IRS to withdraw the proposed rules on political subdivisions. But he cautioned that NABL has not made any decision yet.

John Vahey, managing director of federal policy for Bond Dealers of America, said, "BDA agrees with Treasury's assessment that the proposed political subdivision rule represents an undue increase in both complexity and regulatory burdens. The rule, as proposed, is overly broad and would result in government entities being unnecessarily denied the ability to finance economically beneficial public projects in the tax-free municipal market and BDA looks forward to submitting additional comments in August."

The Securities Industry and Financial Markets Association also urged the IRS in previous comments to withdraw the proposed rules.

Emily Brock, director of the federal government liaison center for the Government Finance Officers Association, said the group previously recommended withdrawal of the proposed regulations due to the far-reaching scope and potential impact to political subdivisions and the essential public services they provide across the US.

She said also that a coalition of issuers joined together to explain to Treasury and IRS officials that the determination of a subdivision's governmental purpose is made during the consideration of state legislation that authorizes the creation of the political subdivision. The group noted that if a political subdivision does not serve the purpose of the authorizing legislation, it is operating ostensibly against the law of that state and that this is an issue for the state, not the U.S. Treasury.

The list of eight regulations stem from Trump's Executive Order 13789, which was issued on April 21 and directed the Treasury secretary and administrator of the Office of Information and Regulatory Affairs to identify regulations issued as temporary, proposed, or finalized during the almost 16 months that: impose undue financial burdens on U.S. taxpayers; add undue complexity to federal tax laws; or exceed the statutory authority of the IRS.

Treasury said it found 105 regulations during that period, 52 of which were considered to be potentially significant, and identified eight of them as needing a reduction of tax burdens.

The IRS notice asked any commenters that want the rules to be modified rather than withdrawn, to describe the modifications that would "reduce burdens and complexity."

The IRS said that in opposing the proposed political subdivision rules, the "commenters stated that the longstanding 'sovereign powers' standard was settled law and had been endorsed by Congress, and additional limitations were unnecessary."

"Commenters also stated that the proposed regulations would disrupt the status of numerous existing entities and that it would be burdensome and costly for issuers to revise their organizational structures to meet the new requirements of the proposed regulations," the agency said.

The Bond Buyer

By Lynn Hume

Tens of Billions in 'Corporate Welfare' Tax Deals About to be Exposed Like Never Before.

- Special deals given by states to companies, including Apple, Google, Facebook, Microsoft and Amazon, can cost as much as $2 million per job.
- One analysis of Mississippi's deal to land a Nissan auto plant found it four times more expensive as was known, and the costliest deal ever to bring in a foreign manufacturer.
- A new accounting rule, GASB 77, will reveal to taxpayers tens of billions of dollars in spending never before disclosed and should result in a new debate about "corporate welfare."

Continue reading.

CNBC

by Greg LeRoy, director of Good Jobs First

Tuesday, 11 Jul 2017 | 4:40 PM ET

Can Communities Finance Their Own Projects?

Cities across the country are in revival mode. Neighborhoods once isolated are now connected. Once dangerous roads are now safer for pedestrians and cyclists.Towns are facilitating projects that bring with them increased commerce and housing.

But those projects need financing, and when a city doesn't have enough money, it borrows. Typically, municipalities issue municipal bonds to cover the costs of a project, which a bank underwrites. Then,the municipal government pays interest to the bondholders using residents' taxes.

Meanwhile, bondholders live all over the world, oblivious to the projects they're helping to finance and the community paying them interest. Bonds can also be part of an index fund managed by a securities firm, so investors do not have a direct relationship with the projects they finance.

That's the old way of municipal finance. But today, cities are experimenting with new financial technologies that can tap financial resources from more people at the local level, giving residents investment opportunities and a stake in the project's success. They're called "mini-bonds." Like the name suggests, mini-bonds are types of municipal bonds that are issued in smaller denominations. While the threshold to purchase a municipal bond is $5,000, mini-bonds can be issued in denominations of $500 or $1,000, or however much a municipality decides. Purchasers are paid back in tax-free interest over the bond's life span.

Do well by doing good

"Theoretically, it's a nice idea, but there is some risk," said Professor Thomas Davis of the Bloustein School of Planning and Public Policy at Rutgers University. Davis has experience dealing with mini-bonds, but it's not been positive.

Mini-bonds played a significant role in the demise of his former employer, Lehman Brothers, when each bond had to be marketed the old-fashioned way by going through big investment banks, which put up barriers to investment, such as trading fees ($50 for an equity trade, for instance).

"The main thing that you want to look at to make it viable is the revenue stream," Davis said. Ideal for the use of mini-bonds would be small-scale projects that many residents in the community can get behind.

Bayonne's Master Plan explores the idea of a crosstown bus system similar to the HOP system in Hoboken to transport residents to the light rail stations. Westside residents are excited at the idea of not having to drive across town and find parking, while residents near light rail stations would like to see their parking preserved.

Projects like this are deemed financially unfeasible by pragmatic local officials, but mini-bonds theoretically could help expedite projects that have public support while giving residents more control over their built environment. "It can be a little tricky, and there would be an art to it," Davis said. But it is possible.

The City of Bayonne considered issuing them in the past without new financial technology, but ultimately decided against it. "A number of years ago we had looked at it," said Bayonne Chief Financial Officer Terrence Malloy, noting that the cost of issuing the bonds and keeping track of the payments was too costly to make it worthwhile for the city. "It just didn't make sense for us at the time."

Opening the door to opportunity, and risk

According to a white paper from the conservative Brookings Institute called "Changing Patterns in Household Ownership of Municipal Debt," the percentage of Americans who own state and local government bonds is shrinking. In 1989, 23.8 percent of all municipal bonds were held by the wealthiest 0.5 percent of Americans. In 2013, that same group owned 42 percent of all municipal bonds. The percentage of Americans who own municipal bonds is down, too, from 4.6 percent in 1989 to 2.4 percent in 2013.

"If you want to complain about cracks in your sidewalk or in your bike lane, put your money where your mouth is," said James McIntyre, a former investment banker at Morgan Stanley and UBS who now works for a San-Francisco-based startup called "Neighborly." This digital municipal bond brokerage firm contracts its proprietary software to municipalities to market mini-bonds to local residents.

McIntyre said one of the greatest benefits of Neighborly, and other digital brokerage companies, is its potential to create stakeholders out of community members rather than onlookers. Purchasing a mini-bond from Neighborly is easier than going through a brokerage house. A simple application lets residents purchase mini-bonds through a digital shopping cart.

"We think financial technology can help lower that cost structure around lowering transactions," McIntyre said. He sees this new form of financing as an addition to bond financing, not just an alternative.

"When you're able to bring all investors to the table, that's where you're going to find your total source of capital," he said. "We want engaged communities that are interested in investing in itself, literally and figuratively."

Cities onboard

Neighborly software is picking up steam, most recently in cities like Cambridge; Burlington, Vermont; Denver; and Lawrence, Kansas. The company has helped sell bonds to build affordable housing in cities in New York and Oregon. Other online municipal bond brokerages have helped fund small-scale projects in other municipalities as well.

Chief financial officers and business administrators are familiar with the concept, but unfamiliar with the new technology and its potential benefits. Officials agree that projects should have community input, but have apparently grown accustomed to a finance industry dominated by big investment banks. One of the hardest parts of issuing bonds is getting competitive bids for them, which is helped by the few powerful investment banks that have access to the world's capital.

"Even in terms of getting competitive bids, if you go back 20, 25 years, it used to be very common for a small broker or bank to directly buy your bonds and sell them to their customers," Malloy said. "It used to be localized. Now with these very large money market funds and tax-exempt funds, that is where the money is going."

Malloy's comment points to the great irony that resources are most available to individuals and communities in the least need of resources.

The profit motive

Is big investment banks' entanglement in municipal finances good in the long term? "Unfortunately I have to lean toward no, because they're in it for the profit," said Davis. "And the places that usually need public financing need that for a reason. It's because they need help. However, if areas that are more in need of financing are willing to pay a higher interest rate, then the investment banks will be interested."

Davis and local officials agree that the technological innovation and sophistication of investment banks are indispensable resources for municipalities, but mini-bonds can play a vital role in opening investment opportunities to residents and getting the community more involved.

In places with less growth and a more stable tax base, like Secaucus, mini-bonds may not be as feasible.

"We haven't looked at [mini-bonds] maybe because we've just been very fortunate with our tax revenue," said Secaucus Business Administrator Gary Jeffas."We've had a good tax base to be able to fund most of our projects."

Secaucus doesn't typically fund small-scale urban projects like pedestrian walkways or street redesigns. In the future, though, anything is possible, especially now that mini-bonds are less costly to market. "Would it be feasible for something Secaucus does in the future?" Jeffas asked."It might be something we explore."

Hudson Reporter

by Rory Pasquariello

Jul 12, 2017

Rory Pasquariello can be reached at roryp@hudsonreporter.com.

SIFMA Asks SEC to Reject 'Inefficient' MSRB Account Transfer Proposal.

WASHINGTON – The Securities Industry and Financial Markets Association is urging the Securities and Exchange Commission to reject proposed Municipal Securities Rulemaking Board changes on customer account transfers, saying the amendments are inefficient and that the board would be better off simply cross-referencing other regulators' rules.

Bond Dealers of America is not asking the SEC to disapprove the proposal, but is seeking several changes including extending the period between when the changes are adopted and when they become effective to give dealers more time to adjust to a number of amendments taking effect then.

The SIFMA and BDA comments respond to an SEC filing from the MSRB containing proposed changes to MSRB Rule G-26 on customer account transfers. Rule G-26 currently requires dealers to cooperate in the transfer of customer accounts and includes various procedures for carrying out the transfer process. A transfer occurs when a customer decides to transfer an account from one dealer, the carrying party, to another, the receiving party. G-26 lays out specific time frames during which the transfers must occur as well as limits on why the receiving party can protest a customer's transfer instruction.

The rule was adopted in 1986 and is part of an industry-wide initiative to create a uniform customer account transfer standard, according to the MSRB. The standard is primarily driven by the Automated Customer Account Transfer Service (ACATS) of the National Securities Clearing Corp.

(NSCC). ACATS is a system that facilitates the transfer of securities from one trading account to another at a different brokerage firm or bank.

The MSRB's rule, which governs municipal security-only customer account transfers, is similar to other self-regulatory organization rules, such as New York Stock Exchange's Rule 412 and Financial Industry Regulatory Authority's Rule 11870. The MSRB periodically modifies its requirements under G-26 to conform to provisions in the parallel rules of other self-regulatory organizations, which have changed somewhat in recent years, so that there is a consistent standard.

SIFMA echoed its past comments to the MSRB in its most recent letter, saying that Rule G-26 in its current form is unnecessary and that dealers would be better off having the MSRB cross-reference the other regulators' rules, particularly FINRA Rule 11870.

"SIFMA and its members feel the proposed amendments take an approach that is a step backward; instead of supporting rulebook simplification and harmonization and promoting automation to facilitate faster transactions, the proposed amendments are inapposite," wrote Leslie Norwood, managing director and associate general counsel with SIFMA.

Norwood added that SIFMA still believes that most of the firms subject to G-26 and no other regulatory rules regarding account transfers don't participate in ACATS anyway.

The MSRB responded to FINRA's past suggestions by saying that if it were to simply incorporate FINRA's Rule 11870 by reference, it "potentially could be seen as delegating its core mission to protect investors, issuers, and the public interest and to promote a fair and efficient municipal market."

SIFMA said it strongly disagrees with the MSRB's rationale for rejecting their recommended approach and pointed to other MSRB rules like G-41 on anti-money laundering compliance program and G-35 on arbitration that include cross-references.

"In this instance, the MSRB would not be seen to be delegating its core mission to protect the municipal securities market, as there is nothing particularly unique regarding the transfer of customer accounts with respect to municipal securities," Norwood wrote.

She added that if the MSRB stays with its decision against cross-referencing, it could choose to instead allow FINRA member firms to follow FINRA 11870 and NYSE member firms to follow NYSE Rule 412 instead of G-26 while also requiring firms not covered by either to follow Rule G-26.

"If the primary purpose of the changes and the draft amendments is to re-establish consistency with ACATS and the rules of other SROs by conforming G-26 to significant updates by the NSCC, the NYSE and FINRA that have relevance to municipal securities, the best way to accomplish this is to have one governing rule that is cross-referenced by the other self-regulatory organizations," Norwood wrote.

Additionally, SIFMA said that having different rules for account level transfers could result in: additional compliance burdens, conflicting examiners from different regulators applying different rules to the same customer account transfer, and confusion among customer.

"We feel these reasons are significant enough to warrant complete rule harmonization governing these procedures," Norwood wrote.

Both SIFMA and BDA included concerns in their letters about the need to harmonize the timeframes under MSRB Rules G-26 and G-12 on uniform practice with FINRA rule 11870 because G-12 was recently amended to shorten the amount of time dealers had to close out account transfer fails. Both dealer groups said FINRA should harmonize its rule to those of the MSRB.

BDA also proposed that the effective date be changed from some time around January 2018 to about 180 days after the adoption of the Department of Labor's principal trading and best interest contract exemptions, which are to become applicable on Jan. 1, 2018. The group said that having an effective date around January 2018 would add to already significant regulatory changes dealers will have to be adjusting to around that time.

BY SOURCEMEDIA | MUNICIPAL | 07/06/17 07:08 PM EDT

By Jack Casey

MSRB Names General Counsel and Chief Compliance Officer.

Washington, DC – The Municipal Securities Rulemaking Board (MSRB) announced today that it has promoted Michael L. Post, who has held leadership roles in the MSRB's Market Regulation department since 2013, to serve as General Counsel. In this role, Post will serve as senior legal counsel and policy advisor to the Board of Directors, and will oversee Board governance, rulemaking for municipal securities dealers and municipal advisors, regulatory relationships and legislative affairs.

"Mike has successfully guided the MSRB's regulatory affairs through an intense period of rulemaking, driven in part by our expanded mandate under the Dodd-Frank Act and the priorities outlined in the 2012 Securities and Exchange Commission Report on the Municipal Securities Market," said MSRB Executive Director Lynnette Kelly. "He is a trusted advisor to the Board and we are thrilled to have him step into this role as our Chief Legal Officer, Bob Fippinger, departs at the end of the month."

Before joining the MSRB as Deputy General Counsel in 2013, Post served for more than 10 years in various senior roles at the Securities and Exchange Commission (SEC). From 2007 to 2009, he was Counsel to Chairman Christopher Cox, advising on a wide range of legal, policy and management issues arising primarily out of the Division of Trading and Markets, Division of Enforcement and Office of Municipal Securities. He also served as a senior litigation counsel in the appellate group in the SEC's Office of the General Counsel and received the Manuel F. Cohen Outstanding SEC Younger Lawyer Award. From 1998 to 2003 Post was in private practice in the Supreme Court and appellate litigation group at Sidley Austin LLP. He began his legal career as a judicial law clerk to Judge Paul J. Kelly, Jr. on the U.S. Court of Appeals for the Tenth Circuit.

Post earned a juris doctor from The George Washington University Law School, a master's of public administration degree in public policy analysis from Arizona State University and a bachelor's degree in economics from the University of California, Los Angeles.

The MSRB also announced that it has named Gail Marshall Chief Compliance Officer. Marshall has served as Associate General Counsel – Enforcement Coordination since 2015. She is responsible for managing the MSRB's professional qualifications program, enforcement support initiatives and internal corporate legal activities.

"Gail is an indispensable resource for fellow securities regulators and MSRB-regulated firms," Kelly said. "She works tirelessly to support industry needs and facilitate regulatory compliance."

Prior to joining the MSRB as Associate General Counsel in 2015, Marshall served as Of Counsel at Bingham McCutchen LLP from 2000-2015 where she advised broker-dealers and investment advisers on compliance with federal, state and self-regulatory organization regulatory matters, and represented clients in examination and enforcement proceedings. Earlier she was an attorney with the SEC where she served as special counsel to Commissioner Isaac C. Hunt, Jr., as well as special counsel in the Division of Trading and Markets and Division of Enforcement.

Marshall received a master's of law in securities and financial regulation from Georgetown University Law Center, a juris doctor from New England School of Law and a bachelor's degree in management from Westfield State University.

Date: July 10, 2017

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

T+2 Webinar: Shortened Settlement Cycle - What You Need to Know.

Thursday, July 20, 2017

2:00 – 3:30 p.m. EST

The standard settlement cycle will shorten for most transactions from three business days after the trade date (T+3) to T+2 on September 5, 2017. This industry-led initiative, guided by the T+2 Industry Steering Committee, will significantly reduce counterparty risk, increase capital efficiency, harmonize U.S. markets with other global markets, and create operational efficiencies.

At this Webinar, industry subject matter experts will address the migration to a shortened settlement cycle broadly, assist clients and participants as they execute implement operational and technology changes at their firms, provide information regarding industry support during the conversion period, and any answer questions participants may have regarding the move to a shorter settlement cycle.

This Webinar is ideal for operations staff, compliance staff, project managers and legal staff – particularly those who support smaller broker dealers, asset managers, service providers, clearing firms, and custodians as well as issuers of securities and those who counsel issuers of securities.

Register.

MSRB Provides Implementation Guidance on Mark-up Disclosure.

Washington, DC – In advance of the May 2018 implementation of landmark new regulations that enhance the transparency of costs associated with municipal securities transactions for retail investors, the Municipal Securities Rulemaking Board (MSRB) is providing extensive guidance to assist municipal securities dealers in preparing to comply.

Amendments to MSRB Rule G-15 require dealers to disclose additional information on retail customer confirmations for a specified class of principal transactions, including the dealer's mark-up or mark-down as determined from the prevailing market price of the security. Today's guidance, provided in a clear question-and-answer format, addresses the new confirmation disclosure requirements, determination of the prevailing market price and disclosure to customers of the time of execution of trades and link to more security information on the [Electronic Municipal Market Access (EMMA®) website](). [Read the FAQs.]()

"By offering additional guidance with nearly a year remaining for firms to prepare, the MSRB aims to facilitate the industry's adoption of this historic new level of price transparency for retail investors," said MSRB Executive Director Lynnette Kelly. "Today's guidance is one example of the MSRB's [renewed commitment to supporting regulated entities' compliance]() with new and existing standards of conduct. Regulated entities can expect to see additions to these FAQs as more questions on the mark-up rule arise, as well as best practices and other compliance resources on a variety of topics in the months ahead."

The mark-up disclosure requirements were approved by the Securities and Exchange Commission on November 29, 2016 and take effect on May 14, 2018, affording dealers approximately 18 months from the adoption of the amendments to develop appropriate processes and systems.

To further support understanding of and compliance with changes to Rule G-15, the MSRB will host a half-day seminar on November 2, 2017 in Washington, DC to give municipal securities dealers the opportunity for an in-depth discussion of the mark-up disclosure requirements and the determination of prevailing market price. [Register to attend.]() [Register to participate via webcast.]()

If needed, the MSRB will host a half-day seminar on an additional date in 2018 to provide further opportunity for in-depth discussion. The MSRB also will be providing education to retail investors to promote understanding of the new information available on their trade confirmations.

The MSRB continues to work in coordination with the Financial Industry Regulatory Authority (FINRA), which has adopted similar confirmation disclosure rules and corresponding guidance for other areas of the fixed income markets.

Date: July 12, 2017

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

MSRB and the Municipal Forum of New York Host Municipal Finance Day in Washington, DC.

Washington, DC – The Municipal Securities Rulemaking Board (MSRB) and the Municipal Forum of New York will host recent high school graduates participating in the 2017 Urban Leadership Fellows Program for "Municipal Finance Day" in Washington, DC on Friday, July 14, 2017.

"This is the sixth consecutive year that the MSRB has connected young people who are interested in careers in public finance with the industry's regulators and policymakers," said MSRB Executive Director Lynnette Kelly. "Each year we are energized and excited to inspire the next generation of leaders and innovators in the municipal securities market."

The Urban Leadership Fellows Program provides underserved graduates of New York City's public high schools with an opportunity to explore careers in finance through a paid summer internship. The participants' visit to Washington, DC supplements the practical skills gained at their internships with an understanding of the legal, regulatory and policy implications facing the municipal securities market.

This year's featured speakers at Municipal Finance Day include Representative Gwen Moore of Wisconsin; Hester Peirce, Director, Financial Markets Working Group and Senior Research Fellow, Mercatus Center at George Mason University; and MSRB Executive Director Lynnette Kelly.

The Municipal Forum of New York has sponsored the Urban Leadership Fellows since 1992 through its Youth Education Fund.

Date: July 13, 2017

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

GASB Issues Exposure Draft, Certain Disclosures Related to Debt, including Direct Borrowings and Direct Placements.

Read the draft.

07/12/17

Bipartisan Mayors to Call on Congress to Save Community Development Block Grants (CDBG) Ahead of Congressional Markup.

WASHINGTON, DC—Today, Tuesday, July 11 at 1 pm ET, a bipartisan group of mayors representing the U.S. Conference of Mayors (USCM) will host a press conference call to call on Congress to reject a White House proposal to eliminate the Community Development Block Grant Program (CDBG), which supports critical housing, infrastructure, and small business and economic development programs in communities across the nation. A House Subcommittee on Appropriations is scheduled to hold a markup later in the day on the Department of Housing and Urban Development's budget, which includes CDBG funding.

During the call, Mayors will point to critical projects funded under the CDBG program, including housing programs, infrastructure/community development, and social services. USCM has outlined the positive effects of CDBG projects in CDBG Works: How Mayors Put CDBG to Work, showcasing the impact of CDBG projects in over 120 cities.

As the most flexible stream of federal dollars allocated directly to local governments that are used for broad purposes, Community Development Block Grants touch the lives of nearly every American in some fashion. Administered through the Department of Housing and Urban Development, CDBG funds reach more than 7,000 rural, suburban and urban communities and support housing investments, public infrastructure improvements, enhanced public safety services, employment training, as well as services for seniors, youth and the disabled.

Most recently, USCM President New Orleans' Mayor Mitch Landrieu issued a new policy proposal, Mayors' Agenda for the Future, which called on the federal government to allocate additional resources directly to cities and counties through the CDBG program – stipulating that these additional funds be first used to invest in low and moderate-income neighborhoods to accelerate infrastructure improvements and make neighborhoods more "investment ready." Such commitments to address street safety concerns and expand mobility options can help address income inequality, specifically by improving access to jobs and lowering household transportation costs.

Bloomberg Brief Weekly Video - 07/13

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

Watch video.

Bloomberg

July 13, 2017

The Week in Public Finance: Lobbying Congress on the 'Tax Perk,' Chronic Deficits and the Credit Threat in Illinois.

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

GOVERNING.COM

BY LIZ FARMER | JULY 14, 2017

Management Strategies for an Era of Budget Uncertainty.

To minimize the impact on services from future spending cuts and economic downturns, governments need to take a proactive, multi-year approach.

The National Association of State Budget Officers recently released its annual Fiscal Survey of the States, and the picture is not a particularly pretty one. Far from having completely rebounded from the Great Recession of 2007-2009, NASBO reports that states have continued to experience a slow recovery: Thirty-three of them projected fiscal-year 2017 revenues to come in slower than anticipated and 23 made mid-year budget cuts.

Moreover, while budgets are expected to recover somewhat for fiscal 2018, many states are preparing for a possible recession by taking actions such as building up their rainy day funds. In addition, there is the wild card of possible federal cuts, to Medicaid and other federally funded programs, that could make both state and local budgets even more volatile. Put all of this together, and it appears that what NASBO previously identified as the “new normal” — a world in which budget constraints are ubiquitous rather than cyclical — may indeed be upon us.

For state and local officials, this kind of budget situation requires an ongoing, conscious strategy of financial and program management to minimize impacts to citizens. Governments and their agencies can lessen the chances of service disruptions and degradations by anticipating and planning. Pushing problems and decisions about them into the future only works if we know that the future environment will be more hospitable than the present one. This seems a dicey proposition for states and localities, given the liabilities — pensions and infrastructure, to name two — that are already present.

Here are some specific actions, in addition to continuing to maintain healthy rainy day funds, that can and should be taken now to be better prepared for the inevitable budget uncertainty of the future:

Focus on efficiency and productivity: Actions that can bring more bang for the buck — carefully contracting out services, consolidating services between agencies and the like — can be considered much more thoughtfully and deliberately now than they can be later when agencies are responding to a mid-year budget cut.

Ask mission questions, prioritize and focus on performance: Many agencies, often through no fault of their own, may have experienced a kind of “mission creep.” Now is the time to reassess priorities by focusing on program performance and reassessing the need for high-cost, low-return initiatives. This increases the odds of avoiding the time-honored but ill-advised practice of across-the-board spending cuts — a strategy that implies that everything is equally important at the margin.

Consider long-term commitments: The underfunding of state and local pensions and retiree health care is well documented. States and local governments need to continue assessing the affordability of these and other future commitments and find ways — and the political will — to get them under control. Once they determine how generous these plans will be in the future, they need to develop a realistic strategy for funding them prudently, including catching up on any underfunding that may have occurred in the past.

There was a time when governments and their agencies could expect to be saved by the natural cycles of budgeting. If an economic downturn created budget problems for a year or two, temporary fixes might be sufficient until more normal times returned. But the new normal requires a new strategy that explicitly recognizes that only a multi-year strategy for budgeting and program management can truly confront the fiscal challenges that governments are virtually certain to face.

GOVERNING.COM

By Philip Joyce | Contributor

Professor at the University of Maryland School of Public Policy

JULY 12, 2017

[The Constitution Prevails as the Political Subdivision Regulatory Project Gets]

Trumped.

July 7, 2017 witnessed a once-in-a-career moment for any tax practitioner. On that date, the Treasury Department released Notice 2017-38, which acknowledged that eight regulatory projects are unduly burdensome and should be reconsidered for modification or repeal – a rare display of administrative modesty. Included in the list of burdensome regulations are the proposed regulations that would re-define the term "political subdivision" for purposes of which entities can issue tax-exempt bonds under Section 103 of the Internal Revenue Code (the "Political Subdivision Proposed Regulations," which we have previously analyzed here, here, here, here, here, and here).

The Political Subdivision Proposed Regulations are indeed unduly burdensome and therefore merited inclusion in Notice 2017-38. As discussed below, the Political Subdivision Proposed Regulations are also of dubious constitutionality.

Continue reading.

The Public Finance Tax Blog

by Michael Cullers

July 12 2017

Squire Patton Boggs

Treasury: Proposed Political Subdivision Regulations are "Burdensome," Issue Price Regulations are "Insignificant."

The noise that you just heard may be another blessed nail in the coffin of Treasury's proposed regulations that would have made it more difficult for an entity to qualify as a political subdivision so that it can issue tax-exempt bonds on its own behalf. Treasury just issued Notice 2017-38, which sends 8 regulatory projects, including the proposed political subdivision regulations, to the President in response to his order to identify and pare back or eliminate regulations that add undue financial burden or undue complexity.

Issue Price Regulations Sneak Past the Guards

The fact that Treasury included the proposed political subdivision regulations among the list of burdensome regulations that are now on the chopping block will get all of the headlines, but there's another story here, too. Treasury somehow concluded that the issue price regulations were not a "significant" tax regulation (apparently they aren't regular readers of this blog). **In other words, Treasury didn't even consider whether the new issue price regulations might be burdensome.** In fact, Treasury says that the issue price regulations were "minor or technical in nature," and – you'll love this – "generated minimal public comment."

Continue reading.

The Public Finance Tax Blog

by John W. Hutchinson

July 7 2017

Squire Patton Boggs

[About $330M Left in New Clean Renewable Energy Bond Program.]

WASHINGTON – About $329.7 million of New Clean Renewable Energy Bonds can still be allocated to states, localities and other users, according to the Internal Revenue Service.

The unused allocations stand at $150.3 million for governmental bodies and $179.36 million for cooperative electric companies, the IRS stated in its latest update published on July 3.

The overall program was authorized for $2.4 billion in bonding authority.

One third of the $2.4 billion New CREBs program was authorized for use by public power companies, but unlike governmental bodies and electric cooperatives they faced a deadline to apply.

Public power companies had a June 3, 2015 deadline to apply for their $800 million share of the program.

An initial round of New CREBs for public power agencies was over-subscribed at the 2009 deadline, according to the American Public Power Association, which reported there were 38 applications for $1.446 billion. The IRS prorated the allocations, setting a 2012 deadline for their use.

However, many of the public power projects were not undertaken by the first deadline. A reallocation was undertaken in 2015, but it's not clear how much of the remaining $516.56 million was used.

School districts, cities and counties around the nation have used new CREBs to finance the installation of solar panels on rooftops and pay for the construction of windmills to produce electricity for schools and government buildings, said Ed Oswald, an attorney at Orrick, Herrington & Sutcliffe here.

No more than $40 million of New CREBs in the latest round can be used for each project by any governmental body or electric cooperative, according to the IRS.

The IRS hasn't tracked how many of the projects have financed solar power versus wind power or other renewable energy sources. It also hasn't looked at the type of governmental bodies, such as school districts, where New CREBs may be most often used, according to an IRS official.

A database maintained by Thomson Reuters lists the Grant County Public Utility District in Washington State as the largest user of New CREBs with $222.4 million issued for three projects followed by American Municipal Power Inc. of Ohio with $136 million for two projects as well as the City of Seattle, Wash. at $84.9 million for three projects.

Seattle City Light, a municipal owned power company, used New CREBs to rebuild generators at the city's Boundary and Diablo hydroelectric dams. Boundary accounts for about 60% and Diablo accounts for 9.5% of the electricity generated by Seattle City Light.

"New CREBs have been relatively well received by the public finance community,'' Oswald said.

"It's, if you will, another tool in the toolbox. It's a tax credit bond, not a tax-exempt bond.''

New CREBs did not work for every community. The town of Norwich, Vermont received an authorization in 2009 to use new CREBs to finance solar panels for a municipal building, but the town ultimately opted for a private company that offered to supply low-cost solar power to the town, public library and local elementary school.

