Bond Case Briefs

Municipal Finance Law Since 1971

FINRA Proposed Rule Change - Section 13 of Schedule A.

Proposed Rule Change to Amend Section 13 of Schedule A to the FINRA By-Laws Relating to the Review Charges for Communications Filed with or Submitted to FINRA

Financial Industry Regulatory Authority, Inc. ("FINRA") is filing with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change to amend Section 13 of Schedule A to the FINRA By-Laws ("Section 13") governing the review charges for communications filed with or submitted to FINRA's Advertising Regulation Department (the "Department") to account for upcoming technological changes that will allow websites to be filed in native format.

Text of Proposed Rule Change.

- MSRB Identifies Compliance Considerations for Municipal Securities Dealers.
- The Bond Lawyer: Summer 2017
- S&P: Cyberattacks Pose A Real, If Varying, Credit Risk Across U.S. Public Finance Sectors. **Ed. Note:** This may serve as a handy guide for new & improved risk factors and disclosures.
- As Flood Risks Intensify, Stormwater Utilities Offer a More Resilient Solution.
- Someone Left the Crayons Out, and Now the Tax Lawyers Are Drawing Pictures.
- *California Cannabis Coalition v. City of Upland* – Supreme Court of California holds that requirement – under constitutional provision limiting ability of local governments to impose, extend, or increase any general tax – that a general tax be submitted to the voters at a general election does not apply to taxes that are imposed by initiative after securing the electorate's approval in a manner consistent with statute setting forth local government's duty with respect to voter initiatives whose proponents request a special election.
- And finally, Please Remind Me Again Why We Aren't Paid Hourly is brought to us this week by *Corrigan v. Illuminating Company*, in which one can positively feel the waves of resigned disgust wafting off the Facts and Procedural Background section of the Supreme Court of Ohio's opinion, which begins, "For over ten years, the parties have litigated the fate of this tree." May visions of chainsaws dance through your heads.

UTILITIES - OHIO

Corrigan v. Illuminating Company

Supreme Court of Ohio - September 13, 2017 - N.E.3d - 2017 WL 4081822 - 2017 -Ohio-7555

Property owners filed a complaint with the Public Utilities Commission against electricity company, seeking to prevent the removal of a tree located on the company's easement across owners' property.

The Public Utilities Commission found that the company's plan to remove the tree was reasonable. Owners appealed.

The Supreme Court of Ohio held that:

- Evidence supported conclusion that continued pruning of tree near transmission line was not a viable option;
- Order permitting removal of tree did not contravene Commission's vegetation-management policy; and
- Evidence supported conclusion that tree could potentially interfere with transmission line.

Evidence supported conclusion by Public Utilities Commission that continued pruning of tree located on electrical company's easement near transmission line was not a viable option, in proceedings brought by property owner seeking to prevent the tree's removal. Certified arborist testified that past pruning operations were ineffective over long term and that future pruning would diminish the tree's vigor, and observed that past pruning had actually shortened the tree's expected life span.

Public Utilities Commission's order permitting removal of tree near transmission line located on electricity company's easement did not contravene Commission's vegetation-management policy. Commission concluded that pruning was no longer a viable option, that property owners failed to rebut company's evidence showing safety hazards posed by tree's continued existence, and that owners failed to prove company acted unreasonably in implementing its right-of-way vegetation-control program.

Evidence supported Public Utilities Commission's conclusion that tree located on electric company's easement could potentially interfere with transmission line, justifying its removal. Tree was outside of the horizontal clearance prescribed by the National Electrical Safety Code, parts of the tree were destined to fail and fall into the transmission lines, and property owners' comparison of disparate risks posed by different activities did not dictate a finding that the tree did not pose a risk to the lines at issue.

IMMUNITY - ALABAMA

Ex parte City of Selma

Supreme Court of Alabama - September 1, 2017 - So.3d - 2017 WL 3821748

Owner of repossessed motor vehicle brought action against city after city police officer's allegedly told employees of repossession company to take the vehicle after owner had called police to object to repossession.

The Circuit Court denied city's motion for summary judgment. City filed petition for writ of mandamus.

The Supreme Court held that officers were entitled to State-agent immunity.

City police officers were performing discretionary functions within the line and scope of their law enforcement duties, and therefore officers were entitled to State-agent immunity in tort action by owner of repossessed vehicle stemming from incident in which officers allegedly told employees of repossession company to take the vehicle after owner had called police to object to repossession. There was no evidence that officers failed to discharge duties pursuant to detailed rules or regulations, such as those stated on a checklist, or acted willfully, maliciously, fraudulently, in bad faith, beyond their authority, or under a mistaken interpretation of the law.

UTILITIES - IDAHO

Hill-Vu Mobile Home Park v. City of Pocatello

Supreme Court of Idaho, Boise - June 2017 Term - September 6, 2017 - P.3d - 2017 WL 3880760

Users of municipality's water and sewer systems brought action against municipality for a refund of a water and sewer charge that had been found unlawful in a previous case, and users sought class certification. The District Court granted summary judgment for city. Users appealed.

The Supreme Court of Idaho held that:

- Idaho Tort Claims Act did not preclude users' state law claims;
- Money is property within the meaning of the takings clause; and
- Trial court did not have discretion to refuse to apply its decision in the previous case that the particular charge was unlawful.

Idaho Tort Claims Act did not bar municipal water and sewer system users' claims under state law for recovery of a charge that was linked to the purported property taxes that municipal water and sewer departments paid to the municipality and that had been held to be unlawful in a separate case, even though Act generally provided that a governmental entity was not liable for a claim that arose out of the assessment or collection of a tax, where municipality did not have authority to add such a charge, municipality did not denominate the charge as a tax, and municipality raised the rates for water and sewer service so that it would not have to take the politically unpopular route of raising property taxes.

Trial court did not have discretion to refuse to apply its decision in a previous case that a particular water and sewer charge by a municipality was unlawful to a new case by water and sewer users who sought a refund of the charge.

UTILITIES - INDIANA

Duke Energy Indiana, LLC v. Town of Avon

Court of Appeals of Indiana - August 24, 2017 - N.E.3d - 2017 WL 3624282

Energy utility company appealed decision of the Indiana Utility Regulatory Commission, which determined that trial court was proper jurisdiction for company's complaint regarding town ordinance, which ordered company to remove, at company's own cost, utility poles, power lines, and other equipment located either on land owned by town or in town's rights-of-way, and dismissed company's complaint.

The Court of Appeals held that:

- Commission had exclusive jurisdiction to hear company's complaint, but
- Court of Appeals, upon remanding company's complaint to Commission, would decline to instruct Commission to hold hearing.

Indiana Utility Regulatory Commission had exclusive jurisdiction to hear energy utility company's complaint on validity of town ordinance ordering company to remove utility poles, power lines, and other equipment located either on land owned by town or in town's rights-of-way, since statute which granted enforcement powers to Commission explicitly stated that it "shall be [Commission's] duty" to "enforce…all…laws…relating to public utilities [,]" and expressly directed Commission to "inquire into any…violation" of local ordinance by public utility, and statute which permitted municipalities to regulate use of municipal property by public utilities specifically contemplated disputes between towns and utilities regarding access to rights-of-way or other access to public property.

Court of Appeals, upon remanding energy utility company's complaint to Indiana Utility Regulatory Commission, would decline to instruct Commission to hold hearing on complaint, since statute which expressly applied to complaints filed by public utilities stated that "[a]n order…may be entered by the [C]ommission without a formal public hearing" or that Commission "may…on its own motion require a formal public hearing[,]" and thus statute left decision to hold hearing to Commission's discretion.

ZONGING & PLANNING - MAINE

Fissmer v. Town of Cape Elizabeth

Supreme Judicial Court of Maine - September 19, 2017 - A.3d - 2017 WL 4126940 - 2017 ME 195

Abutting property owner appealed from a decision of town's zoning board of appeals, which determined code enforcement officer had properly issued a building permit.

The Superior Court affirmed the zoning board's decision, and abutting property owner appealed.

The Supreme Judicial Court of Maine held that provision of zoning ordinance that provided no building permit shall be issued until legally binding arrangements for long-term maintenance of a private road were in place had to be applied to the entirety of the road from its intersection with a public way to at least the location of the proposed structure, and not just to the section of the road abutting the permit applicant's property.

LABOR & EMPLOYMENT - MASSACHUSETTS

Malden Police Patrolman's Association v. Malden

Appeals Court of Massachusetts, Middlesex. - August 11, 2017 - N.E.3d - 92 Mass.App.Ct. 5320 - 17 WL 3442612

Police union filed a complaint against the city, alleging that the city owed the officers approximately $410,000 in compensation for the performance of past detail work pursuant to collective bargaining agreement and requesting relief under theories of breach of contract, breach of an implied covenant of good faith and fair dealing, promissory estoppel, unjust enrichment, and violation of the Massachusetts Wage Act.

The Superior Court Department allowed the city's motion to dismiss with respect to the first four counts of the complaint, and granted summary judgment for the city with respect to the fifth count of the complaint. Union appealed.

The Appeals Court held that:

- Trial court did not abuse its discretion by considering the merits of the city's motion to dismiss, rather than deeming city's motion fatally defective because of city's failure to comply with Superior Court's rules;
- If there was a collective bargaining agreement (CBA) in effect, police union was required to follow the grievance procedures;
- CBA precluded recovery by police union for compensation for the performance of past detail work under a theory of unjust enrichment;
- Doctrine of promissory estoppel was not applicable;
- When officers' detail work is performed for third parties, statute, governing expenditure of compensation for off-duty or special detail work, governs with respect to detail pay, but, to extent that the city "hires" its own officers as "employees" to perform detail services, payment is governed by the Wage Act; and
- Fact that the municipal finance law, provides that compensation for off-duty detail work shall be paid to employee no later than ten working days after receipt by city, does not render this statute incompatible with the Wage Act.

OPEN MEETINGS - MISSISSIPPI

Mayor and City Council and City of Columbus v. Commercial Dispatch

Supreme Court of Mississippi - September 7, 2017 - So.3d - 2017 WL 3913910

City and its mayor sought review of state ethics commission's finding that prearranged, nonsocial, and subquorum gatherings of the mayor and city council in the mayor's conference room violated the Open Meetings Act.

The Chancery Court affirmed. City and its mayor appealed.

The Supreme Court of Mississippi held that gatherings in question violated the Open Meetings Act.

Prearranged, nonsocial, and subquorum gatherings of mayor and city council in the mayor's conference room to discuss retail development and renovations of a public building violated the Open Meetings Act, where the discussions were targeted at avoiding or circumventing the Act, public business was discussed at all of the gatherings, and the discussions led to official action by the quorum when they met.

NUISANCE - OKLAHOMA

Grisham v. City of Oklahoma City

Supreme Court of Oklahoma - September 18, 2017 - P.3d - 2017 WL 4129573 - 2017 OK 69

Two couples who suffered damages as a result of sewer backup brought action against city, asserting claims for property damage, and personal injury/nuisance.

Following jury verdict in couples' favor, the District Court reduced jury award to $25,000 for each couple. The Court of Civil Appeals affirmed. Couples petitioned for writ of certiorari.

The Supreme Court of Oklahoma held that:

- Couples were not precluded from filing separate notices of claims with city for each separate type of compensable injury, but
- Notices of claim stating “property damage,” without stating “any other loss,” were insufficient to provide notice of personal injury/nuisance claims arising from same transaction.

Couples who asserted claims against city for property damages that arose out of sewer backup were not precluded from filing separate notices of claims for each separate type of compensable injury. Couples satisfied notice requirements of Governmental Tort Claims Act (GTCA) when they used forms provided by city, provided their names, addresses, date and time of damage, name of city’s supervisor who investigated their damage, insurance information, sought monetary relief for their property damage, and then filed their written notices with city clerk.

While couples’ notices of “property damage” on city claim forms were sufficient for city to investigate, correct the situation, resolve the controversy, and determine possible liability for property damage claims that arose from sewer backup, without stating “any other loss,” they were insufficient to provide notice of a claim for personal injury/nuisance arising from the same transaction or occurrence, as required to bring their subsequent suit in the district court for both property damage and personal injury/nuisance.

BALLOT INITIATIVES - OREGON

Unger v. Rosenblum

Supreme Court of Oregon, En Banc - September 14, 2017 - P.3d - 361 Or. 814 - 2017 WL 4053893

Challenger filed petition seeking judicial review of Attorney General’s certified ballot title for initiative petition, which proposed statutory amendment in order to allow digital signatures for initiatives and referenda.

The Supreme Court of Oregon held that:

- Caption failed to reasonably communicate major effect of initiative petition;
- Caption of ballot title was not required to inform voters that Secretary of State was responsible for gathering digital signatures; and
- The “yes” result statement of initiative petition failed to sufficiently inform voters that initiative petition required Secretary of State to create a website to be used for gathering digital signatures.

Ballot title caption for initiative petition that, if enacted, would have changed way signatures were gathered to put an initiative measure or a referendum on the ballot, failed to reasonably communicate major effect of requiring Secretary of State to create and administer a website in order for petitions to be signed digitally, where caption merely provided “Secretary of State must enable and accept digital signatures for state initiative and referendum petitions.”

Initiative petition that, if enacted, would have changed way signatures were gathered to put an initiative measure or a referendum on the ballot did not make Secretary of State responsible for gathering digital signatures, and therefore caption of ballot title was not required to inform voters that Secretary of State was responsible for gathering digital signatures. Initiative petition would only have made the Secretary of State responsible for creating and administering a website where voters could sign initiative and referendum petitions digitally.

The “yes” result statement of initiative petition that, if enacted, would have changed way signatures were gathered to put an initiative measure or a referendum on the ballot failed to sufficiently inform voters that initiative petition required Secretary of State to create a website to be used for gathering digital signatures. Result statement merely noted that initiative petition required Secretary of State to "manage" a website for gathering of digital signatures.

OPEN MEETINGS LAW - SOUTH DAKOTA

Lee v. Driscoll

United States Court of Appeals, Eighth Circuit - September 7, 2017 - F.3d - 2017 WL 3910129

Property owners, one of whom was township board clerk, filed § 1983 action alleging that members of township's board of supervisors violated their constitutional rights and state law by excluding them from meetings regarding culvert construction project.

The United States District Court dismissed some claims, entered summary judgment in defendants' favor on other claims, but denied supervisors' motion for summary judgment on qualified immunity grounds. Parties filed cross-appeals.

The Court of Appeals held that:

- Supervisors were not entitled to qualified immunity from liability on clerk's claim that her exclusion from township board meetings violated her First Amendment right to freedom of association, and
- Supervisors' exclusion of plaintiffs from non-public board meetings did not violate their First Amendment right to petition.

Fitch: Utah's Economy, Conservative Financial Ethos Foster Strong Municipal Credit Quality.

Fitch Ratings-San Francisco-18 September 2017: Utah's tax-supported cities, counties, and school districts maintain strong Issuer Default Ratings (IDR), thanks to a vigorous state economy, conservative financial management, and robust revenue frameworks, according to new research from Fitch Ratings

Statewide, Fitch's IDRs are in the top 'AA' and 'AAA' categories, with Stable Rating Outlooks across the board.

"The State of Utah is benefiting from rapid population growth, a diversified economy, and very low unemployment," said Alan Gibson, Director for U.S. Public Finance. "Within this context, local governments are also performing well. Even during periods of economic expansion, they tend to emphasize prudent budgeting, careful financial monitoring, affordable fixed costs, and strong reserves -all important factors in overall credit quality."

Other keys to strong Utah local government ratings include robust revenue frameworks and solid expenditure flexibility. Most Fitch-rated Utah local governments enjoy low to moderate revenue volatility, high to superior inherent budget flexibility, and high reserves. Fitch anticipates most of its rated Utah local governments will maintain sufficient reserve safety margins for a 'aaa' financial resilience assessment through future economic cycles.

Fitch expects these positive credit characteristics to continue supporting strong ratings in the future, according to Gibson.

For more information, a special report titled “Credit Strengths of Local Governments in Utah” is available on the Fitch Ratings web site at www.fitchratings.com or by clicking on the link.

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Bloomberg Brief Weekly Video - 09/21

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

Watch video

Bloomberg

When All Else Fails, Sue Wall Street.

There’s a lot of blame to go around, but banks have deep pockets and a history of municipal-debt settlements.

Disagreements about money often have a clear solution: Everyone sues each other. That’s the American way.

And so it goes for Puerto Rico, the fiscally crippled island that incurred $74 billion of debt over a period when its population and economy were shrinking. Investors have brought many suits against the commonwealth, which now appears to be setting the stage for its own lawsuit against big Wall Street banks.

After all, going after large banks has turned into standard operating procedure for big municipal insolvencies. Just think of Orange County, California, which worked out $800 million in settlements from Merrill Lynch & Co. and others after going bankrupt in the 1990s.

Continue reading.

Bloomberg BusinessWeek

By Lisa Abramowicz

September 20, 2017

Illinois Bondholders Cheer Reversal of Fortune Before Big Sale.

- **Worst-rated state has stabilized, biggest bondholders say**
- **State plans to borrow to pay down record backlog of late bills**

As Illinois prepares for what may be its biggest debt sale in over a decade, its largest investors are celebrating a rally that's transformed the state's bonds from one of this year's worst performers to one of the best.