"Over the length of the project it would have been a plus for the town, but there were certain years where it would be a negative," said Linda Gray, chair of Norwich energy committee. "And I have to say the bonds were pretty weird.''

New CREBs are currently taxable and issued in a direct-pay mode, under which the issuer receives a direct subsidy from the federal government to reduce the interest costs. The subsidy equals 70% of interest costs minus cuts from sequestration.

The Energy Improvement and Extension Act of 2008 allocated an initial $800 million for the New CREBs.

Another $1.6 billion was authorized under the American Reinvestment and Recovery Act of 2009 signed by President Obama that also contained broader measures to stimulate the economy.

Limiting the financing to $40 million for individual projects has been a major obstacle for big cities and other potential large users.

"I think that the most significant limitation for these bonds has been the volume cap level,'' Oswald said. "If you think about the needs of the nation at large in terms of renewable energy, they are somewhat significant and the volume cap allocated here still falls short of the aspirations of a lot of the issuers.''

The original Clean Renewable Energy Bonds program, also known as Old CREBs, was authorized in 2005 as part of the Energy Tax Incentives Act. The initial authorization for $800 million in Old CREBs was increased to $1.2 billion under the 2006 Tax Relief and Health Care Act. Those bonds were issued as taxable tax credit bonds under which purchasers received tax credits.

By Brian Tumulty

Published July 10 2017, 4:40pm EDT

The Bond Buyer

Downgrade in State Oklahoma Could Impact Borrowing Costs.

Fitch Ratings has downgraded the ratings on several Oklahoma bonds one notch — a move that could increase the state's borrowing costs on a number of projects.

The American Indian Cultural Center in Oklahoma City, the Oklahoma Museum of Popular Culture in Tulsa, some higher education construction projects and a new state Health Department lab are among upcoming bond-financed projects likely to be impacted by the downgrade.

The rating change won't impact Oklahoma Turnpike bonds, because they are backed by revenue generated by the turnpike system and are not dependent on state appropriations for the repayment of bonds.

Rating change

Fitch Ratings, one of the big three municipal credit rating services, announced Tuesday that it was lowering the state of Oklahoma's issuer default rating from AA+ to AA.

Fitch also announced that it was lowering the rating on the state's general obligation bonds from AA+ to AA and reducing the ratings on the state's Oklahoma Capitol Improvement Authority and Oklahoma Development Finance Authority bonds from AA to AA-.

Following the downgrade, Fitch's Oklahoma ratings will closely align to those of Standard & Poor's credit rating service, which lowered Oklahoma's rating March 1, and Moody's rating service, which has been slightly lower than Fitch's for a number of years, said state Treasurer Ken Miller.

"This downgrade is certainly not surprising … to anyone who has been paying attention to state finance in the last year or so," Miller said.

Miller said he and other state leaders warned before the last legislative session that a downgrade was likely if the Legislature did not take steps to address the structural imbalance that the state has in its revenue sources.

"Clearly, Fitch did not see the necessary corrective steps taken last session and this downgrade is the result," Miller said.

Oklahoma has relied on a continued drawdown of the state's Rainy Day Fund and one-time revenue sources to fill large revenue gaps over the last couple of years rather than broadening the tax base, Fitch noted in its downgrade report.

Investors rely on the credit ratings to evaluate the risk of default and generally demand a higher interest rate for bonds with a lower rating.

A drop from a rating of AA+ to AA or from AA to AA- is not a drastic change because all are considered to be investment grade bonds of very high credit quality.

Still, the change is not insignificant.

For every $100 million the state borrows under a 20-year repayment structure, a difference between a AA and AA- rating means the state may end up paying around $2.4 million in additional interest over the life of the bonds, an individual knowledgeable in bond financing told *The Oklahoman.*

In 2016, the state sold $360.2 million in tax-backed obligations, so if a similar amount were to be issued this year, the difference between a one-notch lower rating could end up costing state taxpayers an additional $8.64 million or so over the life of the bonds.

State Bond Advisor Jim Joseph cautioned that it is impossible to predict with precision what impact a rating change will have on bond interest rates, noting that many other things factor into the decisions of investors, including the size and structure of the deal and general market conditions.

For that reason, Joseph said he has always declined to predict what interest rates might be.

Miller also pointed out that the other two rating agencies already had Oklahoma rated lower, so the lower evaluation is already likely factored into the interest rates the state has been getting.

Still, it’s not going to help, Joseph said.

“Anytime you’re downgraded, it’s going to end up costing you more money in the long run,” Joseph said. “Any investor is going to ask for more yield when they buy a lower-rated bond.”

Besides making new projects more costly, higher interest rates also make it more difficult for the state’s issuers to refinance outstanding bonds at a savings, he said.

The Oklahoma Museum of Popular Culture project in Tulsa will be among the first to test the impact of the credit rating downgrade. Fitch assigned the $27.315 million deal a AA- rating. The bonds are expected to be sold through private negotiation later this month.

Why the downgrade?

Fitch cited both economic factors and political factors in a five-page paper explaining the downgrade.

Oil and gas prices have been down and “about one-third of the state’s gross state product is attributable to the drilling, production and economic multiplier effects of the oil and natural gas sectors,” the credit agency said.

“Volatility related to the energy industry is an inherent part of the state’s economy and the industry is expected to be a drag over the medium term,” the report said.

“The state has been unable to address its fiscal challenges with structural and recurring measures and revenue collections continue to reflect subdued energy prices,” Fitch reported.

The report noted that lawmakers are constrained, somewhat, in their ability to tap new revenue sources by a constitutional amendment that requires either a three-fourths vote of the Legislature or majority vote of the people to pass a tax increase.

Constitutional challenges have been filed to revenue-generating moves by the Legislature last session. The court will decide on the legality of new fees on cigarettes, measures involving electric and hybrid motor vehicle registration, motor vehicle purchases and personal income tax deductions.

“The validity of the measures, which are forecast to bring in almost $320 million in fiscal 2018, will be decided by the state’s Supreme Court in August,” the report said. “If the court rules that the measures are invalid, the state would be required to solve for any resulting budget gaps.”

The Oklahoman

by Randy Ellis

Published: July 13, 2017

[The Impact of Eliminating the State and Local Tax (SALT) Deduction.]

As part of its tax reform efforts, Congress has discussed whether to eliminate the ability for taxpayers to deduct state and local taxes (SALT). On July 11, 2017, Government Finance Officers Association’s (GFOA) Executive Director, Chris Morrill, will moderate a panel discussion with The Big Seven before Congress about state and local tax (SALT) deduction.

The SALT deduction reflects a partnership between the federal government and state and local governments. The deduction is fundamental to the way states and localities budget for and provide critical public services, and a cornerstone of the U.S. system of fiscal federalism. It reflects a collaborative relationship between levels of government that has existed for over 100 years. Currently, the SALT deduction is an accepted part of the tax structure that is critical to the stability of state and local government finance.

Download Report – The Impact of Eliminating the State and Local Tax Deduction Report

What is the SALT Deduction
Taxpayers in the United States are granted a range of tax preferences from the federal government. The Revenue Act of 1913, which introduced the federal income tax, states that "all national, state, county, school, and municipal taxes paid within the year, not including those assessed against local benefits," can be deducted. The Revenue Act of 1964 later named specific state and local taxes that could be deducted, which included: real and personal property, income, and general sales taxes. These tax preferences serve two important goals. First, by allowing taxpayers the ability to deduct state and local taxes (SALT), taxpayers avoid being taxed twice on the same income. Additionally, the deduction on property taxes, along with deduction on mortgage interest, provides a strong incentive for homeownership. The sales tax deduction provides similar incentives for encouraging spending — which facilitates economic growth.

Compared with other common deductions, the state and local tax deduction has a larger impact than the deductions for both charitable giving and mortgage interest. In recent years, 29.5% of tax units used the SALT deduction. Only 21% used the SALT deduction for mortgage interest, and 15% used the deduction for charitable donations.

How Do Taxpayers Benefit from the SALT Deduction?
Everyone in the United States benefits from SALT, but the SALT deduction is used directly by around 30% of all taxpayers. Currently, taxpayers are given the option of deducting real estate taxes as well as either income taxes orsales taxes paid to state and local governments. While the SALT deduction is used across all income levels, the actual amount of property versus income versus sales tax deducted by lower, middle, and upper income taxpayers provides insight into how those taxpayers benefit. For example, while over 70% of SALT deductions for tax units with an AGI of more than $200,000 are from income taxes, over 60% of deductions from taxpayers with less than $50,000 in income come from property tax. This highlights how important the property tax deduction is for middle class homeownership.

In addition to its effect on taxpayers who itemize, regardless of adjusted gross income, the SALT deduction also benefits taxpayers in all 50 states. **The tax deduction is used by Americans living in urban, suburban, and rural locations and across all congressional districts.** The states with the highest percentage of taxpayers using the SALT deduction are in the East and Northeast regions. However, states in the West and Midwest also take advantage of the deduction. Overall, use of the SALT deduction is widespread among all states. The average deduction per tax unit in Connecticut, New York, and New Jersey are all over $7,000, and close to $6,000 in California. If the SALT deduction were eliminated, assuming a 25% marginal tax rate, an average taxpayer in New York who currently itemizes SALT would face a tax increase of almost $1,800.

Click Here to View State and Local Tax Deduction by Congressional District.

Government Finance Officers of America

July 11, 2017

MSRB Provides Guidance on Duties of Non-Solicitor Municipal Advisors in Conduit Financing Scenarios.

To facilitate compliance with its Rule G-42, on duties of non-solicitor municipal advisors, the Municipal Securities Rulemaking Board (MSRB) today provided interpretive guidance addressing the applicability of the rule in several scenarios that may arise in connection with the issuance of municipal securities for a conduit borrower. The MSRB's guidance discusses a municipal advisor's relationship(s) with, and duties and obligations owed to, a municipal entity issuer, an obligated person that is a conduit borrower, or both, in these scenarios.

Read the regulatory notice.

Hedge Funds Disclose Just How Many Puerto Rico Bonds They Own.

- **Ad hoc group holds $3.3 billion of commonwealth debt**
- **Puerto Rico owes $13 billion of general-obligation debt**

A group of hedge funds that owns $3.3 billion of Puerto Rico bonds disclosed in court documents the amount that each of them holds.

The disclosure is related to the territory's May 3 bankruptcy, which will allow Puerto Rico and its agencies to reduce the $74 billion of debt left after years of economic decline and borrowing to cover operating expenses. The group includes distressed-debt buyers and municipal mutual fund Franklin Mutual Advisers LLC.

The group claims that general-obligation bonds must be paid before other types of Puerto Rico debt because the island's constitution gives those securities the highest claim to the government's cash. The group wants Puerto Rico's sales-tax revenue to help repay general-obligation debt. The island sold sales-tax bonds backed by that revenue stream.

The amounts that each firm holds, as of July 12, are as follows:

- Aurelius Capital Management LP: $470.9 million of general obligations and $2.5 million of Highways and Transportation Authority bonds
- Autonomy Capital (Jersey) LP: $937.6 million of general obligations
- FCO Advisors LP: $422 million of general obligations and $10.2 million of junior-lien sales-tax bonds
- Franklin Mutual Advisers LLC: $294 million of general obligations
- Monarch Alternative Capital LP: $585 million of general obligations and $21.5 million of highway debt
- Senator Investment Group LP: $254.7 million of general obligations
- Stone Lion LP: $310 million of general obligations and $15 million of highway debt

A portion of debt held by Aurelius, FCO Advisors, Monarch Alternative and Stone Lion is guaranteed repayment by bond insurers.

Bloomberg Markets

By Michelle Kaske

July 13, 2017, 2:37 PM PDT

PROMESA and Puerto Rico's Political Future.

Two important events have occurred in Puerto Rico in the last couple months that should be noted. First, on May 3, 2017 the Oversight and Management Board created by the federal legislation PROMESA, filed in Federal District Court of Puerto Rico under its Title III provisions for the protection of the Commonwealth of Puerto Rico from its bondholders and creditors.

This bankruptcy-like proceeding under Judge Laura Taylor Swain promises to be a hard and complex litigation for all parties involved. Second, on June 11, 2017 a plebiscite on the various status options for Puerto Rico was held in which statehood was overwhelmingly favored by a third of able voters, notwithstanding the incoherent call for abstention by the opposing political parties and the bloated voting lists.

Although at first glance apparently unrelated, both events need to be seen as interrelated pieces on the ongoing puzzle that is Puerto Rico's political status question and fiscal and economic spiraling downturn.

As we know, political and legal processes and economic conditions affect one another, at times in unforeseen ways. In July 2016, Congress legislated PROMESA to create an Oversight and Management Board, expressly based on the authority provided by Article IV, Section 3, of the United States Constitution.

Together with the Supreme Court's opinion Commonwealth of Puerto Rico v. Sanchez Valle rejecting Puerto Rico's claim of sovereignty for purposes of avoiding the application of the constitutional protection against double jeopardy in criminal cases, this legislation finally put to bed the midsummer's nightmare of those that for decades have argued for the oxymoronic status of "Estado Libre Asociado".

Today, there is no doubt that legally Puerto Rico has been a territory under the plenary powers of Congress since 1898. In this regard, the long held historic fallacy argued by the pro-territory Popular Democratic Party that Puerto Rico had achieved some sort of political autonomy in 1952 not subject to Congress has finally been put to rest.

The underlying causes for the political and fiscal/economic crisis of Puerto Rico can be summarized as a reliance by a top heavy public sector dependent on debt financing and federal transfers and tax exemptions as a strategy for economic development for the last fifty years; a weak private sector dependent on government contracts and patronage; an incompetent and/or corrupt public administration looking out for short term political advantages and private enrichment at the expense of long-term stability and development; a political culture in Washington, D.C. indifferent to the inherent limitations of territorial status, and populist grandstanding by many leading Puerto Rico politicians.

It is a wonder that it took so long for the bubble to burst. It should be noted as a matter of historical record that our fiscal predicament is partly due to the triple exemption tax advantages Puerto Rico bonds had in the municipal bond market for the benefit of all parties, while the going was good. That is, it is the territorial status that has allowed for a beneficial taxation treatment by Congress and the

Treasury Department for investors – bondholders as well as “foreign” corporations using Puerto Rico as a tax haven. We should not ignore the fact that the responsibility for our current woes is shared by many.

There are those — including former New York Gov. George Pataki — that argue now acting as a spokesperson for certain bondholders – that Puerto Rico needs to attend its economic and fiscal problems before addressing the political question of our status. Although there is something to be said to the fact that a change in Puerto Rico’s political status under current conditions may seem politically untimely, it is also evident that no headway in our economic development can be achieved unless we address the issue of long-term political stability.

It is a chicken and egg question. As the Bush (2007) and Obama (2011) White House Reports on Puerto Rico made abundantly clear, our political lack of definition has been holding back our economic development. A petition for a change in Puerto Rico’s political status will always be untimely for somebody, somewhere.

In this context, the June 11, 2017 plebiscite ratifying the 2012 plebiscite favoring statehood, should be understood as a petition by the people of Puerto Rico that our current territorial status and its lack of economic development needs to be addressed by Congress, the sooner the better for all concerned.

THE HILL

BY ANDRÉS L. CÓRDOVA, OPINION CONTRIBUTOR – 07/14/17 08:30 AM EDT

Andrés L. Córdova is a professor at Inter American University of Puerto Rico School of Law.

The Solution to Puerto Rico's Debt Crisis Isn't Statehood — It's Default.

In an overwhelming majority, Puerto Rican citizens recently voted in favor of becoming the 51st U.S. state. According to poll results, nearly 97 percent of Puerto Ricans were in favor of statehood. Puerto Rico’s governor, Ricardo Rosselló, declared the results a clear victory in favor of becoming a state — the solution he preferred. In a televised speech after announcing the results, he said, “the federal government will no longer be able to ignore the voice of the majority of the American citizens in Puerto Rico.”

What he should have said was the federal government could no longer ignore the voice of 23 percent of the American citizens of Puerto Rico because those are all that bothered to turn out for the vote. In a country where voter turnout is normally closer to 80 percent, a 23 percent turnout is hardly exciting.

Here is a territory that is so thrilled to become a U.S. state that over three-quarters of the population did not bother to even show up at the polls. The reason for this low turnout: they are only considering statehood because it seems like the best option to get out of the more than $70 billion debt crisis they are in.

How Puerto Rico got into this mess

Puerto Rico was forced to declare a form of bankruptcy in May. Its filing represented the largest municipal bankruptcy filing in U.S. history — seconded only by Detroit’s $17 billion bankruptcy under Chapter 9 bankruptcy code. Notably, the Puerto Rican bankruptcy surpasses Detroit by a vast margin, as it has managed to reach $123 billion in debt across bonds and pensions payments outstanding.

To put the territory's size, and proportionate debt, into perspective, there are 20 states that are less populous and have vastly more expansive geographies than Puerto Rico, according to the U.S. Census Bureau. Since Puerto Rico is not a U.S. state, and thus not entitled to the privilege of bankruptcy — which is a recourse for all U.S. state and local governments — it is entering a court-supervised bankruptcy-esque proceeding made possible by legislation enacted by Congress last year.

With an uncertain outlook on just how its obligations will be restructured, to say the island is drowning in debt would not be an understatement. The island previously enjoyed an exemption from U.S. federal taxes that allowed many U.S. companies to set up manufacturing operations there. These tax breaks ended in 2006, leaving the island with a sudden loss of revenue.

The Puerto Rican government tried to offer tax exempt municipal bonds on the U.S. markets to generate ready cash, but this came at the cost of even more debt. Unable to pay off all its obligations, Puerto Rico is turning to the U.S. government for relief. The hope is that if they became a state, the federal government would take more responsibility for the island's overwhelming debt.

As U.S. states are not immune from similar troubles — even ones as wealthy as Illinois, which is possibly headed towards a "junk" credit rating — sheltering Puerto Rico from its obligations by allowing it to become a state is not the solution. Debt of this magnitude cannot be whisked away with a granting of statehood.

The solution to get Puerto Rico out

It's not that the U.S. should do nothing for the territory of more than 3 million, but the government shouldn't pretend that statehood is the best solution. Allowing Puerto Rico to default on its debt would be the best thing the U.S. could do for the territory. Looking to Detroit as an example, its municipal default gave the Motor City some breathing room and has allowed for a nascent economic recovery from its crisis.

The best way to remedy the current and desperate financial condition of Puerto Rico is to stop lending money to the government so it can no longer be squandered. Contrary to what certain governments' and stakeholders' actions might suggest, nothing is too big to fail. It is also the best hope we have of ending the trend of countries, states, and cities needing to be bailed out after borrowing more money than they can repay.

Denying Puerto Rico statehood in its time of need may sound like callous indifference, but at the end of the day, it is the best thing for the island. What Puerto Rico needs more than statehood is to be forced to own up to its obligations. 77 percent of Puerto Ricans made it clear that if the U.S. was their only option, they would rather not vote.

If Puerto Rico becomes a U.S. state, let it be because its people want to be an official part of this nation, not because they are desperate for a way out of their debt.

THE HILL

BY CHRIS MARKOWSKI, OPINION CONTRIBUTOR – 07/10/17 09:00 AM EDT

Chris Markowski (@ChrisMarko) is an author, investment banker, stock market analyst, and consumer advocate. He is the personality behind Watchdog on Wall Street and the founder of

Markowski Investments.

Gov. Malloy Signs Legislation Changing The Structuring Of Municipal Bonds.

On July 8, Governor Malloy signed into law Public Act No. 17-147, An Act Concerning State Taxation and Collection, Tax Gap Compliance, Tax Preparers and Facilitators, Changes to the Tax and Related Statutes, a Mental Health Community Investment Account and Municipal Bonds.

The legislation makes noteworthy changes regarding the structuring of municipal bonds. The legislation:

- extends the permitted maximum maturity of general obligation debt issued by Connecticut municipalities from 20 years to 30 years
- permits Connecticut municipalities to issue refunding bonds for a period of up to 30 years; and
- allows such refunding bonds to be secured by a statutory lien on all revenues received by the municipality from its tax levy and collection.

These changes are applicable to obligations issued during the period from July 1, 2017 through June 30, 2022. The refunding provisions require a two-thirds vote of the municipality's legislative body.

Any municipality considering issuing bonds in accordance with this legislation should address the implications of doing so with its municipal financial advisor and bond counsel.

Click here to read further Insights from Day Pitney

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.

Last Updated: July 13 2017

Article by Judith A. Blank and Namita Tripathi Shah

Day Pitney LLP

Moody's Cuts Hartford Rating Further, Citing Bronin's Move To Restructure Debt.

Moody's Investors Service knocked its rating for Hartford debt down another three notches Thursday from a level that already classified the city's bonds as junk.

With the downgrade, Moody's has Hartford's credit and most of the city's outstanding bonds rated as B2, down from Ba2. That lowers the rating from "speculative" to "highly speculative," both of which are considered non-investment grade, or junk.

"The downgrade reflects the recent increased likelihood that Hartford will pursue debt restructurings to address its fiscal challenges," Moody's said in a report. "The new rating also reflects the city's challenging liquidity outlook in the current fiscal year and weak prospects for achievement of sustainably balanced financial operations."

The move by Moody's follows a downgrade at Standard & Poor's late Tuesday, to BB, which is equivalent to the Ba2 that Moody's assigned last fall.

Hartford Mayor Luke Bronin said Wednesday the city and its newly hired bankruptcy and restructuring law firm, Greenberg Traurig, will immediately approach bondholders in an effort to persuade them to accept lower payments on the city's debt. That could help the city avert bankruptcy, but some experts in municipal finance said the effort has only small chance of succeeding without a court filing.

As Bronin Seeks Givebacks From Bondholders, Averting Bankruptcy A Huge Challenge
The downgrade could lead to lower values for Hartford debt that's traded in the markets. It also decreases the city's ability to borrow additional money, although more borrowing was already difficult and expensive before the latest Moody's action.

Both Moody's and S&P continue to have Hartford on a watch for further downgrades.

Moody's also has a B2 rating for Detroit, which emerged from the nation's largest municipal bankruptcy in late 2014. In all, Moody's has about 3 percent or fewer of 8,500 local governments rated with junk debt, and many of those are higher than Hartford's rating.

The new rating affects about $550 million out of slightly more than $700 million in outstanding city debt.

Moody's said in Thursday's report Hartford's budget is "unlikely to provide a pathway to structural balance over the longer term" even if the state fills this year's estimated $50 million gap — in part because of escalating debt payments coming due over the next several years.

The report also acknowledged, as Bronin has said, that the city's prospect for raising taxes is extremely limited by high current rates and low incomes, and its ability to cut costs is "limited as the city has already gone through multiple round sof expense cutting."

The Hartford Courant

by Dan Haar

July 13, 2017

As Bankruptcy Looms for Hartford, Conn., S&P Downgrades Its Debt to 'Junk'

Standard & Poor's downgraded Hartford debt to junk bond status late Tuesday, less than a week after the financially troubled capital city hired a New York law firm with expertise in restructuring municipal finances.

The Wall Street ratings agency downgraded most city of Hartford outstanding debt to BB, a level that's classified as speculative, also known as non-investment-grade, or junk, from BBB-. That reflects a strong possibility that Hartford could default on its debt or renegotiate it to pay bondholders less money.

The move, announced on the S&P website just after 4 p.m., follows a series of downgrades by ratings agencies over the last year, as Mayor Luke Bronin has warned that Hartford could file for bankruptcy protection if it doesn't receive tens of millions of dollars in additional aid from the state and concessions from unions.

Moody's Investors Service downgraded Hartford bonds last October to Ba2, which is similar to S&P's BB — non-investment grade, aka junk.

Both Moody's and S&P still have Hartford on a negative watch, meaning mor downgrades could happen soon. On Tuesday, S&P also downgraded Hartford Stadium Authority bonds.

The S&P move is related to Hartford on Thursday hiring Greenberg Traurig, a large New York firm, to help sort through options on how to restore the city to financial health.

Even without a bankruptcy filing, one option for the city could be to renegotiate the payback terms of Hartford's outstanding debt. Because of the way the debt was refinanced in recent years, the city's obligations increased sharply this year and will rise further next year.

Bronin confirmed the possibility of bond restructuring negotiations in an interview Tuesday, and in a written statement issued after the S&P action. It's unclear whether such talks would start even before a state budget is reached, as the state began its fiscal year July 1 without a budget — leaving Hartford and other municipalities millions of dollars short in expected state aid.

"I have said for months that we cannot and will not take any option off the table, because our goal is to get Hartford on the path to sustainability and strength," Bronin said in the statement. A long-term solution, he said, "will require every stakeholder — from the State of Connecticut to our unions to our bondholders — to play a significant role."

He added, "Today's downgrade should send a clear message to our legislature, to labor, and to our bondholders that this is the time to come together to support a true, far-sighted restructuring."

Bronin said Tuesday his administration is still actively seeking concessions from city unions, including police.

BY TRIBUNE NEWS SERVICE | JULY 13, 2017

By Dan Haar

Darien Adopts OpenGov for Financial Reporting.

With the start of the 2017-18 fiscal year the Town of Darien has adopted a new platform for financial reporting. Detailed budget information dating back to 2013 can now be accessed by the public through the OpenDarien link on the town's website, DarienCT.gov.

Darien's Department of Finance has implemented a module called OpenGov to provide the public with greater financial transparency and clarity on the town budget. Finance Director Jennifer Charneski briefed the Board of Selectmen with an overview of the reporting platform on on Monday.

"Darien is excited about our partnership with OpenGov, and the immediate improvements this new platform can bring to our town," Charneski said in a statement. "Through this new site, we will be able to make budgeting and decision making more efficient and effective, and most importantly, better communicate with Darien residents."

Using the online module visitors can organize budget information by department and review monthly expenditures. Data within the program can be organized into a number of different graphs at the user's request and all of the data is available for export. Information for the OpenDarien platform is provided directly from the Department of Finance's accounting software and will be updated on a monthly basis to reflect ongoing changes to the budget. The OpenDarien portal will also be updated to include information about the town's capital projects, such as the upcoming redevelopment of the town's public works garage.

For town officials the OpenGov platform will make financial information more readily available and organized. The Department of Finance will be able to create specific user groups for town officials to access and organize more specific data within the town's budget. Members of the Board of Selectmen suggested those user groups would be useful during budget season, when members of the Board of Finance or RTM Finance & Budget Committee need to review a wide range of information. Furthermore, OpenGov provides another module that can be used to directly generate budgets and related documents, if the town chooses to adopt it.

"This could be the end for the budget books," Selectmen Marc Thorne joked, referring to the nearly 300-page document used by town officials during budget review.

Currently OpenDarien does not include detailed information on the Board of Education budget as their budget is managed independently from the town's. Charneski said the Board of Education could choose to adopt the software at a lower cost and be connected to the same OpenGov portal. She said that while the town's adoption of OpenGov took several weeks to complete, the company has changed it's implementation process.

If more local towns adopt the OpenGov it would also allow them to easily share and compare budgeting information through the platform. Charneski said Darien is the sixth town in Connecticut to move to OpenGov. Contrasting what Darien's peer towns earn in parking revenues or how much they pay in police overtime could provide more clarity on financial decisions and trends in the future. For now, the public can use the OpenDarien portal to access budget data for the new fiscal year.

DarienTimes.com

By Kevin Webb on July 14, 2017

Fresh From Budget Deal, Illinois Awaits Fate of Credit Ratings.

CHICAGO — A decision on whether Illinois becomes the first U.S. state whose bond ratings tip into junk was not imminent on Monday as credit rating agencies said they were still reviewing the state's newly enacted budget and tax package.

Analysts at the three major rating agencies, which rate Illinois one or two notches above junk, declined to comment on the timing of their decisions.

With the help of some Republican votes, the Democratic-controlled Illinois Legislature last Thursday overrode Republican Governor Bruce Rauner's vetoes and enacted a $36 billion fiscal 2018 budget and a $5 billion income tax increase.

The action ended an unprecedented two-year budget impasse that ballooned the state's unpaid bill backlog to about $15 billion.

Illinois State Treasurer Michael Frerichs, a Democrat, on Monday unveiled a five-step plan to avoid a junk rating that included Rauner taking steps to issue up to $6 billion of bonds the legislature authorized to begin paying off bills. He also recommended the governor visit credit rating agencies to assure them he intends to implement the budget package.

A junk rating would make future bond sales more difficult and expensive.

Eleni Demertzis, Rauner's spokeswoman, did not answer questions about the borrowing but underscored the governor's dissatisfaction with the budget.

"Even with the tax increase, this budget remains $2 billion out of balance for fiscal year 2018," she said. "The best thing we can do is to work collaboratively to pass truly balanced budgets that pay down our debt, reform our pension system, and make the changes necessary to drive economic growth in our state."

Moody's cited the budget's "substantial implementation risk" when the state's Baa3 rating was placed on review last week for a possible downgrade to junk. Analyst Ted Hampton said risks include revenue and cost-saving assumptions built in to the budget for the fiscal year that began July 1.

Hampton and S&P analyst Gabriel Petek said they expected Rauner to implement the budget as required by law.

John Humphrey, co-head of credit research at Gurtin Municipal Bond Management, said optimism that Illinois finally has a budget should be tempered against the state's strained finances and how much execution risk remains.

"I think Moody's has been pretty clear that they view the state's political dysfunction combined with continued unaddressed long-term liabilities, and unfavorable baseline revenue performance as casting some degree of skepticism on the state's ability to manage out of the very fragile financial situation they are in," he said.

By REUTERS

JULY 10, 2017, 5:30 P.M. E.D.T.

(Reporting by Karen Pierog and Dave McKinney; Editing by Matthew Lewis)

[Troubled Chicago School System Sells $500 Million Bonds at High Rates.]

CHICAGO — The financially troubled Chicago public school system will pay hefty interest rates for a general obligation bond issue that was doubled in size on Monday to $500 million, up from the $250 million that the district announced last week.

The refunding portion of the deal was increased on Monday to $215 million from the previous $50 million, while the new money portion was raised to $285 million from $200 million, according to a preliminary pricing scale.

Underwriters led by J.P. Morgan priced the unrated general obligation bonds targeted at "qualified institutional buyers," with a final 7.65 percent yield and 7 percent coupon for new bonds due in

2046, according to the district. The bonds were initially priced to yield 7.75 percent.

The repricing of refunding bonds due in 2042 dropped the yield 5 basis points to 7.55 percent with a 7 percent coupon. The yield on refunding bonds due in 2030 with a 6.75 percent coupon remained at 7.25 percent.

Escalating pension payments have led to drained reserves, debt dependency and junk bond ratings for Chicago Public Schools (CPS), the nation's third-largest public school system.

"CPS successfully completed the issuance of its GO bond offering, with more than $1 billion in orders for $500 million in bonds," Ron DeNard, the district's senior vice president of finance, said in a statement.

The bonds' spreads over Municipal Market Data's benchmark triple-A yield scale ranged from 474 basis points to 489 basis points, indicating the U.S. municipal market was demanding fat yields for the debt. Those so-called credit spreads were narrower than spreads in the district's February 2016 bond sale, in which yields topped out at a massive 8.5 percent.

The refunding will restructure outstanding bonds in a "scoop and toss" that pushes out payments on the bonds. The prospectus included nine pages of potential risks for buyers.

By REUTERS

JULY 10, 2017, 8:09 P.M. E.D.T.

(Reporting By Karen Pierog; editing by Diane Craft)

What Ending Illinois's Record Budget Impasse Means for Chicago.

- **City won pension fix, averting looming insolvency for funds**
- **Fate of cash-strapped, junk-rated school system is uncertain**

Illinois enacted a full-year budget for the first time in more than two years, ending a record-long stalemate that cast financial uncertainty across the state. Here's three big takeaways for the city of Chicago, which has been contending with its own fiscal struggles:

- **Pensions:** Chicago won state approval to overhaul its municipal employee and laborer retirement funds, which had been on track to run out of money by 2025 and 2027, respectively. The changes allow Chicago to boost contributions to those pensions and have new city employees pay more into their retirement plans, part of Mayor Rahm Emanuel's efforts to put all four of the city's pensions on a path to solvency. The measure became law despite Governor Bruce Rauner's veto.
- **Borrowing:** State budget includes provisions that allow a home-rule municipality like Chicago to sell debt secured by state funds they receive. By providing greater protection against default, that "should be favorably received by investors and is likely to lower the borrowing cost to the extent that" the city utilizes it, said Richard Ciccarone, the Chicago-based president of Merritt Research Services LLC, which analyzes municipal finances. This could especially come in handy for the city, given that it is rated below investment grade by Moody's Investors Service and pays a steep premium to sell traditional general-obligation debt.
- **Schools:** Chicago public schools, along with districts statewide, are still in limbo. The enacted state budget dictates that general aid for schools now be doled out through an evidence-based

funding model. While the Democrat-led legislature passed legislation that rewrites the formula to do that, its fate is uncertain because Rauner has threatened to veto it, calling it a bailout for the city. Emanuel said Monday that enacting that law is his “number one effort.”

Bloomberg Politics

By Elizabeth Campbell

July 12, 2017, 2:00 AM PDT

Cook County Illinois Soda Tax Temporarily Blocked.

- As previously covered on this blog, a number of local jurisdictions throughout the U.S. – like Berkeley, CA; Philadelphia, PA; San Francisco, CA; Oakland, CA; and Boulder, CO – have sought to introduce legislation to tax sweetened beverages. Late last year, on November 10, 2016, the Cook County Illinois Board of Commissioners passed the Cook County Sweetened Beverage Tax Ordinance which would impose $0.01 per ounce on the retail sale of all sweetened beverages in Cook County. The tax was slated to go into effect on Saturday, July 1, 2017. But on June 27, 2017, the Illinois Retail Merchants Association – which represents more than 20,000 stores – and several grocers filed a complaint against the Cook County Department of Revenue to block the sweetened beverage tax, arguing that the tax is unconstitutional and too vague for stores to implement. The Plaintiffs further contend that: (1) Cook County’s penny-per-ounce beverage tax violates the state constitution by imposing different taxes on similar beverage products and (2) the tax would make retailers vulnerable to becoming ineligible for the federal Supplemental Nutrition Assistance Program (SNAP) as the program prohibits purchasing food that has a state or local sales tax.
- On Friday, June 30, 2017, Cook County Circuit Judge Daniel Kubasiak granted the Plaintiff’s request for a temporary restraining order (TRO), effectively putting Cook County’s penny-pe--ounce tax on sweetened beverages on hold at least until July 12, 2017.
- Looking ahead, it remains to be seen what, if any, impact the outcome of this lawsuit will have on the appetite of other U.S. jurisdictions to pursue such legislation.

National Law Review

Wednesday, July 5, 2017

California’s Tax Board of Confusion.

The state has more tax agencies than most — and one in particular is badly mismanaged.

No other state has a tax collection system like California’s. No other state would want one.

Rather than a single revenue department, California uses three separate agencies to manage different taxes. One of those agencies, the Board of Equalization (BOE), collects sales and property taxes, along with many smaller revenue sources such as levies on jet fuel. Now it’s taking on the new role of collecting marijuana taxes. But even as its mission continues to expand, the BOE appears to be badly mismanaged.

A recent audit from the state Finance Department found that the BOE's elected board members have been directing civil servants to work on pet political projects. It also found that those board members, who aren't supposed to receive political contributions exceeding $250, have been known to accept thousands in bundled donations of $249 from companies who have business before them. And although the BOE is supposed to meet in open, quasi-judicial hearings, recent legislative testimony revealed members have met privately with parties who were appealing their tax assessments, never reporting the content of those conversations. "The testimony indicated that board members were inappropriately influencing staff members in the performance of their duties," says state Sen. Steven Glazer.

The audit prompted Gov. Jerry Brown to temporarily block the board's ability to hire or make large purchases. He's also requested a fresh investigation from the state's Justice Department, and called on legislators to find a way to overhaul the BOE. Meanwhile, members of the board have joined with outsiders in putting forward their own proposals to revamp parts of the agency. "Clearly it needs to be run significantly better," says state Rep. Phil Ting. "They have trouble answering even the most basic budget and systems questions."

For all its faults, however, no one in Sacramento is convinced that big changes are about to hit the agency. Many powerful interests in the state like things the way they are. Those with inroads to the board are able to wheedle favorable opinions on behalf of their clients. Board members enjoy pretty good perks, including sizable staffs. The state controller sits on the board, but other members, who are elected directly by voters in four separate districts, include ex-legislators who have chummy relations with their former colleagues. "It's those relationships, I believe, that have kept reforms from happening," says state Sen. Jerry Hill.

The Board of Equalization was set up back in the 19th century as a way of dealing with problems caused by county assessors. Back in those days, taxes were proportionately higher in mining counties than grazing counties. Hence the need to "equalize" taxes.

That function long ago ceased to be important, but the board kept taking on more work. Collection of income taxes, for example, falls under the Franchise Tax Board, but the BOE still adjudicates disputes about those taxes. "With this elected tax board, you've got a group of people with really very little knowledge or expertise about taxes, who don't create any useful body of precedent for people to understand taxation," says Daniel Simmons, an emeritus law professor at the University of California, Davis. "There's really no way to fully know how the law will be interpreted and applied."

Over the years, countless commissions and studies have recommended that state tax collection be consolidated into a single revenue department accountable to the governor — which is how most states do it. But killing off the BOE would require a constitutional revision approved by voters. That isn't likely.

Still, a summoning of political will could create some meaningful changes to the agency. The board, if it were so inclined, could even fix things, says Sen. Glazer. "This could be resolved with better board policies and a CEO who insists on respect for the chain of command of his office," he says. "But it's a big question."

GOVERNING.COM

BY ALAN GREENBLATT | JULY 2017

KBRA Affirms AA+, Stable Outlook, for Municipal Assurance Corp.

Kroll Bond Rating Agency (KBRA) has affirmed the insurance financial strength rating of AA+ with a Stable Outlook on Municipal Assurance Corp. (MAC). MAC demonstrates an ability to withstand KBRA's conservative stress case loss assumptions and to satisfy all claims in full and on time.

As a major part of its analysis, KBRA determined a level of stress losses to be applied to MAC's insured portfolio. MAC's ability to pay these aggregated claims, together with other expenses, was assessed in KBRA's Bond Insurer financial model and MAC met all requirements with a comfortable balance remaining.

Please click on the link below to access the full report:

Municipal Assurance Corp.

If you have any difficulties accessing the report, please contact info@kbra.com or visit www.kbra.com.

KBRA Affirms AAA Rating and Stable Outlook on the State of Texas' General Obligation Bonds.

Kroll Bond Rating Agency (KBRA) has affirmed the long-term rating of AAA with a Stable Outlook on the State of Texas' general obligation bonds. This rating applies to all of the state's outstanding general obligation bonds, excluding bonds backed by a letter of credit or liquidity facility.

This rating is based on KBRA's U.S. State General Obligation Rating Methodology. KBRA's rating evaluation of the long-term credit quality of state general obligation bonds focuses on four key Rating Determinants:

- Management Structure, Budgeting Practices and Policies
- Debt and Additional Continuing Obligations
- Financial Performance and Liquidity Position
- State Resource Base

In the process of rating the State of Texas, KBRA has reviewed multiple sources of information and spoken with representatives of the State.

Please click on the link below to access the report:

State of Texas' General Obligation Bonds

If you have any difficulties accessing the report, please contact info@kbra.com or visit www.kbra.com.

KBRA Comments on Chicago Public Schools Latest Transaction.

Kroll Bond Rating Agency (KBRA) has released a public finance research report commenting on the Board of Education of the City of Chicago's recent issuance of Unlimited Tax General Obligation Bonds (Dedicated Revenues) Series 2017A & 2017B.

On July 10, the Board sold a limited offering of $500 million General Obligation Bonds Series 2017A & Series 2017B. KBRA understands that, prior to delivery of the bonds, the Board intends to establish an additional security feature, the Post Default Security Mechanism, by entering into a State Aid Revenues Escrow Agreement. The Board has stated that it will authorize the state comptroller to intercept state-aid revenues into the escrow fund. In the event of a default, the escrow agent will be required transfer funds to the security account within the escrow fund until 100% of debt service is collected. It is our understanding that this additional security feature will apply only to Alternate Revenue Bonds payable from state aid. The Board has stated that this security feature is intended to apply to all alternate revenue bonds payable from state aid, subject to changes to the legal documents of existing bonds. The legal documents associated with the current issuance have not yet been made available to KBRA. KBRA will evaluate the credit implications of this transaction after we have completed a review of the legal documents.

Please click on the link below to access the full report:

[Chicago Public Schools' Latest Transaction]

If you have any difficulties accessing the report, please contact info@kbra.com or visit www.kbra.com.

KBRA Releases Rating Report for the OCTA Toll Revenue Senior Bonds, 2017 TIFIA Series.

Kroll Bond Rating Agency (KBRA) announces the preliminary rating of BBB- for the Orange County Transportation Authority Toll Revenue Senior Bonds, 2017 TIFIA Series, which evidences the $627 million loan from the United States Department of Transportation to the Orange County Transportation Authority (OCTA). The TIFIA Loan constitutes federal project credit assistance under the Transportation Infrastructure Finance and Innovation Act for the Interstate 405 Improvement Project ("the Project") located in Orange County, California.

The TIFIA loan will have a senior-lien priority in project revenues. The interest rate will be set at closing at the 30-year U.S. Treasury State and Local Government Series rate plus 0.01%. The actual maturity of the TIFIA Loan is limited to the earlier of 35 years after substantial completion of the Project (68 months after financial close) or December 1, 2057. Interest on the TIFIA loan will be paid semi-annually while principal will be paid annually. The TIFIA loan will fully amortize by the projected maturity date, and therefore there is no refinancing risk in the transaction. Proceeds of the TIFIA loan will be used to fund a portion of design-build and other costs for the Project, which are currently estimated at $1.9 billion. Other sources of funds for such costs include OCTA's Measure 2 sales tax revenue, sales tax revenue bonds issued in relation thereto and various federal and State funds and grants. Senior debt service coverage ratios for the TIFIA Loan average 3.35x under KBRA's rating case and stressed assumptions KBRA used in analyzing project cash flows include higher construction and O&M costs, and lower traffic volumes.

Please click on the link below to access the report:

[Orange County Transportation Authority Toll Revenue Senior Bonds, 2017 TIFIA Series]

If you have any difficulties accessing the report, please contact info@kbra.com or visit www.kbra.com.

- **Ed. Note:** Hey, folks. As very little went down this week, please feel free to submit a request for a 1/50 *pro rata* refund of your subscription price. Send enquires to AirborneSwine@bondcasebriefs.com
- [SIFMA Submits Comments to the SEC on Proposed Rule Change to Amend MSRB Rule G-26, on Customer Account Transfers.]
- [Groups Ask MSRB to Broaden CUSIP Exception for Private Placements.]
- [Unlocking Value from Public Assets: Leveraging Private-Sector Expertise to Generate New Public Benefits.]
- [Goldman Leaps Into Ranks of Top Muni Underwriters With Big Sales.]
- [NABL: Political Subdivision Regs on List of Burdensome Regs.]
- [*Valley Forge Towers Apartments N, LP v. Upper Merion Area School District*] – Supreme Court of Pennsylvania holds that Uniformity Clause did not permit school district to selectively appeal only assessments of commercial properties, such as apartment complexes, while choosing not to appeal assessments of other types of property, such as single-family residential homes.
- [*People v. Superior Court*] – Supreme Court of California holds that an independent contractor can be a public officer or employee prohibited from having a financial interest in a contract made in his official capacity, disapproving *People v. Christiansen*.
- And finally, Not Exactly the Casino Royale is brought to us this week by [*McAnally v. Thompson*], in which whistleblowing town police captain contacted the FBI to request its assistance in investigating possible municipal malfeasance. The site of their clandestine rendezvous? "In the parking lot behind the Dairy Queen in Wasilla." Captain MacAnally, I knew Bond, James Bond. Bond, James Bond was a friend of mine. You sir, are no….

UTILITIES - ALABAMA

[Ex parte East Central Baldwin County Water, Sewer and Fire Protection Authority]

Supreme Court of Alabama - June 30, 2017 - So.3d - 2017 WL 2822788

Town, city, and county sewer services company filed actions against county water, sewer, and fire protection authority and county commission, seeking judgment declaring that commission-approved amendments to authority's articles of incorporation, which expanded authority's geographical service area and expanded authority's services to include sewer services, were void.

The Circuit Court consolidated actions and entered partial summary judgment in plaintiffs' favor. Authority appealed. The Court of Civil Appeals held that town, city, and company lacked standing to bring action. Certiorari was granted. The Supreme Court reversed and remanded. On remand, the Court of Civil Appeals affirmed. Authority filed petition for writ of certiorari.

The Supreme Court of Alabama held that fact questions existed regarding whether there were adequate public water services and adequate public sewer services in expanded service areas covered by authority's proposed expansion.

PUBLIC EMPLOYMENT - ALASKA

McAnally v. Thompson

Supreme Court of Alaska - June 23, 2017 - P.3d - 2017 WL 2709741

Former city police captain brought wrongful termination employment action against city, mayor, and deputy mayor, alleging a breach of the implied covenant of good faith and fair dealing and retaliatory discharge based on his investigations of mayor.

After dismissing captain's Alaska Whistleblower Act claim that he attempted to add in his trial brief without moving to amend his complaint, the Superior Court entered verdict in favor of defendants and awarded attorney fees and costs to city pursuant to city's prior offer of judgment. Captain appealed.

The Supreme Court of Alaska held that:

- Trial court acted within its discretion in dismissing captain's claim under Alaska Whistleblower Act;
- An employer does not violate the implied covenant of good faith and fair dealing by terminating an at-will employee for a personality conflict with another employee; and
- Rule governing offers of judgment applied to allow trial court's award of attorney fees to city pursuant to offer of judgment city made to captain.

Trial court acted within its discretion in dismissing former city police captain's claim under Alaska Whistleblower Act, which captain attempted to add in his trial brief to wrongful termination suit brought against city, mayor, and deputy mayor three weeks before trial without moving to amend his complaint. Captain was not entitled to pursue claim without pleading it, fact that defendants were aware of facts on which claim was based did not mean that defendants would not be prejudiced by claim, justice did not require granting captain leave to amend his complaint to include claim, and court did not bar captain from presenting a whistleblower theory or whistleblower-related evidence in support of his other claims.

Rule governing offers of judgment applied to allow trial court's award of attorney fees to city, which, along with mayor and deputy mayor, was sued for wrongful termination by former city police captain, pursuant to offer of judgment city made to captain. City's offer came more than 60 days after its initial disclosures and more than 90 days before trial began when it could accurately assess the damages, offer was a reasonable calculation of captain's lost wages given that the city closed the entire police department only three weeks after terminating captain, captain failed to mitigate his damages by accepting comparable employment following his termination, and attorney fees that city incurred over three years of litigation and a three-week trial were reasonable.

PUBLIC CONTRACTS - CALIFORNIA

People v. Superior Court

Supreme Court of California, California - June 26, 2017 - P.3d - 2017 WL 2729540 - 17 Cal. Daily Op. Serv. 6139

The People charged defendant with being personally interested in a contract made in his personal capacity as public officer or employee.

The Superior Court granted defendant's motion to dismiss the charge. The People petitioned for writ of mandate. The Court of Appeal denied petition. The People petitioned for review. The Supreme Court granted review, superseding the opinion of the Court of Appeal.

The Supreme Court of California held that:

- An independent contractor can be a public officer or employee prohibited from having a financial interest in a contract made in his official capacity, disapproving *People v. Christiansen*, 216 Cal.App.4th 1181, 157 Cal.Rptr.3d 451;
- Defendant could not reasonably believe he was not expected to subordinate his financial interests to the public's;
- Defendant had constitutionally adequate notice that the statute applied to him; and
- Evidence that defendant made a contract in his official capacity was sufficient to overcome his motion to dismiss.

Under the statute forbidding public officers and employees from being financially interested in any contract made by them in their official capacity, the term "employees" includes outside advisors with responsibilities for public contracting similar to those belonging to formal employees, notwithstanding the common law distinction between employees and independent contractors; disapproving *People v. Christiansen*, 216 Cal.App.4th 1181, 157 Cal.Rptr.3d 451.

A defendant who was, or had been, an independent contractor for a hospital that was a public entity could not reasonably believe he was not expected to subordinate his financial interests to the public's interest in the hospital's contract with another physician, and thus the defendant could not rely on any such exception to criminal liability under the statute forbidding public officers and employees from being financially interested in any contract made by them in their official capacity, where the defendant served on the hospital's independent medical executive committee, the defendant was the hospital's codirector of surgery, and the defendant was asked "to try to bring physician services to the hospital."

A defendant who was, or had been, an independent contractor for a hospital that was a public entity had adequate fair notice that he could be subject to criminal liability under the statute forbidding public officers and employees from being financially interested in any contract made by them in their official capacity if he was affiliated with the hospital at the time of the challenged contracts, where the contracts were made before the Court of Appeal erroneously held in *People v. Christiansen*, 157 Cal.Rptr.3d 451, that independent contractors were not "officers" or "employees."

There was sufficient evidence that a defendant who was, or had been, an independent contractor for a hospital that was a public entity, made a contract in defendant's official capacity as an "officer" or "employee" of the hospital in recruiting a physician to work at the hospital and negotiating payment, thus precluding the trial court from granting defendant's motion to set aside the accusatory pleading based on insufficient evidence of the offense of being financially interested in a contract made in one's official capacity as an officer or employee; hospital's former CEO testified that defendant was asked "to try to bring physician services to the hospital," and there was evidence that defendant exploited his position on the hospital's independent medical executive committee in negotiating against hospital.

ELECTIONS - COLORADO

Keim v. Douglas County School District

Supreme Court of Colorado - July 3, 2017 - P.3d - 2017 WL 2836165 - 2017 CO 81

County school district appealed from an ALJ decision finding that it made a "contribution," in violation of the Fair Campaign Practices Act (FCPA), when it commissioned and disseminated a third-party report touting the accomplishments and plans of the district and the county school board during an election year in which four county school board positions were open.

The Court of Appeals reversed and remanded. County school board candidate petitioned for a writ of certiorari.

The Supreme Court of Colorado held that:

- A contribution, for purposes of the state constitution and FCPA, requires that (1) something of value (2) be given to a candidate, directly or indirectly, (3) for the purpose of promoting the candidate's nomination, retention, recall, or election, and
- Report was not "given to, directly or indirectly," any candidate running for a school board position, and thus school district did not make a "contribution" to a campaign in violation of FCPA.

Third-party report, which touted the accomplishments and plans of county school district and county school board and which was commissioned and disseminated publicly by the school district during an election year in which four county school board positions were open, was not "given to, directly or indirectly," any candidate running for a school board position, and thus school district did not make a "contribution" to a campaign, under the state constitution, in violation of Fair Campaign Practices Act (FCPA), even if candidates who benefited from the contents of the report received the report from school district's public dissemination; plain language of definition of "contribution" was not so broad as to include anything that might indirectly benefit a candidate.

MUNICIPAL ORDINANCE - ILLINOIS

City of Chicago v. Alexander

Supreme Court of Illinois - June 15, 2017 - N.E.3d - 2017 IL 120350 - 2017 WL 2590718

Protesters involved in grass roots political movement challenging wealth inequity were arrested and charged with violating park district ordinance prohibiting persons from remaining in parks after closing time.

The Circuit Court dismissed charges, finding ordinance facially unconstitutional and unconstitutional as applied. City appealed. The Appellate Court reversed and remanded. Protesters petitioned for appeal as a matter of right or for leave to appeal. The Supreme Court denied petition, but issued supervisory order instructing the Appellate Court to vacate order and review trial court's judgment. On remand, the Appellate Court again reversed and remanded. Protestors petitioned for leave to appeal, which petition was granted.

The Supreme Court of Illinois held that:

- As a matter of first impression, the right to assembly afforded by the state constitution is to be interpreted and applied in lockstep with the federal precedents interpreting and applying the assembly clause of the federal constitution's First Amendment, and
- Protesters forfeited any claim that appellate court failed to properly conduct intermediate review under the applicable First Amendment jurisprudence.

The right to assembly afforded by the state constitution is to be interpreted and applied in lockstep with the federal precedents interpreting and applying the assembly clause of the federal constitution's First Amendment. Both the state and federal constitutions used the verb "assemble," with state constitution using adjectival phrase "peaceable manner" and federal constitution using the adverb "peaceably," and while most recent amendment to state constitution inserted comma after phrase "right to assemble in a peaceable manner," and before unique language referring to right to consult for common good and right to make opinions known, addition of comma merely corrected inconsistency, with intent of drafters being to express same meaning as federal constitution.

Protesters forfeited any claim that the appellate court failed to properly conduct intermediate review under the applicable First Amendment jurisprudence, when reviewing their challenge, under state constitutional provision governing right to assembly, to park district ordinance prohibiting persons from remaining in parks after closing time, by failing to argue such issue in their brief to Supreme Court except in the context of arguing for departure from lockstep based on their claim of broader protection of right to assembly under state constitution.

IMMUNITY - NEW YORK

Farrago v. County of Suffolk

Supreme Court, Appellate Division, Second Department, New York - June 21, 2017 - N.Y.S.3d - 2017 WL 2662589 - 2017 N.Y. Slip Op. 05067

Motorcyclist brought personal injury action against driver of vehicle that motorcyclist struck, alleging negligence, and against county defendants, which included county, county police department, and county highway patrol motorcycle division, alleging the failure to properly control traffic along motorcycle route and at accident location, county defendants asserted a cross-claim for comparative negligence against driver, and driver asserted a cross claim against county defendants for contribution and indemnification.

The Supreme Court, Suffolk County, granted county defendants' summary judgment motion on grounds of governmental immunity. Driver appealed.

The Supreme Court, Appellate Division, held that conduct alleged against county defendants was discretionary, and thus county defendants were entitled to governmental immunity.

Failure of county, county police department, and county highway patrol motorcycle division to properly control traffic along route of motorcycle run, and specifically at location of accident between motorcyclist and driver, involved exercise of police officers' professional judgment, and thus was discretionary, such that county, police department, and highway patrol were entitled to governmental function immunity defense to third party claim by driver seeking contribution and indemnification in motorcyclist's personal injury action against driver, county, police department, and highway patrol.

PUBLIC EMPLOYMENT - OHIO

State ex rel. Rocco v. Cuyahoga Cty. Bd. of Elections

Supreme Court of Ohio - June 27, 2017 - N.E.3d - 2017 WL 2806748 - 2017 -Ohio- 4466

After county board of elections declined to issue certificate of nomination and to certify candidate's name for placement upon ballot as candidate for city's director of law, candidate filed complaint seeking writ of mandamus.

The Supreme Court of Ohio held that:

- City charter required director of law to have been engaged in practice of law for any period of six years preceding election, and
- Candidate had engaged in practice of law for over six years.

Provision of city charter requiring director of law to have been engaged in active practice of law in state "for a period of six (6) years next preceding his election" required director of law to have been engaged in active practice of law for any period of six years preceding election. Charter contained term "a period" rather than "the period," and charter contained term "next preceding" rather than "immediately preceding," which charter did provide with respect to residency requirement.

Candidate for director of law met city charter's requirement that she engage in active practice of law for any six-year period preceding election. Candidate worked in private practice at law firm for two years, she then served as Assistant Attorney General for over six years, and she worked as prosecutor and assistant director of city law department for 11 years.

ASSESSMENTS - RHODE ISLAND

Roadepot, LLC v. Home Depot, U.S.A., Inc.

Supreme Court of Rhode Island - June 23, 2017 - A.3d - 2017 WL 2709435

Commercial landlord brought action against tenant seeking declaratory judgment that tenant was responsible under lease to pay fast track assessment for sewer infrastructure costs.

Tenant filed counterclaim for breach of contract, seeking to recover amounts it had already paid city for the assessment. The Superior Court granted tenant's motion for summary judgment on issue of liability for assessment payment, and later entered judgment awarding tenant value of assessments paid. Both parties appealed.

The Supreme Court of Rhode Island held that:

- Under lease, landlord was solely responsible for payment of assessment;
- Court could not apply equitable principles of restitution and unjust enrichment to tenant's breach of contract counterclaim;
- Voluntary payment doctrine did not bar tenant from recovering payments from landlord; and
- Tenant could not recover late fees which city imposed on tenant's late sewer assessment payments.

Under commercial lease, landlord was solely responsible for payment of fast track assessment to construct sewer line and connect premises to sewer treatment facility. While lease assigned tenant the responsibility for paying "Real Estate Taxes," which, as defined in the lease, included "assessments for betterments and improvements that are levied or assessed by any lawful authority," lease excluded from real estate taxes "any fees or other sums paid to a governmental authority in consideration of obtaining any of the [a]pprovals or utility service," and assessment was a one-time fee which landlord's predecessor had elected to pay over 20 years.

Trial justice could not apply equitable principles of restitution and unjust enrichment to commercial tenant's breach of contract counterclaim seeking to recover sewer assessment payments it made to city under lease, which in fact required landlord, rather than tenant, to make assessment payments, without first affording the parties an opportunity to address the issues. Counterclaim did not assert any claims for equitable relief, nor did tenant amend complaint to add claim under equity, and although landlord defended on some equitable grounds, it did not defend on restitution or unjust enrichment grounds.

Voluntary payment doctrine did not bar commercial tenant from recovering from landlord fast track sewer assessment payments tenant made to city sewer line to connect property to sewer treatment plant, which were landlord's responsibility under lease. Tenant's initial payments were made without full knowledge of the facts, as payments had been made by a vendor and there was some confusion as to whether the bills were for usage, for which vendor would have been responsible, rather than infrastructure, and tenant's later payments were made in order to avoid adverse consequences of nonpayment and imposition of lien and protect its leasehold interest.

Commercial tenant could not recover from landlord late fees which city imposed on tenant's late sewer assessment payments, even though landlord, rather than tenant, was responsible under lease for those payments, as failure to make timely payments was due to tenant's own lack of reasonable diligence, and landlord had nothing to do with the imposition of the late penalties.

P3 Digest: July 5, 2017

Read the Digest.

NCPPP

July 5, 2017

Tax Court Strains to Disallow Charitable Contribution Deduction.

Not unlike the American Broadcasting Company's Wide World of Sports, our blog attempts to provide you the reader with blogs covering a wide variety of topics directly and indirectly related to tax-exempt bonds. In the category of topics indirectly related to tax-exempt bonds, this blog will address a recent Tax Court Memorandum (*Fakiris, George v. Commissioner*; No. 18292-12; T.C. Memo 2017-126) in which the Tax Court upheld an IRS notice of deficiency based on a disallowed charitable contribution deduction. The Memorandum isn't the topic of this week's blog because it is rare for a charitable contribution deduction to be disallowed in full or in part; rather, the Tax Court's decision is noteworthy because of the incredible effort that the Tax Court went through to reach its conclusion!

Continue Reading

The Public Finance Tax Blog

By Joel Swearingen on July 7, 2017

Squire Patton Boggs

[Groups Ask MSRB to Broaden CUSIP Exception for Private Placements.]

WASHINGTON – Market groups are asking the Municipal Securities Rulemaking Board to broaden a potential exception to its proposal to clarify that CUSIPs are required for private placements, saying the current version doesn't go far enough because it excludes non-bank entities.

The groups made their requests in comment letters responding to a modified proposal from the MSRB on its Rule G-34 on CUSIP numbers. The original proposal, released for comment on March 1, clarified that Rule G-34 requires dealers to obtain CUSIP numbers for new issue securities sold in private placement transactions, including direct purchases, where the dealer is the placement agent. The proposal also broached adding a requirement that non-dealer municipal advisors for the first time be subject to the CUSIP requirement for new issue securities that are sold in a competitive offering.

The board recast that proposal in June in response to market concerns by adding an exception for private placements that involve a limited number of participants and are not expected to be resold. The exception would allow a dealer acting as an underwriter or a placement agent in a new private placement with a bank to "elect not to apply for assignment of a CUSIP number if the dealer has a reasonable belief that the purchasing bank is likely to hold the securities to maturity or limit the resale of the municipal securities to another bank."