Since the state in July resolved a two-year budget impasse that pushed its rating to the brink of junk, debt issued by Illinois and its local governments has vaulted to a 7 percent return this year, more than any other state, according to S&P Municipal Bond Indices. Until June 8, they were the worst performer among the five most-indebted states, which include Texas, California, Florida and New York.

The reversal came after lawmakers enacted a budget — and raised taxes — over Governor Bruce Rauner's objections. They also extended Illinois authority to reduce a record pile of leftover bills by selling as much as $6 billion of bonds. It would be the state's biggest sale since 2003 if done in a single offering.

What follows is a round-up of the outlook for the state from some of Illinois's largest bondholders and how much their firms own:

Nuveen Investments: $868 million

> "It has turnaround potential," said John Miller, co-head of fixed-income at Nuveen, which bought more Illinois bonds in late June and July as the budget came together. The firm plans to take a "hard look" at the $6 billion borrowing, calling it a "benchmark-type deal" because it may be one of the largest of the year, according to Miller, who cautioned that the state's rising pension-fund debts are still posing risks.

AllianceBernstein LP: $583 million

> "They've stopped the bleeding," said Guy Davidson, director of municipal investments at AllianceBernstein. He said the firm is interested in buying more Illinois debt. "It's not like we think they have solved their problems. We just think they've stabilized their

> problems."
> Davidson said investors are "getting paid more than we think the risk entails"

Wells Fargo Asset Management: $428 million

> "They're not under the gun as much as far as ratings go," said Dennis Derby, a portfolio manager at Wells, which holds $40 billion of municipal debt. The firm would be "more comfortable" if the state took action soon to reduce the $16 billion of unpaid bills

BlackRock Inc.: $310 million

> The tax hike gives the state "more tools" to meet their expenses and obligations, marking an improvement, said Joe Gankiewicz, a credit-research analyst in Princeton, New Jersey, for the company, which oversees about $124 billion of municipal debt. The state's unfunded retirement liabilities — $130 billion, according to the Commission on Government Forecasting and Accountability — remain an issue. "The pension expense is likely to outstrip the organic revenue growth in the state in the coming years," Gankiewicz said

Illinois G.O. holding figures are based on data compiled by Bloomberg.

Bloomberg

By Elizabeth Campbell

September 22, 2017, 4:00 AM PDT

— Written with the assistance of Bloomberg's Municipal Global Data team

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MBTA Plans to Issue First Tax-Exempt Sustainability Bond.

The Massachusetts Bay Transportation Authority plans to issue tax-exempt sustainability bonds Tuesday as part of a $574 million competitive sale.

Officials from the MBTA, which operates mass transit in Greater Boston and whose board authorized the sale on Sept. 11, say it's the first sale in the U.S. for such a bond.

Proceeds of sustainability bonds exclusively fund projects with environmental and/or social benefits. The MBTA has adopted a framework to assure conformance with International Capital Market Association standards for determining project eligibility, tracking bond proceeds and reporting on project impact.

This framework also calls for tracking bond proceeds and reporting on project impact. The MBTA consulted academic leaders, impact investors and sustainability leaders at Fortune 500 companies.

The issuance "represents an exciting market precedent," June Matte, a managing director at financial advisor Public Financial Management, said on an investor call.

Moody's Investors Service and S&P Global Ratings rate the bonds Aa3 and AA, respectively.

According to MBTA treasurer Paul Brandley, the sale will include $233.6 million of subordinated sales tax bonds split into two subseries, which fund capital projects for fiscal 2018 and 2019 and replenish commercial paper capacity. Series A-1 of that component will feature $101 million of sustainable bonds and $132.5 million will be sold in the traditional A-2 offering.

Additionally, $281.7 million of subordinated sales tax bond anticipation notes, along with $82 million of commercial paper, will fund $382 million in interim financing for a $492 million positive train control project.

Positive train control is a GPS-based remote system designed to prevent train crashes. The MBTA faces a federally mandated interim deadline of Dec. 31, 2018, and final deadline two years thereafter, to install it.

In 2021, said Brandley, the MBTA expects to take out the BANs and commercial paper with loan proceeds from the federal Transportation Infrastructure Finance and Innovation Act and Railroad Rehabilitation & Improvement Financing programs.

"TIFIA and RRIF loan agreements should be finalized in the coming weeks," said Brandley.
Climate resilience projects include a $50 million undertaking in Boston's Charlestown neighborhood to protect a critical bus facility from worsening storms and to minimize runoff, and the continuing $99 million work on the 118-year-old Government Center station in front of City Hall, which in 2016 became accessible to disabled people.

In addition, the MBTA is modernizing its bus fleet, earmarking $332 million for fuel-efficient hybrid vehicles. Its first hybrids entered in 2010 on the "trackless trolley" Silver Line.

The MBTA, the country's fifth-largest mass transit system, has a $1.6 billion annual operating budget and a five-year capital investment plan of $7.4 billion. About 60% of its capital program funds state-of-good-repair projects such as signaling and tracks, with the balance split between expansion and modernization.

The authority carries about $5 billion in debt, with more than three-quarters of it through its sales-tax credit.

For the past two years the MBTA has operated under a fiscal oversight board that Gov. Charlie Baker and state lawmakers approved after a record 110 inches of snow hit Greater Boston in the winter of 2014-15. The storm paralyzed parts of the transit system and exposed operational flaws.

Former General Electric Co. (GE) executive Luis Ramirez took over last week as the MBTA's general manager, while Michael Abramo was promoted to chief administrator last July. In addition, the state control board was extended to 2020.

Mintz, Levin, Cohn, Ferris, Glovsky and Popeo PC is bond counsel for the sale.

The Bond Buyer

By Paul Burton

09/20/17

CA Multifamily Issuance Jumps $2B in 2016.

Read the Volume Cap Report.

CDFA | Sep. 21

National IDB Issuance Falls in 2016.

Read the Volume Cap Report.

CDFA | Sep. 21 | Bond Finance | CDFA Original Research

Total National PAB Issuance Returns to Pre-Recession Levels.

Read the Volume Cap Report.

CDFA | Sep. 21 | Bond Finance | CDFA Original Research

The Path Forward on HQLA.

PHOENIX- Legislation defining readily tradeable, investment-grade municipal securities as high quality liquid assets under federal banking rules may have a window to move forward fairly soon, according to market groups watching developments on Capitol Hill.

The Municipal Finance Support Act of 2017, H.R. 1624, sponsored by Rep. Luke Messer, R-Ind., was reported out of the House Committee on Financial Services Sept. 12 after receiving unanimous support in late July.

The bill is a response to rules adopted by the Federal Reserve Board, Office of the Comptroller of the Currency, and Federal Deposit Insurance Corp. in 2014. These rules require banks with at least $250 billion of total assets or consolidated on-balance sheet foreign exposures of at least $10 billion to have a high enough liquidity coverage ratio – the amount of HQLA to total net cash outflows – to deal with periods of financial stress.

The regulators did not include munis as HQLA under the rule because they felt the securities were not liquid enough.

The Fed later amended its rules to include some munis as HQLA but muni market participants said the amendments were still too restrictive and, in any case, would mean little if the other banking regulators did not ease their rules as well.

Messer's bill has been amended to require the regulators to treat munis that are investment grade and actively traded in the secondary market as level 2B HQLA, the same level as mortgage backed securities, down from its original requirement that they be treated as level 2A securities on the same level as sovereign debt.

This change reconciles it with a Senate bill, S. 828, sponsored by Sen Mike Rounds, R-S.D. The House approved legislation making some munis 2A assets last year, but it never advanced in the Senate.

"The House is expected to act on the bill soon," the National Association of State Treasurers said in a legislative update posted for members Sept. 17. "The House bill as reported out of committee now conforms with the Senate 2B legislation, which increases the likelihood that the bill could be signed into law."

The NAST update said that S. 828, currently awaiting action by the Senate Banking Committee, is considered likely to come up when the committee next takes action on several financial services-related bills.

"A unanimous vote in support could clear the way for the bill to be 'hotlined,' a Senate procedure that would allow for expedited consideration and passage," the NAST update said.

The question now remains when and if the House will act on the bill now that it is awaiting floor action. It could be considered as a stand-alone bill, or it could end up being attached to a larger bill, such as tax reform legislation.

Emily Brock, director of the Government Finance Officers Association's federal liaison center, said her sense is that lawmakers might be inclined to deal with bipartisan legislation like Messer's bill before the anticipated difficulty of a tax reform showdown. Brock said that when GFOA last met with legislators on this issue, the energy was very positive.
"This is a light lift," she said.

The House's agenda is ultimately determined by House Speaker Paul Ryan, R-Wisc., and other Republican leaders.

The Bond Buyer

By Kyle Glazier

09/18/17

TAX - CALIFORNIA

California Cannabis Coalition v. City of Upland

Supreme Court of California, California - August 28, 2017 - P.3d - 3 Cal.5th 924 - 2017 WL 3706533 - 17 Cal. Daily Op. Serv. 8392

Initiative sponsor petitioned for writ of mandate to compel city to hold a special election on an initiative imposing a charge on medical marijuana dispensaries.

The Superior Court denied petition, determining that the charge constituted a tax and had to be placed on the next general election ballot. Sponsor appealed. The Court of Appeal reversed and directed the trial court to issue writ of mandate compelling city to place initiative on special ballot. City petitioned for review. The Supreme Court granted review, superseding the opinion of the Court of Appeal.

The Supreme Court of California held that:

- Term “local government” in constitutional provision limiting power of local government to impose general tax did not encompass the electorate;
- Distinction between local government and its governing body in provision did not indicate that “local government” included electorate;
- Reference to voters’ initiative power in Proposition 218, which added constitutional provision, did not indicate intention to subsume tax-related initiatives within ambit of Proposition;
- Provision did not indirectly encompass imposition of taxes by electorate via initiative;
- Term “impose” in provision meant to establish, not to collect;
- Clear evidence of intended purpose to constrain exercise of voters’ initiative power was necessary to construe provision as imposing such limitations; and
- Determination that sponsor’s proposed initiative was governed by provision did not relieve city of its statutory duties with respect to initiatives whose proponents requested special election.

Supreme Court would exercise its discretion to address issue of whether constitutional provision that prohibited local governments from imposing a general tax unless that tax was first submitted to and approved by voters during regularly scheduled general election restricted voters’ constitutional power to propose and adopt initiatives and whether initiative imposing a charge on medical marijuana dispensaries should be submitted to voters at special election, rather than general election, even though initiative had been submitted to and defeated by voters and issue was technically moot; issue presented important questions of continuing public interest that had potential to evade review.

Term “local government” in constitutional provision added by voter initiative that prohibited local government from imposing a general tax unless that tax was first submitted to and approved by voters during general election did not encompass the electorate, and thus provision did not require that voter initiatives pertaining to imposition of taxes be first submitted to electorate at general election, rather than special election. Construing “local government” as excluding electorate was consistent with common understanding of term, related provisions, and ballot materials for initiative that added provision, and interpreting term “local government” to include the electorate would give that term a broader meaning than adjoining specific term, “local or regional governmental entity.”

Existence of a distinction between a local government and its governing body in state constitutional provision limiting ability of local governments to impose, extend, or increase any general tax did not indicate that term “local government,” as used in provision, included the electorate and that provision would therefore apply to voter initiatives; separate references to government and its governing body did not imply the absence of a meaningful distinction between the government and the public it served, distinction between electorate and governmental entities was identified elsewhere in provision, and term “local government” plausibly referred to the entire organization constituting local or regional governmental entity, and not simply a locality’s elected officials.

Reference to voters’ initiative power in Proposition 218, which prohibited local government from imposing a general tax unless that tax was first submitted to and approved by voters during general election, did not demonstrate that voters knew initiative power could affect local taxes and that voters intended to subsume tax-related initiatives within ambit of Proposition, and thus reference to initiative power did not support restricting power by requiring that tax-related initiatives be first submitted to electorate at a general election, rather than special election; Proposition did not place any limitations on initiative power, and inferring a calculated decision to squelch voters’ initiative rights would improperly embrace presumption against initiative power.

Constitutional provision added by voter initiative that limited ability of local governments to impose, extend, or increase any general tax did not indirectly encompass imposition of taxes by the electorate via initiative; fact that voters' approval acted as precondition to a tax measure becoming operative did not transform voters into "local government" referenced in constitutional provision, and there was no indication that requirement under provision that general taxes be submitted to voters at a regularly scheduled general election was intended to apply to electorate's initiative power.

Term "impose" in constitutional provision that prohibited local governments from imposing a general tax unless that tax was first submitted to and approved by voters during regularly scheduled general election meant to establish, not to collect, and thus city was not precluded from collecting a general tax imposed via voter initiative unless and until tax was approved by voters at regularly scheduled election, rather than special election; ordinary meaning of "impose" was "to establish," and construing "impose" as meaning "to establish" was consistent with usage in relevant ballot materials.

Requirements of constitutional provision prohibiting local governments from imposing a general tax unless that tax was first submitted to and approved by voters during regularly scheduled general election apply only when a local government seeks to impose, extend, or increase a general tax.

Requirement under constitutional provision limiting ability of local governments to impose, extend, or increase any general tax that a general tax be submitted to the voters at a general election does not apply to taxes that are imposed by initiative after securing the electorate's approval in a manner consistent with statute setting forth local government's duty with respect to voter initiatives whose proponents request a special election; a contrary conclusion would work an implied repeal of statute, something against which courts have a strong presumption.

Clear evidence that constraining exercise of voters' initiative power was intended purpose of constitutional provision limiting ability of local governments to impose general tax, rather than evidence that voters intended to exempt initiative power from provision as precondition for preserving that power in unencumbered form, was necessary to construe provision as applying to tax-related voter initiatives; court had obligation to protect and liberally construe initiative power and to narrowly construe provisions that would burden or limit its exercise, and clear statement rule was consistent with and appropriately advanced duty to safeguard exercise of initiative power.

City's unilateral determination that proposed voter initiative imposing a charge on medical marijuana dispensaries constituted a general tax and was therefore governed by constitutional provision that prohibited local governments from imposing a general tax unless that tax was first submitted to and approved by voters during regularly scheduled general election did not relieve city of its obligation to adhere to statute setting forth local government's duty with respect to voter initiatives whose proponents requested a special election; deadlines under statute were mandatory, and proposed initiative was not a tax measure on its face, given that it purported to propose a fee.

TAX - VERMONT

Rutland County Parent Child Center, Inc. v. City of Rutland

Supreme Court of Vermont - September 1, 2017 - A.3d - 2017 WL 3821833 - 2017 VT 81

Privately owned parent-child centers sought review of city tax assessor's determination that centers did not qualify for the public-use exemption from property taxation.

After a bench trial, the Superior Court determined that centers qualified for the exemption. City appealed.

The Supreme Court of Vermont held that:

- Centers were wholly dedicated to public use;
- Centers directly benefited an indefinite class of persons; and
- Centers conferred a benefit on society as a result of the benefit conferred on the persons directly served, as required as part of the test for whether a property qualified for a public-use exemption from property taxation.

The Week in Public Finance: Latest Repeal and Replace Proposal Still Damaging for States, Pennsylvania's Downgrade and More.

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

GOVERNING.COM

BY LIZ FARMER | SEPTEMBER 22, 2017

S&P: Florida Hospitals Show Resiliency Before, During, And After Hurricane Irma.

Given their location, many Florida hospitals and senior living communities have experience dealing with hurricanes and other severe weather events, and they have very detailed disaster preparedness plans they can initiate in anticipation of a major storm such as Hurricane Irma, which recently roared up the state.

Continue Reading

Sep. 19, 2017

S&P: An Overview Of U.S. Federal Disaster Funding.

When disaster strikes, the cost of clean-up can be enormous, creating an unexpected expense for governments and individuals. In the U.S., there are several sources of federal aid grants to help with rebuilding, but for many, the process of accessing these funds is a mystery.

Continue Reading

Sep. 19, 2017

S&P: Cyberattacks Pose A Real, If Varying, Credit Risk Across U.S. Public Finance Sectors.

The recent cyberattack on the personal credit scoring company Equifax has exposed personally identifiable information of over 140 million people in the U.S. and more in Canada and the U.K. Although this breach might not be directly connected to U.S. public finance (USPF) organizations, the broad media coverage has further elevated the public's cyber risk literacy.

Continue Reading

Sep. 20, 2017

S&P: How Durable Is California's Fiscal And Credit Recovery?

California's economy is dynamic and capable of strong growth rates. Additionally, the state's upwardly skewed income distribution and progressive tax structure combine to amplify the effects of economic and financial market fluctuations in its revenue performance.

Continue Reading

Sep. 21, 2017

Someone Left the Crayons Out, and Now the Tax Lawyers Are Drawing Pictures

Timing, as they say, is everything. The tax-exempt bond rules are full of deadlines and sunsets, both before and after the issue date and before and after the project is finished. Here is a diagram of how some of these rules work together. It's by no means exhaustive, but certainly exhausting. Maybe you'll find it helpful; it's designed to be printed on 11 x 17 paper, for those who prefer the analog version, and it's suitable for framing for those who have empty space on their office walls. We'll update it from time to time. Enjoy.