It would also apply for MAs in competitive sales of munis where the securities are purchased directly by a bank and the MA believes the bank will hold the securities to maturity or limit any resale to another bank.

Leslie Norwood, managing director and associate general counsel with the Securities Industry and Financial Markets Association, said SIFMA and its members "welcome" the MSRB's exception but believe "that the exception should be clarified to clearly accommodate similar non-bank purchasers."

SIFMA, in addition to the American Bankers Association, is proposing language that would provide an exception for dealers or MAs if the underwriter or MA reasonably believes that the purchaser of the munis is: a bank; any entity directly or indirectly controlled by the bank or under common control with the bank other than a broker-dealer; or a consortium of the previous institutions used to participate in a purchase of a new issue of municipal securities.

The SIFMA-proposed exception would also require that the munis are either being purchased with no present intent to sell or distribute or that resales will be limited to the institutions described above or qualified institutional buyers or accredited investors as defined by Securities and Exchange Commission rules.

ABA's proposed exception differs from SIFMA's in that it specifies that the exception should apply if the purchasers represent their intentions not to resell and to only resell to the particular investors named, meaning dealers and MAs could rely on the investors' representations. SIFMA does not specifically include the need for a representation.

Bond Dealers of America agreed that the exception should apply to non-bank affiliates. It, along with Bloomberg's Open Symbology Group, also suggested that the MSRB consider moving away from a CUSIP requirement and instead allow other security identifiers.

SIFMA said that in the absence of the language it is proposing, the MSRB should clarify the documentation underwriters and MAs would be required to produce during a regulatory examination. It is asking that a reasonableness standard apply and made clear that written guidance from the MSRB "would be extraordinarily helpful."

The MSRB said in its June proposal that it expects both dealers and MAs to have policies and procedures in place that are reasonably designed to help them come to conclusions about whether to get a CUSIP number. Dealers and MAs would also be expected to document their findings that play into any ultimate determinations about whether to get CUSIPs. However, it said it would not set prescriptive steps to comply with the exception, specify instances where the exception would apply, or define the parameters for how a dealer should craft its policies and procedures.

Emily Brock, director of the Government Finance Officers Association's federal liaison center, said GFOA supports the ABA's representation idea because it would address the group's concern that the original exception language was not clear enough and would ultimately damp demand for bank loans and direct purchase financings. The language ABA is proposing would "allow for all participants to rely on the investor's representation and will add certainty that CUSIPs are not assigned to those securities," Brock said.

The National Association of Municipal Advisors agreed with GFOA and ABA in its comment letter, saying the inclusion of the "represent" language would mean "all parties will have a better understanding and ability to ensure that the intent of the investor is known based on fact."

NAMA also said it is concerned that the process for getting CUSIPs under the proposal would require dealers and MAs to get the CUSIPs before they can determine if they are needed and leave them without the possibility of reimbursement if the CUSIPs are ultimately unnecessary.

Both GFOA and NAMA also said the MSRB should consider including exceptions for other situations like state and local government bonds purchased by other state and local governments with no intention to resell.

NAMA also reiterated its opposition to the MSRB's intent to require non-dealer MAs to be subject to the CUSIP requirement, saying the requirement does not align with the regulatory structure or roles and responsibilities associated with MAs.

The requirement would not benefit MA clients, would create confusion when a competitive deal does not have an MA involved, and would blur the line between MA and dealer activity, according to Susan Gaffney, executive director of NAMA and author of the group's letter.

"Instead of expanding the current responsibility of MAs to obtain CUSIPs in competitive sales, the MSRB should altogether eliminate the responsibility of having any MA (independent or broker/dealer MAs) obtain CUSIP numbers," Gaffney wrote. "This is an activity best suited for underwriters who use the identifiers to sell the bonds."

Gaffney said the MSRB should be aware of the time and cost burdens MAs would face if the proposal were to be approved.

Norwood wrote that there is currently a regulatory imbalance between dealers and MAs because of the existing CUSIP requirements and that the MSRB's proposal to include non-dealer MAs is "an opportunity to level the regulatory playing field."

She added that SIFMA understands the concern about non-dealer MAs possibly acting as dealers under the proposed requirements and asked that the SEC confirm that such activity in this context would not constitute dealer activity.

The Bond Buyer

By Jack Casey

07/03/17 07:07 PM EDT

TAX - WYOMING

Thomas Gilcrease Foundation v. Cavallaro

Supreme Court of Wyoming - June 7, 2017 - P.3d - 2017 WL 2464949 - 2017 WY 67

Taxpayer, which was trustee of trusts that owned eight parcels of property, brought action against county assessor seeking declaratory judgment that trusts were charitable trusts exempt from property taxation.

The District Court dismissed complaint on basis of primary jurisdiction. Taxpayer appealed.

The Supreme Court of Wyoming held that:

- Taxpayer was required to exhaust administrative remedies prior to bringing action, and
- Primary jurisdiction doctrine warranted dismissal in favor of review through administrative process.

Taxpayer, which was trustee of trusts that owned eight parcels of property, was required to exhaust administrative remedies prior to bringing action against county assessor seeking declaratory judgment that trusts were charitable trusts exempt from property taxation, since taxpayer was not asking court to interpret statutes defining charitable trusts and setting forth charitable trust exemption, but was asking court to determine whether trust was charitable trust exempt from taxation, and such determination was precise function of county assessor and administrative process.

Primary jurisdiction doctrine warranted dismissal in favor of review through administrative process of action by taxpayer, which was trustee of trusts that owned eight parcels of property, against county assessor seeking declaratory judgment that trusts were charitable trusts exempt from property taxation, even if taxpayer was seeking interpretation of phrase “directly beneficial” in statute setting forth charitable trust exemption, since such interpretation did not simply require answer to legal question, but involved significant questions of fact, and determining whether factual situation of trust fell within exemption was best left to expertise of county assessor.

KBRA Affirms AA+, Stable Outlook, for National Public Finance Guarantee and Releases Corresponding Surveillance Report.

Kroll Bond Rating Agency (KBRA) has affirmed the insurance financial strength rating of AA+, with a Stable Outlook, on National Public Finance Guarantee Corporation and released its surveillance report. National demonstrates an ability to withstand KBRA’s conservative stress case loss assumptions and satisfy all claims in full and on time.

KBRA’s rating methodology and analysis are fundamentally different from those of the rating agency that recently downgraded National. In KBRA's opinion, bond insurance financial strength ratings should be heavily focused on an assessment of the likelihood a financial guarantor will meet all its obligations to policyholders when claims come due. KBRA disagrees with our competitor's emphasis on new business production and competitive position in light of National's substantial balance sheet and book of legacy business.

Please click the link below to access the full report:

[National Public Finance Guarantee]

If you have any difficulties accessing the report, please contact info@kbra.com or visit www.kbra.com.

Unlocking Value from Public Assets: Leveraging Private-Sector Expertise to Generate New Public Benefits.

In cities and states across the United States, public-sector entities are harnessing new ideas and technologies to transform their assets for broad public benefits. Today, on any given block in New York City, the same spot where a payphone once stood is a digital "Link" kiosk. Here, a worker can charge her phone, a visitor can look up directions, and a resident can register to vote. Along select highways in Oregon, Georgia, and other states, previously underutilized right-of-ways are now home to solar panels positioned to help illuminate roadways and power local electricity grids. In Boston, a paratransit rider is no longer limited to public van services and can now use on-demand transportation providers such as Uber or Lyft to travel throughout the city at lower costs for the local authority.

RBC Capital Markets has sponsored a new report focused on how government and public institutions, including higher education, can create value from their assets by collaborating with the private sector: *Unlocking Value from Public Assets: Leveraging Private-Sector Expertise to Generate New Public Benefits.*

Through five case studies, this report demonstrates how private sector expertise, when applied to public assets, can generate a range of diverse public benefits. The case studies highlighted in the report include:

- **LinkNYC** is transforming outdated payphones into 7,500 "Links," communication hubs that provide free Wi-Fi, phone calls, USB charging, access to City services, and maps, among other features.
- **The Ohio State University Comprehensive Energy Management Plan** is leveraging existing energy assets to generate $1.2 billion in upfront investments for the University's endowment and sustainability initiatives.
- **Massachusetts Bay Transportation Authority On-Demand Paratransit Program** is re-envisioning paratransit services by supplementing publicly-owned vehicles with private, on-demand Uber and Lyft.
- **Oregon Department of Transportation Solar Highway Program** is working with private utility and equity partners to transform previously unused right-of-ways into solar highways that produce cost savings and feed the private energy grid.
- **University Center of Chicago, The Educational Advancement Fund** – a nonprofit representing Columbia College, DePaul University, and Roosevelt University – has employed an

innovative disposition strategy that will redirect university resources toward core academic objectives while retaining high quality student housing.

RBC Capital Markets

July | 2017

Puerto Rico Insured.

We closely follow the bond insurers because they remain an important part of the municipal market, and they are integral to our Insured Puerto Rico Strategy.

Cumberland exited all uninsured Puerto Rico exposure in 2011, as it was clear that population loss and economic circumstances combined with the heavy indebtedness and dysfunctional governance would result in deteriorating credit quality.

In 2014 we saw an opportunity to invest in insured Puerto Rico backed by Assured Guaranty or National (MBIA), because headline risk had caused yields to rise higher than warranted given the claims-paying ability of the insurers.

Assured Guaranty Municipal (AGM) and National Public Finance Guarantee (National or NPFG) have very strong claims-paying resources and insure billions of dollars of mostly low-risk municipal bonds. On June 6, 2017, S&P placed National and Build America Mutual (BAM) on CreditWatch negative based on competitive position and lack of business-line diversification, particularly in the case of National. Market participants were surprised, because in the early 2000s the rating agencies' concern that the financial guarantors were not diversified enough misled the insurers to expand into subprime and other asset-backed securities that soured and led to downgrades of the bond insurers, which had previously had AAA ratings.

On June 26th S&P downgraded National to A from AA- based on its very low market share compared with AGM and BAM, while – importantly for our strategy – affirming that National continues to have very strong claims-paying resources.

Current ratings

Prior to the financial crisis, the bond insurance industry insured over 50% of municipal bond new issues. Market penetration, or percentage of insured bonds to all new bond issues, is now under 10% (though the figure could grow with higher interest rates or increased credit concerns). AGM and National write less business than is running off, and the companies are not releasing capital at as fast a rate as previously. Thus leverage of claims-paying resources to insured book has been decreasing.

Bond insurers have very strong claims-paying resources for several reasons:

- They possess a large book of high-quality investments relative to bonds insured, a result of having been in business for over 40 years.
- Stress testing by the companies and the rating agencies shows that claims could be paid in many stressful scenarios.

- Insurers are regulated by state insurance commissions, which constrain the amount of capital that can be released – although the insurers have capital well in excess of required minimums to meet internal and external stress testing.
- Premiums are collected up front and earned over the life of the bonds, so that the companies continue to have earnings even if no new business is written.
- Insureds pay only regularly scheduled principal and interest; payments are not subject to acceleration.
- Any claims paid are contractually required to be repaid over time, so the insurer may not be paid on time but will eventually be paid in full.
- Insurers have strong underwriting and surveillance capabilities.
- They have experience with workouts. The large exposure represented and the fact that the companies are protecting bondholders generally gives them a greater voice in negotiations.
- Bond insurers often become part of the solution when an issuer needs market access at a lower cost after emerging from bankruptcy.

The National downgrade caused a blip up in yields of insured Puerto Rico paper, with slight widening in MBIA-insured bonds but not to levels beyond those seen at other points in the past few years. We continue to like the story of insured Puerto Rico municipal bonds. We disagree with S&P's approach on ratings, as they are reviewing business prospects and not claims-paying ability, which they themselves admit is still very strong. At 4.00–4.50% tax-free yields (depending on maturity and calls), we feel that the overall market still presents opportunity.

By Cumberland Advisors

Jul 06, 2017 08:51AM ET

Scoreboard: What If Congress Nixed Federal Stadium Subsidy?

What would happen if Congress eliminated a popular federal tax break used to build sports stadiums?

A bipartisan group of House and Senate lawmakers want Congress to take a second look at recently reintroduced legislation that would eliminate the tax exemption for municipal bonds used to finance construction of professional sports stadiums. The issue has been a hot topic of late, with Nevada embarking on a $1.9 billion stadium in Las Vegas for the National Football League's Raiders—funded in part with the largest public subsidy for a stadium in the league's history.

The bills—introduced in the House (H.R. 811) by Rep. Steve Russell (R-Okla.) and the Senate (S. 1342) by Sens. Cory Booker (D-N.J.) and James Lankford (R-Okla.)—would eliminate the subsidy by creating a special rule under tax code Section 141(b).

"If a community wants to vote and tax themselves to improve their city or to do something to bring a sports team in, that is up to those local citizens," Russell told Bloomberg BNA. "But you shouldn't have people in Nevada asking for Oklahoma or New York tax dollars to fund their stadium," he said.

A September 2016 report from the Brookings Institution found that 36 NFL, National Basketball Association, National Hockey League, and Major League Baseball stadiums that were newly built, extensively renovated, or under construction from 2000 through September 2016 were—at least in part—funded with tax-exempt municipal bonds, costing the federal government $3.2 billion when calculated using a 3 percent discount rate.

Russell, who has met with House Ways and Means Committee Chairman Kevin Brady (R-Texas) about the bill, said the measure is designed to be included in the tax reform package currently being crafted by Republican lawmakers and the White House. Booker told Bloomberg BNA he would rather see the measure enacted on its own.

The NFL is monitoring the legislation, said Jocelyn Moore, the league's senior vice president of public policy and government affairs. But a similar bill introduced by Russell last session (H.R. 4838) failed to gain traction, she noted. As far as the new legislation is concerned, "I don't think that either bill has garnered a significant amount of bipartisan cosponsors," Moore told Bloomberg BNA.

The bill's passage may be a long shot, but just how valuable are tax-exempt municipal bonds to the state and local governments and teams that rely on them to build new stadiums?

Costs Shifted to States

The average cost of debt service on the state and local level would increase 25 percent if stadiums lost the ability to use the bonds, said Dennis Zimmerman, director of projects at the American Tax Policy Institute and a former Congressional Research Service analyst who wrote a series of frequently cited reports on tax-exempt stadium financing in the 1990s. "That's generally the value of the tax subsidy."

The amount local taxpayers currently pay for the stadiums is equal to the total principal of tax-exempt bonds issued, which was $13 billion for the 36 stadiums surveyed in the Brookings report, said co-author Austin J. Drukker, a project coordinator and research assistant at the think tank.

"Assuming localities would switch from tax-exempt bonds to taxable bonds with the same principal value and other characteristics, the additional cost to local taxpayers would be equal to the federal subsidy"—$3.2 billion total—Drukker said in an email. Dividing $3.2 billion by $13 billion roughly equals a 24.6 percent increase in debt service, very close to Zimmerman's estimate.

"However, if localities used other financing options that were cheaper than taxable bonds (which have to pay interest to investors at the expense of the local taxpayers), the expense to the local taxpayer might be lower," he said.

Worth the Investment?

The NFL's Moore said stadiums shouldn't be treated differently than opera houses, cultural centers, or education facilities that states and localities vote to build.

Federal investment in infrastructure is designed to bring in private dollars for local projects that will lead to economic development, "which our stadiums certainly do," Moore said.

Brett Bolton, principal associate for finance and intergovernmental relations at the advocacy group National League of Cities, echoed Moore's comments about flexibility in an emailed statement. "If a referendum passes or a council votes to build a large public project, we believe the city should be able to use every tool in the tool chest to finance and advance the project," he said. "That would include tax-exempt municipal bonds."

But the Brookings study, citing several research papers, said: "Academic studies consistently find no discernible positive relationship between sports facility construction and local economic development, income growth, or job creation." Among other explanations, the report said the money people spend attending a game at a newly constructed stadium is largely offset by reduced spending at other local venues.

The NFL provided Bloomberg BNA with reports from the late 2000s that projected stadiums recently built in California, Minnesota, and Georgia—for the 49ers, the Vikings and the Falcons, respectively—would generate hundreds of millions in economic output. The league referred Bloomberg BNA to the individual cities to obtain the actual economic figures now that the first two stadiums are in service and the last one is nearing completion.

The mayor's office in Santa Clara County, Calif., didn't return requests for comment; the mayor's office in Minneapolis referred Bloomberg BNA to the Minnesota Sports Facilities Authority, which didn't respond; and the mayor's office in Atlanta said the city uses the Bureau of Economic Analysis for information on economic growth but hadn't verified the projected numbers.

In general, the tax exemption "has been a cost-effective way for state and local governments to finance infrastructure, and if the tax exemption broadly for municipal bonds were to be eliminated, it would likely result in less infrastructure investment," said Robin Prunty, a managing director in the Public Finance Ratings Group at S&P Global Ratings. "I think that would follow through for stadiums."

Demand Exceeds Supply

If legislation eliminating the tax exemption becomes law, "[w]ill it have an effect on the amount of sports economic activity?" Zimmerman asked. "I think we can say with great assurance, it will not."

The federal subsidy isn't the main driver for states and localities looking to finance professional sports stadiums, said Ted Gayer, vice president and director of Brookings' economic studies program and a co-author of the 2016 report. Other factors play a role, including a local community's desire to have a team and local politicians who want to bring in a team as part of their legacy, he said. And "most importantly, if you want a football team, you can't create a football team, you have to go to the NFL," he said.

The demand for franchises far exceeds the supply, Zimmerman said. "It's that excess demand that gives them the leverage to extract subsidies from the local and state governments."

Moore, at the NFL, disagreed with the assessment that the league would be unharmed by the stadium bills. "I think it's a concern for all sports leagues that build stadiums," she said, adding that the public financing is used not only for stadium construction, but also for security and technology upgrades.

The NHL, NBA, and MLB didn't return requests for comment.

Controversial Corner

The tax-exempt bond market probably would fare well if the stadium bills were enacted, according to Matt Fabian, a partner at Municipal Market Analytics Inc.

Tax-exempt stadium financing is a controversial corner of the municipal market. "It accounts for less than 1 percent of the bond market and yet it probably draws 25 percent of the criticism," Fabian said. Eliminating that small, problematic corner would legitimize the remainder of the market and reduce the risk of other areas losing their tax exemption, he said.

Any negative effects of killing the stadium-bond exemption would likely be felt by public finance bankers, he said.

Cutting stadium financing out of the tax-exempt space would mean that those bankers could no longer charge fees for their underwriting services on stadium bond issues. And while there aren't a lot of these bond issues in the market, they are generally lucrative for banks to bring in, Fabian said.

Stadium bond issues are complex and tend to be controversial, so an investment bank can generally get a larger spread for selling those bonds than general obligation bonds, he said. "These are harder transactions to structure and complete, which is a welcome change from the low-spread world of GO bond issuance."

Bloomberg BNA

By Allyson Versprille

July 3, 2017

With assistance from Kaustuv Basu in Washington.

To contact the reporter on this story: Allyson Versprille in Washington at aversprille@bna.com

To contact the editor responsible for this story: Meg Shreve at mshreve@bna.com

---

NABL: Political Subdivision Regs on List of Burdensome Regs.

The IRS has issued Notice 2017-38 which responds to Executive Order 13789 that required the IRS and Treasury to review significant tax regulations issued on or after January 1, 2016 and report on those regulations that (i) impose an undue financial burden on U.S. taxpayers; (ii) add undue complexity to the Federal tax laws; or (iii) exceed the statutory authority of the Internal Revenue Service (IRS).

Eight regulations were identified, including the proposed regulation on the definition of political subdivisions. In discussing that regulation, the Notice states: "Commenters stated that the longstanding 'sovereign powers' standard was settled law and had been endorsed by Congress, and additional limitations were unnecessary. Commenters also stated that the proposed regulations would disrupt the status of numerous existing entities and that it would be burdensome and costly for issuers to revise their organizational structures to meet the new requirements of the proposed regulations."

Comments are requested on whether the regulations identified in the report, including the proposed regulation on political subdivisions, should be rescinded or modified. Comments are due by August 7, 2017. Treasury must submit a report to the President by September 18, 2017 recommending specific actions to mitigate the burdens identified.

The proposed regulations are available here.

NABL's comments on the proposed regulations are available here.

KBRA Releases Rating Report: Riverside County Transportation Commission Toll Revenue Bond, 2017 TIFIA Series

Kroll Bond Rating Agency (KBRA) announces the preliminary rating of BBB for the Riverside County Transportation Commission Toll Revenue Bond, 2017 TIFIA Series. The bond evidences the $152.5 million loan ("the TIFIA Loan") from the United States Department of Transportation to the Riverside County Transportation Commission (RCTC). The TIFIA Loan constitutes federal project credit assistance under the Transportation Infrastructure Finance and Innovation Act for the I-15 express lanes project ("the Project") located in Riverside County, California.

The TIFIA Loan will have senior lien priority in project revenues. The interest rate will be set at closing at the 30-year U.S. Treasury State and Local Government Series rate plus 0.01%.The maturity of the TIFIA Loan will be limited to the earlier of 35 years after substantial completion of the Project (currently projected for July 1, 2020) or June 1, 2056. Interest on the TIFIA Loan will be paid semi-annually while principal will be paid annually. The TIFIA Loan will fully amortize by the projected maturity date, and therefore there is no refinancing risk in the transaction. Proceeds of the TIFIA Loan will be used to fund a portion of design-build and other costs for the Project, which are currently estimated at $471 million. Other sources of funds for such Project costs include RCTC's Measure A sales tax revenue and Measure A sales tax bonds issued in relation thereto and various federal grants. Senior debt service coverage ratios for the TIFIA Loan average 3.13x under KBRA's rating case and stressed assumptions KBRA used in analyzing Project cash flows include higher construction and O&M costs and lower traffic volumes.

Please click on the link below to read the full report:

Riverside County Transportation Commission Toll Revenue Bond, 2017 TIFIA Series

If you have any difficulties accessing the report, please contact info@kbra.com or visit www.kbra.com.

TAX - PENNSYLVANIA

Valley Forge Towers Apartments N, LP v. Upper Merion Area School District

Supreme Court of Pennsylvania - July 5, 2017 - A.3d - 2017 WL 2859007

Taxpayers brought action against school district, as a taxing district, seeking declaratory and injunctive relief on the theory that the district violated the Uniformity Clause of the Pennsylvania Constitution by systematically appealing only assessments of commercial properties.

The Court of Common Pleas sustained district's preliminary objections and dismissed the complaint with prejudice. Taxpayers appealed. The Commonwealth Court affirmed. Taxpayers appealed.

The Supreme Court of Pennsylvania held that:

- Taxpayers could invoke equity jurisdiction of Court of Common Pleas to seek declaratory and injunctive relief based on theory that school district violated Uniformity Clause, and
- Uniformity Clause did not permit school district to selectively appeal only assessments of commercial properties, such as apartment complexes, while choosing not to appeal assessments of other types of property, such as single-family residential homes.

Taxpayers could invoke equity jurisdiction of Common Pleas Court to seek declaratory and injunctive relief based on theory that school district, as taxing district, violated the Uniformity Clause of the Pennsylvania Constitution by systematically appealing only assessments of commercial properties. Statutory appeals process was not designed to provide declaratory or injunctive relief, strict adherence to the process would implicate concerns relating to piecemeal litigation and inadequacy of statutory remedy, and adjudicatory process by board of assessment appeals was solely directed at ascertaining the subject property's value and applying ratio to that value.

Uniformity Clause of the Pennsylvania Constitution did not permit school district, as taxing district, to selectively appeal only assessments of commercial properties, such as apartment complexes, while choosing not to appeal assessments of other types of property, such as single-family residential homes. All property in taxing district was single class, Uniformity Clause did not permit government to treat different property sub-classifications in disparate manner, and nondiscriminatory methods of deciding which properties to appeal existed.

Monetizing Masterpieces in Detroit's Bankruptcy.

General Motors filed for bankruptcy in 2011 and sold off divisions Hummer, Saab, and Saturn. The city of Detroit filed for bankruptcy in 2013 and faced the prospect of selling off a Matisse, Cezanne, and a Van Gogh. This article discusses the treatment of public assets such as the DIA's art collection in municipal bankruptcy. Municipal bankruptcies are rare, and parties to such a case have little precedent and little research on which to rely. The purpose of this article is to better inform academics, local officials, and bondholders of the consequences of debt adjustment under Chapter 9 of the Bankruptcy Code.

Read the article.

American Bar Association

By James L. Tatum III

Harvesting the Value of Water: Stormwater, Green Infrastructure, and Real Estate.

How Stormwater Retention Paid Dividends for Three Sites

Recently, ULI hosted a webinar looking at how three different land uses were able to economically include stormwater diversion infrastructure in ways that added value. From a park in Washington, D.C., to a former department store warehouse in Portland, Oregon, to a Whole Foods site in suburban Raleigh, North Carolina, these diverse projects are linked by a common ingenuity in handling stormwater challenges.

These three examples were among many showcased in the Institute's recent report, *Harvesting the Value of Water: Stormwater, Green Infrastructure, and Real Estate*, which highlighted the numerous ways in which water is not merely a threat requiring defensive measures, but "one that can be harnessed to make cities more sustainable and livable." These examples ranged from a suburb near Dallas to a flood-prone site in New Orleans to a pier development in Boston—locations prone both to excess water and to too little water—and featured an assortment of tools that can be combined given the circumstances. It is both an address of problems for cities and individual properties and sometimes even a means to make a profit. As the report notes:

“Cities across the United States are embracing green infrastructure approaches because they offer social, economic, and environmental benefits while addressing water challenges. Green infrastructure cost-effectively reduces sewer system overflows and manages stormwater runoff, improves local water quality, decreases the use of potable water, reduces heat-island effects, improves public health, enhances recreational opportunities, increases employment, and stimulates economic growth—all at a lower cost than gray infrastructure solutions alone.”

The projects featured in ULI’s webinar each involved differing approaches to water, designed to turn an unwelcome guest into a helpful one.

Brad Fennell, senior vice president at W.C. Smith, spoke about the public/private partnership of Canal Park in Southeast Washington, D.C., an infill park built in 2012 as an anchor both for the company’s construction nearby and for the neighborhood in general.

Property developers and owners also indicated that design and operation of stormwater projects requires a learning curve, particularly in terms of landscape maintenance for green infrastructure installations such as bioswales and rain gardens. The three-block park replaced a former bus parking lot and public housing, and its foliage and leisure space are immediately apparent. The park is a space for area residents and employees to leave their cares behind, but the park is a warren of underground activity. As Fennell commented, “While lush landscaped areas provide a tranquil area to picnic and engage in a civic way below the surface, the park’s hard at work capturing and cleaning stormwater. Most visitors to the park are unaware of the extensive stormwater recycling that’s happening under their feet.”

A complex system rests beneath the surface: one 40,000-gallon (151,000 liter) holding tank that pumps water to bioplanters that irrigate the landscape. The water is then routed to a second cistern of the same size, where it is then cleansed through microfilters before use in the park’s fountains and restrooms, and seasonally, in the park’s 10,000-square-foot (929 sq m) ice rink. This water is tested weekly for quality. It is designed not merely with the idea of collecting water from the park itself, but also from nearby blocks that might not accommodate stormwater as effectively. It remains necessary to augment the site’s uses with potable water for human consumption, but most needs can be filled by on-site collection.

One person asked whether this eliminated the need for water entirely; it cannot completely, due to inevitable seasonable variation:

“In a perfect world, we would have a big-enough storage facility to hold all the water necessary, but ultimately it rains during the colder seasons when you don’t need the irrigation and it tends to be dry during the seasons when you’re in drought, so having the ability to funnel more water into the system will help us in the long run.”

The second project profiled was of a substantially different nature—not a permeable park, but a solid warehouse, a historically landmarked former department store warehouse in Portland. Working around the building’s historic character, plenty of improvements were still possible. Sidewalk bioswales were located on every side of the full-block building, and accentuated by an 11,700-square-foot (1,100 sq m) green roof also featuring a solar array. All water from the rooftop is collected and reused for toilet flushing.

In renovating the building, Gerding Edlen, the property management company, realized that an entirely new foundation would be necessary. Thus, they decided to seize this opportunity to place a cistern beneath that surface, according to Renee Loveland, director of sustainability, Gerding Edlen, “by going deeper into the basement and creating the floor above.” She estimated the necessary cost of reconstruction at about $60,000 in any case; for an additional "$80,000 in plumbing costs and pumps and motors and those sort of things," they yielded a 169,000-gallon bunker for water in the building's effective sub-basement.

It is an impressive figure that has yielded other impressive benefits. Loveland said that in 2016 "our harvested rainwater met 93 percent of all nonpotable needs in the building." Reclaimed rainwater provided 52 percent of all water use, potable or otherwise, for the building in that year. This system provided a dramatic reduction of 107 percent in the building's water bill. "We actually saved more money than we paid the city last year due to the water savings we achieved." And that is not the only benefit: the green roof has provided for reduced building heat gain and is an amenity to employees in its own right.

The next project shifted yet again, from city to suburb, to a six-acre (2.4 ha) project, the Market at Collonade, which contains a Whole Foods and a smaller additional building. Chris Widmayer, vice president of Regency Centers, outlined the site's constraints. "One is we did not have enough land to do traditional stormwater detention. The typical aboveground systems that we had looked at were too expensive." The site was additionally adjacent to a watershed and at active and frequent risk of stormwater runoff. They ended up with a site that is 80 percent impervious to water, and yet filled with other features to overcome this deficiency. As Widmayer commented, "A combination of cisterns to take the stormwater from the roof, subsurface infiltration systems, bioswales, and bioretention areas to clean the water, and landscape irrigation systems to use the water that has been reclaimed in a massive underground detention chamber." A cistern beneath the parking lot can contain 350,000 gallons (1.3 million liters) of water, used both for storage and to irrigate the landscaping. Another aboveground cistern next to Whole Foods collects all the water from the retailer's roof, then uses it for assorted purposes within the store. It is a system that can absorb a remarkable amount of water. According to Widmayer, "with 36 inches of rainfall, only 0.6 inch [1.5 cm] float out of the system and into public storm systems." In practical terms, "less stormwater runoff than the typical suburban house."