The Public Finance Tax Blog

By Johnny Hutchinson on September 21, 2017

Squire Patton Boggs

As Flood Risks Intensify, Stormwater Utilities Offer a More Resilient Solution.

The 2017 hurricane season is not yet complete, but Houston's damage from Hurricane Harvey and Florida's fallout from Hurricane Irma have already left a severe economic and environmental toll. Yet as disaster turns to recovery in each state, the storms serve as national reminders of resilience challenges facing the country's most flood-prone areas and the need to help them. Federal recovery efforts are not only receiving more scrutiny, but state and local strategies are also gaining more attention, including adaptive measures and investments in resilient infrastructure.

Flood risks are not just limited to severe storms, though. The ways in which planners, engineers, and other leaders manage and design cities every day plays a huge part too. Houston's urban sprawl over the past few decades, for instance, exposed its most vulnerable households to greater dangers. Meanwhile, aging infrastructure systems designed to handle excess flows of water–and even daily rainfall–failed to protect the environment or mitigate flood risks.

Continue reading.

The Brookings Institute

by Joseph Kane and Ranjitha Shivaram

Thursday, September 21, 2017

MSRB Identifies Compliance Considerations for Municipal Securities Dealers.

As part of the MSRB's long-term commitment to facilitating compliance with municipal market rules, the Municipal Securities Rulemaking Board (MSRB) today published this *Compliance Advisory for Brokers, Dealers and Municipal Securities Dealers*. The compliance advisory serves as a reference tool for municipal securities dealers seeking to proactively address compliance risks and assess the effectiveness of their compliance programs.

The MSRB actively engages with the dealer industry throughout the year to inform the development of this annual compliance advisory. Our advisory flags important factors for dealers to consider when evaluating the adequacy of their supervisory controls. Taking appropriate steps to address compliance risks benefits municipal securities dealers, their clients and, ultimately, investors and public confidence in the municipal securities market.

This June, the MSRB published a similar compliance advisory for municipal advisors to support their efforts to comply with new and existing standards of conduct. Additional compliance resources, including interpretive guidance, educational webinars and interactive, rule-based MuniEdPro® courses, are available on the MSRB's website.

CDFA Announces Winners of 2017 Excellence in Development Finance Awards.

The CDFA Excellence in Development Finance Awards recognize outstanding development finance programs, agencies, leaders, projects, and success stories. These awards honor excellence in the use of financing tools for economic development, as well as the individuals who champion these efforts. These awards honor creative use of development finance tools such as bonds, TIF, tax credits, and access to capital. The awards also honor the cutting edge use of development finance tools to support innovation and development. These awards honor individuals and agencies alike to build a distinguished and recognized development finance industry.

CDFA Distinguished Development Finance State Agency Award

New Jersey Economic Development Authority

The CDFA Distinguished Development Finance Agency Award (State Agency) is presented to an outstanding state development finance agency. This year's honor is bestowed to New Jersey Economic Development Authority. As an independent and self-supporting state entity, the New Jersey Economic Development Authority works every day to broaden and expand the state's economic base. They have succeeded in creating public-private partnerships to provide access to capital in the New Jersey business community. In addition to supporting entrepreneurial development through training programs, they also provide access to funds for both small and mid-size businesses as well as non-profits for development. Particular projects that really emphasize the EDA's work include the Strand Theater in Lakewood and the Technology Centre of New Jersey in North Brunswick Township, to name a couple.

CDFA Distinguished Development Finance Local Agency Award
Redevelopment Authority of the City of Milwaukee

The CDFA Distinguished Development Finance Local Agency Award is presented to an outstanding local development finance agency. This year's honor is bestowed to the Redevelopment Authority of the City of Milwaukee. Since 1958, the Redevelopment Authority of the City of Milwaukee, an independent corporation in Wisconsin, has succeeded in being a leader in the field of economic development. Over the years they have issued over $500 million in bonds in an effort to eliminate blighting conditions that inhibit neighborhood reinvestment, promote business expansion and job creation, and facilitate new business and housing development. The Redevelopment Authority has participated directly in many projects and have promoted and attracted development in both stable and marginal markets and have created model solutions for complex challenges in real estate and environmental development. .

CDFA Excellence in Development Finance Program Award
Development Finance Authority of Summit County

The CDFA Excellence in Development Finance Program Award is presented to a development finance agency that has implemented an innovative new or particularly successful program. This year's honor is bestowed to Development Finance Authority of Summit County for their Akron Community Revitalization Loan Fund. The Akron Community Revitalization Loan Fund is a part of the Development Fund of the Western Reserve (DFWR) and is connected to the Development Finance Authority of Summit County. This program has succeeded in providing financing opportunities for business development projects within the distressed and urban areas of Akron, Ohio and was started when the DFWR dedicated $6.75 million to the program. With the high poverty and unemployment rates in the area, this program is helping to provide loans that are between $500,000 and $2 million. The loans have less strict credit requirements, interest rates ranging from 2.5% to 2.75% and more flexibility. From the time that the program began doing business in July, the program now has six projects that are being processed to receive loans.

CDFA Excellence in Development Finance Project Award
Allentown Neighborhood Improvement Zone Development Authority

The CDFA Excellence in Development Finance Project Award is presented to a development finance agency that has implemented a specific project that has used finance to be transformative. This year's honor is bestowed to Allentown Neighborhood Improvement Zone Development Authority for the City Center Allentown Project. In July of this year, the Allentown Neighborhood Improvement Zone Development Authority (ANIZDA) in Pennsylvania issued $210 million in tax revenue bonds to refinance a portion of the debt incurred by City Center Investment Corporation in developing the tremendously successful City Center Allentown project. City Center Investment Corporation had completed approximately $400 million in mixed-use real estate development in the Neighborhood Improvement Zone at that point. Completed and leased projects included 650,000 square feet of class A office space, nearly 100,000 square feet of retail and restaurant space, 237 market rate apartments, and a 170 room luxury hotel. Refinancing a portion of short-term bank loans with long term tax exempt bond financing issued through ANIZDA allowed the developer to continue building new projects within the Neighborhood Improvement Zone. Today, Allentown's resurgence continues as construction is underway on additional City Center Investment Corporation projects including a 142,000 square foot class A office tower, 140 market rate apartments, and co-working space in a vibrant, walkable downtown. The Neighborhood Improvement Zone is a special taxing district created by state law in 2011 that is overseen and managed by ANIZDA.

CDFA Excellence in Development Finance Innovation Award
Greater Cincinnati Redevelopment Authority

The CDFA Excellence in Development Finance Project Award is presented to a development finance agency that has implemented a specific project that has used finance to be transformative. This year's honor is bestowed to Greater Cincinnati Redevelopment Authority for their commercial development loan program. The Greater Cincinnati Redevelopment Authority is an economic development agency in Cincinnati, OH that has found success in initiating projects that promote job creation and improve property value. In 2017, the Kresge Foundation invested $5 million in the Greater Cincinnati Redevelopment Authority to assist in establishing a commercial development loan program that has since begun assisting neighborhood revitalization and transformation through mixed-use and mixed-income projects. This investment has facilitated Cincinnati's ability to make loans to development projects in targeted redevelopment areas. This has allowed the Greater Cincinnati Redevelopment Authority to help break down barriers for entrepreneurs who are setting up local operations. This first of its kind impact investment in a development finance agency will drive urban revitalization and serve disinvested communities, which serves as a model for future engagements between philanthropy and development finance agencies.

The **CDFA Excellence in Development Finance Awards** will be formally presented at the 2017 CDFA National Development Finance Summit, in Atlanta, GA on November 16. In addition to the awards above, CDFA will honor two individuals as recipients of the CDFA Lifetime Achievement Award for their leadership, service, and impact to the industry.

Don't miss your chance to register and get engaged at the **2017 CDFA National Development Finance Summit** in **Atlanta, Georgia**, **November 15-17, 2017**.

Register

TAX - OHIO

NWD 300 Spring, L.L.C. v. Franklin County Board of Revision

Supreme Court of Ohio - September 14, 2017 - N.E.3d - 2017 WL 4081818 - 2017 -Ohio-7579

Condominium unit owners filed complaints challenging an increase in the valuation of the land underlying the condominiums for tax purposes. The Franklin County Board of Revision adopted the county auditor's appraisal.

Unit owners appealed, and the Board of Tax Appeals adopted the land value in the city schools board of education's appraisal. Unit owners appealed.

The Supreme Court of Ohio held that the Board of Tax Appeals did not abuse its discretion in finding appraisal submitted by city schools board of education more probative of the value of the land.

Board of Tax Appeals did not abuse its discretion in finding appraisal of land underlying condominium complex submitted by city schools board of education more probative of the value of the land than that performed by appraiser hired by unit owners. Board's appraiser's use of comparables in central business district, despite fact that land at issue was outside of such district, reflected the appraiser's opinion that subject property's location was actually better than comparables' location, as appraiser noted that area surrounding subject property commanded higher rents than did those around comparables, and reference to mixed-use comparables comported with highest-and-best-use determination, despite fact that subject property had no commercial tenants.

Disaster Bonds Proposed for Relief from Hurricanes Irma, Harvey.

WASHINGTON — In the wake of extensive damage caused by Hurricanes Harvey and Irma, the Council of Development Finance Agencies wants Congress to create a new permanent category of federally tax-exempt bonds for disaster rebuilding.

The group is proposing that up to $20 billion in this special category of so-called disaster recovery bonds be made available for annual issuance for future disaster relief. The bonds should not be subject to state volume caps, it said.

"We're sort of in the beginning of coalition building,'' said Tim Fisher, legislative and federal affairs officer for CDFA. He's reached out to the Municipal Bonds for America coalition as well as other state and local groups.

Fisher said his group does not want to slow up any special assistance that Congress might enact for rebuilding in Texas, Florida, Puerto Rico, and the U.S. Virgin Islands.
Instead, the proposal could be addressed as a part of tax reform.

"I don't know where we stand on tax reform in terms of tax-exempt bonds, but this might be something that the administration, with its big infrastructure push, might be intrigued by,'' Fisher said. "Forward thinking or proactive Republican members might be interested in pushing something like this during tax reform.''

The proposal calls for replicating several temporary programs Congress has created in the wake of other recent natural disasters and the terrorist attack of Sept. 11, 2001.

Following the destruction of the World Trade Center by terrorists, Congress also authorized the issuance of $8 billion in tax-exempt Liberty Bonds for use in Manhattan.

And after Hurricane Katrina flooded and devastated New Orleans and other parts of the Gulf Coast in 2005, Congress enacted the Gulf Zone Opportunity Act of 2005. That legislation authorized $14.9 billion in tax-exempt private activity bonds for Louisiana, Alabama and Mississippi. It also provided an additional $7.9 billion in advance refunding bonds.

In addition, Congress has authorized Hurricane Ike Bonds and Midwestern Disaster Area Bonds for disaster rebuilding in recent years.

“Both the Gulf Opportunity Zone Act of 2005 and the Heartland Disaster Tax Relief Act of 2008 allowed affected states to issue tax-exempt bonds to finance qualified activities involving residential rental projects, nonresidential real property, and public utility property located in the disaster area and below market rate mortgages for low- and moderate-income home buyers,’’ the nonpartisan Congressional Research Service said in a report.

“There was not, however, a comparable package of tax benefits provided following tropical storm Irene in 2011 or Hurricane Sandy in 2012,’’ CRS said. “Some general disaster provisions were available for all disasters declared in 2008 and 2009.”

Congressional lawmakers from the Northeast are continuing in their effort to create disaster recovery bonds for rebuilding in the wake of Superstorm Sandy in 2012.

A bill introduced earlier this month by two members of the House Ways and Means Committee proposes $10 billion in qualified disaster recovery bonds for disasters between 2012 and 2015.

“Last Congress we had 41 bipartisan cosponsors in the House and 12 members on in the Senate, Timothy Carroll, a spokesman for Rep. Bill Pascrell, D-N.J., said in an email.

Pascrell is an original cosponsor of the bill, the National Disaster Tax Relief Act of 2017 (H.R. 3679) with Rep. Tom Reed, R-N.Y.

In an issue brief released earlier this month, CRS said, “The National Disaster Tax Relief Act (H.R. 3679) proposes a number of temporary tax relief measures for disasters that occurred in 2012, 2013, 2014, or 2015. The bill also proposes additional permanent disaster relief provisions that could be triggered with a federal disaster declaration.’’

The Bond Buyer

By Brian Tumulty

09/20/17

NABL: Disaster Recovery Bonds Proposed.

he Council of Development Finance Agencies (CDFA) has recommended that Congress create a permanent category of tax-exempt private activity bonds, to be known as Disaster Recovery Bonds, which would support state and local government recovery efforts. The bonds would be similar to Gulf Opportunity Zone Bonds, Midwest Disaster Area Bonds, and Liberty Bonds.

In addition, earlier this month, Representatives Tom Reed (R-NY) and Bill Pascrell (D-NJ) introduced the National Disaster Tax Relief Act of 2017 (H.R. 3679), which would provide tax relief, including bond provisions, for major disasters between 2012 and 2015 and would also provide additional permanent disaster relief provisions, again including bond provisions, that would be triggered by a federal disaster declaration.

The CDFA press release is available here.

H.R. 3679 is available here.

The Bond Lawyer: Summer 2017

The Summer 2017 issue of *The Bond Lawyer®* is now available. Click here to download the document.

The Bond Lawyer®: The Journal of the National Association of Bond Lawyers is published quarterly, for distribution to members and associate members of the Association. Article submissions and comments should be submitted to Linda Wyman, (202) 503-3300.

TIFIA and P3 - Infra Without Undue Fiscal Leverage

Kroll Bond Rating Agency (KBRA) has released a macro-market research report titled, "TIFIA and P3 – Infra Without Undue Fiscal Leverage." The key points made in the report are:

- In the wake of Hurricanes Harvey and Irma, the vulnerability of critical infrastructure assets is once again the focus of policymakers across the U.S. and beyond.
- Slow growth in resources available to support necessary infrastructure has resulted in a significant underinvestment in critical infrastructure.
- TIFIA, or Transportation Infrastructure Finance and Innovation Act, is a Federal credit program that has been particularly successful in helping leverage existing resources and accelerating the delivery of infrastructure projects.
- KBRA has been increasingly active in these public and project finance transactions. Infrastructure challenges concern KBRA's sovereign group, given the importance to macro and fiscal policy developments.

Please click on the link below to access the report:

TIFIA and P3 – Infra Without Undue Fiscal Leverage

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

SIFMA Annual Meeting.

OCTOBER 23-24 | JW MARRIOTT | WASHINGTON, DC

The Capital Markets Conference convenes in Washington, D.C. next month for candid one-on-one conversations and in-depth breakout sessions with more than 50 expert speakers.

We're excited to announce this year's program, featuring conversations with Congressman Kevin Brady (R-TX), Chairman of the House Ways & Means Committee; SEC Chairman Jay Clayton; CFTC Chairman J. Christopher Giancarlo; Abigail Johnson of Fidelity Investments; David Solomon of Goldman Sachs; and Warren Stephens of Stephens Inc.; plus eight panels and in-depth breakout sessions on today’s most salient issues including tax reform, cybersecurity, financial regulation and more.

700+ financial industry leaders, policymakers and regulators will be there.
Will you?

Click here to learn more and to register.

EPA Approves Expedited Loan Funding for Harvey-Related Water Projects.

AUSTIN – The Environmental Protection Agency this week approved a request from Texas officials to expedite funding to help local governments restore water and wastewater systems damaged by Hurricane Harvey.

The Texas Water Development Board, which administers an EPA low-interest loan program for the state, asked the federal agency in a Sept. 1 letter for the flexibility to quicken loan distribution procedures. In the letter, the board said loan money could serve as a bridge to meet immediate recovery needs for damaged water systems while local governments wait for other federal aid.

“We’re trying to be another party getting funds to communities when they need them,” said Jessica Zuba, the deputy executive administrator of water supply and infrastructure at the TWDB. “In the past, there’s been a feeling that federal funding can take quite a bit of time lag. We wanted to … use our capacity and funds and bridge some of that time.”

Zuba said the board is reaching out to several cities where Harvey’s flooding impacted water infrastructure — such as Pearland, south of Houston, and Rose City, outside Beaumont — to talk about recovery funding needs.

Harvey’s flooding had a sweeping impact on water systems across Texas. At least five public drinking systems throughout the state were destroyed by flooding, and 14 systems remain inoperable, according to the Texas Commission on Environmental Quality. At least 31 waste water facilities are inoperable.

The Texas Water Development Board has about half a billion dollars in loan capacity through the Clean Water State Revolving Fund. This fund has historically provided low-interest loans to cities, districts and other water authorities to finance wastewater infrastructure. But its scope was expanded last year to include more stormwater projects, potentially meaning a large portion of it could be distributed for post-Harvey infrastructure proposals.

“There’s a need right now for the interim financing to get communities back online and back serving their customers, and there’s also: ‘How do we prepare for the next disaster?’” Zuba said.

The fund’s large loan capacity could be used for long-term stormwater resiliency projects, Zuba said. This could appeal to cities looking to finance the initial phases of large-scale infrastructure projects and then later rely on federal funding from agencies such as FEMA to continue construction.