A question emerged as to how these projects are being funded. These do involve varying amounts of resources from government bodies. The District of Columbia provided 65 percent of financing for the Canal Park project, and the North Carolina Clean Water Management Trust fund furnished around $500,000 for the North Raleigh Project. There are encouraging signs that these are becoming less necessary. The Portland project received a $25,000 grant from the city's Green Investment Fund, but this grant no longer exists—not for lack of interest, but because such practices have become ubiquitous. Loveland said, "I would say that there are fewer financial incentives in this market currently for stormwater strategies because it's become so much more commonplace."

The Urban Land Institute

By Anthony Paletta

July 5, 2017

The Week in Public Finance: Late Budgets, Illinois' First in Years and Risky Pension Investments.

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

GOVERNING.COM

BY LIZ FARMER | JULY 7, 2017

Restructured Federal Freight Grants to Offer 'More Bang for the Buck.'

DALLAS — The Trump administration has reconfigured and renamed a $4.5 billion discretionary grant program dedicated to freight-related transportation infrastructure to put more emphasis on projects that can leverage additional state, local, or private financing.

The freight infrastructure program authorized by 2015’s Fixing America’s Surface Transportation Act will now be known as Infrastructure for Rebuilding America (INFRA) grants rather than the Fostering Advancements in Shipping and Transportation for the Long-term Achievement of National Efficiencies (Fastlane) as it was called by the Obama administration, according to a notice published in Thursday’s Federal Register.

The revised program is intended increase the impact of projects by leveraging capital and allowing innovation in the project delivery and permitting processes, including public-private partnerships, the Transportation Department said in a fact sheet on the changes.

“We need to take steps to get more bang for the buck,” according to the fact sheet. “By getting more of our partners to use federal funding as a supplement — not a substitute — we seek to increase the amount of overall funding that goes to infrastructure.”

Though the INFRA grants can be used to fund highway, rail, and port projects, the program is specifically focused on projects in which the local sponsor is significantly invested and is positioned to proceed rapidly to construction, said Transportation Secretary Elaine Chao.

“By ensuring the right incentives, projects selected under this program will be better able to make significant, long-term improvements to America’s transportation infrastructure,” she said.

The notice of funding opportunity in the Federal Register said approximately $1.5 billion of the grants would be available through fiscal 2018.

The notice gives states and localities 120 days from publication to submit new applications for the revised grant program. Projects proposed for the 2017 Fastlane grant cycle submitted by the mid December 2016 deadline can be refiled, but the applicants must show how their new proposals address the program’s amended criteria.

The FAST Act authorized $800 million of the discretionary grants in fiscal 2016, $850 million in 2017, $900 million in 2018, $950 million in 2019, and $1 billion in 2020, the final year of the five year highway funding bill.

The INFRA grant program preserves the statutory requirement in the FAST Act to award at least 25% of funding for rural projects.

“The administration understands that rural needs may well exceed this limit, and the department will consider rural projects to the greatest extent possible,” the fact sheet said.

Highway projects in rural areas may not have the revenue stream needed to attract private investments, so the grant process “will consider an applicant’s resource constraints when assessing the leverage criterion,” the Transportation Department said.

The FAST Act caps the grants at no more than 60% of project costs, although additional loans and grants could boost the federal share to as much as 80%.

The first and so far only round of the annual grants provided $759.2 million for 18 projects in 15 states and the District of Columbia in 2016. The successful projects were chosen from 212 applications seeking a total of $9.8 billion.

No more than $500 million of the $4.5 billion of grants authorized by the FAST Act may go to freight rail or port projects, with the remainder reserved for highways and bridges. Approximately $326 million of freight rail and port funding remains after the first round of grants.

More funding for freight infrastructure could be provided by a bill (HB 3001) introduced in the House on June 22 by Rep. Alan Lowenthal, D-Calif. The measure would create a Freight Transportation Infrastructure Trust Fund, funded through a national 1% tax on the cost of transporting goods.

The proposed tax would generate $8 billion per year dedicated to freight-related infrastructure projects with a focus on multimodal projects and projects to restore aging infrastructure while relieving bottlenecks in the freight transportation system, Lowenthal said.

The Bond Buyer

By Jim Watts

Published June 29 2017, 1:22pm EDT

Bill Would Lift Caps on PABs Used to Finance Water, Sewer Infrastructure.

WASHINGTON – Advocates of removing state volume caps for tax exempt private activity bonds used to finance water and sewer projects have once again reintroduced bipartisan legislation in the House.

Reps. John Duncan, R-Tenn., and Bill Pascrell, D-N.J. introduced the Sustainable Water Infrastructure Investment Act (H.R. 3009) on June 22 with seven other cosponsors.

No Senate version of the bill has been introduced this year, though there were identical bills cosponsored by Sens. Mike Crapo, R-Utah, and Robert Menendez, D-N.J. in the Senate and Duncan and Pascrell in the House during the previous Congress. Versions of this legislation have been proposed in the House since 2008 and Pascrell has always been a sponsor.

States and territories issue most private activity bonds, including those used for water and sewage projects, under volume caps based on population data from the U.S. Census Bureau and a formula set by the Internal Revenue Service. For 2017, the cap is either $305.32 million per state or $100 per capita based on a state’s population, whichever is greater.

Nationally the cap for all 50 states, the District of Columbia and Puerto Rico stands $35.69 billion this year. Nine states have individual caps of more than $1 billion each with California topping the list with a $3.93 billion limit.

President Trump campaigned last year on a pledge for a $1 trillion, 10-year infrastructure initiative that would rely on tax credits to attract private investment.

But the president's fiscal 2018 budget requested only $200 billion for the federal share of the infrastructure initiative spread out over nine years. Trump also proposed eliminating community block development grants and other programs that provide funds for infrastructure projects.

State and local governments would have to provide matching funds to qualify for some of the $200 billion in proposed federal funding. But it's still uncertain to what extent there will be a role for tax-exempt bonds, if any, in the plan. Tax-exempt bonds have been the primary way by which states and localities finance infrastructure, including so-called exempt-facility PABs for water furnishing and sewage facilities.

Eliminating the federal cap on PABs for water and sewer infrastructure projects would leverage $50 billion in private capital investment, the bill's cosponsors said. In addition, they estimate it would create 1.4 million jobs and add $101.5 billion in tax revenue for federal, state and local governments.

"If we do not start investing in our water infrastructure now, it is going to cost our nation many billions more in the future," Duncan said at the time of the bill's introduction.

The water and wastewater infrastructure projects would help communities comply with safe drinking water and sanitation standards.

"Our deteriorating water infrastructure regularly causes water main breaks in communities across our country, destroying property, disrupting neighborhoods and wasting our limited water supply," Pascrell said. "By encouraging private investment to help fund critical water infrastructure upgrades, we are encouraging stronger investments in our country's future at a reduced cost to the taxpayer."

The Bond Buyer

By Brian Tumulty

Published July 06 2017, 3:48pm EDT

Free Interactive Course Simulates Decision-Making about Investing in Municipal Bonds.

Washington, DC – The Municipal Securities Rulemaking Board (MSRB) today launched a free, interactive online course to help investors understand how municipal bonds work and assess how they might fit into a balanced portfolio.

"For sheer variety, there is no market quite like the universe of municipal securities," said MSRB Executive Director Lynnette Kelly. "One million securities are outstanding, a total that dwarfs all other equity and bond instruments. The MSRB is committed to providing objective and authoritative information to help investors navigate this diverse marketplace."

“Exploring Municipal Bonds: A Course for Investors” uses real-world scenarios to show investors where to get information about municipal bonds and to highlight considerations for selecting an individual security. Appropriate for both individual investors and professionals, the course was developed to supplement the MSRB’s online Education Center, which provides free, objective information about the municipal bond market. Create an account in MuniEdPro® to take the free, 45-minute course.

The municipal bond investor course is part of MSRB’s MuniEdPro® suite of online, interactive courses about municipal market activities and regulations. Other topics in the series include primary market offering disclosure responsibilities, roles and responsibilities of market participants in a primary offering, and the role of the regulator.

“We wanted to leverage the latest in online technology to engage investors seeking a deeper understanding of municipal bonds,” said Ritta McLaughlin, MSRB’s Chief Education Officer. “Our investor course enables them to experience a variety of scenarios to explore how municipal bond investing would have an impact on their portfolio and their income. It is an exciting addition to the growing catalog of MuniEdPro® courses.”

The MSRB developed the free course to educate fixed-income investors about municipal bonds and help them evaluate how municipal bonds can fit into a balanced portfolio of investments. Municipal bonds attract perennial interest through ups and downs in the broader financial markets because of their tax advantages and historically low default rates.

Date: July 5, 2017

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

Who Pays the Local Tax Bill?

There’s disagreement over who bears the biggest burden: the poor or the wealthy.

For the past 15 years, cities have focused on attracting the creative class. The idea is that if you build a thriving creative culture — vibrant communities of artists, writers, musicians and so on — a thriving economy will follow. It’s a strategy that’s worked well, especially in places like Asheville, N.C.; Denver; and Seattle.

In many cities, it’s worked too well. Some creative-class cities have become victims of their own success, unable to keep up with demand for housing, local public services and livable-wage jobs for the lower-middle class. The result is a crisis of affordability driven by huge spikes in home prices, rents and homelessness.

Local leaders have taken steps to respond. In the past 18 months, Los Angeles, San Francisco, Seattle, Silicon Valley in Santa Clara County, Calif., and other localities have proposed new local taxes to expand affordable housing and bolster services for the homeless. As they grapple with this new challenge of affordability, they must also confront an old question at the heart of local public finance: Who actually pays local taxes?

There are two ways to think about who pays. One is the “statutory incidence,” or who is required to remit a tax to the government. The other is the "economic incidence," or who pays a tax because they're unable to avoid it. The former is easy to measure. The latter is not.

Most local governments have access to the sales tax and the property tax. There's good evidence that the economic incidence of the sales tax is on consumers. Merchants collect and remit the tax, but consumers pay it because there's really no way around buying basic items like clothing. If the goal is for tourists to help pay for local affordability, then the sales tax makes sense. However, for that same reason poor and middle-income people also pay a larger share of their incomes in sales taxes compared to the rich because the sales tax is regressive. For many affordability advocates, that's unacceptable. Why pay for affordability with a tax that falls disproportionately on the poor?

That's why affordability advocates have warmed to the property tax. Middle- and upper-income people are more likely to own property and pay property taxes, so the statutory incidence is inherently less regressive. But if we care about economic incidence, the reality is unclear at best. In fact, for more than 50 years public finance experts have argued over who actually pays the property tax.

One school of thought says it's really a tax on wealth. But higher property taxes might work against affordability by reducing the demand for housing and discouraging density. Why? It's easy to imagine a homeowner who decides not to add on a new guest room because that will increase property value and the subsequent property tax bill. The same might apply to a landlord who opts against building a new rental property.

Another view says local property taxes are what you pay for the services your local government delivers. This is especially true for zoning, public safety and other services that benefit all property owners in roughly the same way. If that's true, then property taxes are neither progressive nor regressive. Everyone pays a proportional amount for a proportional share of benefits.

Yet another view says the property tax is a tax on the service called housing. In that case, the property tax is like the sales tax. Since lower-income people cannot escape paying for housing (usually as renters) then property owners can send much of the property tax burden down the income ladder.

We're not likely to settle this question any time soon. So for now, the question of who should pay for affordability will be about perceptions, priorities and politics, and not about public finance.

GOVERNING.COM

BY JUSTIN MARLOWE | JUNE 2017

[The Cost of Water Is Rising. Philadelphia Has an Unprecedented Plan to Make It More Affordable.]

It's the first city to set water rates based on income.

This week, Philadelphia is launching a first-of-its-kind program to address a common problem: Late and unpaid water bills can leave low-income people without the ability to shower or cook food in their homes.

In Philadelphia, more than 40 percent of the city's water utility customers are delinquent in paying their water bills, amounting to about $242 million in uncollected revenue, according to the Philadelphia Water Department.

The city's solution? Charge residents based on how much money they make.

Continue reading.

GOVERNING.COM

BY J.B. WOGAN | JULY 5, 2017

Illinois Bonds Rally on End of Impasse That Triggered Downgrades.

- **Gap between yields on Illinois debt and benchmark narrows**
- **Despite action, Moody's warns that cut to junk still possible**

Illinois bonds climbed after the state enacted its first full budget in two years and raised taxes to reduce its chronic deficits, ending a long-running impasse that triggered multiple downgrades and pushed the state's rating to the precipice of junk.

The securities were the most actively traded municipal bonds Friday, a day after the legislature overrode Governor Bruce Rauner's vetoes to enact the spending plan. Without that step, Illinois was at imminent risk of another downgrade, which could have scared off individual investors who dominate the market and left some mutual funds unable to buy its debt. That's remains a possibility, with Moody's Investors Service saying this week that it has placed the state on watch for a potential downgrade.

"Investors are breathing a sigh of relief," said Vikram Rai, a municipal-bond analyst with Citigroup Inc. "If it weren't for the overhang of the Moody's downgrade after the recent statement, the bonds would have rallied more."

Over $21 million of Illinois general-obligation bonds due in 2023 traded Friday morning, according to data compiled by Bloomberg, and the average price rose of 101.4 cents on the dollar from 98 cents on Thursday. That pushed the yield to 2.3 percentage points more than benchmark securities, down from 2.9 percentage points.

The push for lawmakers came largely from major rating companies, which threatened to pull Illinois's investment-grade rank if the government did not produce a budget for the year that began on July 1. Though that deadline was missed, lawmakers worked through the weekend and and on the July 4 holiday to avoid the cut, which would have reduced Illinois's rating to an unprecedented low for a U.S. state.

Bloomberg Markets

By Kristy Westgard

July 7, 2017, 9:29 AM PDT

Los Angeles Schools Face Fiscal Woes.

- **District challenged by deficits, pensions, falling enrollment**
- **Bonds are trading at better levels than that of Texas**

Los Angeles Unified School District has credit ratings others would envy — yet faces challenges that if left unchecked could undermine its stellar reputation with investors.

The bonds of the nation's second-largest school system are ranked AAA by Fitch Ratings and Aa2 by Moody's Investors Service though the district, like others in California, wields little power to raise revenue and relies on a state funding formula pegged to student enrollment. And that enrollment is in steady decline, with the 2019-2020 class rolls projected to be more than a third lower than in 2003.

So far, its borrowing costs don't seem to be reflecting any concern, as a sample of the district's 5-year and 10-year general-obligation bonds shows them yielding less than similar debt from Texas, a state that carries the top rank from all three major credit raters, data compiled by Bloomberg show.

The school administration, which forecasts deficits within two years, saw contracts for all but one of its bargaining units expire Friday. It's a "significant" time for officials, who haven't built in any related cost increases for future budgets, said Moody's analyst Helen Cregger. Meanwhile, contributions for pensions and lifetime retiree health-care benefits are escalating.

"We may be at an important inflection point," Cregger said. "Going forward, annual increases in state funding may be more moderate. So the pressures will be compounded."

Los Angeles officials are taking action, laying off and reassigning some employees while hoping through contract negotiations to slow the growth in retiree health-care liabilities that have reached $13.6 billion, or 366 percent of payroll. The district must also contend with a rising pension tab as general-fund contributions for retired teachers will reach $497 million in fiscal 2021 from $215 million seen in 2014.

Ksenia Koban, municipal strategist at Payden & Rygel, anticipates the district's debt rating falling within three to five years to the A-level category and spreads over benchmark bonds widening. While the rating companies assign the district a stable outlook, their analyst reports and interviews flag the potential for the school system's challenges to deepen. Administration officials declined to comment on the prospect of future ratings downgrades.

"The fundamental problems it has to address are almost insurmountable," said Koban, who has stopped adding to the firm's holdings of district bonds. "I don't know how you can get out of this in two years, forget ten."

Bloomberg Markets

By Romy Varghese

July 5, 2017, 2:00 AM PDT

Goldman Leaps Into Ranks of Top Muni Underwriters With Big Sales.

- **Bank of America holds its lead in municipal-bond business**

- **RBC gains most market share during the first half of 2017**

Goldman Sachs Group Inc. vaulted into the ranks of the biggest U.S. municipal-bond underwriters in the first half of 2017 by managing large sales for New York City's Hudson Yards redevelopment, the city of Chicago and American Dream, a long-stalled shopping and entertainment center in New Jersey's Meadowlands.

The New York-based bank oversaw $9.8 billion of long-term state and local debt issues in the first half of 2017, rising to seventh biggest muni underwriter from 11th. Goldman hasn't finished in the top 10 in a full year since 2014, according to data compiled by Bloomberg.

Meanwhile, Bank of America Corp. held the lead in state and local government debt underwriting, a title it's kept for five straight years, followed by Citigroup Inc. Bank of America managed $26.5 billion of municipal bond sales in the first half compared with $23.9 billion for Citigroup.

RBC Capital Markets boosted its market share in the municipal business by 2.4 percentage points in the first half, the most of any bank, by handling 7.5 percent of new issues, according to data compiled by Bloomberg. The Royal Bank of Canada-unit climbed one spot into fifth place, behind JPMorgan Chase & Co. and Morgan Stanley.

The underwriters are chasing fewer deals as the pace of debt sales slows from last year, in part because interest rates have risen from more than half-century lows. There were about $187 billion of municipal bonds issued through June 30, a 13.1 percent decline from the same period last year. The number of advance refundings, a popular technique used to refinance debt before it can be paid off, has lagged, according to Bank of America Merrill Lynch.

Last month, Goldman managed a $1.1 billion sale of unrated municipal bonds for American Dream, a planned 2.9 million square-foot amusement mall about 10 miles (16 kilometers) west of Manhattan. It was the year's biggest offering of unrated municipal securities, which are sold for speculative projects that are often risky enough to be awarded below investment-grade ratings.

In May, Goldman managed the refinancing of $2.2 billion of debt issued to fund infrastructure at Hudson Yards, a 26-acre residential, office and retail development on Manhattan's far west side.

The prices Wall Street banks charged U.S. cities and states to sell bonds in the first half were little changed. Fees averaged $5.08 per $1,000 of long-term bonds compared with $4.95 in 2016.

Bloomberg

By Martin Z Braun

July 3, 2017, 9:55 AM PDT

Illinois House Overrides Rauner's Veto to End Budget Impasse.

- **Lawmakers override governor's veto to end record budget fight**
- **S&P warned of likely downgrade without budget by July 1**

For the past two years, nearly Illinois Governor Bruce Rauner's entire time in office, his state was locked in a political paralysis that battered its universities, left contractors waiting to be paid and undermined its standing on Wall Street.

Then on Thursday, faced with the risk of becoming the only U.S. state with a junk bond rating, Democrats who control the legislature and almost a dozen of the governor's fellow Republicans voted to override his vetoes of a $36 billion spending plan and across-the-board tax hikes, enacting a budget for the first time since mid-2015.

"If we don't have a budget, with virtual certainty, we will go to junk status," said Representative David Harris, a Republican who broke ranks with the governor. "At least with a budget, we hold off."

The resolution will ease the cash-flow crisis that threatened to halt payments to pensions, schools and government workers. It will allow the state to borrow money to pay down a record pile of unpaid bills that tripled to $15 billion during the impasse. Social service providers and universities starved of aid will get some relief. And Illinois will have an actual spending plan for the next 12 months, instead of haphazardly running deeper into the hole by spending more than it's taking in because of court orders and continuing appropriations.

After the deal came together over the last week, with votes during the weekend and on the Fourth of July holiday, Illinois bond prices rallied on signs that the elected leaders would finally tackle the government's long-building financial strains. On Friday, the state's bonds were the most actively traded municipal securities, with taxable Illinois bonds due in 2033 rising to an average of 96.8 cents on the dollar, up from 91.5 cents on June 30, according to data compiled by Bloomberg. That pushed the yield down to 5.4 percent from 5.9 percent.

The House of Representatives on Thursday followed the Senate by approving the budget bills despite Rauner's objections that it would unduly burden residents by raising their taxes. House Speaker Michael Madigan, a Democrat, praised the the end of a "destructive" impasse while noting there's still work to do.

Even though it's over, the risks to the state may not be. While officials clashed over the budget, the state's obligations to its deeply underfunded pensions grew to about $130 billion. On Wednesday, Moody's Investors Service, in anticipation of the successful override, said it could still downgrade the state over the next few months, citing potentially optimistic revenue assumptions and the massive retirement fund debts.

"This budget will not solve all our problems tomorrow," Comptroller Susana Mendoza, a Democrat, said in a statement Thursday, praising the passage of the budget, but noting that vendors still won't get paid as fast as they want. "We haven't won the lottery."

The fight between Rauner, who in 2015 became the first Republican to lead the state in more than a decade, and legislative Democrats was stoked in part by the expiration of temporary tax increases just as he took office. Rauner has held the line against any plan that failed to include elements of the agenda he says he was elected to enact, including a property-tax freeze, legislative term limits and changes to the workers' compensation insurance system to cut costs for businesses.

Rauner had said he vetoed the budget measures because they were insufficient. On Thursday, he said the "tax-and-spend plan is not balanced, does not cut enough spending or pay down enough debt, and does not help grow jobs or restore confidence in government."

The break in the record-long impasse came after S&P Global Ratings and Moody's last month dropped Illinois's credit rating to one step above junk and warned of further downgrades if the government failed to take steps to stanch the bleeding. A cut below investment grade would be unprecedented for a U.S. state. That possibility hasn't entirely receded, though Fitch Ratings earlier this week called the budget plan "concrete progress" and S&P said it was a "meaningful step."

“Even with this override, it is one step in a long journey that Illinois is going to need to stay on in order to stabilize its finances,” said Laurence Msall, president of the Civic Federation, a Chicago nonprofit that tracks state and municipal finance. He added that there doesn’t appear to be a “silver bullet” for addressing the state’s unfunded pension liabilities.

Even with the resolution, John Humphrey of Gurtin Municipal Bond Management said he wants to see a more stable political atmosphere before buying Illinois’s debt. Gurtin doesn’t hold any Illinois general-obligation or sales tax bonds, he said.

“In the short-term yes, they stanched the most immediate liquidity pressures that they were facing,” said Humphrey, Gurtin’s Chicago-based head of credit research. “But the amount of fiscal discipline that’s going to be required each year, every year remains to be seen, especially given the political environment.”

Bloomberg Politics

By Elizabeth Campbell

July 6, 2017, 2:33 PM PDT July 7, 2017, 6:12 AM PDT

Hartford Hires Restructuring Firm as Fiscal Strains Build.

- **Mayor Bronin: law firm was hired ‘to examine all options’**
- **City facing $50 million deficit, nearly 10 percent of budget**

Hartford, Connecticut, capital city of the wealthiest U.S. state, hired Greenberg Traurig LLP to evaluate restructuring options for the cash-strapped city, including a potential bankruptcy, as the state’s failure to pass a budget put further pressure on its finances.

Hartford, where a third of its 123,000 residents live in poverty, faces a $50 million deficit, nearly 10 percent of its budget, and may not receive a lifeline from the state, which hasn’t adopted a budget for the fiscal year that began July 1. Last week, Aetna Inc., its fourth-largest taxpayer, said it was moving its headquarters to New York from the city it’s called home since 1853. Hartford’s credit rating may be downgraded deeper into junk by Moody’s Investors Service.

Greenberg Traurig’s team will be led by Nancy Mitchell, a co-chair of the firm’s restructuring practice, the city said in a news release. When Hartford was soliciting proposals from firms that specialize in bankruptcy, Council President Thomas Clarke told the local newspaper that looking into seeking court protection from creditors would only be a last ditch option.

“Nancy Mitchell and the team at Greenberg Traurig have extensive experience in municipal restructuring, and they will be working with us to examine all options for putting the city of Hartford on a sustainable path,” Mayor Luke Bronin said in a statement. “As we start a new fiscal year without a state budget and with significant uncertainty, we will have the advice and counsel of an experienced and highly respected restructuring firm.”

Hartford’s tax base of about $4.1 billion is about two-thirds that of neighbor West Hartford, which has far fewer residents, because half of property — state buildings, hospitals, universities, non-profit agencies — is tax-exempt. The city has $672 million in debt, including $228 million uninsured bonds, according to data compiled by Bloomberg. It also guarantees about $70 million in debt for a minor-league baseball stadium downtown and Aetna, Hartford's fourth-largest property-taxpayer, is moving 250 jobs to New York City. It will still have thousands working in Hartford.

In 2016, Bronin, a Democrat, took over a city that'd been delaying its fiscal reckoning by pushing debt payments into the future, draining reserves and resorting to one-time measures, such as selling a parking garage, while its debt swelled by 52 percent from 2011 to 2015, according to Moody's Investor Service figures.

Since taking office in 2016, he's cut 100 jobs and renegotiated leases and energy contracts. Bronin's been less successful in getting concessions from unions: The city's fiscal 2017 budget assumed $16.5 million of concessions, the bulk of which haven't materialized. Hartford managed to strike a deal with its firefighters that saves about $4 million a year through 2020 by freezing pay increases, increasing pension contributions, lowering salaries for new hires and requiring employees to pay more for health care.

Bronin is lobbying the state to fully fund a program that compensates local governments for revenue lost to tax-exempt properties, which alone would provide enough money to close next year's deficit, and has joined with cities pushing to raise Connecticut's 6.35 percent sales tax to 6.99 percent to provide more aid. He also persuaded Hartford Financial Services Group Inc., Travelers Cos. and Aetna to pledge $50 million to the city over five years as part of a "comprehensive and sustainable solution for Hartford."

Hartford could renegotiate labor contracts and cut debt and pensions in bankruptcy, as a handful of cities have done since the recession. It would need the governor's consent to file chapter 9.

Connecticut, facing a $5 billion two-year deficit failed to adopt a biennial budget by July 1. Governor Dannel Malloy is controlling spending while legislators continue negotiations.

Bloomberg Markets

By Martin Z Braun

July 6, 2017, 11:24 AM PDT July 6, 2017, 2:17 PM PDT

In America's Richest State, the Capital Flirts With Bankruptcy.

- **Hartford hires law firm to explore 'all options' available**
- **Officials haven't ruled out filing for bankruptcy protection**

The hedge-fund enclave of Greenwich, on the Connecticut Gold Coast, is about 100 miles and a world away from the state capital.

But the fiscal crisis in Hartford, the historic center of the American insurance industry, is fast becoming more representative than mansions or yachts of the wealthiest state in the U.S. The city is edging closer than ever to the breaking point, waiting for the financially troubled state government to step in.

It may seem crazy that a place as rich as the Nutmeg State, which counts among its residents hedge-funds masters like Ray Dalio and Steven A. Cohen and legions of Wall Street bankers, could be in such fiscal trouble. Last year, the per-capita income there was $71,033, the highest in the nation, according to the U.S. Bureau of Economic Analysis.

For all that, state-worker pensions have been underfunded for decades. Tax increases aimed at closing deficits have put a strain on an economy struggling from the loss of high-paying finance jobs, leaving it among the few that still haven't recovered from the recession. The hedge fund industry fell on hard times, with about 1,060 shuttering globally last year. UBS Group AG abandoned the world's largest trading floor in Stamford after the financial crisis, and the Royal Bank of Scotland downsized its office there. Pension, debt and health-care costs just kept growing.

"There's a limit to how much you can tax and there's a limit to how much you can cut before you damage the viability and attractiveness of the city," Mayor Luke Bronin said in May. "Right now, from a fiscal standpoint, you have a capital city fighting with its hands behind its back."

Like many other local governments across the country, Hartford — city of Mark Twain and the young John Pierpont Morgan — has been grappling with budget problems for years. On the same day that Illinois lawmakers finally scraped together a long-overdue budget, Hartford hired the law firm Greenberg Traurig LLP to evaluate its options, which include bankruptcy. It would be the first prominent U.S. municipality to seek protection from its creditors since Detroit did so in 2013.

As for Connecticut, it faces a projected two-year deficit of $5 billion that lawmakers haven't figured out how to close, even though the new fiscal year began on July 1.

In Hartford, the woes have been piling up for a while. Like Puerto Rico, which filed a record-setting bankruptcy in May, or even Greece, the city came to the edge in the usual way: slowly, then suddenly. The population declined 23 percent between 1960 and 2000 and has remained stagnant ever since. A third of its residents live in poverty, a higher share than in Baltimore or Newark. From 2010 to 2014, the metropolitan area saw the fifth-biggest decline in employers in the nation, according to the Economic Innovation Group, a Washington-based public policy organization.

Hartford's tax base of about $4.1 billion is about two-thirds that of neighbor West Hartford, which has far fewer residents, because half of the property — state buildings, hospitals, universities, non-profit agencies — is tax-exempt. Hartford has the highest property tax rate in the state and faces a $50 million deficit, nearly 10 percent of its budget. The city's credit rating may be downgraded deeper into junk by Moody's Investors Service.

Uninsured Hartford bonds maturing in 2024 traded at yields of more than 6 percent in late June, compared with about 4.4 percent in January, as investors' jitters mounted. The city has $672 million in debt, including $228 million of uninsured bonds, according to data compiled by Bloomberg. It also guarantees about $70 million in debt for a minor-league baseball stadium downtown.

Governor Dannel Malloy and Republican and Democratic leaders in the legislature agree the bankruptcy of the state's capital isn't another negative headline they need. General Electric Co. has decamped from Fairfield to Boston, and last week Aetna Inc. said it was moving its corporate headquarters from Hartford, where it has been since 1853, to New York. About 250 jobs are going with it, though thousands will stay in town.

"The state needs a budget that supports Hartford, its residents and its employers," said Chris McClure, a spokesman for Malloy. "In the absence of action by the General Assembly on a budget vote, it's entirely appropriate that the city explore all its options and prepare for every contingency."

Greenberg Traurig's team will be led by Nancy Mitchell, a co-chair of the firm's restructuring practice, the city said in a statement. When Hartford was soliciting proposals from firms that specialize in bankruptcy, Council President Thomas Clarke told the local newspaper that looking into court protection from creditors would only be a last ditch option.