Since last August, the TWDB has approved three non-Harvey-related stormwater projects, totaling about $35.5 million. The city of Houston has a $47 million loan application pending to finance stormwater control infrastructure including extensions for flood reduction along Brays Bayou. The city filed this application before Hurricane Harvey hit, and the board expects to review it in October.

The TWDB anticipates more applications from Harris County, which includes Houston, as the country's storm recovery plans solidify.

The TWDB has sought assurance from the EPA that its loan financing would not make water projects ineligible for future federal grants as rebuilding from Harvey continues.

Gov. Greg Abbott also got behind the board's request to get infrastructure funding to communities as quickly as possible. He sent his own letter to EPA chief Scott Pruitt, asking for streamlined loan options.

Zuba said it is hard to speculate how many loans applications the TWDB might receive but that volume is expected to increase and cooperation with the federal government is making the process easier.

"The flexibility that the EPA is willing to work with us is a great achievement," she said.

The Texas Tribune

by Katie Riordan

September 15, 2017

[South Dakota Supreme Court Rules in Favor of Remote Retailers; Next Step US Supreme Court?]

Yesterday, the South Dakota Supreme Court released its much-anticipated opinion in the *Wayfair* litigation, affirming a March 2017 trial court decision granting the remote retailer's motion for summary judgment on the basis that the economic nexus law enacted in 2016 (SB 106) is unconstitutional and directly violates the US Supreme Court's dormant Commerce Clause precedent in *Quill Corp. v. North Dakota*.

The South Dakota litigation remains at the front of the pack of a host of state court cases challenging similar state economic nexus laws across the United States. The expedited review (and decision) by the South Dakota Supreme Court here is significant, and puts the litigation well within the range of cases that would be decided by the end of the October 2017 Term (*i.e.*, by July 2018), assuming cert is granted—which is by no means a guarantee. The state has 90 days to file a cert petition with the US Supreme Court, which can be extended upon request. Stay tuned, as this litigation is far from over and the sitting US Supreme Court will be tasked with deciding whether they will honor Justice Kennedy's request to bring a case before the Court in *DMA v. Brohl*.

The full South Dakota Supreme Court opinion is available here.

Last Updated: September 19 2017

Article by Stephen P. Kranz, Mark Yopp and Eric Carstens

McDermott Will & Emery

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.

BDA Comment Letter to the DOL: Supporting an Extended Transition Period

The DOL published a proposed rule to extend the transition period for the Department of Labor Fiduciary Duty Rule. The proposal would delay the applicability dates for the Best Interest Contract Exemption and the Principal Trading Exemption until July 1, 2019.

BDA Comment Letter

BDA submitted a comment letter on Friday, September 15th. The letter can be read here. The letter references and echoes the letter BDA sent to the DOL on August 7th. Both letters support an extended transition period.

BDA urges the DOL to continue its review per the directive of the February 2017 Presidential Memorandum and to coordinate with the SEC on a harmonized best interest standard of care for all retail investment accounts.

Bond Dealers of America

September 18, 2017

Expanding Community Development Financial Institutions.

Abstract

Community development financial institutions (CDFIs) provide capital to strengthen communities that are experiencing economic distress or are underserved by mainstream lenders. We find that CDFIs lent more than $34.3 billion between 2011 and 2015, roughly $6.8 billion a year. Sixty-four percent of CDFI lending went to census tracts with one or more indicators of being underserved or distressed. But CDFI activity was not distributed equally across the country, even among economically comparable places. To expand its reach into underserved communities where it has yet to establish a strong presence, the CDFI industry needs further supports.

Download PDF

The Urban Institute

by Brett Theodos & Eric Hangen

September 19, 2017

Recent Hurricanes Strain U.S. Towns' Aging Sewer Systems.

Harvey and Irma caused untreated sewage to be released into streets, rivers and homes of affected towns and counties

In the days after Hurricane Irma slammed Brunswick, Ga, most businesses and restaurants were shut down. The problem wasn't just flooding or hurricane damage, it was also untreated sewage mixing with floodwater, seeping out of manholes and overwhelming an aging system of pipes and pumps.

Residents were asked not to take showers, wash dishes or flush toilets for four days, and schools were closed for more than a week. Crews, facing extensive power outages, worked to bring the sewage system back online in order to restore service.

Downtown sandwich shop Wrap Happy had no damage or flooding, but lost days of business because the water and sewer restrictions made it difficult for evacuees to return home and kept life from getting back to normal.

"It shut down our customer base," said Taneka Beasley, whose family owns Wrap Happy. "We took a really big hit financially."

The Brunswick-Glynn Joint Water & Sewer Commission, which serves about 30,000 residential and commercial sewer customers and treats about 8 million gallons of wastewater a day, said on its website that the area saw widespread sewer overflows but the wastewater "contained very dilute and minimal human waste."

Hurricanes Harvey and Irma killed dozens of people, destroyed thousands of homes, and caused flooding that has lasted weeks in some cases. They also exposed the failings of aging sewer systems that were unable to cope with the heavy rainfall and flooding. As a result, many released untreated sewage into streets, rivers and homes of affected towns and counties.

Local governments in Florida have filed more than 250 notices of pollution with state regulators in the days since Irma made landfall in southwest Florida. In Texas, two wastewater treatment facilities in Harris County were destroyed by Harvey, and eight others remain nonoperational in five counties including Harris three weeks after the record-setting rainfall.

It is impossible to design sewage treatment facilities that can handle every storm, experts said, and recent hurricanes have delivered unprecedented rainfall and flooding in some areas.

But the recent storms magnified a problem that occurs regularly across the country albeit on a smaller scale: sewage spills from overburdened and underfunded wastewater treatment systems.

"We're still in a place where there's not enough funding to really take care of this underground infrastructure," said Rebecca Shelton, an Atlanta-based member of the American Society of Civil Engineers specializing in wastewater treatment.

Sewage spills can contaminate drinking water, kill fish and close beaches to swimmers. The Environmental Protection Agency, which regulates water quality under the federal Clean Water Act of 1972, said that while sewage spills have significantly decreased over the last 40 years, 23,000 to 75,000 sewer overflows still occur in the U.S. every year.

The EPA works with states to provide low-cost loans to municipal treatment plants for capital and environmental projects, and last year awarded $7.6 billion in funding. But the brunt of operation and infrastructure costs for the nation's sewer systems are paid by customers.

Most American wastewater treatment facilities are operated by local governments as public utilities that charge rates based on usage, said Matt Fabian, partner at the research firm Municipal Market Analytics. Costs have increased in recent years as sewage systems grapple with meeting new federal environmental regulations and more consistent or extreme weather events as well as regular maintenance costs, he said.

Municipal bond sales for water and sewer projects have increased sharply in recent years, topping $37 billion last year compared with $22 billion in 2013, Mr. Fabian said.

“I wouldn’t say that governments are ignoring the water and sewer problem,” he said. “It is a major issue if you ask any mayor. But there’s so many competing priorities.”

Residential sewer bills, which consistently outpace water costs, soared from about $22 a month in 2004 to more than $42 in 2016, according to surveys by the American Water Works Association, a nonprofit organization of water supply professionals.

“One of the real pressures that governments are facing is that water and sewer rates are not progressive. They’re the same regardless of what your income is,” Mr. Fabian said.

In Georgia’s southeastern Glynn County, residents complained of untreated sewage seeping out of manholes and mixing with floodwater. Evacuee Elle Hammarlund Woodcock stayed several days longer than she planned at her daughter’s house in Enterprise, Ala., to avoid coming in contact with untreated sewage. The ground level of her home flooded and she said she was worried about what the waters may have contained. “I’m wiping everything down,” she said, “with bleach.”

Some components of the Glynn County sewer system date back to the 1940s, such as clay sewer pipes that are more vulnerable to leaks that let in groundwater and overwhelm treatment plants, said Todd Kline, director of engineering for the Joint Water & Sewer Commission.

Irma brought rainfalls of up to 10 inches of rain to parts of Georgia. Brunswick received 6 inches of rain, according to the National Oceanic and Atmospheric Administration, and average rainfall in Glynn County was more than 9.4 inches, according to National Weather Service estimates.

“Every drop of water that gets into the pipes—be it groundwater or storm water—you’re pumping that and you’re treating that unnecessarily,” Mr. Kline said. “Every drop of water takes up capacity.”

Extensive power outages are also a contributing factor to sewage overflows during storms, because pumping stations lose power and are unable to transport wastewater to the treatment plant.

Glynn County Commission Chairman Bill Brunson said sewer infrastructure faltered for a combination of reasons. Heavy rainfall from Irma as well as earlier storms strained a system already overburdened by fast and dense residential development, And maintenance of the system had been neglected for decades, Mr. Brunson said.

“Politicians don’t typically spend money on infrastructure,” he said. “It’s just easy to ignore.”

THE WALL STREET JOURNAL

By Kate King and Valerie Bauerlein

Sept. 20, 2017 5:30 a.m. ET

Write to Kate King at Kate.King@wsj.com and Valerie Bauerlein at valerie.bauerlein@wsj.com

States Need $645 Billion to Pay Full Health-Care Costs.

New accounting guidelines urge local governments to put their full health costs on their balance sheets

When Aurora, Ill., closed its books last December, about $150 million disappeared from the city's bottom line.

The Chicago suburb of 200,000 people hadn't become poorer. Instead, for the first time it recorded on its balance sheet the full cost of health care promised to public employees once they retire.

States and cities around the country will soon book similar losses because of new, widely followed accounting guidelines that apply to most governments starting in fiscal 2018—a shift that could potentially lead to cuts to retiree heath benefits.

The new Governmental Accounting Standards Board principles urge officials to record all health-care liabilities on their balance sheets instead of pushing a portion of the debt to footnotes.

The adjustments will show that U.S. states as a group have promised hundreds of billions more in retiree health benefits than they have saved up. The shortfall amounts to at least $645 billion, according to a new report from the nonprofit Pew Charitable Trusts based on 2015 data. That is in addition to the $1.1 trillion that states need to pay for promised pension benefits, according to Pew.

The new level of transparency around retiree health expenses for public workers could lower municipal-bond prices and force new decisions to reduce or scrap retiree health benefits as a way of coping with ballooning future costs, some analysts and researchers said. "I think the market has understated the concern," said Richard Ciccarone, president and chief executive of Merritt Research Services LLC, a research firm that tracks municipal bonds.

Rising retiree health-care costs are compounding government pressures when many state and local officials are struggling to manage their ballooning pension liabilities and balance their budgets. Waves of baby boomers are already wrapping up their working lives, and expenses are expected to rise in coming years.

"By not dealing with it, we could be setting ourselves up for a very unwelcome surprise," said New York State Comptroller Thomas DiNapoli.

The change will lower bottom lines by tens of billions for some state governments. In New York, the state's health-care liabilities as reported on its balance sheet will jump to $72 billion once the new accounting rules are in place, up from $17 billion. That new total would be 10 times the state's pension liabilities, Mr. DiNapoli's office said.

Mr. DiNapoli said New York has been upfront with bond-rating firms about its retiree health liabilities, but he hopes the new numbers will provide a wake-up call for policy makers. For the last decade, he has helped draft legislation annually that would establish a fund to set money aside for retiree health costs, but he said those bills have stalled.

"If you can put money towards a school or a senior center today, that has a lot more appeal," Mr. DiNapoli said.

Most states have almost no money saved up for future retiree health-care costs and treat the benefits as an operating expense. States had just $48 billion in assets set aside as of 2015, compared with $693 billion in liabilities, according to Pew.

One state that has been setting aside more is Michigan, where retiree health-care liabilities have dropped by roughly $20 billion since 2012 partly because of added state payments. The state also stopped offering retiree health care to new employees, instead contributing an additional 2% of salary to their defined-contribution plans to limit the state's exposure to rising health costs.

"It's transferring the risk for those inflationary items from the state to the employees," said Kerrie Vanden Bosch, director of Michigan's Office of Retirement Services.

Even so, states' retiree health obligations are still much smaller than future pension promises, which are already reported this way. Even if states were to start setting aside money for future costs, annual state spending on retiree health care would still be just 3.4% of expenditures, compared with 1.4% today, according to a study by the National Association of State Retirement Administrators and the Center for State and Local Government Excellence.

States that want to bring their liabilities down will likely face fewer legal hurdles to benefit cuts than they have with public pensions, which enjoy ironclad legal protections in many states. Courts have often upheld employers' rights to increase health-care costs and reduce coverage unless the benefits are laid out in explicit detail in a collective-bargaining agreement or protected by a state constitution, said University of Minnesota Law School Professor Amy Monahan.

"It's going to be really hard to prevent those changes," Ms. Monahan said.

Among more than 80 state and local governments surveyed last year by Segal Consulting, 57% said they were somewhat or very likely to reduce benefits in response to the new accounting standards. The guidelines aren't mandatory, though they are widely followed and ignoring them can complicate audits.

The American Federation of State, County and Municipal Employees, which represents public-sector workers, opposed the new Governmental Accounting Standards Board guidelines. It said in a comment letter that "implementing new standards during a fragile recovery may lead to hasty and unwarranted decisions about retiree health benefits."

"If you're going to tell people that you're going to give the best years of your life as a firefighter or cop, you have to figure out a way to bridge those people to Medicare," said Steven Kreisberg, director of research and collective bargaining for the union. "These are manageable expenses, if you want to manage them."

THE WALL STREET JOURNAL

By Heather Gillers

Sept. 20, 2017 5:30 a.m. ET

Write to Heather Gillers at heather.gillers@wsj.com

Judge Affirms Limited Power of States and Cities Over Drones.

The ruling was a defeat for Newton, Mass., which banned people from flying drones below 400 feet over private property.

A federal court in Massachusetts has struck down key elements of a local drone ordinance that had significantly restricted where residents could fly the devices, affirming the limited power of cities and states to regulate unmanned aircraft.

The ruling was a defeat for the city of Newton, which enacted an ordinance in December that restricted flights of pilotless aircraft weighing less than 55 pounds. The city said the rules were meant to address safety and privacy concerns about the proliferation of drones in the area.

In January, Newton resident Michael Singer sued the city, seeking to strike down four provisions of the law. Among them were a requirement that drone owners register their aircraft with Newton and a ban on flying drones below an altitude of 400 feet over private property without permission of the property owner.

Citing Federal Aviation Administration guidance, lawyers for Newton said localities are allowed to “co-regulate unmanned aircraft” and argued that the city’s ordinance was “within the bounds of its municipal police powers.”

But U.S. District Judge William G. Young of Massachusetts disagreed, ruling that the ordinance was in direct conflict with federal government’s drone policies mandated by Congress.

Such a collision between local and federal rules, he wrote, violates a provision of the U.S. Constitution that gives federal law priority over conflicting state or local regulation.

“Newton’s choice to restrict any drone use below this altitude thus works to eliminate any drone use in the confines of the city, absent prior permission,” wrote Judge Young. “This thwarts not only the FAA’s objectives, but also those of Congress for the FAA to integrate drones into the national airspace.”

The ruling leaves in place other provisions of the ordinance that Mr. Young didn’t challenge, such as a prohibition on operating drones in reckless manner or using them to spy on people.

On Friday, the Law Department for Newton said the city is considering its appeal options.

Mr. Singer, a physician-scientist, said the decision helps to “ensure that the skies would remain open for new technology that would benefit society.” He said that at the time the ordinance was passed, he was researching ways of using drones for delivering medical services.

A number other local jurisdictions in the U.S. have imposed or considered similar clamp downs on drones, such as West Hollywood in California and the Florida town of Palm Beach, which is rewriting its drones rules to avoid the same legal concerns Newton faced.

The Consumer Technology Association, which supported Mr. Singer’s case, said the ruling makes clear that the FAA, and not local jurisdictions, has the final say over who can fly drones and where and when they can do so.

“This decision establishes a rock-solid affirmation that the federal government unequivocally holds jurisdiction over the drone industry,” said Doug Johnson, vice president of technology policy for the association.

THE WALL STREET JOURNAL

By Jacob Gershman

Sept. 22, 2017 7:32 p.m. ET

Write to Jacob Gershman at jacob.gershman@wsj.com

New Fight in California Water Wars: How to Update Old System

FRESNO, Calif. — In California's long-raging water wars, pitting north against south and farmer against city dweller, the one thing everybody agreed on Wednesday was that the outdated method of shipping water throughout the most populous state needs a serious upgrade.

A group of influential California farmers shook up the debate a day earlier, backing out of Gov. Jerry Brown's $16 billion plan to build two massive water tunnels, re-engineering the delivery system. Westlands Water District in Fresno said it was too expensive and came with too few guarantees.

Brown's administration, however, gave no sign of giving up. Other key water districts serving vast farmland in the most productive agricultural state and millions of residents still have to weigh in, including the behemoth Metropolitan Water District of Southern California.

"I don't think a 'no' vote is the end of the story," said Metropolitan's general manager, Jeffrey Kightlinger. "We don't live in a world where we can just turn off the projects and walk away."

Kightlinger sees a path to launch the project before Brown leaves office next year. It's impossible to predict what form it will take before all the water districts have voted on whether they're in or out.