"They will be working with us to examine all options for putting the city of Hartford on a sustainable path," the mayor said in a statement. "As we start a new fiscal year without a state budget and with significant uncertainty, we will have the advice and counsel of an experienced and highly respected restructuring firm."

In 2016, Bronin, a Democrat, took over a city that had been delaying its fiscal reckoning by pushing debt payments into the future, draining reserves and resorting to one-time measures, such as selling a parking garage, while its debt swelled by 52 percent from 2011 to 2015, according to Moody's figures.

Since taking office, he's cut 100 jobs and renegotiated leases and energy contracts. Bronin's been less successful in getting concessions from unions: The city's fiscal 2017 budget assumed $16.5 million of concessions, the bulk of which haven't materialized.

Hartford managed to strike a deal with its firefighters that saves about $4 million a year through 2020 by freezing pay increases, increasing pension contributions, lowering salaries for new hires and requiring employees to pay more for health care.

The city could renegotiate labor contracts and cut debt and pensions in bankruptcy, as a handful of cities have done since the recession. But it would need the governor's consent to file for Chapter 9.

Bronin is lobbying for the state to fully fund a program that compensates local governments for revenue lost to tax-exempt properties, which alone would provide enough money to close next year's deficit, and has joined with cities pushing to raise Connecticut's 6.35 percent sales tax to 6.99 percent to provide more aid.

He also persuaded Hartford Financial Services Group Inc., Travelers Cos. and Aetna to pledge $50 million to the city over five years as part of a "comprehensive and sustainable solution for Hartford."

Bloomberg Politics

By Martin Z Braun

July 7, 2017, 2:00 AM PDT

[U.S. Municipal VRDO Update, June 2017]()

A brief historical stat sheet to the municipal ARS, FRN, and VRDO market ending June 2017.

[View the update.]()

[Bloomberg Brief Weekly Video - 07/06]()

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

[Watch video.]

Bloomberg

Why Tolling is Often a Political Minefield.

Taxes and tolls have become synonymous in the context of the US.

Taxes and tolls have become synonymous in the context of the US. People often think about tolls as a tax, and whether merited or not paying the two of them is perceived as double taxation. Part of the reason is because many tolling entities are run by the public sector. As such, these corporations have boards that are appointed by the state and are in turn subject to the political cycle; a cycle that has interwoven decades of these practices into the decision making process. Then you have to factor in what is an anti-tax environment. If you are a politician seeking election and plan to raise taxes, you are automatically placed in a hole irrespective of the merits of your position.

Tolling is not the only public sector where this marriage of business and politics is in play. US airports, for instance, implement user fees called ‘passenger facility charges’ (PFCs) that are controlled by the government. Though these PFCs are passed down to the passenger, it is not transparent where they are coming from. They blend in with several other taxes and charges added to the airline ticket price, versus the clear transactional nature of paying a highway toll. And despite some resistance from the airlines, it’s normally not as political an issue to raise PFCs from the public’s perspective. The airlines that have to deal with a total ticket price understandably have a different view. The business and politics relationship is also evident in the structure of public power utilities and electricity prices, albeit in a more indirect and less transparent form. We as consumers have become acclimated to electric prices going up over time. Water, though, is exposed to the political winds but you do need it to live so the value proposition is clearer. Consequently, very essential improvements do get paid for with rate increases.

Raising tolls, by contrast, is transparent but the benefit less clear. The road is almost never unavailable. As a result, the idea of raising tolls may be the toughest sell. That may be due to simple complicity. While tolls by and large have increased in recent years, the cost of operating highways has gone up even more but that increase has not always been passed on. It’s a tenuous equilibrium that we as the public have been passively aware of for a long time and have been content to live with. As a result, no politician stepped in to rectify these “minor imbalances” when they were still minor and when the price would have been affordable.

What we’re seeing today is these negligible issues that could have been solved incrementally over time have instead morphed into a singularly large issue, one that the American Society of Civil Engineers has placed a US$4tr price tag to fix all of our infrastructure. So now you have the opposite problem of too large of a bill and not enough people willing to pay for it. So whether it’s tolling the interstates or taxing everybody, it’s a bitter pill any way you swallow it.

So what is the solution for managing tolling in the US? Part of it could rest with taking business decisions out of the hands of politicians and devolving authority to the lowest level, i.e. an appointed board with no veto authority from elected officials. If a politician is responsible for making business decisions on how to run a business like a toll road or an airport, the politics will be rampant within that process. Creating distance between an elected official and an executive decision and creating transparency in the decision making process is a way to limit the impact of politics. Having a representative board of major stakeholders—not elected officials or their direct appointees—with longer and staggered terms that focuses on the objectives of providing quality services and maintaining financial viability at least cost can also serve to create a sorely needed independent component in the process.

Another possible solution could be the creation of a regulated structure similar to a Public Utilities Commission among power and water authorities. While there remains a degree of political influence in this structure, it can be limited and thus still prove to be a positive.

Conclusion

Highway, road and bridge funding deficits have become a huge chasm for the US economy largely through inertia. But, this can be alleviated by creating distance between the business of highways and politics. It has proved easier around the world to introduce tolls on new roads rather than introduce a toll on an existing free road. Nonetheless, a common theme exists here: The greater distance to an election cycle, the greater the independence.

Fitch Ratings

by Cherian George

Cherian George is a managing director and head of the Americas in Fitch Ratings' global infrastructure and project finance group. He is based in New York.

Fitch Downgrades Puerto Rico Electric Power Auth's IDR and Rev Bonds to 'D'

Fitch Ratings-New York-06 July 2017: Fitch Ratings has downgraded the Puerto Rico Electric Power Authority's (PREPA) Long-Term Issuer Default Rating and power revenue bond ratings to 'D' from 'C'. The action follows the authority's failure to pay principal and interest due on the revenue bonds on July 3, 2017 and the commencement of insolvency proceedings under Title III of the Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA) on July 2, 2017.

Both ratings have been removed from Rating Watch Negative.

PREPA had previously disclosed a restructuring plan and related support agreement that anticipated the reduction of existing debt by means of a proposed distressed debt exchange but could have resulted in the continuing performance of certain securities. However, the plan and support agreement were effectively terminated following a vote on June 29, 2017 by the Financial Oversight and Management Board appointed under PROMESA not to certify the agreement as eligible for debt modification procedures under Title VI of PROMESA. On June 30, 2017, the Board certified PREPA to file a voluntary petition under Title III of PROMESA.

RATING SENSITIVITIES

The Puerto Rico Electric Power Authority's Issuer Default Rating and power revenue bond ratings have reached the lowest level on Fitch's rating scale. It is Fitch's intent to continue to monitor PREPA's Issuer Default Rating and reexamine PREPA's credit profile once debt restructuring plans become clear.

Contact:

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

Secondary Analyst
Lina Santoro
Analytical Consultant
+1-212-908-0522

Committee Chairperson
Jessalynn Moro
Managing Director
+1-212-908-0608

Media Relations: Elizabeth Fogerty, New York, Tel: +1 (212) 908 0526, Email: elizabeth.fogerty@fitchratings.com.

Additional information is available on www.fitchratings.com

[Fitch: Budget Wrangling Continues in Seven States.]

Fitch Ratings-New York-06 July 2017: Illinois, Connecticut, Massachusetts, Pennsylvania, Oregon, Rhode Island, and Wisconsin remain without a budget for the new fiscal year, although Fitch Ratings anticipates no immediate rating implications, except potentially in the case of Illinois. Fitch placed the state on Rating Watch Negative, due partly to its inability to enact a budget in the prior two fiscal years.

The Illinois (Issuer Default Rating [IDR] of 'BBB'/RWN) legislature appears close to enacting its first full budget since fiscal 2015 but still needs to override the governor's vetoes. The budget bills approved by the legislature and vetoed by the governor, include permanent income tax increases and recurring expenditure reductions, along with a plan to issue bonds to pay down a portion of the state's significant accounts-payable backlog. The state Senate overrode the governor's vetoes on Tuesday; the House will likely convene this afternoon for its own vote. The original House votes on the budget bills had enough legislative support to override the vetoes.

Weak revenue performance has complicated budget negotiations in several states without enacted budgets while idiosyncratic issues have pushed others beyond their June 30 deadline. Many states retain statutory or constitutional authority to make debt service payments without enacted budgets. Fitch anticipates states will take appropriate measures to make timely payments in accordance with their generally high credit quality.

Revenue shortfalls in the prior fiscal year in Connecticut ('A+'/Stable) and Pennsylvania ('AA-'/Stable) contributed to structural budget gaps for the current year, challenging legislators and governors to come to fiscal agreement. Connecticut's House rejected the governor's proposal for a short-term budget and negotiations are at a standstill on how to address the sizable projected budget gap in the 2018-2019 biennium. The governor has signed an executive order authorizing limited current spending until the budget is resolved.

The Pennsylvania legislature and governor have agreed on a spending bill though negotiations are ongoing for a revenue plan. The commonwealth took the same approach last year and the governor has until midnight on July 10 to sign, veto or allow the spending bill to go into law without his signature.

Massachusetts ('AA+'/Stable) also dealt with a revenue shortfall in fiscal 2017, creating a budget challenge for 2018. The commonwealth has already enacted a one-month interim budget through the end of July to provide additional time to negotiate a full-year budget (similar to the approach taken in recent years). In Wisconsin ('AA'/Stable), legislators have been working to address a shortfall in transportation funding. The state also enacted its last biennial budget two weeks late.

Oregon's ('AA+'/Stable) budget process includes multiple bills. Most have been approved for the current biennium. The legislature is still deliberating over several measures including a bill to cut state spending through various means including the merger of two boards that provide health benefits to teachers and state employees, and changes to state hiring practices.

Rhode Island's ('AA'/Stable) late budget is arguably the most surprising development. Legislative leadership and the Governor had appeared set to finalize a budget on June 30. Before final approval, the state Senate amended the House's proposed six-year phase-out of a car tax levied by local governments, with the state reimbursing municipalities for the lost revenue. The Senate's amended bill would freeze the phase-out along with state reimbursements if the state accessed its Budget Reserve and Cash Stabilization Account (rainy day fund). The state last drew on the fund in fiscal 2009, during the last recession. Rhode Island's House did not take up the revised bill and the Speaker has indicated he may hold his chamber out of session indefinitely. Without a budget, the state operates under fiscal 2017 appropriations levels per statutory provisions.

Several states resolved budget disputes over the holiday weekend. Delaware ('AAA'/Stable), Maine ('AA'/Stable), and New Jersey ('A'/Stable) all enacted budgets several days into their new fiscal years. Delaware and New Jersey's budgets were delayed primarily by disagreements on policy issues rather than spending plans, and late negotiations in both states led to resolution. Maine's budget was the first to be signed into law by the current governor, rather than enacted over his veto, in three biennia.

Washington ('AA+'/Stable) enacted its budget less than an hour before the start of the new fiscal year, with the legislature voting on a budget bill the same day it was publicly released. The budget includes significant additional state funding, primarily through an increase in the state property tax levy, to address long-standing demands from the state's Supreme Court to address education funding issues.

Contact:

Marcy Block (Connecticut, New Jersey)
Senior Director
+1-212-908-0239
Fitch Ratings, Inc.
33 Whitehall Street
New York, NY 10004

Eric Kim (Maine, Pennsylvania)
Director

+1-212-908-0241

Karen Krop (Illinois, Wisconsin)
Senior Director
+1-212-908-0661

Douglas Offerman (Massachusetts)
Senior Director
+1-212-908-0889

Stephen Walsh (Washington)
Director
+1-415-732-7573

Media Relations: Elizabeth Fogerty, New York, Tel: +1 (212) 908 0526, Email: elizabeth.fogerty@fitchratings.com.

Additional information is available on www.fitchratings.com

Ill-Funded Police Pensions Put Cities in a Bind.

Municipalities that try cutting the retirement plans face pushback both from the officers, some of whom quit, and from a generally pro-police public

When the city of San Jose had trouble affording services such as road repair and libraries because of the cost of police pensions, it obtained voter approval to pare them. What happened next proved sobering for other cities in the same pickle. Hundreds of police officers quit. Response times for serious calls rose.

Faced with labor-union litigation, San Jose this year restored previous retirement ages and cost-o--living increases for existing police officers, and last month it gave them a raise.

Police pensions are among the worst-funded in the nation. Retirement systems for police and firefighters have just a median 71 cents for every dollar needed to cover future liabilities, according to a Wall Street Journal analysis of data provided by Merritt Research Services for cities of 30,000 or more.

The combined shortfall in the plans, which are the responsibility of municipal governments, is more than $80 billion, nearly equal to New York City's annual budget.

Broader municipal pension plans have a median 78 cents of every dollar needed to cover future liabilities, according to data from Merritt. The 100 largest U.S. corporate pension plans have 85% of assets needed on hand, according to Milliman Inc. data as of March 31.

And yet any attempt to bring police pensions into line with today's municipal budgets and stock-market performance runs into the reality that many officers won't stand for it—and they often have the public behind them.

"They have extra clout because people love police," said Dallas Mayor Mike Rawlings. "I love police. You love police. An electrician—you don't have that emotional tie."

His city, like San Jose, found itself facing widespread police-officer resignations when it moved to cut their pensions. In Dallas, the situation became so difficult the state legislature stepped in this spring to work out a solution.

Police pensions were the first nonmilitary retirement systems to be created in the U.S., in second half of the 19th century. In later years, when municipal budgets were tight, augmenting pension promises in lieu of raises became a way governments could make peace with politically powerful police unions without incurring immediate new spending.

In the 1980s and 1990s, robust investment returns made governments' pension promises look affordable. By 2001, major police and firefighter plans followed by the Public Plans Database, which tracks 150 major state and local pension plans, had a median 101% of what they needed to pay for future obligations.

The 2008 financial crisis wiped out pension-plan earnings at the same time that it put stress on municipal budgets, leading some cities to contribute less to the plans each year than what actuaries calculated was needed.

Also, many cities continued to assume robust 1990s-era investment returns when they calculated annual pension contributions. Their pension debt grew as those returns failed to materialize and cities didn't adjust their contributions to the plans.

Memphis, Tenn., gambled it could cut police pensions without any impact on public safety. The city council voted in 2014 to end pensions for municipal workers, including the police, with 7.5 years of service or less, and replace the pensions with a hybrid plan combining pension and 401(k)-style benefits.

In the following two years, about 100 officers affected by the changes left the force, out of a total of about 2,000. Homicides rose to a record 228 last year from 167 in 2014. Billboards erected by the police union around town read, "Welcome to Memphis: 228 homicides in 2016, down over 500 police officers." Memphis currently has 1,928 officers, down from 2,416 in 2012.

The city's mayor, Jim Strickland, has since pledged to increase police staffing. A spokeswoman for the city said enrollment in the police academy is increasing despite the reduced benefits package. Even so, city officials recently announced a $6.1 million grant for retention bonuses. Meanwhile, the police union is trying to get certain benefits restored in court.

One of the first cities that tried to bring police pension costs down was San Jose, where former Mayor Chuck Reed asked voters to approve pension cuts as part of a 2012 ballot measure.

Among the hundreds of police officers who quit after voters said yes to the change was Tim Watermulder, who left to join the Oakland police department in 2013. It had been announced that the police-academy class in which he graduated would be the first to operate under a new system providing lower cost-of-living increases and a retirement age of 60 instead of 50.

"You start to see what police work is really like every day," said Mr. Watermulder, 35 years old, who fought in Iraq with the U.S. military before becoming a police officer. "I really started thinking about 'Can I do this job till I'm 60?'"

About 180 of 1,109 sworn officer positions in San Jose are currently vacant. San Jose has the lowest number of officers per capita among the nation's 35 largest cities, according to a Journal analysis of Federal Bureau of Investigation data from 2015, the most recent available.

Response times for the most serious calls rose to an average of 7.3 minutes last year from 6.1 minutes in fiscal 2011, according to the police department.

San Jose is still safe compared with many other cities, but its violent-crime rate jumped last year to the highest since 2008. “A lot of it had to do with us not having enough officers,” said San Jose Police Chief Eddie Garcia. His advice to other cities seeking to shore up their finances by cutting police benefits: “Don’t make a crisis into a bigger crisis.”

Crime has risen in many cities in recent years, not just in those that have lost officers. Per capita homicide rates are up in 27 of the country’s 35 largest cities since 2014, according to homicide data. The causes of such increases are hard to pinpoint, but there is little doubt “losing hundreds of officers would make a big difference in the ability to control crime,” said Richard Rosenfeld, a criminologist at the University of Missouri-St. Louis.

San Jose, to retain and recruit officers, has gone beyond rolling back changes it had tried to make in retirement ages and cost-of-living increases for existing police officers. Police got a 10% raise last month, to be followed by 3% raises in 2018 and 2019.

Since those measures were put in place, police-academy enrollment has risen sharply. “It looks like were now on the right track,” a city spokesman said.

Dallas has had an unusual struggle with the police-pension issue. The funding level of its plan for police and firefighters earlier this year fell to just 36%, among the lowest in the nation.

A trouble spot has been a plan created 25 years ago in an effort to keep experienced officers from leaving for police jobs elsewhere after they qualified for police pensions around age 50.

Officials figured they couldn’t afford sufficient wage increases to keep those officers, so instead they would sweeten pension benefits, said Steve Bartlett, who was mayor when the special fund was created.

That deal allowed officers who worked into their 50s to earn a pension and a salary at the same time. Terms provided for a guaranteed 8% to 10% return on the assets contributed to the plan, forcing the pension fund to make up the difference when market returns came in below that threshold. Officers who stuck around long enough could potentially accumulate $1 million in the special fund.

“They said, ‘Hey, the retirement is top notch. You may not be paid well initially, but in the end you’ll be a millionaire,’ ” said Brad Uptmore, a Dallas police officer for 10 years.

The promised return became harder to deliver after the financial crisis, as real-estate investments the fund made from Hawaii to Paris went sour and triggered more than $500 million in losses.

Spooked by the losses and talk of benefit cuts, hundreds of police and firefighters quit, withdrawing $500 million from the roughly $3 billion fund and pushing it closer to insolvency.

The city sought help from the Texas legislature. In late May the state government approved a package that requires the city to contribute an additional $25 million to $40 million a year to the pension plan while also cutting benefits.

Under the legislation, a police officer who is now 40 and retires in 2035 can get a pension that year of $95,339, compared with $109,583 under the old pension structure, according to a hypothetical calculated by the pension fund.

The changes may not be enough. The plan will still have less than half what it needs to cover its liabilities, according to an estimate provided by the fund to legislators. A review by S&P Global Ratings concluded that "more reforms will be needed." Mayor Rawlings agreed the city has "much work ahead."

Many longtime Dallas police officers won't be around to see how the changes pan out, including Mr. Uptmore. He left to join the much smaller police department of Southlake, Texas, in the spring of last year—one of 336 Dallas officers who left in 2016.

"Once you realize there's no gold at the end of the rainbow, I think you stop pursuing that," Mr. Uptmore said.

The Wall Street Journal

By Heather Gillers and Zusha Elinson

July 4, 2017 10:59 a.m. ET

Puerto Rico's Power Authority Effectively Files for Bankruptcy.

Puerto Rico's troubled power company defaulted on a deal to restructure roughly $9 billion in bond debt and sought court protection from its creditors, the government said on Sunday.

The government said the move to, in effect, file for bankruptcy was the only way to reduce the existing debt of the Puerto Rico Electric Power Authority "to a sustainable level." The utility, known as Prepa, had previously negotiated an out-of-court deal to reduce its bond payments by about 15 percent. The bondholders now seem likely to sustain larger losses under court supervision.

Puerto Rico's Fiscal Agency and Financial Advisory Authority, which announced the move, said it did not expect any disruption of service to Prepa's residential or commercial customers on the island.

Bondholders had hoped that Prepa's debt could be reduced consensually, as planned. Some questioned the legality of moving into federal court to redo the deal.

Bill Fallon, the chief executive of National Public Finance Guarantee Corporation, a bond insurer, called the move "improper" and warned that it "would leave Prepa years away from attracting the private investment necessary to modernize."

Electrical power has long been a drag on the island's economy. Prepa's antiquated generating plants burn imported oil to produce electricity. Efforts to modernize the plants and shift to clean and renewable fuels have been delayed repeatedly. Customers pay rates that follow oil prices up and down, and while the rates are relatively low at the moment, they are vulnerable to rising again.

In addition, there are longstanding accusations that Prepa's fuel-purchasing office for many years bought dirty oil sludge as fuel, charged consumers the much higher price of cleaner distillates, and then created a slush fund with the difference. The Puerto Rican senate held a series of hearings on Prepa's fuel-purchasing irregularities, and has referred its findings to the Federal Bureau of Investigation.

Prepa got into severe financial trouble before the rest of the Puerto Rican government, when it was unable to pay for fuel in 2014. Its creditors extended fuel-purchasing credit that year, and subsequently negotiated a deal to restructure about $5.7 billion of Prepa's $9 billion in total debt.

The deal was held up as a model at the time, because it was achieved without the sort of leverage that can be exerted in bankruptcy. In addition to taking a 15 percent loss, the bondholders had agreed that Prepa could put a portion of the savings toward its long-promised modernization and conversion to cleaner sources of power.

But the agreement also called for Prepa to continue paying down its remaining debt by adding an unpopular increase in power customers' monthly bills. It also required the restructured debt to be secured to an investment-grade rating, an insurmountable challenge with the island's central government itself effectively bankrupt, and its economy in a painful decline.

Last week, the federal oversight board that is guiding Puerto Rico's finances voted to authorize Prepa to seek debt relief under Title III of Promesa, which is similar to Chapter 9 municipal bankruptcy. Natalie Jaresko, the board's executive director, said then that talks could continue, and the utility's bondholders said they still hoped to pursue the consensual deal. They also offered to cover a $170 million interest payment that Prepa was required to make to bondholders on Saturday.

But Prepa declined that offer, defaulting on the payment and paving the way for the move on Sunday for court protection.

THE NEW YORK TIMES

By MARY WILLIAMS WALSH

JULY 2, 2017

SIFMA Submits Comments to the SEC on Proposed Rule Change to Amend MSRB Rule G-26, on Customer Account Transfers.

SIFMA provided comments to the Securities and Exchange Commission (SEC) on the Municipal Securities Rulemaking Board's (MSRB) proposed rule filing SR-MSRB-2017-03, which would amend MSRB Rule G-26, on customer account transfers. SIFMA incorporates by reference our prior comment letter to the MSRB as part of this proceeding, and specifically request that the SEC consider the issues raised in that letter as part of its consideration of the Proposal. SIFMA and its members strongly urge you to disapprove the proposed rule change in its current form.

Read the letter.

- GASB Establishes Single Approach for Reporting Leases.
- BDA Submits Comment Letter: MSRB Second Request for Comment on Draft Amendments to and Clarifications of MSRB Rule G-34, on Obtaining CUSIP Numbers.
- MSRB Publishes Compliance Advisory for Municipal Advisors + Webinar
- S&P: Typical U.S. Water and Sewer Utilities and the Margin Between High and Medium Investment Grade Ratings.
- Tax-Exempt Financing of Churches, Parochial Schools and Other Sectarian Institutions After

Trinity Lutheran Church: Permitted? Required? Let us Pray for Answers.
- Why Disclosure really Matters Now – The S.E.C. Enforcement Agenda.
- BLX/Orrick Post-Issuance Compliance Workshop.
- Reminder: GASB Review 2017
- And finally, Please Let Us Be Wrong is brought to you this week by *Thompson v. City of Albuquerque*, in which "Minor children brought loss of consortium action against city, police chief, and police officer who shot and killed children's father." It has always been our understanding that loss of consortium was available exclusively for spouses who had been deprived of the uh, affections, of the other spouse. We pray that we are wrong about that. Otherwise, someone should probably contact social services.

SPECIAL IMPROVEMENT DISTRICTS - ALABAMA

Aliant Bank, a Division of USAmeribank v. Four Star Investments, Inc.

Supreme Court of Alabama - May 5, 2017 - So.3d - 2017 WL 1787935

Judgment creditor, which was a mortgagee that had agreed to subordinate its interest in a defaulted mortgage to the bonds of special improvement district that comprised land that was subject to the defaulted mortgage, brought action against judgment debtor, district's board members, district, and other entities and persons involved in the development of a subdivision on district's land for allegedly wrongful acts that rendered judgment creditor's security interest worthless.

The Circuit Court dismissed and entered summary judgment for judgment debtor, district's board members, district, and other entities and persons. Judgment creditor appealed.

The Supreme Court of Alabama held that:

- Genuine issue of material fact precluded summary judgment on claims against members of special improvement district's board for negligence and breach of fiduciary duty;
- Collateral estoppel and res judicata did not preclude judgment creditor's action;
- District's management company owed no duty to judgment creditor so as to support creditor's claims for breach of fiduciary duty and negligence;
- Judgment creditor did not rely on representations of construction company that did work on subdivision so as to sustain a cause of action for fraud against company;
- District was immune from judgment creditor's claims of fraud, conspiracy, and wantonness;
- Judgment debtor's president had a duty to make a full disclosure to judgment creditor regarding expenditures from proceeds from district's bond issue;
- Judgment creditor put forth substantial evidence so as to preclude summary judgment on its conspiracy claim against certain parties; and
- Judgment creditor was not a third-party beneficiary of either the completion agreement between subdivision developer and district or the management agreement between district and management company.

Members of board of special improvement district that encompassed a planned subdivision owed a duty of care and a duty of loyalty to judgment creditor, which was a mortgagee that had obtained a default judgment against the mortgagor that owned district's land, as required as an element of judgment creditor's claims against the board members for negligence and breach of fiduciary duty for allegedly wrongful acts that rendered judgment creditor's security interest in the subdivision worthless. Alabama was a "title theory" state, and the district existed primarily to benefit those owning property within its boundaries.

Genuine issue of material fact precluded summary judgment in action against members of board of special improvement district for negligence and breach of fiduciary duty regarding allegedly wrongful acts that rendered worthless the security interest in district's land of judgment creditor, which was a mortgagee that had obtained a default judgment regarding mortgage of judgment debtor that owned district's land.

Provision in statute on immunity of officers of special improvements districts that indicates that no claim can be pursued against a director of an improvement district "for or on account of the negligence of a district or director or its or his or her agents, servants, or employees" operates only to bar a negligence claim from being asserted against a director based upon the negligence of some other party, not the director's own negligence.

Judgment creditor's default judgment against judgment debtor and judgment debtor's president for failure to repay a mortgage that judgment debtor's president had personally guaranteed regarding land planned for a subdivision did not preclude on grounds of collateral estoppel judgment creditor's action for negligence, fraud, and other claims against entities involved with the subdivision and against members of board of special improvement district that comprised the land. The necessary factual issues regarding the claims against the board members and entities were not litigated in the action that produced the default judgment and were not relevant to the default judgment.

Judgment creditor's default judgment against judgment debtor and judgment debtor's president for failure to repay a mortgage that judgment debtor's president had personally guaranteed regarding land planned for a subdivision did not operate as res judicata so as to preclude judgment creditor's action for negligence, fraud, and other claims against entities involved with the subdivision and against members of board of special improvement district that comprised the land. The prior case was based on evidence that was not needed to establish judgment creditor's claims in the new action.

Summary judgment that the two-year statute of limitations had run was precluded by factual dispute as to when judgment creditor reasonably should have discovered the basis for its negligence and breach-of-fiduciary duty claims regarding its allegation that board members of special improvement district, which comprised land that was subject to judgment debtor's unpaid mortgage, committed wrongful acts that rendered judgment creditor's security interest in the district's land worthless. Trial court could not properly decide as a matter of law when a reasonable person should have discovered that claims had been fraudulently concealed unless the evidence was undisputed.

No relationship existed between special improvement district's management company and judgment creditor, which had obtained a default judgment against judgment debtor for an unpaid mortgage on district's land, so as to create a fiduciary duty or duty to responsibly manage the district, and thus judgment creditor's claim against company for breach of fiduciary duty failed. Judgment creditor and management company did not deal with each other at all.

Special improvement district's management company owed no duty to judgment creditor, which had obtained a default judgment against judgment debtor for an unpaid mortgage on district's land, with regard to company's management of the district, and thus judgment creditor's negligence claim against company failed. Judgment creditor was not a party to the contract between company and district, and company was never in a position of control over judgment creditor.

Two-year limitations period for negligence and breach-of-fiduciary-duty claims by judgment creditor, a mortgagee that had agreed to subordinate its interest in a defaulted mortgage to the bonds of a special improvement district that comprised land that was subject to the defaulted mortgage and was for a planned subdivision, against engineering company that did work on subdivision began to run when creditor came into possession of documents that indicated that company had to approve reimbursement requests from district's funds from its bond issue, and thus creditor's action against company was untimely, where creditor filed action more than two years after coming into possession of the documents.

Judgment creditor, a mortgagee that had agreed to subordinate its interest in a defaulted mortgage to the bonds of a special improvement district that comprised land that was subject to the defaulted mortgage and was for a planned subdivision, did not rely on allegedly false invoices from construction company that did work on the subdivision, and thus judgment creditor could not sustain a cause of action for fraud against construction company, where judgment creditor had no knowledge of the allegedly false invoices until the bond proceeds had been disbursed.

Special improvement district was immune from claims of fraud, conspiracy, and wantonness by judgment creditor, a mortgagee that had obtained a default judgment regarding a mortgage on district's land and that had agreed to subordinate its interest in the judgment to district's bonds, that stemmed from acts that allegedly rendered worthless creditor's security interest in district's land, even though district's board members individually were not immune from creditor's claims. Immunity statute regarding special improvement districts absolved a district from liability for the intentional torts of its agents.

Factual issue as to when judgment creditor, a mortgagee that had obtained a default judgment regarding a mortgage on special improvement district's land and that had agreed to subordinate its interest in the judgment to district's bonds, should have known about alleged acts by district's management company's partner that purportedly gave rise to creditor's fraud and conspiracy claims against partner precluded summary judgment for partner based on the two-year statute of limitations.