The proposed 35-mile-long (56-kilometer-long) tunnels, however, can't survive as it's drawn up now without "big players," such as Westlands, said Kightlinger, who entertains the possibility of a scaled-down project.

Current plans call for building twin tunnels east of San Francisco to deliver water from the Sacramento River mostly to farms and cities hundreds of miles away in central and Southern California.

Backers say the tunnels will stabilize flows, save endangered fish species and ensure a reliable water supply. However, critics say it will be used to drain Northern California dry and further harm native fish.

It is California's most ambitious water project in more than 50 years, when state and federal officials launched a hard-fought campaign to win support for building the current system of reservoirs, pumping stations and canals.

Westlands farmers on Tuesday became the first of several large water districts to vote, pulling out after having spent millions over more than a decade on drawing up plans and calculating costs.

The shake-up forced a big moment for the players to take stock of the whole water system, said Jay Lund, a leading state water expert at the University of California, Davis.

"It's a strategic opportunity to make a strategic political decision," he said.

Among the options are building a single tunnel to serve just municipal districts rather than two, in what Lund called the "garden hose" option, or burrowing one now with the option for a second one later, if it's needed.

The Sacramento-San Joaquin River Delta is such a vital water source for California that somebody will always be advancing projects, Lund said.

In Northern California, the source of much of the state's water, Westlands' vote won cheers from farmers who have fought the project for years.

They contend the tunnels, and their decadelong construction, would have further harmed the delta and San Francisco Bay, destroyed their farms and doomed many sleepy Gold Rush-era towns.

"Does this project end with that vote? I don't know," said Russell van Loben Sels, speaking by cellphone Wednesday from his vineyard where one of the giant water intakes for the tunnels would go. "There'll be a lot of politics and a lot of arm-twisting and that kind of thing."

Brown's Natural Resources secretary, John Laird, said Wednesday that there's broad agreement water deliveries will keep declining without upgraded infrastructure.

"While it's too soon to speculate on potential changes to the project," he said, "the state will continue to consider how best to meet the needs of the agencies" that want to participate.

U.S. Rep. John Garamendi, a Democrat from the delta, said it was a matter of time before central California farmers, such as those who are part of Westlands, realized that high cost and uncertainty would crush the project.

The Democratic governor had floated a similar plan during his first two terms as governor, aiming to build a canal around the delta to ship water south. Brown could not let go of it, said Garamendi, who seeks more water storage and fortifying levees.

"It just takes a long time for bad, old ideas to finally die," Garamendi said. "Hopefully we can move onto cheaper, more effective solutions."

Another major supporter that has yet to vote, Kern County Water Agency, called it a good project.

"I do think if we don't go ahead (with the tunnels), California in 20 years will look back on this as a mistake," general manager Curtis Creel said.

By THE ASSOCIATED PRESS

SEPT. 20, 2017, 9:06 P.M. E.D.T.

A Storm's Never Destroyed a Grid Like Maria Ruined Puerto Rico's.

- **Parts of island may be without power for weeks, if not months**
- **Utility crews will restore service to critical resources first**

You don't even have to leave the airport to see that Hurricane Maria has laid waste to Puerto Rico's power grid.

On Friday, the San Juan airport was abandoned. No electricity meant no air conditioning, and no air conditioning meant hot and muggy air wafting through the terminals. Ceilings were leaking. Floors were wet. Only the military, relying on its own sight and radar systems, was landing planes. The airport is one of the first places crews will restore power — whenever they can get to it. Hundreds are still waiting for the all-clear to move in and start the arduous task of resurrecting Puerto Rico's grid.

The devastation that Maria exacted on Puerto Rico's aging and grossly neglected electricity system when it slammed ashore as a Category 4 storm two days ago is unprecedented — not just for the island but for all of the U.S. One hundred percent of the system run by the Puerto Rico Power Authority is offline, because Maria damaged every part of it. The territory is facing weeks, if not months, without service as utility workers repair power plants and lines that were already falling apart.

"I have seen a lot damage in the 32 years that I have been in this business, and from this particular perspective, it's about as large a scale damage as I have ever seen," said Wendul G. Hagler II, a brigadier general in the National Guard, which is assisting in the response.

No federal agency dared on Friday to estimate how long it'll take to re-energize Puerto Rico. If it's any indication of how far they've gotten, the island's power authority known as Prepa is only now starting to assess the damage.

"We are only a couple of days in from the storm — there could be lots of issues and confusion at the beginning of something like this," said Kenneth Buell, a director at the U.S. Energy Department who is helping lead the federal response in Puerto Rico. "We are in the phase where we have people queued up and lining up resources."

'Evacuate NOW'

What Buell does know is Puerto Rico's power plants seem inexplicably clustered along the island's south coast, a hard-to-reach region that was left completely exposed to all of Maria's wrath. A chain of high-voltage lines thrown across the island's mountainous middle connect those plants to the cities in the north.

Puerto Rico's rich hydropower resources have also taken a hit. On Friday, the National Weather Service pleaded for people to evacuate an area in the northwest corner of the island after a dam burst. "All areas surrounding the Guajataca River should evacuate NOW. Their lives are in DANGER!," the service said on Twitter.

And that's not to mention the state of Puerto Rico's grid before the storm. Government-owned Prepa, operating under court protection from creditors, has more than $8 billion in debt but little to show for it. Even before the storm, outages were common, and the median plant age is 44 years, more than twice the industry average.

Rebuilding the island's grid into something more robust will cost billions of dollars, Buell said. "You are talking about a lot of money."

Buell is a part of what is known as the Emergency Support Function No. 12. That's another way of saying his team is 12th on a list of groups getting priority access to the island to help with restoration efforts. They're behind the ones that, among other things, are delivering food and water and carrying out search-and-rescue missions.

Essential Services

One major task for the National Guard will be to clear debris, allowing workers to move around. The biggest priority for utility crews will be to restore power to essential services — the airport, water infrastructure and hospitals, Buell said.

It won't be easy. The supply chains the island once relied on to shuttle fuel oil and natural gas to generators, supplying the vast majority of the island's power, have been destroyed. The Energy Department is looking for alternative sources, Buell said.

Some agencies are capable of flying in fuel, and the government may waive a law that limits the tankers permitted to haul oil and liquefied natural gas between U.S. ports to boost shipments to the island.

Once critical resources have regained power, crews will start the long process of getting power plants back up and running and transmission lines reconnected. New York Governor Andrew Cuomo flew in Friday with 10 people from the state's own public power authority, drones and back-up generators.

A helicopter was scheduled to fly out as soon as Saturday to assess the damage to the system, said Mike Hyland, senior vice president of engineering services for the American Public Power Association, the industry group for municipal utilities.

At this point, "we don't know what to do if there is no generation," Hyland said. "You need to see it."

Bloomberg Technology

By Naureen S Malik and Jonathan Levin

September 22, 2017, 4:31 PM PDT

— With assistance by Michelle Kaske, Sophie Caronello, and Christopher Maloney

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Puerto Rico Bond Prices Fall as Hurricanes Add to Island's Troubles.

Prices have fallen as much as 4% on some bonds issued by the commonwealth or its utilities

It could take weeks to determine the full extent of the hurricane damage to Puerto Rico, but bondholders are already anticipating losses.

Prices have fallen as much as 4% since Monday on some bonds issued by the commonwealth, its public power company, and its water and sewer authority. Investors were already expecting deep haircuts as the commonwealth makes its way through a federally supervised restructuring process.

"How long will they be missing revenues because of people not getting power?" asked Dan Solender, director of municipals at Lord Abbett & Co. which holds more than $100 million of Puerto Rico bonds, including some from the power authority.

Even before Hurricane Maria slammed into Puerto Rico early Wednesday, thousands of people had been without electricity for two weeks, since Hurricane Irma passed by the island's northern coast. But the damage from Maria, the most powerful hurricane to hit Puerto Rico since 1928, is likely to be much more widespread on the island, which is already reeling from a decade of economic distress.

August and September mark peak hurricane season in the Atlantic basin. Here's why the conditions in these months make them more likely to form there. Photos: NASA/NOAA

Puerto Rico owes roughly $70 billion to investors, including individuals on both the island and the mainland, to major U.S. mutual funds and, increasingly, to hedge funds. OppenheimerFunds Inc. and Franklin Resources Inc. are the biggest mutual fund holders of Puerto Rico bonds, according to Morningstar Direct.

Depending on the extent of the damage, the hurricane could factor into future decisions by the federal control board on just how much those investors will get paid, said Matt Fabian, a partner with Municipal Market Analytics.

In the aftermath of a natural disaster, "why would a court decide 'yes, investors, you should take more money off the island?'" Mr. Fabian asked.

But some analysts and advisers to Puerto Rico bondholders also said Wednesday that a massive hurricane recovery effort could help stimulate economic growth on the island. Federal disaster relief funds and insurance money flowing into Puerto Rico could replace outdated infrastructure, and rebuilding could help put people to work, these people said.

THE WALL STREET JOURNAL

By Heather Gillers

Sept. 20, 2017 5:47 p.m. ET

Write to Heather Gillers at heather.gillers@wsj.com

Puerto Rico's Power Woes Are Decades in the Making.

Years of underinvestment and massive debts left the energy grid vulnerable

TOA BAJA, Puerto Rico — As residents here grapple with power outages across the entire island, the task of turning the lights back on falls to an electrical utility beset by rickety infrastructure, workforce reductions and financial woes so deep it declared a form of bankruptcy in July.

Earlier this month, Hurricane Irma sideswiped the island, knocking out power to about 70% of the customers of the Puerto Rico Electric Power Authority, or Prepa. The utility had made significant strides in restoring electricity when Hurricane Maria struck on Wednesday, wiping out power to 100% of its customers.

The "damage is catastrophic," Ricardo Ramos, chief executive of Prepa, said Friday on CNN. He said previously that it could take months for power to be restored across the island.

Residents are bracing for an uncomfortable slog.

"People don't think there will be light until after Christmas," said Mara López, a resident of Toa Baja, near San Juan. Electricity "here is really unstable. It's a system that has not been well-maintained, and every time the wind blows, it falls."

The prolonged loss of power and disruption to businesses "could delay the economic recovery of the island," said Rick Donner, vice president and senior credit officer at Moody's Investors Service. Puerto Rico is contending with a decadelong recession, declining population and $73 billion in debt. A federal board is overseeing its finances, and in May, the island declared what amounts to the largest-ever U.S. municipal bankruptcy.

Two months later, the federal board voted to place Prepa, which has $9 billion of debt, in bankruptcy as well. The move was aimed at helping advance plans to modernize the utility and turn it from a government-owned monopoly into a regulated private utility.

Calls and emails to a spokesman for Prepa weren't returned, though Puerto Rico's telecommunications system was hobbled by Maria. Periodic updates on the utility's Twitter feed highlight its efforts to assess damage and begin the process of restoring power.

Prepa's problems have been decades in the making. Early in its history, it earned praise for powering Puerto Rico's industrialization efforts in the 1940s and 1950s. But over time, it became less efficient, energy analysts say.

Its generating plants, which rely on imported oil for about 60% of their energy production, are mostly obsolete and require major upgrades or outright replacement, said Miguel Soto-Class, president of the Center for a New Economy, a nonpartisan think tank in San Juan that has done in-depth analyses of the utility's finances.

Power outages on the island are common. A fire at one of the utility's plants in September triggered a blackout across the island that left many customers without power for days.

Yet prices are high. In April, Prepa's average electricity rate for customers was 20.1 cents per kilowatt-hour, down from 25 cents in 2013 but still close to double the average mainland U.S. rate of about 12 cents, according to Moody's.

Island residents have complained in interviews in recent years about the lengths to which they must go to keep their electricity bills in check. Some said they had limited their use of air conditioners as much as they can tolerate. Others said that they had shut off circuit breakers, except for the one controlling the refrigerator, before heading to work.

For years, Prepa enjoyed easy access to bond markets and borrowed regularly, accumulating enormous debt. Yet it failed to make important capital investments, such as transitioning to natural gas from oil to generate power, analysts say. Analysts say the money went to a bloated payroll, among other things.

When the island sank into recession, Prepa's finances suffered even more, as business and residential demand for power declined. The exodus of Puerto Ricans to the continental U.S. is shrinking the island's population, depleting the utility's customer base. And austerity measures that the utility implemented as it headed toward bankruptcy resulted in cuts to the workforce it now needs to make repairs.

"All these things have compounded, one on top of the other," Mr. Soto-Class said. They "will severely limit the ability of Prepa to come back quickly."

The utility likely will need many resources, such as power poles and lines, that typically aren't stored on the island, said Brock Long, administrator of the Federal Emergency Management Agency. And "even if the power grid is back up and running, getting power to the house is a whole other situation," since homes may have flooded and sustained damage to their electrical systems, he said.

Given that President Donald Trump declared a major disaster in Puerto Rico, the utility could receive federal disaster funds to help finance repairs.

"They're going to need help," Mr. Donner said. "This really is a big task."

THE WALL STREET JOURNAL

By Arian Campo-Flores and José de Córdoba

Updated Sept. 23, 2017 10:33 a.m. ET

Write to Arian Campo-Flores at arian.campo-flores@wsj.com and José de Córdoba at jose.decordoba@wsj.com

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Weakened Dam the Latest Threat as Puerto Rico Reels From Hurricane.

SAN JUAN, Puerto Rico — A Puerto Rico dam damaged by heavy rains from Hurricane Maria was in danger of failing on Sunday, posing a risk to communities downstream, as people across the U.S. territory sought to dig out from the deadly storm.

Some 70,000 people who live downstream from the compromised Guajataca Dam in the northwest of the island were under orders to evacuate, with the structure in danger of bursting at any time.

Puerto Rico Governor Ricardo Rossello, after surveying damage to the cracked dam, reiterated his request on Saturday that people leave the area as soon as possible.

"The fissure has become a significant rupture," Rossello said at a news conference.

The dam, which is made of earth and surrounded by trees in a largely rural region of Puerto Rico, is 120 feet (37 meters) tall, according to a U.S. Army Corps of Engineers database

The National Weather Service extended a flash flood watch for communities along the rain-swollen Guajataca River, downstream from the dam, until 1400 local time on Sunday.

If the dam fails, the flooding would be life-threatening, the National Weather Service warned. "Stay away or be swept away," it said.

Maria, the second major hurricane to savage the Caribbean this month and the most powerful storm to strike Puerto Rico in nearly a century, carved a path of destruction on Wednesday.

The storm killed at least 25 people, including at least 10 in Puerto Rico, as it churned across the Caribbean, according to officials and media reports.

It knocked out electricity, apart from emergency generators, on Puerto Rico, which has 3.4 million inhabitants.

Severe flooding, structural damage to homes and virtually no electric power were three of the most pressing problems facing Puerto Ricans, New York Governor Andrew Cuomo, whose state is home to millions of people of Puerto Rican descent, said during a tour of the island.

"We lost our house, it was completely flooded," said resident Carmen Gloria Lamb, a resident near the rain-swollen Guajataca. "We lost everything; cars, clothes, everything."

The Guajataca Dam was built in 1929 to serve as a supply of drinking water and for irrigation, according to a U.S. Geological Survey website.

FUEL SHORTAGES AND WATER RATIONING

Signs of the strain on Puerto Ricans were evident throughout San Juan, the capital.

Drivers had to wait up to seven hours at the few filling stations open on Saturday, according to news reports. Hotels, meanwhile, warned that guests might have to leave soon without fresh supplies of diesel to keep generators operating.

Water rationing also began on Saturday. Signs posted throughout San Juan's Old Town informed residents that service would return for two hours a day between 1700 and 1900 local time until further notice.

Telephone service also was unreliable, with many of the island's cell towers damaged or destroyed.

Maria struck Puerto Rico as a Category 4 storm on the five-step Saffir-Simpson scale, dealing a savage blow to an island already facing the largest municipal debt crisis in U.S. history.

The storm caused an estimated $45 billion of damage and lost economic activity across the Caribbean, with at least $30 billion of that in Puerto Rico, said Chuck Watson, a disaster modeler at Enki Research in Savannah, Georgia.

Maria, which was hundreds of miles east of Florida over the Atlantic Ocean on Sunday, had eased slightly to a Category 2 storm but still sustained winds of up to 110 miles per hour (175 kmh). It was expected to weaken gradually as it moves north over the next two days.

Dangerous surf and rip currents driven by the storm were expected along the southeastern coast of the U.S. mainland for several days, the National Hurricane Center said.

Scattered showers were forecast for Puerto Rico on Sunday, said National Weather Service meteorologist Arlena Moses at the agency's Miami office.

Maria hit Puerto Rico about two weeks after Hurricane Irma, one of the most powerful Atlantic storms on record, killed more than 80 people in the Caribbean and the United States. The two storms followed Hurricane Harvey, which also killed more than 80 people when it struck Texas in late August and caused flooding in Houston.

By REUTERS

SEPT. 24, 2017, 10:42 A.M. E.D.T.

(Writing by Alex Dobuzinskis; Editing by David Goodman)

[Municipal Securities: Financing the Nation's Infrastructure]

The MSRB today released a primer underscoring the role of municipal securities in financing infrastructure.

[Read the primer.]