Affidavit by officer of judgment creditor, a mortgagee that had obtained a default judgment regarding a mortgage on special improvement district's land and that had agreed to subordinate its interest in the judgment to district's bonds, in which officer described alleged misrepresentations made by judgment debtor's president and creditor's reliance on them established a prima facie case for fraudulent misrepresentation so as to preclude summary judgment for judgment debtor's president, company developing a subdivision on district's land, district's management company, and partner in management company, where affidavit alleged that creditor agreed to subordinate its security interest to district's bonds by relying on representations regarding expenditures from district's bond issue.

Allegation by judgment creditor, a mortgagee that had obtained a default judgment regarding a mortgage on special improvement district's land and that had agreed to subordinate its interest in the judgment to district's bonds, that judgment debtor's president made fraudulent misrepresentations to creditor as part of a conspiracy involving judgment debtor, debtor's president's brother, and a real estate broker could not support a claim of fraudulent misrepresentation against the three parties. If the finder of fact thought that debtor's president made fraudulent misrepresentations and that there was a conspiracy, then the three parties were liable for conspiracy, not fraudulent misrepresentation.

No relationship existed between judgment creditor, which was a mortgagee that had agreed to subordinate its interest in a defaulted mortgage to the bonds of a special improvement district that comprised land that was subject to the defaulted mortgage, and district's management company so as to create a duty on the part of management company to disclose that judgment debtor's president was going to use the bulk of the proceeds from district's bond issue to reimburse himself and his companies for work done before the bonds were issued, and thus judgment creditor's claim for fraudulent suppression against management company failed. Judgment creditor and management company had no relationship other than one telephone call whose substance was unknown.

Judgment debtor’s president had a duty to make a full disclosure to judgment creditor, which had obtained a default judgment regarding judgment debtor’s mortgage on special improvement district’s land, as to how proceeds from district’s bond issue would be used before creditor agreed to sign a mortgagee-special-assessment acknowledgment subordinating its security interest from the default judgment to district’s bonds, thus precluding summary judgment on creditor’s fraudulent-suppression claim, where debtor’s president represented to creditor that bond proceeds would be used to develop 270 additional lots in district while allegedly knowing that his companies would actually receive the majority of the bond proceeds for work that had already been performed on the first 80 lots.

Judgment creditor, which was a mortgagee that had agreed to subordinate its interest in a defaulted mortgage to the bonds of special improvement district that comprised land that was subject to the defaulted mortgage and was for a planned subdivision, put forth substantial evidence regarding fraudulent misrepresentation and fraudulent suppression so as to preclude summary judgment on its conspiracy claims against certain entities and persons involved with the district for alleged acts that rendered creditor’s security interest worthless, despite argument that the parties could not be liable for conspiracy if they were not liable for the underlying fraud. It was not necessary that each alleged conspirator be the subject of the underlying cause of action.

Judgment creditor, which was a mortgagee that had obtained a default judgment concerning mortgage on special improvement district’s land that was planned for use as a subdivision, was not a “third-party beneficiary” of either the completion agreement between subdivision developer and district or the management agreement between district and management company such that creditor could sustain an action against developer and district for breach of contract. Although creditor would receive an incidental benefit from the contracts inasmuch as the property securing creditor’s loan would increase in value and creditor’s risk of loss in the event of default would decrease, that was far from a direct intended benefit that would support a third-party-beneficiary breach-of-contract claim.

PUBLIC UTILITIES - COLORADO

Carestream Health, Inc. v. Colorado Public Utilities Commission

Supreme Court of Colorado - June 19, 2017 - P.3d - 2017 WL 2640798 - 2017 CO 75

Customer filed complaint with Colorado Public Utilities Commission, claiming that provider of gas transportation services violated its tariff by faIling to use all reasonable means to prevent billing errors.

The Public Utilities Commission denied complaint. Customer appealed. The District Court affirmed. Customer appealed.

The Supreme Court of Colorado held that:

- Determining what means were reasonable required consideration of what errors were foreseeable;
- Customer was not deprived due process; and
- Customer lacked standing to challenge provider’s recovery of undercharge from its general customer base.

Determining what means were reasonable within meaning of provision of gas transportation services provider that required provider to use all reasonable means to prevent billing errors required consideration of what errors were foreseeable. Use of the term “reasonable” showed that, rather than requiring compliance with some bright-line rule, the tariff called for appropriate measures to be taken given the circumstances.

Customer was not deprived due process in proceeding concerning complaint filed by customer alleging that gas transportation services failed to comply with provision of its tariff that required provider to use all reasonable means to prevent billing errors, where customer was provided with ample notice and an opportunity to be heard of issue of whether provider’s billing error was foreseeable.

Customer lacked standing to challenge gas transportation services provider’s recovery of undercharge from its general customer base, where customer suffered no injury from that action.

CIVILIAN INVESTIGATIVE PANELS - FLORIDA

D'Agastino v. City of Miami

Supreme Court of Florida - June 22, 2017 - So.3d - 2017 WL 2687694

Police officer filed petition to quash a subpoena issued by city civilian investigative panel (CIP), which was independent body designed to investigate instances of alleged police misconduct, and for a protective order against having to testify in CIP proceeding, and city intervened.

Separately, police union brought declaratory action against city challenging the constitutionality of city ordinances empowering CIP to investigate law enforcement officers.

The actions were consolidated. The Circuit Court granted summary judgment in favor of city and CIP. Officer and union appealed. The District Court of Appeal affirmed. Officer and union filed application for review, which was granted.

The Supreme Court of Florida held that:

- Police Officers’ Bill of Rights did not expressly preempt ordinances granting CIP authority to investigate and review police misconduct;
- Ordinance granting CIP authority to issue subpoenas was impliedly preempted by Police Officers’ Bill of Rights as to police officers; but
- CIP retained authority to issue subpoenas to non-police officers under ordinance.

Police Officers’ Bill of Rights did not expressly preempt ordinances granting city civilian investigative panel authority to investigate and review alleged police misconduct, though the Bill of Rights required every law enforcement agency to establish a system for investigating a complaint, required a municipality to forward complaints to an officer’s employing law enforcement agency, and carved out exception for Criminal Justice Standards and Training Commission to exercise its authority. Statutory language did not convey preemption with sufficiently explicit language, and to find statutory provisions to be understood as preclusive would require inferences.

Local ordinance granting city civilian investigative panel (CIP), which was independent body designed to investigate and review instances of alleged police misconduct, authority to issue subpoenas to compel testimony from law enforcement officers in connection with investigations and complaints against them was impliedly preempted as to police officers by Police Officers’ Bill of

Rights, which provided elaborate framework of rights and obligations for interrogating an officer. Objective of Bill of Rights was to protect officers to a degree from certain means of interrogation, and to uphold CIP's authority to issue subpoenas in connections with investigations of an officer's conduct would impermissibly countermand rights conferred by the statute upon the officer.

City civilian investigative panel (CIP), which was independent body designed to investigate and review instances of alleged police misconduct, retained authority to issue subpoenas to non-police officers under local ordinance granting subpoena power, though authority to subpoena law enforcement officers was preempted by Police Officers' Bill of Rights.

WATER RIGHTS - IDAHO

City of Blackfoot v. Spackman

Supreme Court of Idaho, Twin Falls - May 2017 Term - June 20, 2017 - P.3d - 2017 WL 2644703

City filed petition for review of ruling by Idaho Department of Water Resources (IDWR) denying its application for water right, to be offset by mitigation through another water right.

Irrigation districts and canal companies intervened. The District Court denied petition, and city appealed.

The Supreme Court of Idaho held that:

- City could not use its water permit for groundwater recharge without first filing for transfer;
- Settlement agreement between city and private party did not allow city to use permit for groundwater recharge or mitigation purposes associated with future groundwater rights;
- Seepage that occurred from city's diversion and use of water from river pursuant to permit could not be used as basis for claim of separate or expanded water right without transfer; and
- Intervenors were entitled to recover their attorney fees.

TELECOM FRANCHISE FEES - KENTUCKY

Kentucky CATV Association, Inc. v. City of Florence

Supreme Court of Kentucky - June 15, 2017 - S.W.3d - 2017 WL 2591800

Cities filed petition for declaratory relief, alleging that multichannel video programming (MVP) and communications services tax violated their right to grant franchises and to collect franchise fees as provided for in the Kentucky Constitution.

The Circuit Court dismissed. Cities appealed. The Court of Appeals vacated and remanded with instructions to grant judgment in favor of cities. State officials appealed, and Supreme Court granted discretionary review.

The Supreme Court of Kentucky held that:

- Provision of MVP and communications services tax, prohibiting municipalities from levying franchise fees on MVP services, was unconstitutionally void as applied to cities seeking to collect franchise fees for use of their rights-of-way;
- General Assembly did not have the power under provision of Kentucky Constitution, which allowed

General Assembly to confer upon municipalities the authority to collect franchise fees, to prohibit cities from collecting franchise fees in exchange for use of their rights-of-way; and
- Prohibition provision of MVP and communications services tax was severable from remainder of tax scheme.

Provision of multichannel video programming (MVP) and communications services tax, prohibiting municipalities from levying franchise fees on MVP services, was contrary to provisions of Kentucky Constitution requiring public utilities to obtain franchise to use city streets and stating requirements for municipalities to grant franchises, and thus was unconstitutionally void as applied to cities seeking to collect franchise fees for use of their rights-of-way. Framers of Constitution intended that municipalities had the power to grant franchises and collect franchise fees, guiding themes behind enactment of Constitution provisions were municipal control and municipal benefit via the sale of franchises, and assessment of franchise fee was indispensable part of granting franchise.

General Assembly did not have the power under provision of Kentucky Constitution, which allowed General Assembly to confer upon municipalities the authority to collect franchise fees, to prohibit cities from collecting franchise fees in exchange for use of their rights-of-way. Power of municipalities to collect franchise fees was granted in other provisions of Constitution, and founders did not intend Constitution provision to include franchise fees paid by private franchisees as consideration for use of municipality's rights-of-way.

Provision of multichannel video programming (MVP) and communications services tax, prohibiting municipalities from levying franchise fees on MVP services, which was unconstitutionally void as applied to cities seeking to collect franchise fees for use of their rights-of-way, was severable from remainder of the tax scheme. Severance did not render the remainder of the tax scheme incapable of being executed in accordance with intent of General Assembly, severance did not damage one of the intended purposes of the tax, which was to prevent double payment by non-satellite program providers, and tax credit accomplished goal of alleviating perceived inequity among various types of program providers.

ANNEXATION - MICHIGAN

Township of Lockport v. City of Three Rivers

Court of Appeals of Michigan - May 9, 2017 - N.W.2d - 2017 WL 1927859

Township filed action against city seeking to prevent annexation of 80 acres of real property.

The Circuit Court granted summary disposition in favor of city, and township appealed.

The Court of Appeals held that property that city sought to annex from township was not "vacant," and therefore city could not annex property from township solely by resolution of the city council, where an underground water transmission line located on the land at issue was in constant use, rather than just in use seasonally, and thus property at issue was being "put to use."

IMMUNITY - NEW MEXICO

Thompson v. City of Albuquerque

Supreme Court of New Mexico - June 19, 2017 - P.3d - 2017 WL 2628216

Minor children brought loss of consortium action against city, police chief, and police officer who shot and killed children's father.

The District Court dismissed the action for failure to state a claim based on sovereign immunity. Children appealed. The Court of Appeals reversed. City, chief, and officer petitioned for certiorari.

The Supreme Court of New Mexico held that:

- Immunity is waived for claims of loss of consortium damages deriving from enumerated tort under the Tort Claims Act (TCA);
- Children sufficiently pled underlying battery claim, as required to state claim for loss of consortium damages; and
- Children's claim for loss of consortium damages was independent of battery claim.

Sovereign immunity is waived for claims of loss of consortium damages deriving from an enumerated tort under the law enforcement officers provision of the Tort Claims Act (TCA).

Children sufficiently pled underlying battery claim, as required to state claim for loss of consortium damages against city, police chief, and police officer based on shooting death of father, even though children did not assert battery cause of action, where children alleged that city, chief, and officer caused deadly shooting of father, which resulted in children losing their relationship with their father.

Children's claim for loss of consortium damages, arising out of shooting death of father allegedly caused by city, police chief, and police officer, was an independent claim, rather than a bystander claim, and thus qualified for waiver of sovereign immunity under Tort Claims Act (TCA), despite contention that father was only individual who suffered direct injury. Children alleged direct injury to their relational interest with their father as result of battery, and children were not merely indirect or incidental victims.

IMMUNITY - NEW YORK

Town of Turin v. Chase

Supreme Court, Appellate Division, Fourth Department, New York - June 16, 201720 - 17 WL 2604244 - 2017 N.Y. Slip Op. 05016

Town brought action against former town justice to recover damages arising from alleged mishandling of fines and fees and failure to maintain complete and accurate books and records while in office.

The Supreme Court, Lewis County, granted defendant's motion for summary judgment. Town appealed.

The Supreme Court, Appellate Division, held that defendant was acting within his jurisdiction, and thus had judicial immunity.

Former town justice acted in his judicial capacity and within scope of his jurisdiction regarding handling of fines and fees, and keeping of related books and records, which were duties mandated by statute and regulation, and thus former town justice had judicial immunity from town's allegations of mishandling of fines and fees and failure to maintain complete and accurate books and records while in office. Statute and regulations required every town justice to deposit any monies received by the court into a separate bank account pending disposition, and to maintain proper books and records.

COLLECTIVE BARGAINING - PENNSYLVANIA

[City of Pittsburgh v. Fraternal Order of Police, Fort Pitt Lodge No. 1]

Supreme Court of Pennsylvania - May 22, 2017 - A.3d - 2017 WL 2229859 (Mem) - 209 L.R.R.M. (BNA) 3148

City petitioned for review of interest arbitration panel's supplemental award in favor of police union that modified the parties' collective bargaining agreement (CBA) by inserting a non-residency clause for police officers.

The Court of Common Pleas affirmed the award. City appealed. The Commonwealth Court reversed. Union filed petition for allowance of appeal, which was granted.

The Supreme Court of Pennsylvania held that:

- Interest arbitration panel had authority to modify residency requirement in CBA;
- Amendment to home rule charter to require residency was contrary to Police and Fireman Collective Bargaining Act, and thus violated Home Rule Charter Law;
- City's home rule charter amendment was unenforceable under constitutional provision stating that such charters were subservient to limitations imposed by legislature; and
- City's home rule charter amendment was preempted by the Police and Fireman Collective Bargaining Act.

Where a municipality has the authority to set or not to set a residency restriction under statute providing that a city of the second class may require a police officer to become a bona fide resident as a condition of employment, the interest arbitration panel under the Police and Firemen Collective Bargaining Act has the same authority.

Amendment to city's home rule charter to require all city employees and officials, including police and fire personnel, to maintain their domicile within city violated Home Rule Charter Law, which precluded exercise of powers contrary to statutes applicable across Commonwealth and provisions inconsistent with statutes enacted prior to certain date affecting the rights, benefits, and working conditions of public employees. Residency was mandatory subject of bargaining under Police and Firemen Collective Bargaining Act, Act specifically provided that it was applicable to every political subdivision, regardless of adoption of home rule charter, and amendment was contrary to the Act by removing residency as a subject of collective bargaining.

City's home rule charter amendment, which required all city employees and officials, including police and fire personnel, to maintain their domicile within city, thus divesting officers of right to bargain over residency under Police and Firemen Collective Bargaining Act, was unenforceable under constitutional provision stating that home rule charters and amendments were subservient to limitations imposed by General Assembly. Home Rule Charter Law provided that statutes that were uniform and applicable in every part of the Commonwealth would remain in effect not be changed or modified, Act was applicable to every political subdivision in Commonwealth, and amendment sought to change or modify Act.

City's home rule charter provision, which eliminated residency as mandatory subject of collective bargaining by requiring all city employees and officials, including police and fire personnel, to maintain their domicile within city, was expressly preempted by Police and Fireman Collective Bargaining Act based on explicit preemption clauses in Home Rule Charter Law, under which statutes of statewide application predominated over municipal enactments and municipalities were prohibited from enacting provisions inconsistent with any statute enacted prior to a certain date affecting the rights of any public employee. Act was applicable to all political subdivisions, and public sector bargaining rights under the Act and the Public Employe Relations Act (PERA) became effective prior to relevant date in Law.

ZONING & LAND USE - RHODE ISLAND

[Key v. Brown University]

Supreme Court of Rhode Island - June 27, 2017 - A.3d - 2017 WL 2784864

Property owners brought action against private university and city, seeking declaratory judgment that university's construction of an artificial-turf field hockey field with attendant bleachers, press box, electronic scoreboard, and public-address system was an unlawful use under city zoning ordinances.

The Superior Court granted defendants' cross-motions for summary judgment and denied property owners' cross-motion for summary judgment. Property owners appealed.

The Supreme Court of Rhode Island held that property owners suffered an articulable, particularized injury in fact due to university's construction and use of fields, and thus had standing to bring suit.

Property owners, who brought action against private university and city seeking a declaratory judgment under the Uniform Declaratory Judgments Act (UDJA) that university's construction and subsequent use of new athletic fields and other amenities was unlawful under city zoning ordinances, suffered an articulable, particularized injury in fact due to university's construction and use of fields, and thus had standing to bring suit. Owners' allegations regarding their home provided measurable economic injuries that they suffered as a result of university's project, owners were the proper parties to request an adjudication of the particular issue, and owners' failure to pursue administrative remedies that may have been available to them did not preclude them from seeking declaratory relief.

GOLF - WISCONSIN

[Benson v. City of Madison]

Supreme Court of Wisconsin - June 22, 2017 - N.W.2d - 2017 WL 2687891 - 2017 WI 65

Golf professionals who oversaw clubhouse operations of public golf courses owned by city brought action against city alleging that it failed to comply with Fair Dealership Law in terminating its relationships with them.

The Circuit Court granted summary judgment for city and denied partial summary judgment for professionals. Professionals appealed. The Court of Appeals affirmed. Professionals filed petition for review, which was granted.

The Supreme Court of Wisconsin held that:

- City was person under Fair Dealership Law;
- Relationships between professionals and city were dealerships under Law;
- Action accrued when professionals were informed that their agreements with city were not going to be renewed;
- Notice of claim statute applied to action; and
- City did not enjoy governmental immunity.

City was person under Fair Dealership Law and, thus, Law applied to it in action brought by golf professionals who oversaw clubhouse operations of public golf courses owned by city alleging that it failed to comply with Law in terminating its relationships with them. Law's definition of person included corporation, which included municipal corporations such as city, words natural person, partnership, joint venture, and other entity in definition of person under Law did not plainly evidence legislative exclusion of municipal corporations from meaning of corporation, and provision of Law listing certain parties to whom it did not apply did not include cities on list.

Relationships between golf professionals who oversaw clubhouse operations of public golf courses owned by city and city were dealerships under Fair Dealership Law. Agreements between city and professionals granted professional right to sell or distribute goods and services, as city produced golf course and opened it up to public in exchange for money and member of public seeking to golf on city course set reservation through professionals and paid fee to professionals, and relationships fell within definition of community of interest, as professionals put substantial resources into relationship by hiring and training employees and purchasing supplies and equipment, and city and professionals shared duties inherent in maintaining operative course, sharing common goals in business relationship.

Action by golf professionals who oversaw clubhouse operations of public golf courses owned by city alleging that city failed to comply with Fair Dealership Law in terminating its relationships with them accrued when professionals were informed that their agreements with city were not going to be renewed, rather than when city's parks supervisor asked for new proposals. When asked for new proposals, professionals did not know what grantor's decision would be and were not capable of assessing wither city had complied with Law.

Notice of claim statute, which increased statute of limitations from one year to one year and 120 days, applied to action by golf professionals who oversaw clubhouse operations of public golf courses owned by city alleging that city failed to comply with Fair Dealership Law in terminating its relationships with professionals. Law's statute of limitations period of one year was not more restrictive than 120-day notice of claim requirements, and, although Law allowed for injunctive relief, it also permitted damages, and professionals did not seek injunctive relief.

City did not enjoy governmental immunity in action by golf professionals who oversaw clubhouse operations of public golf courses owned by city alleging that it failed to comply with Fair Dealership Law in terminating its relationships with professionals. City did not explain why statutory Fair Dealership Law claim was based in tort, and fact that city's decision might have been high-level planning decision that required exercise of discretion and weighing and balancing of numerous factors inherent in governmental decision-making did not establish its rights to immunity.

Puerto Rico Bankruptcy-Related Statement Filed.

The Commonwealth of Puerto Rico's ad hoc group of general obligation bondholders, Ambac

Assurance, Assured Guaranty, Assured Guaranty Municipal, Mutual Fund Group, National Public Finance Guarantee and Puerto Rico Funds (collectively, "Responding Creditors") filed a statement in response to the Commonwealth's status report regarding (a) financial disclosures to creditors and (b) status of settlement discussions. Because the Responding Creditors occupy different positions in the capital structure of the Commonwealth and its instrumentalities, their interests are diverse and, in certain respects, in conflict with one another; however, the statement notes that all parties are united in their rejection of certain fundamentally misguided and misleading positions set forth by the Oversight Board the status report.

The statement notes, "The Oversight Board's Status Report rests on a breathtakingly overbroad conception of the Oversight Board's authority under the Puerto Rico Oversight, Management, and Economic Stability Act ('PROMESA'). In the Board's view, PROMESA confers upon the Board a unilateral – and unreviewable – power to dictate the amount of revenues that will be available to service the debts of the Commonwealth and its instrumentalities, through the certification of a Fiscal Plan. All that is left for creditors to do, the Oversight Board asserts, is 'negotiate to divide up the money available for debt service under the fiscal plan.'…The Oversight Board therefore contends that creditors may not even obtain discovery regarding the analyses, judgments, and projections that underlie the certified Fiscal Plan…The Oversight Board's position fundamentally misunderstands PROMESA."

In addition, "To make matters worse, Commonwealth officials have been engaging in a mad dash to pay certain creditors before a restructuring plan is proposed – trade creditors, tax refund claimants, and others are being paid in full at a rapid rate, without any regard for lawful liens or priorities. The Oversight Board's insistence that it may dictate to creditors, rather than negotiate with them, also dooms any possibility for a consensual resolution of these Title III cases."

BANKRUPTCY COMPANY NEWS

BY BRANDY CHETSASON

JUNE 28, 2017

[For Sale: Puerto Rico.]

Territory seeks private companies to run ports, airports, ferries, and more; utilities could be next

Puerto Rico has no cash and can't borrow money anymore. So it is looking to sell itself off in parts.

The troubled U.S. territory is preparing to seek bids in coming months from private companies willing to operate or improve seaports, regional airports, water meters, student housing, traffic-fine collections, parking spaces and a passenger ferry, according to a government presentation reviewed by The Wall Street Journal.

The goal is to attract more than $500 million in investment starting this summer, according to a spokesman for the Puerto Rico Public-Private Partnerships Authority. Future possibilities include the island's power utility, water and sewer system and waste management, according to presentations made in April to private investors.

Puerto Rico officials haven't disclosed exactly how they plan to use any proceeds. The government currently needs cash to pay down debt, run operations and for other purposes.

Potential deals are a cornerstone of a new plan to revitalize the territory, which in May was placed under court protection, the largest-ever U.S. municipal bankruptcy. Gov. Ricardo Rosselló predicts public-private partnerships launched over the next three years will bring $5 billion in new investment and 100,000 jobs to Puerto Rico. Economic projections in the commonwealth's revitalization plan are based in part on the completion of public-private partnership deals.

It's an ambitious goal. U.S. public-private transportation projects—the most common type of partnerships—have attracted about $30 billion in total private and public investment since 1993, according to Public Works Financing newsletter's P3 Projects Database.

"I hope it happens but I recognize it's aggressive," former Puerto Rico Gov. Luis Fortuño, who created the Public-Private Partnerships Authority, said of the $5 billion target.

In public-private partnerships, the government allows private firms to lease and operate public infrastructure for decades in exchange for upfront cash or a promise of long-term improvements. Some arrangements also involve building new infrastructure. Unlike municipal bonds, public-private partnerships insulate investors from the government's financial distress: The money typically flows straight to the private operator without ever passing through government officials' hands.

Proponents say privately run projects are typically more efficient and well-run than public projects, creating savings that lower the overall cost.

Critics of the partnerships say governments are pledging away revenues they need to fund core services in exchange for infrastructure improvements that could cost less if publicly financed. In one example, after Chicago leased its parking meters to a private firm in 2008, the city's inspector general found the firm's $1.157 billion upfront payment was $974 million less than what the city would have gotten from operating the meters itself.

"Just as it is imprudent to sell your house to make a monthly credit card payment, valuable governmental assets shouldn't be viewed as a one-shot budget solution," said Chris Hamel, head of municipal finance at RBC Capital Markets, speaking generally about public-private partnerships.

Puerto Rico has had issues in the past with private partners.

Former Gov. Alejandro García Padilla tried to find partners for a passenger ferry from the mainland to the islands of Culebra and Vieques. But the government couldn't afford to put down collateral to guarantee to a private operator that it would make payments to supplement ferry fares, and prospective partners lost interest.

Rick Newman, a developer and owner-operator of hotels in Puerto Rico who runs a private ferry service, opted against bidding to operate the Culebra and Vieques ferry under Mr. García Padilla's plan. He said the proposed partnership carried too much risk. He said he would consider a new partnership, but not if the private partner is expected to rely solely on passengers for revenue.

"If the request for proposals comes out and says you have to live off of the fare box, the government may not find a private operator," Mr. Newman said.

Other public-private partnerships in Puerto Rico have done better.

In 2009, then-Gov. Fortuño pushed through legislation creating an authority that could move forward with public-private deals without legislative approval. Puerto Rico's largest airport is run by a public-private partnership.

The authority's first major deal was a decision to lease the island's busiest road, the José de Diego Highway, and a shorter nearby road. Puerto Rico got $1.08 billion in upfront cash—almost all of it went to pay off debt—and a promise from the private firm, Autopistas Metropolitanas de Puerto Rico LLC, to invest about $350 million in the roads, according to the Federal Highway Administration.

The private firm made a range of improvements, paving and widening the expressway and enhancing toll-collection efforts. It also raised prices for drivers by 20% since 2011; driving from end to end now costs $4.45.

Mr. Fortuño said without private investment, he wouldn't have had the upfront capital to make needed safety improvements. "I didn't have a choice," he said.

The private operator's owners, Goldman Sachs Infrastructure Partners and the Spanish infrastructure firm Abertis , each received about $40 million in earnings before interest, tax, depreciation and amortization from the road last year, according to people familiar with the matter.

Prices on the toll road's bonds have risen by about eight cents on the dollar since October and now are trading at par value. Puerto Rico highway bonds, in contrast, are trading at close to 50 cents on the dollar after the island's highway authority entered a court-supervised bankruptcy process last month.

"This is the solution that Puerto Rico has to move forward," said Wilson Ortiz-Vega, advisory leader with the insurance brokerage Aon , which worked on a previous public-private partnership with Puerto Rico."They don't have access to capital markets at a reasonable rate, and they don't have the resources."

Even so, Carlos A. Colón De Armas, a professor of finance at the University of Puerto Rico Graduate School of Business, said the commonwealth would have been better off continuing to operate the José de Diego Highway. His 2011 study found the present value of the revenue the government would have collected over 40 years was $2.1 billion.

The Wall Street Journal

By Heather Gillers

June 26, 2017 7:00 a.m. ET

Write to Heather Gillers at heather.gillers@wsj.com

Opinion: Privatize Puerto Rico's Power.

It would reduce the cost of living and spur economic growth.

This article was written by Andrew G. Biggs, Arthur J. Gonzalez, Ana J. Matosantos and David Skeel, four of the seven members of the Financial Oversight and Management Board for Puerto Rico. They were appointed by President Obama based on recommendations by the Democratic and Republican Congressional leadership.

In July 2016, Puerto Rico defaulted on its more than $70 billion of debt, putting at risk those liabilities as well as more than $50 billion in public pension obligations. Just before the default, Congress had enacted the Puerto Rico Oversight, Management and Economic Stability Act, or Promesa, which established the Financial Oversight and Management Board for Puerto Rico. Today, under the board's guidance, Puerto Rico is undertaking the largest municipal restructuring in U.S. history, with the goal of sorting out its longstanding fiscal issues and reigniting economic growth.

The board has worked steadily toward these goals over the past year. After rejecting turnaround plans submitted by two successive Puerto Rican governors, last March the board approved an amended plan that includes a nearly 30% cut in government health spending, sizable reductions in government subsidies, school closings, consolidations of government agencies, and the most extensive public-employee pension reforms ever passed in the U.S.

This week, after much deliberation, the board rejected the Puerto Rico Electric Power Authority's request to move forward with a restructuring support agreement with its creditors. Puerto Rico's electricity costs are two to three times as high as mainland levels. The board concluded that lowering the price of electricity and spurring economic growth depended on reforming Prepa's operations, not merely restructuring its credit. Affordable electricity could boost growth by up to half a percentage point annually, raising family incomes on the island, stemming outmigration and increasing funds available to repay creditors.

Successful reform will require a true transformation of Puerto Rico's power sector. As the Center for the New Economy, a Puerto Rican think tank, put it in a 2009 report: "PREPA's operations are substantially less efficient than the operations of its U.S. counterparts and it underperforms in virtually every area of operations under consideration." While mainland utilities have reduced costs by shifting to natural gas, Prepa relies on outmoded oil-fired generating plants. The company also loses 12% of sales revenue to faulty billing and theft, three times the U.S. average. Prepa has languished under heavy administrative overhead and politicized management, which contribute to its failure to deliver reliable, cost-effective energy.

We believe that only privatization will enable Prepa to attract the investments it needs to lower costs and provide more reliable power throughout the island. By shifting from a government entity to a well-regulated private utility, Prepa can modernize its power supply, depoliticize its management, reform pensions, and renegotiate labor and other contracts to operate more efficiently. A reformed Prepa is key to restoring opportunity for the people of Puerto Rico.