MSRB Announces Results of Qualifying Examination for Municipal Advisors.

Washington, DC – More than 3,000 individuals at 505 municipal advisor firms across the country are now qualified to provide advisory services to state and local governments and other clients following implementation of the first mandatory qualifying examination for municipal advisor professionals, the Municipal Securities Rulemaking Board (MSRB) announced today.

"Municipal advisors play an important role in the municipal securities market as trusted experts whose advice can have a profound impact on the financial health of state governments, local communities and other municipal entities," said MSRB Executive Director Lynnette Kelly. "The MSRB's exam is designed to ensure that only those individuals who can demonstrate their knowledge of regulatory standards of conduct and current market practices can hold themselves out as municipal advisor professionals."

Effective September 12, 2017, the MSRB's Municipal Advisor Representative Qualification Examination (Series 50 exam) is a required baseline test of competency for professionals who provide advice on the issuance of municipal securities or use of municipal financial products.

Continue reading.

Date: September 21, 2017

Contact: Jennifer A. Galloway, Chief Communications Officer
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U.S. Muni Bond Market Edges Up to $3.837 trln in Q2 - Fed

NEW YORK, Sept 21 (Reuters) – The U.S. municipal bond market edged up to $3.837 trillion in the second quarter of 2017 after shrinking slightly during the previous quarter, according to a quarterly report from the Federal Reserve released on Thursday.

U.S. banks' muni bond buying continued to dwindle. Financial institutions added just $10.2 billion in the second quarter, compared to $27.3 billion in the first quarter and $52.9 billion in the fourth quarter of 2016.

Foreign holdings of munis rose to $98.6 billion, an all-time high, after having fallen the previous quarter for the first time in five years.

Households, or retail investors, held $1.627 billion, down slightly from $1.646 billion in the previous quarter, the data showed.

Property and casualty insurance companies added $5.8 billion of munis in the second quarter after having shed $8.4 billion in the first quarter. Life insurance companies picked up $4.2 billion of the bonds.

U.S. mutual funds bought $48.5 billion of munis while exchange traded funds added $5.8 billion.

(Reporting by Hilary Russ; Editing by Chizu Nomiyama)

Moody's Places 37 Texas Municipalities Under Review for Downgrade.

New York, September 22, 2017 — Moody's Investors Service has placed the general obligation bond ratings of 31 Municipal Utility Districts, four School Districts, and two cities under review for downgrade, affecting $1.2 billion in outstanding debt. The review was prompted by the potential for significant economic and revenue loss associated with damage caused by Hurricane Harvey and the related rains that inundated the region for several days. The area affected by the hurricane covers 39 FEMA-designated counties in Texas that include over 450 Moody's-rated municipal issuers. The majority of issuers that have been placed under review are smaller entities with concentrated revenue sources and limited financial flexibility.

Moody's identified issuers for review on the basis of their flood exposure, location and, in the case of utility systems and schools, their operating status. Specifically, the rating agency examined the issuers' exposure to flooding based on their proximity to 100- and 500-year flood zones and the Addicks and Barker reservoirs, and their location relative to the areas identified in FEMA's initial assessment of damage as of September 2, 2017. For those issuers in the most affected areas, the rating agency then considered potentially mitigating financial resources, including cash and reserves from their most recent audited financial statements. Moody's also considered information related to the extent of damage in a given area, including utility systems that were destroyed or rendered inoperable as of September 18, 2017 as reported by the Texas Commission on Environmental Quality (TCEQ) and schools that have not yet opened.

During the review Moody's will consider the credit implications of any economic and revenue loss from the hurricane as well as operating and capital costs associated with recovery. Additionally, Moody's will assess issuers' damage estimates, access to financial resources, including potential for and timing of financial assistance from federal and state sources, private property damage insurance coverage, and business disruption insurance.

The rating agency expects to complete the reviews over the next 60 to 90 days. Moody's will continue to review additional rated entities that were impacted by this unprecedented weather event as information becomes available.

List of issuers by sector:

Municipal Utility Districts:

Issuer Name Rating/Outlook County Debt outstanding as of 8/29/2017

Corinthian Point Municipal Utility Dist 2 Baa3/STA Montgomery County $1.39M

Cypress-Klein Utility District A1/NOO Harris County $355,000

Fort Bend Co. MUD 25 A2/NOO Fort Bend County $100.39M

Fort Bend County M.U.D. 117 A2/NOO Fort Bend County $16.13M

Fort Bend County MUD No. 128 A2/NOO Fort Bend County $67.47M

Harris County Municipal Utility District 132 A1/NOO Harris County $385,000

Harris County Municipal Utility District 153 A1/NOO Harris County $23.02M

Kleinwood Municipal Utility A2/NOO Harris County $11.83M

Montgomery County MUD 94 A3/NOO Montgomery County $33.16M

Montgomery County MUD 95 Baa2/STA Montgomery County $20.93M

Montgomery County Municipal Utility District 46 Aa3/NOO Montgomery County $82.91M

Montgomery County Municipal Utility District 9 A1/NOO Montgomery County $12.11M

Montgomery County Water Control Improvement District 1 A3/NOO Montgomery County $13.49M

Montgomery MUD 90 Baa2/STA Montgomery County $8.09M

New Caney Municipal Utility District A3/NOO Montgomery County $25.17M

Northampton Municipal Utility District A2/NOO Harris County $28.90M

Northeast Harris Co. M.U.D. 1 Baa3/STA Harris County $8.51M

Oakmont PUD A2/NOO Harris County $30.05M

Pecan Grove Municipal Utility District A1/NOO Fort Bend County $53.34M

Southern Montgomery County Municipal Utility District Aa3/NOO Montgomery County $7.56M

Spring Creek Utility District A2/NOO Montgomery County $52.12M

Timber Lane Utility District A2/NOO Harris County $49.48M

Varner Creek Utility District Baa1/NOO Brazoria County $7.46M

Cnp Utility District A1/NOO Harris County $15.94M

Fort Bend Co MUD 144 Baa2/STA Fort Bend County $15.40M

Fort Bend County M.U.D. 116 A2/NOO Fort Bend County $26.34M

Fort Bend County Municipal Utility District 152 Baa3/STA Fort Bend County $8.40M

Fulshear Municipal Utility District No. 1 Baa2/STA Fort Bend County $13.29M

Galveston County MUD 14 A3/NOO Galveston County $9.61M

Harris County MUD 109 A2/NOO Harris County $28.39M

Harris County Water Ctrl. & Imp. Dist.132 Baa1/STA Harris County $3.80M

Cities:

Issuer Name Rating/Outlook County Debt outstanding as of 8/29/2017

Port Arthur (City of) A1/NOO Jefferson County $48.62M

Robstown (City of) Ba2/NEG Nueces County $16.13M

School Districts:

Issuer Name Rating/Outlook County Debt outstanding as of 8/29/2017

Ingleside Independent School District Aa3/NOO San Patricio County $45.03M

Orangefield Independent School District A2/NOO Orange County $9.36M

Sheldon Independent School District Aa3/NOO Harris County $280.15M

Taft Independent School District A2/NEG San Patricio County $28.45M

Methodology

The principal methodology used in the ratings was US Local Government General Obligation Debt published in December 2016. Please see the Rating Methodologies page on www.moodys.com for a copy of the methodology.

Regulatory Disclosures

For ratings issued on a program, series or category/class of debt, this announcement provides certain regulatory disclosures in relation to each rating of a subsequently issued bond or note of the same series or category/class of debt or pursuant to a program for which the ratings are derived exclusively from existing ratings in accordance with Moody’s rating practices. For ratings issued on a support provider, this announcement provides certain regulatory disclosures in relation to the credit rating action on the support provider and in relation to each particular credit rating action for securities that derive their credit ratings from the support provider’s credit rating. For provisional ratings, this announcement provides certain regulatory disclosures in relation to the provisional rating assigned, and in relation to a definitive rating that may be assigned subsequent to the final issuance of the debt, in each case where the transaction structure and terms have not changed prior to the assignment of the definitive rating in a manner that would have affected the rating. For further information please see the ratings tab on the issuer/entity page for the respective issuer on www.moodys.com.

Regulatory disclosures contained in this press release apply to the credit rating and, if applicable, the related rating outlook or rating review.

Please see www.moodys.com for any updates on changes to the lead rating analyst and to the Moody’s legal entity that has issued the rating.

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Atlantic City Casino Tax Appeal Settlements Covered Through Municipal Bonds.

Atlantic City reached property tax appeal settlements with numerous casinos last month, and the state government says it's funding the payments through the issuance of municipal bonds.

Bally's, Caesars, Golden Nugget, Harrah's, Tropicana, and the former Trump Taj Mahal and Trump Plaza all reached tax deals that totaled $68 million, a staggering sum, but also one that saved many millions for Atlantic City. New Jersey says it has already sold $68 million in state bonds to cover the disbursements, and even better, the debt investments were issued on relatively low interest rates.

State-appointed takeover leader Jeff Chiesa, a former US senator for New Jersey, revealed that the bonds have a 4.1 interest rate, which will save the city and state millions.

> **"The fact that the city obtained bond insurance and sold the bonds at a low-interest cost means it is well-positioned to responsibly pay down the tax refunds it owes to casinos while preserving critical public services," Chiesa explained in a statement. He went on to say that the fiscal turnaround is excellent considering the city "was contemplating bankruptcy before we stepped in to manage its finances."**

Under the current PILOT (Payment In Lieu of Taxes) program, casinos guarantee the city $120 million annually. In exchange, the town cannot increase property taxes on the resorts, but the resorts also cannot appeal the fee in the future.

Tax Refund

Beginning in 2009, as the US recession was firmly felt across the nation, Atlantic City casinos began appealing the valuations of their resorts. The local government, in desperate need of revenue as gaming and tourism plummeted, decided to instead increase the assessed values of the properties in order to gain additional taxes.

A legal fight ensued over the course of many years, with courts eventually siding with the resorts that they had indeed been paying far too much for several years.

> The Borgata, the city's biggest revenue earner, sent in $165 million more than it should have between 2009 and 2015, a court deemed. On the hook for the return, Chiesa's takeover office managed to swindle a sweet deal by settling with the MGM-owned resort for just $72 million.

Cleared for Recovery

The looming appeals was a leading reason New Jersey Governor Chris Christie (R) and the state legislature decided to take control of Atlantic City's finances. The former presidential candidate said Mayor Don Guardian's inability to settle the property tax disputes forced the state to intervene.

Uncertain as to just how much property tax money Atlantic City was going to be forced to return impeded the beachfront gambling town's financial future, Christie explained.

> **"The settlements reached with these casinos are the culmination of my administration's successful efforts to address one of the most significant and vexing challenges that had been facing the city," Christie said last month.**

Chiesa has the authority to govern the city's finances for up to five years. Both the state and Atlantic City government hope the recovery is executed much faster.

CASINO.ORG

SEPTEMBER 23, 2017 BY KATIE BARLOWE

- NFMA Comment: GASB Proposed Statement No. 3-30, Certain Disclosures Related to Debt, Including Direct Borrowings and Direct Placements.
- MSRB Solicits Input on Retrospective Review of Primary Offering Practices.
- Commentary: Key Takeaways from the SEC's Post-MCDC, Beaumont Cease and Desist Order.
- MSRB Issues Advisory on Selective Disclosure of Material Information: Day Pitney
- An Overview Of S&P Global Ratings' Proposed Methodology For Special Assessment Debt + S&P Request for Comment: Special Assessment Debt + S&P Live Webcast: Request for Comment (RFC): Special Assessment Debt.
- Force Majeure and Similar Considerations for the Energy Industry in the Aftermath of Hurricane Harvey: Mayer Brown
- Exposing Government Favoritism.
- Florida Judge Refuses to Validate Poinciana CDD Bonds.
- SEC, MSRB, FINRA to Hold Compliance Outreach Program for Municipal Advisors.
- MSRB Begins Daily Release of Previously Unavailable Municipal Market Statistics: Webinar **(Short notice! – 9/21)**

- Tax Reform: What Does it Mean for Main Street, Wall Street and K Street? **(Short notice! 9/21)**
- And finally, For This I Went To Law School? is brought to us this week by *Hatfield v. Board of Supervisors of Madison County*, in which THE SUPREME COURT OF MISSISSIPPI wonders just how it came to be that the issue of Arlin George Hatfield, III's right to raise "60 chickens, guineafowl, and ducks" on his property fell into their august, berobed laps. Regardless, we condemn in the strongest terms the Court's tepid embrace of the myriad, cringeworthy punning opportunities here presented. One winking nod to "afoul?" Really? Shame. Shame.

CA 103 Tax Lawyer.

California law firm is currently seeking a tax lawyer specializing in Section 103 tax law with a minimum of four years of municipal bond transaction experience to work in our southern California office. This position will advise in financial transactions involving cities, counties, school districts, special districts, and joint powers authorities.

Candidates must have excellent academic credentials, California Bar membership, superior research and writing skills, and a commitment to professional excellence.

Please send a cover letter, resume, transactional writing sample, and law school transcript via e-mail to: editor@bondcasebriefs.com

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EMINENT DOMAIN - CALIFORNIA

Mercury Casualty Company v. City of Pasadena

Court of Appeal, Second District, Division 3, California - August 24, 2017 - 2017 WL 3634467 - 17 Cal. Daily Op. Serv. 8457 - 2017 Daily Journal D.A.R. 8268

Homeowners' insurer brought subrogation action against city for inverse condemnation after tree on city parkway fell on house during windstorm.

Following a bench trial, the Superior Court entered judgment for insurer, and city appealed.

The Court of Appeal held that:

- Tree was not a "work of public improvement" absent evidence as to who planted tree or for what purpose, and
- City's adoption of tree protection and maintenance ordinance did not convert tree into a work of public improvement.

Tree on city parkway was not a "work of public improvement," for purposes of inverse condemnation claim after tree fell on home, absent evidence as to who planted tree or for what purpose, or that city took any deliberate action before tree fell.

City's adoption of tree protection and maintenance ordinance did not convert tree on parkway into a "work of public improvement" for purposes of inverse condemnation claim which arose after windstorm knocked tree into house. Ordinance was adopted decades after tree was planted, ordinance did not establish specific design standards or parameters for planting or removing street trees or include maintenance schedules, city's urban forestry plan did not reduce value of house, and city's five-year cycle for inspecting and caring for city trees was not a policy decision to shift loss to private property owners but rather exceeded the standards used by most other cities.

REDEVELOPMENT AGENCIES - CALIFORNIA

City of Anaheim v. Cohen

Court of Appeal, Third District, California - August 30, 2017 - Cal.Rptr.3d - 2017 WL 3725650 - 17 Cal. Daily Op. Serv. 8706

City, city housing authority, and successor to dissolved redevelopment agency brought action against Department of Finance for mandamus, declaratory, and injunctive relief arising out of Department's denial of funds from Redevelopment Property Tax Trust Fund.

The Superior Court denied writ petition and dismissed complaint. City appealed.

The Court of Appeal held that:

- Loan agreement between city and successor gave rise to enforceable obligation for which successor could use money from Fund;
- Statutory invalidation of funding agreement between city and city redevelopment agency, as part of statute dissolving former redevelopment agencies, impaired developer's contractual rights; and
- Such impairment violated constitutional contracts clause.

Loan agreement between city and successor to dissolved redevelopment agency gave rise to an enforceable obligation for which successor could use money from Redevelopment Property Tax Trust Fund, even though city provided loan funds directly to contractor instead of to successor. Direct payment to contractor was due to Department of Finance's having thwarted successor's earlier attempt to obtain money from Fund to pay for particular elements of project, and fundamental substance of transaction was a loan under which city was lending money to successor with the right to be paid back.

Failure of successor to redevelopment agency to obtain prior approval from oversight board to enter into loan agreement with city did not render loan agreement unenforceable, and thus successor could receive money from Redevelopment Property Tax Trust Fund for its payment obligations under loan agreement, where such failure did not preclude oversight board from exercising its supervisory power over successor, since oversight board approved, on multiple occasions, payment schedules that included requests for money due under same loan agreement, and oversight board approved loan agreement separately on one occasion, albeit after successor entered into that agreement.

Impairment of developer's contractual rights, through statutory invalidation of funding agreement between city and municipal redevelopment agency, which, in cooperation with housing authority had contracted with developer for revitalization project, exceeded permissible constitutional bounds under the contracts clause, and thus statute was unconstitutional as applied to developer, even though city was still bound to perform its funding obligation under the agreement, where city's funding obligation amounted to less than 20 percent of total funding that was to be provided for project, with remaining 80 percent having been responsibility of redevelopment agency, and justification for statutory impairment of developer's rights was merely to spend money elsewhere.

WATER LAW - CALIFORNIA

Stockton East Water District v. United States

United States Court of Federal Claims - August 1, 2017 - 2017 WL 3262230

California water districts sued United States, claiming breach of water supply contracts and Fifth Amendment takings based on Bureau of Reclamation's alleged failure to provide districts with required volumes of surface water from reservoir.

After bench trial, the Court of Federal Claims awarded judgment for government on breach of contract claim and dismissed takings claim, granted in part and denied in part districts' motion to alter or amend judgment denied districts' motion for reconsideration. Districts appealed. The United States Court of Appeals, Federal Circuit, affirmed in part, reversed in part, vacated in part, and remanded for determination of damages for breaches of contracts. On remand, the Court of Federal Claims awarded $149,950 in cost-of-cover mitigation damages, but denied expectancy damages. One district appealed. The United States Court of Appeals, Federal Circuit, affirmed in part and vacated and remanded in part for reconsideration of denial of expectancy damages. On remand, the Court of Federal Claims, granted district partial final judgment awarding cost-of-cover damages. Subsequently, record was reopened regarding expectancy damages, and trial was held.

The Court of Federal Claims held that award of expectancy damages was not justified.

California water district failed to provide reliable quantification of farmers' actual demand for surface water before Bureau of Reclamation made announcement that breached water supply contract with district by stating at public meeting that Bureau would not be able to meet quantity commitments in contract, thus supporting denial of award of expectancy damages for breach as impermissibly speculative, since district failed to reliably quantify either level of demand for surface water by district's farmers before Bureau's announcement or what expected level of demand would have been in non-breach world.

California water district failed to provide reliable quantification of extent to which farmers' demand for surface water was suppressed by Bureau of Reclamation's announcement that breached water supply contract with district by stating at public meeting that Bureau would not be able to meet quantity commitments in contract, and thus, award of expectancy damages for breach was not justified, since district merely speculated that in non-breach world in which Bureau never made breaching announcement, demand for surface water would have exceeded amount of water Bureau actually made available in breach years.

PUBLIC EMPLOYMENT - CONNECTICUT

Maio v. City of New Haven

Supreme Court of Connecticut - September 5, 2017 - A.3d - 326 Conn. 708 - 2017 WL 3751217

Police officer brought action against city, seeking indemnification for economic loss sustained in defense of an unsuccessful prosecution of a crime allegedly committed by officer in the course of his duty.

Following a jury trial, the Superior Court entered judgment in favor of officer in the amount of $187,256.46. City appealed and officer cross-appealed.

The Supreme Court of Connecticut held that:

- The Superior Court did not improperly rely on workers’ compensation principles in instructing the jury on the meaning of the phrase “in the course of his duty,” but
- The Superior Court’s error in improperly excluding the testimony of the complainants by failing to find they were “unavailable” for purposes of the former testimony exception to the hearsay rule was not harmless.

Trial court did not improperly rely on workers’ compensation principles in instructing the jury on the meaning of the phrase “in the course of his duty” under statutory provision governing the indemnification of police officer who sustained economic loss in the defense of an unsuccessful prosecution of a crime allegedly committed by the officer in the course of his duty. The principles underlying both workers’ compensation and indemnity statutes were similar, in that both types of statutes served the remedial purpose of making an employee whole after suffering losses closely related to his or her employment and were in derogation of the common law and governmental immunity, and that the seminal cases construing the statute simultaneously borrowed definitions from workers’ compensation and observed that the statute was to be strictly construed.

In action by police officer seeking indemnification from city for economic loss sustained in defense of an unsuccessful prosecution of a crime allegedly committed by officer in the course of his duty, the trial court’s error in improperly excluding the testimony of the complainants by failing to find they were “unavailable” for purposes of the former testimony exception to the hearsay rule was not harmless; as the trial court repeatedly acknowledged and the officer effectively conceded at trial, the complainants’ testimony was critical to the defendant’s claim that the plaintiff was not acting in the course of his duty during the relevant time period, even assuming that his employer acquiesced in his presence inside bar where the purported crime occurred.

ZONING & PLANNING - MISSISSIPPI

Hatfield v. Board of Supervisors of Madison County

Supreme Court of Mississippi - August 10, 2017 - So.3d - 2017 WL 3452426

After property owner was found to have violated county zoning ordinance and he failed to correct the violation the county board of supervisors found property owner violated ordinance by keeping or raising around 60 ducks, geese, or other fowl on property.

Property owner appealed. The Circuit Court affirmed and property owner appealed.

The Supreme Court of Mississippi held that board of supervisor’s determination that property owner violated zoning ordinance by keeping or raising ducks, geese, or fowl on property was not arbitrary or capricious.

Property owner’s property was located in a residential estate district, which permitted breeding, raising, and feeding of grazing livestock but did not specifically permit the breeding, raising or feeding of chickens, ducks, turkeys, or other fowl, as was permitted in an agricultural district.

GOVERNMENTAL ENTITIES - MISSOURI/ILLINOIS

United States ex rel. Fields v. Bi-State Development Agency of Missouri-Illinois Metropolitan District

United States Court of Appeals, Eighth Circuit - August 1, 2017 - F.3d - 2017 WL 3254401

Former employee of both a bi-state agency that operated public transportation services and a limited liability company (LLC) brought qui tam action under False Claims Act (FCA) against agency and LLC, alleging that they made false claims to receive federal public-transit funds through Department of Transportation and Federal Transit Administration.

The United States District Court for the Eastern District of Missouri denied agency's motion for summary judgment based on Eleventh Amendment immunity. Operator appealed.

The Court of Appeals held that agency was not an arm of compacting states and instead was comparable to a local governmental entity, and thus, agency was not entitled to Eleventh Amendment immunity from suit in federal court.

Determining whether a bi-state agency is an arm of the compacting states, as basis for Eleventh Amendment immunity from suit in federal court, requires an examination of the nature of the entity, by considering the following factors: (1) whether the compacting states characterize the agency as an arm of the compacting states or as a local governmental entity; (2) whether the compacting states fund the agency; (3) whether the compacting states are financially responsible for the liabilities and obligations the agency incurs; (4) whether the agency's commissioners are appointed by the compacting states or by local governments; (5) whether the functions the agency performs are traditionally state or municipal; and (6) whether the compacting states can veto the agency's actions.

Bi-state agency that operated public transportation services in Missouri and Illinois was not an arm of the compacting states and instead was comparable to a local governmental entity, and thus, agency was not entitled to Eleventh Amendment immunity from suit in federal court, in qui tam action under False Claims Act (FCA), relating to agency's receipt of federal public-transit funds. State funding comprised less than two percent of agency's operating budget, and states were not obligated to assist in paying a judgment against agency, though Missouri's legislature deleted a statutory waiver of sovereign immunity for multistate compact agencies, which suggested that Missouri characterized agency as an arm of the state.

LEASES - TEXAS

EP Hotel Partners, LP v. City of El Paso

Court of Appeals of Texas, El Paso - August 4, 2017 - S.W.3d - 2017 WL 3326819

Owners and operators of existing hotels located near airport brought action seeking declaratory judgment under Uniform Declaratory Judgment Act that lease between city and entity seeking to construct and operate new hotel was void on basis that it violated city charter.

City and entity filed counterclaims seeking declaration under Act that lease was valid and enforceable. The County Court at Law granted summary judgment for city and entity on claims of owners and operators and counterclaims. Owners and operators appealed.

The Court of Appeals held that:

- Statement that city did not utilize specific criteria for determining what was reasonable fee did not prove that its lease did not include reasonable fee as required by charter;
- Evidence that city did not structure rental obligations in lease in same manner that it did in other leases did not prove that lease did not include reasonable fee; and
- City council members did not act in ultra vires manner in approving lease.

City’s statement, that it did not utilize any specific criteria for determining what constituted reasonable fee for hotel leases on airport property, did not prove that city’s lease with entity seeking to construct and operate new hotel did not include reasonable fee as required by city charter in declaratory judgment action by owners and operators of existing hotels alleging that lease between city and entity was void. Charter only required city to include reasonable fee in all of its leases with private parties and did not prescribe any specific criteria in determining rent to be charged in lease agreement or require city to use same criteria in every lease, and city believed it was necessary to offer rental abatements as incentive to entice entity to construct hotel on parcel of land that had remained vacant for more than ten years.

Evidence that city did not structure rental obligations in lease with entity seeking to construct and operate new hotel on airport property in same manner that it did in other leases to hotels did not prove that lease did not include reasonable fee as required by city charter in declaratory judgment action by owners and operators of existing hotels alleging that lease between city and entity was void. Evidence established that city had structured rental obligations in airport hotel leases in variety of ways over years and that it had included rental abatements in many other leases, charter did not require city to set leases in exact manner in all instances but only required assessment of reasonable fee when leasing property, and owners and operators failed to account for fact that entity’s lease imposed different, more burdensome requirements on entity.

City council members did not act in ultra vires manner in approving lease between city and entity seeking to construct and operate new hotel on airport property, despite claim that lease did not contain reasonable fee as required by city charter; question of what council knew or did not know when it voted to approve lease had no bearing on validity of lease and, thus, its knowledge of rationale behind entering into lease did not render its actions in voting on lease ultra vires, and argument that council members did not have all relevant information before them when they voted to approve lease or that they were misled on nature of lease was purely speculative, as summary form presented to council contained all of lease terms that were being offered to entity, including rental abatements in question.

PENSIONS - VIRGINIA

City of Danville v. Garrett

Supreme Court of Virginia - August 31, 2017 - 803 S.E.2d 326

City police officer filed complaint against city, alleging that it had failed to pay her proper amount of disability benefits following work-related accident.

The Circuit Court entered judgment for officer, and city appealed.

The Supreme Court of Virginia held that city was not required by statute to pay officer 66-2/3 percent of her salary as disability benefit.

Statute providing that if member of city police department that had pension plan became disabled as result of work-related accident, that member “shall receive, as pension and benefits during such disability, the sum of not less than sixty-six and two-thirds percent of the member’s salary until eligible to retire under age and service retirement” did not apply to city’s calculation of disability benefit for city police officer who was rendered disabled as result of work-related accident. Statute was contained within article addressing members of police departments located in chapter of Virginia Code governing local retirement systems, article contained provision allowing for optional adoption of article by city, and city never passed resolution adopting article.

ASSESSMENTS - WASHINGTON

Hamilton Corner I, LLC v. City of Napavine

Court of Appeals of Washington, Division 2 - August 22, 2017 - P.3d - 2017 WL 3599888

Taxpayer, a limited-liability company that owned property in city, sought review of city council's confirmation of the local improvement district (LID) assessment levied against taxpayer's property.

The Superior Court affirmed. Taxpayer appealed.

The Court of Appeals held that:

- Fact that a well that was connected to water mains with funds raised through the LID assessment did not produce potable drinking water did not materially alter the special benefits provided by the LID;
- City's allegedly late disclosure of the appraisal of taxpayer's property that determined what special benefit the property received from the LID did not mean that city failed to provide meaningful notice of the LID assessment; and
- Procedure of the city's confirmation hearing regarding the LID assessment did not violate due process owed to taxpayer.

Fact that a well that was connected to water mains with funds raised through a local improvement district (LID) assessment did not produce potable drinking water did not materially alter the special benefits provided by the LID, as would preclude confirmation of the LID assessment, where the purpose of the LID improvements was to expand the public water system to an area not previously served by a public water system, LID did not require water to be supplied specifically from the well in question, and the well was still available for fire-suppression purposes.

City's allegedly late disclosure of the appraisal of taxpayer's property that determined what special benefit the property received from a local improvement district (LID) did not mean that city failed to provide meaningful notice of local improvement district (LID) assessment, as required by due process, where city gave notice of the amount of the proposed final assessment, state law required only that the city give at least a 15-day notice of the assessment hearing, and there was no similar requirement for any associated appraisal reports.

Procedure of the city's confirmation hearing regarding a local improvement district (LID) assessment did not violate due process owed to taxpayer challenging the assessment, where the city, at the conclusion of its initial meeting on accepting the assessment roll, explicitly encouraged taxpayer to talk to an appraiser and get a second opinion as to whether the LID improvements benefited its property, and taxpayer was able to question city appraiser at a later hearing.

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8 Ways Your Readers May Be Paying for Their Football Stadium.

The National Football League makes more money than any other pro sports league in the country. Over the past 20 years, NFL teams have raised billions of dollars to renovate stadiums and build new ones. The most expensive is New Jersey's MetLife Stadium, home to the Giants and Jets, which cost

$1.6 billion. The cheapest is the Washington Redskins' FedExField, coming in at a mere $250 million.

The majority of these stadiums are primarily funded by the public, but without much public input. If your community is home to an NFL facility, readers will want to know how they're paying for the building, maintenance, or renovation of their mega stadium. Here are places to look.

Tax-exempt Municipal Bonds

Tax exempt municipal bonds are usually responsible for funding a big chunk of these stadiums. Local government leaders can issue revenue bonds to help finance the big projects, just as they fund bridges, airports, hospitals and subsidized housing. Two U.S. Senators, Corey Booker (D-NJ) and James Lankford (R-OK) introduced a bill in 2016 to ban the use of municipal bonds to pay for pro sports stadiums.

Private Funds

While the MetLife Stadium was 100 percent privately funded, according to a CBS Minnesota report, most stadium projects are not majority funded by private funds. Most teams in the NFL do use private funds, but they usually cover less than half of the total cost.

Food and Beverage Taxes

Ticket surcharges are obviously a large source of game-day revenue, but food and drink also contribute to the bottom line. Taxes on beverages and food go toward paying the lease on the stadium (teams don't fully own them) and paying for future costs. Now you know why a beer cost you over $10.

Rental Car and Hotel Taxes

This story from USA Today reveals a little-known fact about tourist fees: When you pay for a rental car or hotel, you are probably financing that city's future stadium project. Page eight of this State of Nevada Senate bill draft about stadium financing shows how the state plans on using the tourist fee to pay for parts of its new $2 billion facility for the Raiders.

Live Entertainment Taxes (LET)

Licensed gaming establishments (such as casinos) that host non-gaming events (such as concerts) usually will include a tax for live entertainment, often assessed during ticketing. The State of Nevada Department of Taxation outlines its state's live entertainment tax here. A portion of that tax may go to support the local NFL stadium.

Parking Fees

Parking fees and taxes are another significant source of stadium revenue. Chicago Bears fans know to expect to pay $50 dollars for parking. Even as Chicago Mayor Rahm Emmanuel talks about additional renovations, those funds can go toward anything stadium-related.

State Infrastructure Funding

Just like tax-free municipal bonds, state infrastructure grants are sometimes used to build stadiums instead of public facilities such as roads and schools. This document from Convention Sports & Leisure International, shows how State lottery money is used for stadiums. The Seattle Seahawks took this route when building Century Link field

Stadium Sales Tax

Some municipalities charge a stadium sales tax to generate money. For example, the Professional Football Stadium District of Brown County, Wisconsin, enacted a local sales tax for its stadiums when it sought to renovate Lambeau Field, originally built 1956 for a cost of $960,000 (covered equally by the Packers Corporation and bonds issued by the City of Green Bay). The stadium's most recent renovation, costing $312 million, used no public tax money.

Donald W. Reynolds National Center for Business Journalism

by Jimmie Jackson | September 13, 2017

CUSIP Request Volume Suggest Growth in New Corporate and Muni Bond Issuance.

NEW YORK, Sept. 13, 2017 /PRNewswire/ — CUSIP Global Services (CGS) today announced the release of its CUSIP Issuance Trends Report for August 2017. The report, which tracks the issuance of new security identifiers as an early indicator of debt and capital markets activity, found increases in the pre-trade market for municipal and corporate bond issues in August. This increased demand for new CUSIP IDs for corporate and municipal bonds is suggestive of a possible increase in new security issuance volume over the coming weeks.

CUSIP identifier requests for the broad category of U.S. and Canadian corporate offerings, which includes both equity and debt, totaled 4,197 in August, down 2% from July, driven primarily by declines in requests for new corporate equity identifiers. By contrast, requests for corporate debt identifiers increased 43% during the month of August, logging the second-highest monthly count for new corporate debt CUSIP requests so far in 2017. So far this year, demand for new CUSIPs for both corporate debt and equity offerings are up 25% over the same period in 2016.

Municipal CUSIP requests surged in August. A total of 1,141 municipal bond identifier requests were made during the month, an increase of 38% from July. On a year-over-year basis, municipal request volume was down 24% through the end of August 2017, reflecting ongoing volatility in municipal issuance volumes over the course of this year.

"CUSIP request volume for the month of August has stayed true to form with what we've seen over the course of this year as issuers of new securities ratchet-up their volume one month, slow-down a bit the next month, and repeat ," said Gerard Faulkner, Director of Operations for CUSIP Global Services. "As a whole, volumes are strong this year, but the path we've taken to get here has been volatile."

International debt and equity CUSIP International Numbers (CINS) volume both declined in August. International equity CINS decreased 2% and international debt CINS decreased 3% during the month. On a year-over-year basis, international equity requests were down 11% and international debt requests were up 62%, reflecting continued volatility in international markets.

"Market participants are clearly watching interest rates and the broader geopolitical situation to choose their spots to issue new securities optimally," said Richard Peterson, Senior Director, S&P Global Market Intelligence. "Though the vast majority of asset classes are showing growth in new request volume versus last year, we're not seeing the same unbridled enthusiasm that was a hallmark of new issuance volume in 2016."

To view a copy of the full CUSIP Issuance Trends report, please click here.

New Mexico's Effort to Hedge Against Higher Rates Backfires.

As borrowing costs have fallen, public agencies from school districts to county and state governments have saved millions of dollars by refinancing debt that carries higher interest rates.