Prepa's credit restructuring proposal would make effective privatization impossible. Under the proposal, bondholders would grant Prepa a five-year reprieve from principal payments and some would accept a 15% reduction in debt. In return, those bondholders would be guaranteed repayment of remaining debt through an electricity surcharge. If demand for electricity continues to decline, the surcharge will have to rise to compensate the creditors. The Prepa proposal and its guarantee to current creditors would increase costs to ratepayers while leaving new investors—the ones Prepa needs to transform its operations—assuming all the risk.

Private investors would not involve themselves with Prepa on those terms, meaning the company would lack the capital to modernize. Electricity costs would remain high, and economic growth, families and bondholders would suffer. The board's economists estimate that without pro-growth energy reforms, funds available to pay Puerto Rico's creditors would be reduced by $15 billion.

The Board's decision was not easy. Promesa gave preferential treatment to the credit support proposal, not requiring it to satisfy the same criteria as other debt restructuring settlements. Some members of Congress have suggested that Prepa's credit agreement should have been considered a "done deal." But not all the proponents of Promesa understood its provisions in that way. The law clearly expresses that the board must authorize any voluntary debt restructuring, and the agreement proposed by Prepa itself explicitly requires board authorization.

The board cannot amend the Prepa agreement, as it did with the fiscal plan submitted by Puerto Rico's government. But the board will pursue improved terms of agreement for creditors, and more equal sharing of risk between current creditors and new investors.

Transformation of Puerto Rico's energy sector is only one part of a broader reform agenda, which must include fundamental public pension and welfare reforms, as well as the modernization of labor laws. Prepa's viability must be addressed in the context of these larger solutions to Puerto Rico's fiscal and economic crisis. But unless Prepa can be modernized, Puerto Rico's economic recovery and its ability to repay its debts will suffer.

The Wall Street Journal

June 29, 2017 6:55 p.m. ET

Illinois Is in Deep Trouble: What Investors Need to Know.

Here are answers to questions investors may be asking

Illinois is locked in a political stalemate, and in danger of becoming the first U.S. state to have its debt downgraded to junk status. S&P Global Inc. threatened to take that action if Gov. Bruce Rauner and Democratic Speaker of the House Michael Madigan can't agree on a package of spending and taxes by the start of the next fiscal year on Saturday. Below is a breakdown of what this unprecedented event would mean for everyone from individual investors to large Wall Street money managers.

Who owns Illinois's debt?

Much of Illinois's $25 billion in outstanding general obligation debt is held by individual investors seeking a stable source of income, according to analysts' estimates. But Wall Street is also exposed via mutual funds, hedge funds and insurers that purchased the state's bonds. Money management giant Vanguard Group has $1.2 billion spread across seven mutual funds. It is the biggest holder among all mutual-fund firms that had a total of $4.5 billion in Illinois bonds, according to the most recent figures from research firm Morningstar.

What would a downgrade do to those investments?

Not much, say analysts. They predict prices would drop only a few cents in the event of a junk downgrade. The state's uninsured general obligation debt traded this week as high as 95 cents on the dollar. Junk bonds don't usually trade near par, but state general obligation debt is considered safer because states have broad power to tax and lack the legal ability to declare bankruptcy.

Will investors still get paid?

A junk rating won't affect the state's ability to pay bondholders. State officials have said those payments are their No. 1 priority.

What does a 'junk' rating mean, anyway?

Ratings firms rank debt according to how safe an investment they believe it is. The 12 safest tiers are considered “investment grade,” meaning investors have what S&P terms “adequate” protection against the risk of default. Below that, bonds are considered junk, or “speculative grade,” meaning they face “large uncertainties” or “major exposure to adverse conditions,” according to S&P. Investors who buy junk may earn greater profits if the bonds perform well but they also face greater danger of losses.

Are mutual funds even allowed to own junk municipal bonds?

Most mutual funds have rules limiting their investment in junk-rated debt, but when bonds drop below investment grade they may not be required to sell them. At Vanguard, mutual funds are allowed to hold a “modest allocation” of junk bonds, a spokesman said. Vanguard’s municipal bond team, a spokesman said, is “comfortable with the risk/reward” of investing in Illinois bonds.

How are investors expected to react to a downgrade?

Bonds are still likely to change hands as holders spooked by the state’s deteriorating credit sell and high-yield investors take advantage of the opportunity to buy. Mutual funds have already sold more than $100 million in Illinois general obligation bonds since the end of 2016, according to Morningstar, and buyers have been taking advantage of temporary dips. Howard Cure, director of municipal bond research at Evercore Wealth Management, said some of his clients might buy more Illinois bonds if prices drop further.

How would a downgrade affect Illinois?

The most immediate impact would likely be a rise in borrowing costs, making it more expensive to raise money for new projects. Analysts predict investors could demand an additional half-percent to a percent in interest, meaning the state would pay an additional $5 million to $10 million for every $1 billion it borrows. Illinois already pays a premium. When it last sold tax-exempt debt in November 2016, the state paid yields of 4.4% for 20-year bonds. In contrast, 20-year bonds issued by the state of Wisconsin around the same time yielded 2.8%.

Is Illinois on its way to becoming the next Puerto Rico?

Analysts say no, noting that Illinois’s problems are largely political. Unlike Puerto Rico, which is in the midst of a court-supervised restructuring, Illinois has a strong underlying economy and annual revenues that are about 10 times its yearly debt service payments. Puerto Rico, on the other hand, has endured more than a decade of economic distress. “There’s no risk of Illinois losing market access,” said Matt Fabian, a partner at Municipal Market Analytics.

Will a junk downgrade spill over affect other states and cities?

It could. New Jersey and Connecticut, among the lowest-rated states after Illinois, may face more scrutiny from investors, analysts said. Both are wrestling with budget problems and mounting liabilities. But New Jersey and Connecticut still have a long way to go to match Illinois’s ratings dilemma. They are rated several notches higher by S&P and Moody’s Investors Service.

The Wall Street Journal

By Heather Gillers

June 29, 2017

Write to Heather Gillers at heather.gillers@wsj.com

Puerto Rico Electric Bonds Fall as Restructuring Pact Dashed.

- **Bonds had been sliding as board delayed approval of deal**
- **Agreement would have given investors 85 cents on the dollar**

Puerto Rico's government electric company bonds tumbled after the island's federal oversight board rejected an agreement with creditors to restructure $9 billion of debt, pushing the agency toward bankruptcy.

The price of Puerto Rico Electric Power Authority bonds due in 2040, one most actively traded Wednesday, changed hands for an average of 52.7 cents on the dollar, down 15 percent from when they last traded on June 14, according to data compiled by Bloomberg.

A rout followed the board's announcement late Tuesday that it shot down the agency's deal with insurers and investors that would have allowed bondholders to receive 85 cents on the dollar. Prepa, as the utility's known, first struck the agreement in 2015, before Congress enacted emergency rescue legislation that placed Puerto Rico under federal oversight and gave the island the option to file for bankruptcy.

"It's pretty negative from the perspective that you have an agreement and it's been out there for a long time," said Daniel Solender, head of municipals at Lord Abbett & Co., which manages $19 billion of state and local debt, including Puerto Rico bonds. "It makes it hard to proceed going forward with them if agreements don't hold up."

The restructuring of Prepa, the largest U.S. public power utility by customers and revenue, will likely happen using a form of bankruptcy called Title III, the board said. Puerto Rico's central government took that step on May 3 after negotiations with creditors failed.

Investors had been speculating that the Prepa deal could unravel, given that the board had failed to approve revisions that Governor Ricardo Rossello made nearly three months ago. Without it in place, Prepa may default on a $423 million principal and interest payment due July 1. It would be the first missed payment for the agency after it negotiated for nearly four years with hedge funds, mutual funds and bond-insurance companies to find an out-of-court solution.

Board members have questioned the deal's ability to lower electricity rates and sufficiently modernize the system.

"Affordable and reliable electricity is central to Puerto Rico's economic turnaround, without which customers will seek alternative measures to satisfy their needs resulting in increased pressure to increase the rates to the remaining customer base, thereby inhibiting growth and long-term viability," the board said in a statement Tuesday.

The board voted four to three against the deal, according to a person familiar with the vote who asked not to be named because the meeting wasn't public.

The vote comes after MBIA Inc.'s National Public Finance Guarantee Corp. and units of Assured Guaranty Ltd. sued the board Monday in U.S. court in Puerto Rico, seeking to prevent the panel from blocking Prepa's restructuring agreement.

Congress last year passed legislation, known as Promesa, that allows Puerto Rico and its agencies to file Title III to force creditors to take losses on their investments. The legislation included language that directed the board to approve any already-crafted creditor agreement. U.S. Representative Rob Bishop, chairman of the Natural Resources Committee, which drafted Promesa, earlier this month urged the board in a letter to approve Prepa's restructuring deal.

The board's decision was criticized by a group of Prepa bondholders, including OppenheimerFunds Inc. and Franklin Advisers, that were involved in the negotiations.

"We do not understand the board's decision to block this deal after more than three years of cooperative, good faith negotiation by all stakeholders, exhaustive third-party review and explicit statements from the chair of the Congressional committee that drafted PROMESA that the law wasn't intended to give the board the power to take this action," the group said in a statement. "At this stage we remain open to working with the oversight board but are considering all options."

Bloomberg

By Michelle Kaske

June 28, 2017, 9:13 AM PDT June 28, 2017, 11:08 AM PDT

[BDA Submits Comment Letter: MSRB Second Request for Comment on Draft Amendments to and Clarifications of MSRB Rule G-34, on Obtaining CUSIP Numbers.]

The BDA submitted a comment letter to the MSRB in response to their [second request for comment] seeking industry input on draft rule amendments to MSRB Rule G-34, on CUSIP numbers, new issue, and market information requirements. You can find our final comment letter [here].

BDA's comment letter addresses the following:

- Expresses support for the changes the MSRB made from the original request for comment
- Requests clarifications exempting direct purchases by banks from the CUSIP and depository eligibility requirements
- Requests a clarification where direct purchase transactions are not purchased by banks but instead by their non-bank affiliates
- Suggests that the MSRB should not refer specifically to CUSIP but to any identification number widely accepted in the municipal securities market

Background on updated proposed amendments:

- Provides a limited exception to the requirement to obtain CUSIP numbers, and to apply for depository eligibility, in the case of a direct purchase of municipal securities by a bank, affiliated banks or a consortium of banks formed for the purpose of participating in the direct purchase.
- Amends the definition of "underwriter" in Rule G-34(a) to cross reference to the definition of "underwriter" set forth in Exchange Act Rule 15c2-12(f)(8) and requires all municipal advisors to obtain CUSIP numbers when advising an issuer in a competitive new issue transaction in municipal securities.
- Requires all municipal advisors to obtain CUSIP numbers when advising an issuer in a competitive new issue transaction in municipal securities, however, the MSRB seeks comment on draft

proposed exceptions from each of these requirements in certain limited circumstances.
- The MSRB proposes to make the application of the draft rule amendments set forth in this second request for comment prospective.

You can find BDA's letter to the MSRB for the original proposed amendments here.

Bond Dealers of America

June 29, 2017

Fitch: US Senate Bill A Risk for Governments, Health Providers.

Fitch Ratings-New York-26 June 2017: A proposed Senate healthcare bill, the Better Care and Reconciliation Act (BCRA), would have negative credit implications for US States and public non-profit hospitals, says Fitch Ratings. It would mean significant reductions in federal funding to states and changes in the payor mix and lower patient volumes for public hospitals. Higher uninsured rates would also act as a structural headwind for growth for corporate healthcare entities, though those issuers would benefit in the near term from the roll back of most of the industry taxes and fees that were implemented under the Affordable Care Act (ACA).

These outcomes are based on an unlikely total adoption of the BCRA and the Congressional Budget Office's (CBO) estimates of the impact of the previous House version of the bill, the American Healthcare Act (AHCA). The CBO will report on the BCRA in the coming days. That report will be seminal to when and how the Senate will vote on it. If BCRA passes the Senate, before going to the President's desk it will need to be passed by the House in its final Senate-approved form, or reconciled with the House's AHCA and then passed by both houses.

Federal aid for Medicaid currently represents approximately 20% of all state budgets. The CBO estimates that the AHCA would lower federal Medicaid spending by 24% by fiscal 2026. The speed and scale of that contraction could be difficult for states to manage and could affect both the states that expanded Medicaid under the ACA and those that did not. The 2020 and 2021 implementation dates for most Medicaid provisions would likely result in pressure on states to cut funding to local governments, public colleges and universities, and healthcare providers.

Amongst healthcare providers, acute care hospitals would be the most pressured by those state cuts and by the rise in uninsured patients. The CBO estimates that the AHCA would raise the uninsured rate of the non-elderly segment of the US population to 19% from its current 10%. That change would mean hospitals would have a higher percentage of uninsured patients and lower patient volumes as people will opt out of less critical care. Unless offset by cost savings or higher reimbursement from insured patients, this would pressure margins and could result in downward ratings pressure.

In the near term, acute care hospitals and other healthcare providers would get a reprieve from the pressures of a decline in the number of insured people as the bill includes federal appropriation for approximately $7 billion (annually, through 2019) of cost-sharing subsidies for middle income enrollees to the individual health plan market. Healthcare companies would also benefit from the repeal of the taxes and fees imposed by the ACA. This will boost financial results for many companies in the near term since those taxes and fees mitigated much of the initial financial benefits of the ACA's insurance expansion.

However, that initial positive benefit will evaporate as higher uninsured rates will be an important structural headwind to topline growth for healthcare companies over the longer term.

Contact:

Eric Kim
Director, US Public Finance
+1 212 908-0241
Fitch Ratings, Inc.
33 Whitehall Street
New York, NY

Megan Neuburger, CFA
Managing Director, US Corporates
+1 212 908-0501

Kevin Holloran
Senior Director, US Public Finance
+1 512 813-5700

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

Media Relations: Alyssa Castelli, New York, Tel: +1 (212) 908 0540, Email: alyssa.castelli@fitchratings.com; Elizabeth Fogerty, New York, Tel: +1 (212) 908 0526, Email: elizabeth.fogerty@fitchratings.com.

Fitch: Rising Debt Expected for Florida Water Utilities.

Fitch Ratings-New York-26 June 2017: Florida water utilities have seen a rise in debt outstanding over the past three years, according to Fitch Ratings' 2017 Florida Water and Sewer Sector Update. Fitch believes this will continue as concurrent increases in capex have not resulted in declines in the average age of water plants.

Renewal and replacement of water infrastructure has driven the majority of capital spending for Florida water and sewer utilities. However the average age of the state's water utilities has remained mostly stable, at 14.5 years in fiscal year 2016.

"Increasing focus on alternative water sources and efforts around water quality most likely mean more financing will be required to meet needs that go above and beyond regular renewal and replacement," says Eva Rippeteau, Director, U.S. Public Finance.

Regulatory requirements for wastewater quality, storm water and flood mitigation are major capital spending drivers throughout the state.

Nutrient reduction, in particular, remains a big focus and has both environmental and economic implications. In early May, Governor Scott authorized a $1.5 billion plan aimed at mitigating algae blooms caused by nutrient accumulation in Lake Okeechobee, the largest such plan to date. Increasingly, storm water capture and disposal systems are under greater scrutiny due to persistent flooding and pollution risk. Utilities requiring system changes to address these methods may require additional financing.

Some utilities have on-going requirements to expand or seek alternative water sources to accommodate renewed population growth. Certain supply projects can be expensive and necessitate regional coordination in order to finance, operate and sustain. One example is the Central Florida Water Initiative, which spans five counties, three water management districts, the Florida Department of Environmental Protection and other stakeholders.

Despite the increase in debt, most Florida water and sewer utilities saw significant improvements in finances in fiscal 2016 relative to the year prior. Four upgrades and only one downgrade comprised the year's ratings changes. The ratings for 34 other systems were affirmed. The average Florida water and sewer utility rating continues to be 'AA'. Fitch anticipates credit quality will remain high.

The 2017 Florida Water and Sewer Sector Update was published in conjunction with the 2017 Fitch Analytical Comparative Tool (FACT) for Florida Water and Sewer credits. The 2017 FACT contains financial data for 58 water and sewer utilities in Florida, including historical statistics and metrics going back to 2012.

The FACT includes a dashboard feature to plot annual issuer metrics and median performance, a peer analysis tool which allows users to review and compare metrics of two issuers, and a charting tool which generates a comparison of issuer metrics against rating category medians.

The full reports, "Florida Water and Sewer Sector – 2017 Update," and "Florida Water & Sewer – Fitch Analytical Comparative Tool (FACT) – 2017," are available at www.fitchratings.com.

Contact:

Eva D. Rippeteau
Director
+1-212-908-9105
Fitch Ratings, Inc.
33 Whitehall Street
New York, NY 10004

Andrew DeStefano
Director
+1-212-908-0284

Media Relations: Elizabeth Fogerty, New York, Tel: +1 (212) 908 0526, Email: elizabeth.fogerty@fitchratings.com.

Additional information is available on www.fitchratings.com

Fitch: New York State Leaves Local Tax Revenue in Limbo.

Fitch Ratings-New York-23 June 2017: The New York State legislature is expected ultimately to approve extending key revenue sources for local governments, despite adjourning its 2017 session without approving the extensions, says Fitch Ratings. However, there may be a lapse in tax collections by local governments if the legislature does not arrive at an agreement prior to its next scheduled session in 2018.

The legislature adjourned its 2017 session on Wednesday without an agreement on a bill that would extend the right for 53 counties to charge sales taxes above the 3% base sales tax rate and New York City to continue its current income tax rate. Many counties levy an additional 1% or more, some of which may be shared with their municipalities. This tax must be renewed biennially by the legislature. The bill would also have continued mayoral control of the New York City public school system.

We do not believe the legislature’s intention was to deprive local governments of a revenue source that for many funds a significant portion of their budgets. However, the parts of the bill concerning the schools were highly politicized.

State officials are reportedly discussing arrangements to vote on a bill incorporating the tax extensions before the next session. Fitch expects the extensions to ultimately be extended before they expire, but Fitch will take any rating actions it deems appropriate if this expectation is not met.

In addition to potentially affecting government operations, failure to extend taxes would impact debt service coverage for a number of state-created authorities whose bonds are secured by sales tax revenue. The New York City Transitional Finance Authority’s (TFA) bonds are secured by both sales and income tax revenues. While only a minimal portion of the city’s sales tax revenue is at risk, the loss of the extension of the current income tax base rate and 14% surcharge could result in a loss of tax revenues of $8.1 billion by fiscal 2021, according to an analysis by the TFA. Debt service coverage on TFA bonds is very strong, as it is for bonds issued by the Nassau County Interim Finance Authority, the Buffalo Fiscal Stability Authority and the Erie County Fiscal Stability Authority – all rated ‘AAA’/Stable.

TFA reports the effects on fiscal 2018 revenues of a reduction in the income tax rate, effective Jan. 1, 2018, would be $2.9 billion. This has a modest impact on TFA coverage yet would create a gap in the city’s fiscal 2018 budget (beginning July 1, 2017) as the income taxes reduced represent 3.4% of budgeted revenues. However, for those with fiscal years ending December 31 and taxes expiring on November 30, current year budget adjustments would be needed.

Contact:

Amy Laskey
Managing Director, U.S. Public Finance
+1 212 908-0568
Fitch Ratings, Inc.
33 Whitehall Street, New York

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

Media Relations: Elizabeth Fogerty, New York, Tel: +1 (212) 908 0526, Email: elizabeth.fogerty@fitchratings.com.

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

[Fitch: Mixed Outcome in Southern California Water Rate Litigation.]

Fitch Ratings-Austin-26 June 2017: On June 21, in a decision that Fitch Ratings found to be credit-neutral, the California Court of Appeal gave both parties reason to claim victory in its decision on litigation between the Metropolitan Water District of Southern California (Metropolitan, rated 'AA+'/Stable) and the largest of its 26 member agencies, the San Diego County Water Authority (CWA, rated 'AA+'/Stable). The court ruled in favor of the CWA on most points, but the ruling favored Metropolitan on the core financial aspect of the case. The appellate court affirmed the legality of the aspect of Metropolitan's rate-setting methodology that includes State Water Projects (SWP) costs, reversing the trial court decision of Nov. 2015. We believe the most recent appellate court ruling is credit-neutral for Metropolitan in that the bulk of its transportation rate was found to be appropriate, and credit-neutral for San Diego CWA, since it could receive some relief in the transportation rate that would be credited back to its members. The case is expected to be appealed to the State Supreme Court.

Water Transportation Rate at Heart of the Case

CWA pays water transportation rates to Metropolitan for the movement of imported water CWA purchases from the Imperial Irrigation District. Metropolitan's transportation rate-setting methodology includes SWP charges (charges associated with the 444-mile California aqueduct that moves water from northern California to southern California), which CWA has contested as costs that are more appropriately characterized as water supply costs and not allocable to transportation costs. Based on the 2010 legal filing, CWA asserted that the inclusion of SWP costs resulted in an overcharge of at least $24.5 million per year and inclusion of the water stewardship rate resulted in a further overcharge of $5.4 million per year, in comparison to CWA's full payments to Metropolitan of approximately $328 million in recent typical years.

The trial court, in its 2015 decision, had awarded San Diego CWA $188.3 million in breach of contract claims to San Diego CWA for rate overcharges (both SWP and water stewardship rate) during the years 2011-2014 plus additional amounts for interest and legal costs. While there is legal precedent that affirms water transportation rate methodology can include system costs broader than just the facilities used to convey specific water supplies in an individual contract, the trial court found Metropolitan's inclusion of the SWP charges improper because the SWP is not directly owned by Metropolitan However, the appellate court's recent ruling reversed the trial court's determination, finding that the SWP, while not owned by Metropolitan, is an integral component of its water supply system and can be included in the transportation rate.

The remaining points in the litigation on which the appellate court found in favor of the CWA are 1) in regard to the exclusion of Metropolitan's water stewardship rate in its water transportation charge methodology (in agreement with the Nov. 2015 trial court decision); 2) the more generous calculation methodology of CWA's rights to preferential water during a shortage (also in agreement with the trial court decision); and 3) a finding that CWA has standing to challenge an unconstitutional component of Metropolitan's water conservation program contracts that allowed Metropolitan to cut off conservation program funding to a member that is in active litigation to challenge the Water Stewardship Rate. The trial court had found this aspect of the conservation program to be unconstitutional but determined that CWA lacked the standing to challenge the provision.

Credit Rating Outcomes Expected to be Relatively Neutral

Fitch believes the current credit ratings of Metropolitan and CWA provide sufficient room to incorporate any potential outcomes in the case pending ultimate resolution. Fitch believes Metropolitan is positioned to absorb the costs and required rate restructuring required by the appellate court ruling if it were upheld. This outcome would allow Metropolitan to include SWP costs but exclude the water stewardship rate in its transportation rates and pay certain damages to CWA, assumed to be substantially less than those awarded by the Nov. 2015 trial court decision. The appellate court's decision would lower the transportation rates charged to CWA in the future by removing the water stewardship rate but Metropolitan could recover those lost revenues through an incremental rate increase to other members. Metropolitan's revenue stability will depend on the timeliness of rate restructuring to recover the revenues at issue from other members. Metropolitan's cash reserves were spent down in fiscal 2016 related to the state drought but should recover to more typical robust levels prior to a final decision by the Supreme Court. Reserves could be necessary to provide financial cushion until rate restructuring could be put into place. If a final ruling is instead consistent with the original trial court decision, resulting in a more urgent need for rate restructuring among Metropolitan's members, strong reserves and rapid Board action will become more critical credit considerations.

San Diego CWA's credit quality is unlikely to shift regardless of the outcome, given the upside potential of receiving financial damages and the intent to return any funds directly to customers. If the appellate court ruling is upheld, CWA would receive a smaller portion of the damages being sought but the higher rates have already been paid to Metropolitan and recovered in CWA's own rates charged to its customers. CWA has committed to returning any funds received from the litigation to its customers (net of legal costs). Fitch believes the credit impact would be neutral for San Diego regardless of whether the final ruling includes the large $188.3 million settlement awarded by the trial court or the smaller amount related only to the water stewardship rate component implied by recent appellate ruling. Future water rates may be higher than what CWA had hoped, but CWA has cautiously assumed a continuation of current rates in its conservative forecast planning and rate methodology.

Contact:

Kathy Masterson
Senior Director
512-215-3730
Fitch Ratings, Inc.
111 Congress Avenue, Suite 2010
Austin, TX 78701

Andrew Ward
Director
415-732-5617

Media Relations: Elizabeth Fogerty, New York, Tel: +1 (212) 908 0526, Email: elizabeth.fogerty@fitchratings.com.

Additional information is available on www.fitchratings.com

Bloomberg Brief Weekly Video - 06/29

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

Watch video.

Bloomberg

June 29, 2017

Illinois Blows Budget Deadline, Pushing It Closer to Junk.

- **House plans Sunday vote after adjourning without agreement**
- **S&P warns of downgrade if the impasse isn't soon resolved**

Republican Governor of Illinois Bruce Rauner. Photographer: Scott Olson/Getty Images
Illinois entered its third straight fiscal year without a budget as Republican Governor Bruce Rauner and Democratic lawmakers struggle to agree on how to rein in the government's chronic deficits, pushing it closer toward becoming the first junk-rated U.S. state.

State legislators failed to enact a budget by the end of Friday, the last day of the fiscal year, though negotiations continued. Speaker Michael Madigan, a Chicago Democrat, said in a statement on Saturday the House would vote Sunday "on a revenue package that is modeled on the bill supported by the governor, and House and Senate Republicans."

The failure marked a continuation of the unprecedented impasse that's left Illinois without a full-year budget since mid-2015. Without a deal around July 1, S&P Global Ratings has warned that the nation's fifth-most-populous state will likely get downgraded again, losing its investment-grade status.

After Madigan, 75, appeared briefly on the House floor, Republicans stood and chanted in objection, with one member shouting "Speaker Junk" as Madigan left the floor.

On Friday, Madigan, who controls much of the legislative agenda, pleaded with rating companies to "temporarily withhold judgment" as lawmakers negotiate.

'Job Done'

"Much work remains to be done," Madigan said on the floor of the House Friday, before the chamber adjourned for the day. "We'll get the job done."

Without a spending plan, the state has effectively been on autopilot, leaving it with a record $15 billion of unpaid bills as it spent over $6 billion more than it brought in over the past year. The impasse has devastated social-service providers, shuttering services for the homeless, disabled and poor. The lack of state aid has wrecked havoc on universities, putting their accreditation at risk.

If the standoff isn't resolved, Illinois officials have said they won't be able to pay contractors and road construction will shut down, putting thousands out of work. The yields on the state's bonds have risen as investors anticipate a downgrade.

At its root, the fight is a showdown between former private equity executive Bruce Rauner, who in 2015 became the first Republican to lead Illinois since 2003, and Madigan, who's served as speaker for decades. The two can’t agree on how to end deficits that were exacerbated when tax hikes expired just as Rauner took office.

The partisan gridlock has created the longest budget standoff ever for a state, according to the National Conference of State Legislatures. Rauner has demanded any plan come with parts of his self-described pro-business reforms, like a property-tax freeze and legislative term limits. Democrats have resisted, saying his agenda would devastate the middle class. They’ve passed some of his initiatives, but Rauner argues they didn’t go far enough.

School Funding

Without a budget that includes borrowing to pay down the bill backlog, Illinois by August will run out of money for key expenses for the first time since the stalemate began, according to Comptroller Susana Mendoza, a Democrat. That means school funding, state payroll, and pension payments could be affected, she said. There won’t be enough money for these mandated or court-ordered payments.

This won’t jeopardize debt-service payments, she said. Illinois hasn’t missed any bond payments and state law requires it to make monthly deposits to its debt-service funds.

Investors have been punishing Illinois for its fiscal woes. Yields on the state’s 10-year bonds have soared to 4.8 percent, 2.8 percentage points more than those of benchmark debt. That’s the highest yield of all 22 states that Bloomberg tracks.

“Recognizing that they’re continuing to work through the weekend, it doesn’t look good to adjourn halfway through your last day,” said John Humphrey, the Chicago-based head of credit research for Gurtin Municipal Bond Management, which oversees about $10.1 billion of state and local debt.

Bloomberg Politics

By Elizabeth Campbell

June 30, 2017, 9:01 PM PDT July 1, 2017, 2:53 PM PDT

Citigroup Likes Illinois's Fundamentals, Dislikes Its Politics.

- **The state’s G.O. bonds offer attractive spreads for HY buyers**
- **Build Illinois Bonds (BIBs) ‘somewhat on par with GOs’**

Illinois general-obligation debt may be attractive for high yield investors as the state contends with a two-year budget impasse that has its rating on the verge of junk, according to Citigroup’s municipal research team led by Vikram Rai.

General-obligation bonds are trading from 1.55 percentage point to 2.05 percentage points more than securities with the lowest investment-grade ratings, though large-scale, forced selling in the event of a downgrade to junk is unlikely, the analysts stated in a note. Investors should show a preference to the 5- to 7-year part of the curve, they said.

The analysts also note:

- Build Illinois Bonds (BIBs) are “somewhat on par with GOs” as state law provides for irrevocable and continuing appropriation in much the same manner seen for the GOs and sales-tax revenue

bonds. In addition, the amount outstanding is low and payment is backed by a first lien on the state's share of sales tax revenue.
- The state's appropriated debt (Metropolitan Pier & Exposition Authority) have already been downgraded to junk and have outperformed GOs of late; this may continue as the notional amount is just about $3.6 billion and is backed by dedicated sales tax revenues.
- Taxable pension obligation bonds have limited upside.
- Expect Illinois bonds to rally only after a budget passes; even a stopgap measure should lead to some price improvement.
- The state "has the ability to continue to pay for most debt service and pension contributions" whether or not a budget is passed. State law mandates a monthly set aside for debt service on GOs and sales-tax revenue bonds and this mandate has not been breached.

The state's budget impasse shows little sign of resolution by the end of the week. Republican Governor Bruce Rauner, who called a special session to breach the stalemate between the Democratic-led legislature, called the first few days of talks "a waste of time."

Bloomberg Markets

By Kristy Westgard

June 27, 2017, 1:59 PM PDT