For the state of New Mexico, that has meant savings of more than $300 million for the Department of Transportation alone, which has refinanced or closed out a dozen lines of credit and outstanding bonds since 2010.

But lower interest rates have not been good news in every case for the Department of Transportation. Taxpayers also have lost millions of dollars by not being able to restructure some debt approved in 2004 under then-Gov. Bill Richardson to pay for highways, bridges and the New Mexico Rail Runner Express.

Despite interest costs being half of what they were a decade ago, refinancing some $400 million in outstanding bonds at substantially lower rates would involve paying a a huge penalty — $80 million to $100 million — because of a complicated hedging strategy between the state and Wall Street banks.

Of the $1.58 billion authorized under Richardson's programs, which included the train, $440 million were part of these interest-rate swap agreements. The average fixed-rate bonds at the time were paying 4.3 percent, but the state decided to sell bonds with a floating interest rate that could have cost more if rates rose. To protect against that risk, the bonds were swapped and taxpayers ended up paying between 3 percent and 5.072 percent on the amount borrowed.

Now the state pays 2.4 percent to borrow money. At times last year that cost was under 2 percent, a rate the Department of Transportation said it would have jumped at had it been able to refinance.

So, while the swaps protected taxpayers against rate increases, the deals backfired because they made it impossible to refinance the debt or obtain a lower floating rate.

"These swaps were intended to protect the state against higher interest rates, but they actually hurt the state because interest rates went down," said Marc Joffe, a policy analyst with the Reason Foundation and a former director at Moody's Analytics.

Any termination costs on bonds that have swap agreements would be paid to Goldman Sachs, Deutsche Bank, JP Morgan Chase, and UBS AG, according to state financial records.

"If they get out of the swaps today, they would have to pay $87 million," said Michael Zavelle, chief financial strategist for the New Mexico Finance Authority. "And you'd have to refinance $420 million, plus the termination cost."

Zavelle said the bond deal that included swaps shifted the risk for the borrowing from the lender to taxpayers, and it came at a time when those in public financing were doing more deals with these sorts of hedges.

Interest-rate swaps or hedges are not part of state debt packages today, though they are still prominent in the portfolio of The University of New Mexico.

“Our philosophy is, if the only way you can do that project is by taking on extra risk, that’s probably something you shouldn’t be doing,” Zavelle said.

Those in state government now see the issue the same way.

“If we were to issue more debt today, we wouldn’t do it that way,” said Marcos Trujillo, the bond-financing director with the Department of Transportation.

Tom Church, Cabinet secretary of the department, said Gov. Susana Martinez’s administration inherited the swaps from a time when concerns about rising rates made them more common. The other advantage is the swaps brought more predictability to costs and allowed more borrowing up front.

“At the time this was a tool being used around the country,” Church said. They provided “a comfort level that you’d never had to pay a lot more in interest.”

Zavelle and others tried to calculate what it would cost to refinance the bonds and determined the termination costs would be higher than any interest rate savings, even though borrowing costs are significantly lower.

Church said interest rates have to rise more than 3 percentage points from today’s level for refinancing to make sense with the high termination fees.

Most of the initial transportation bonds had an initial interest rate below 4 percent but could have been adjusted. With the swap agreement, the rate the state pays today is more than 5 percent.

Termination costs exist because the banks and lenders that receive interest from the state road fund promise regular money to their investors, often retirees or insurance companies. When rates are low, those banks would not be able to find another borrower to pay them the same amount, upward of 5 percent under the agreement with New Mexico, or they would have to make up the difference.

So the termination fees are built into the swap contract to cover the promised payments until the bonds mature.

At the end of 2016, the interest rate swaps were $119 million underwater, meaning that would have been the loss that would result from terminating the agreements, according to state financial reports.

If interest rates go up, then the termination fees actually go down because it becomes easier for lenders to replace the revenue. At some point when the bulk of interest is paid on the bonds, there will be no termination cost. That is expected to happen in 2024.

“Every year that goes by, the termination value goes down, so there is a benefit in waiting to redo the swaps,” Zavelle said.

Joffe said many entities, including the Chicago Public Schools, counties in California and parishes in Louisiana were burned badly by swap deals.

“When it comes to municipal finance, simple is better than complicated. It turns out these things often backfire, and that’s what happened here,” Joffe said after looking at documents about New

Mexico at The New Mexican's request.

Zavelle added: "If they had financed at a fixed rate and paid a bit more, they would have refinanced. Probably overall, they would have been better off with a fixed rate and it would have eliminated all the risks.."

By Bruce Krasnow | The New Mexican

Sep 11, 2017

Exposing Government Favoritism.

A new accounting rule will give taxpayers a better understanding of corporate handouts.

Every paycheck we receive lists the earnings taken away by various payroll taxes. But as aggravating as paying taxes may be, at least we have a partially transparent view of where the money goes. Now, thanks to a new accounting rule, we'll also have better information for how state and local governments provide corporate handouts.

For the first time, city and state governments are releasing financial reports covered by the new Government Accounting Standards Board's Statement 77, which requires governments following "Generally Accepted Accounting Principles" – the widely accepted industry standard – to report the value of tax abatements in their yearly financial statements.

Tax abatements are a common tool used by governments to stimulate economic development, but the taxpayer costs of such agreements are often hidden. This is a problem, because the cost of such corporate handouts from state and local governments is estimated to be as high as $70 billion per year.

The tax abatements that GASB 77, as it's also known, focuses on are part of the larger body of "targeted economic development incentives." Many of these tax breaks are high-profile and subject to vigorous public debate, since they offer large direct subsidies or tax abatements to major corporations, like the recent $3 billion in tax credits offered to Foxconn by Wisconsin.

However, many more are smaller and escape public notice. Regardless of the size of the subsidy, after the initial debate there's often little attention paid to the long-run effects of such subsidies on government budgets, let alone their actual economic impact.

One of the most recent and heavily publicized such examples was the $7 million in tax credits and grants that Indiana provided to Carrier Corporation to prevent it from relocating jobs to Mexico. The size of this deal is relatively small in relation to the $1.4 billion Nevada gave Tesla or the $8.7 billion Washington gave Boeing, and it's likely that few people would have known about the deal had it not been reported so heavily by the media because of President Donald Trump's involvement. The new reporting rule will help illuminate these kind of deals in thousands of local governments across the U.S.

This transparency is important because of the impact these targeted tax breaks can have on local government finances. Pearl, Mississippi offers a dramatic example: In 2005 Pearl provided $28 million in public funding for stadium construction to convince the Richmond Braves minor league baseball team to relocate there. Because the predicted increase in tax revenue from the team's presence has fallen short of expectations, the city has been forced to use taxpayer dollars from the city's general fund to make payments on the municipal bonds they issued to finance the stadium. These payments have consumed more than 5 percent of annual government spending, and led Moody's investment service in 2015 to downgrade Pearl's credit rating to junk bond status.

Furthermore, the new transparency rules will reveal the side-effects of such tax incentives by requiring public entities to report when they lose tax revenue because of abatements given by other governments. For example, school districts will now provide information on the amount of funding lost due to property tax abatements given by their municipal governments.

In addition, the indirect effect of these tax breaks – the influence they have on subsequent government policies and tax increases, and the broader economic impact of such changes – should also become clearer.

This means that that GASB 77-related information might be able to address a number of interesting policy questions. For example: Are tax abatements correlated with subsequent tax increases? And are schooling outcomes or emergency responder response times negatively affected by decreased funding due to tax abatements?

Perhaps more importantly, the fact that such breaks are "targeted" means that government officials are picking winners and losers. They provide a financial advantage to those who lobbied successfully for political favor, while making other firms – often the subsidized business's competitors – bear the burden through higher taxes.

State and local governments are effectively encouraging "rent-seeking" – the wasteful practice of devoting economic resources (time, money, talent, etc.) toward gaining government-granted privilege rather than focusing on increasing productivity or serving customers better. This skewing of business priorities leads to decreased economic growth.

Even worse, when government-granted privileges like these tax breaks are commonplace, ordinary people lose. Either the taxes they pay are correspondingly higher or the quality and quantity of public services are lower than would otherwise be the case.

In short, the new transparency rule will allow us to peek behind the curtain and better quantify the taxpayer money devoted to targeted economic development incentives. It will show taxpayers just how much of their money is being given away in the form of political favors and it will illuminate how government handouts contribute to municipal budget crises, higher taxes and reduced public services. This understanding could offer greater motivation for policy changes to address government favoritism.

U.S. News

By Michael Farren and Jared Mercadante | Sept. 11, 2017, at 11:35 a.m.

Michael Farren is a research fellow with the Mercatus Center at George Mason University.

Jared Mercadante was a summer research intern with Mercatus Center and is a student at Roanoke College.

How Olympia Financed an Arena in a Bankrupt City.

The Ilitch family's dream for a new home for their Detroit Red Wings was 25 years in the making.

The ambition finally becomes reality on Sept. 12, when Little Caesars Arena opens with a series of Kid Rock concerts. The $863 million project — a 20,000-seat state-of-the-art arena anchoring 12 acres of mixed-use buildings and a parking garage — is the centerpiece of The District Detroit, the family's wider $2 billion, 50-city-block development plan.

How the arena came to fruition amid an especially turbulent era in the city's history is a study in the marriage of timing, politics, money, influence and home team-inspired civic pride. It survived the political turmoil of ex-Mayor Kwame Kilpatrick, the global recession and Detroit's municipal bankruptcy. The legislation needed to authorize public financing for its construction sailed though Lansing in 2012 with no effective opposition. Local approvals followed with few roadblocks. A brief legal challenge earlier this year didn't delay anything.

How did they pull it off amid the chaos?

The chaos was key.

The tumult in many ways helped smooth the way for the sweeping downtown development plans by the Ilitch family (and fellow Detroit billionaire Dan Gilbert).

"It's not surprising they were able to do what's necessary, to acquire property under the radar in a period of turbulence," said Robin Boyle, professor and chairman of Wayne State University's department of Urban Studies and Planning, who has closely watched the arena project over the years. "The focus of government in Detroit was to keep the lights on, to overcome the chaos we were going through. (Ilitch and Gilbert) were able to do it without a great deal of interference. These two companies benefited from the chaos that existed (at) the time."

With one mayor in prison followed by a succession of three more in office and then an emergency manager appointed by the governor, Detroit city government wasn't able to scrutinize wealthy businessmen's plans too closely. Politicians saw new investment as a tonic for a city under scrutiny after decades of problems and decline.

"It wasn't able to impose what in other cities would be a much more stringent regulatory process. They got their approvals without much conversation," Boyle said, adding that the city hadn't updated how it handled development projects in decades.

The sheer size of the arena project, and the promise of massive investment and new jobs, was hard to resist in a city of crumbling infrastructure, poverty, bad schools and joblessness.

Political prowess

The Ilitches, who declined to make anyone available to talk for this story, also employed the right players to navigate the project through potential minefields, Boyle said.

Developer Eric Larson played an especially crucial role. Larson was hired as non-executive president of Olympia Development in 2011 to oversee the Ilitch real estate holdings. He assembled the political support in Lansing to get the public financial enabling legislation passed in December 2012.

Larson, who left Olympia in 2013, is CEO of Bloomfield Hills-based Larson Realty Group and also CEO of the Downtown Detroit Partnership. Larson said the talks to get the arena bill through

Lansing began in earnest about six months before the vote.

Also hired to shepherd the legislation were Lansing-based lobbying firm Muchmore Harrington Smalley & Associates and Detroit law firm Miller, Canfield, Paddock and Stone PLC.

These allies helped make the case to politicians and the public for giving a billionaire public money to build a hockey arena — and also to anticipate and tamp down public outcry.

Such pushback had become common in the decade before as taxpayers questioned the need to help pay for sports stadiums that ultra-wealthy owners wanted.

But even the Ilitch family had previously encountered difficulties in stadium financing.

In 1996, Mike Ilitch got Wayne County voters to OK a 2 percent rental car tax and 1 percent hotel room tax to finance construction of Comerica Park for his Detroit Tigers, but banks balked at his portion of private financing.

He was forced to assemble a consortium of lenders, including financiers in Japan and Europe, to get the cash.

Ilitch's pizza business wasn't as healthy then as it is today, and bankers were concerned about financing his stadium.

Now, with Little Caesars churning out billions in sales, the family's financial standing has improved to the point where lenders are happy to finance the arena.

The total up-front public cost of the arena, so far, is $324.1 million, while Olympia is financing $538.8 million.

Political decision-makers have come to view public financing as a practical matter — a benefit in exchange for a subsidy. And developers of large projects know that's how business is done.

Quite simply, politicians are willing to hand the money over.

To make sure that happened, Olympia had a strategy to offset potential opposition: Avoid using any general fund dollars from the cash-strapped city.

The public subsidy for the arena's construction comes in the form of tax-exempt municipal bonds sold by the Detroit Downtown Development Authority, the city's economic development agency that has its own budget and taxing authority.

That's what the legislation authorized — changing the law that allows the DDA to use an expanded tax capture in downtown Detroit to pay off the $250 million in construction bonds it eventually issued to help pay for the arena.

Those dollars are legally obligated for new economic development projects and cannot be diverted to pay for things like city services or schools.

Most of the taxes captured come from large downtown corporations such as General Motors and Dan Gilbert's Bedrock, which owns more than 90 downtown buildings.

Broader vision

The other Ilitch strategy to gain support was to make the project much more than just an arena.

Instead, they unveiled a bold pitch that was no less than the creation of of an entire neighborhood.

Shortly before the arena bill vote in December 2012, Olympia unveiled its plan for a $650 million project that included not only the arena bowl but also surrounding development of residential, retail, office and green spaces. The Ilitches had begun quietly gathering the land in the early 1990s with the intent of using the plots for an arena. They eventually decided to make it a much broader effort.

The strategy of a wider project helped Olympia burnish the playbook employed by arena and stadium developers everywhere: Sell the project with the promise of new jobs and increased economic activity that fills tax coffers and pocketbooks. With the Olympia project, it would be on an even larger scale in a city starved for new development. And they promised jobs and contracts would go to city residents and locally based companies, pledges they say they have stuck to with some exceptions. Job training and internships are part of the construction effort, too.

In July 2014, the Ilitches made public their far wider District Detroit plan of 50 city blocks remade with new investment. They paid University of Michigan professor Mark Rosentraub for a report that estimated the mammoth arena project would create 8,300 construction jobs and 1,100 permanent jobs, along with $1.8 billion in economic impact for the city, region and state.

Decades of academic study nationally, however, cast doubt on the economic sense of public subsidies for sports stadiums.

Such caution didn’t affect the political will to give Olympia the money it sought. The promise of developing a blighted section of the city was irresistible.

“Over the years (the Ilitches) were able to assemble enough land to think about where significant infill developments could occur,” Larson said. “Little Caesars Arena is filling a void that was going to take a very long time, tens of years, to infill with traditional development. There was this void and nothing was going to link (downtown and Midtown) as impactfully and quickly as the arena.”

Stitching together two parts of the central business district with a sprawling mixed-use project helped sell political and civic leaders on the project, Larson said.

“The return on investment, I think, ultimately, is much more significant and will be realized much faster than if it were just a standalone sport facility,” Larson said.

The family’s business reputation also helped their quest for public subsidies. The Ilitches have been long praised for relocating their Little Caesars pizza chain headquarters downtown in 1989 while other businesses were leaving the city.

The reality is mixed: They put a lot of money into downtown investments, but also garnered criticism for their stewardship of some blighted properties. Plans for some new developments fell through, too, fueling boos from some.

But overall, they’ve been heralded for their accomplishments, which include renovation of the Fox Theatre and construction of Comerica Park and MotorCity Casino and Hotel. They’re currently building a $150 million new headquarters for Little Caesars next to the Fox.

The Ilitches also were able to rely on the Red Wings’ history for support. Mike Ilitch bought the club for $8 million in 1982. It would go on to win four Stanley Cups during a playoff streak that lasted 25 years. Winning fuels goodwill.

The arena strategy has worked so well for the Ilitches that they successfully got city approval for another $34.5 million worth of DDA bonds to pay for retrofitting the arena to accommodate the Detroit Pistons, who announced in November they'd relocate to Little Caesars Arena to be a tenant alongside the Red Wings.

The Ilitches haven't faced the sort of resistance Dan Gilbert is facing in Cleveland, where he's seeking $70 million in local aid for a $140-million upgrade to Quicken Loans Arena, where his Cleveland Cavaliers play home games.

Public and political opposition to Gilbert's plan reached the Ohio Supreme Court, which ruled last month that the issue must go to a public referendum.

"Community-based push back has been really muted here. It hasn't had the same resonance you'd find in other places," Boyle said.

Crain's Chicago Business

By Bill Shea

September 10, 2017 12:01 a.m.

Commentary: Key Takeaways from the SEC's Post-MCDC, Beaumont Cease and Desist Order.

While many would prefer the SEC's MCDC Initiative be a distant memory, on August 23, the SEC's Chief of the Enforcement Division's Public Finance Abuse Unit reminded issuers and underwriters alike that "[i]ssuers and underwriters will continue to be held accountable when they fail to provide investors with an accurate picture of past compliance with continuing disclosure obligations." SEC Press Release, Muni Bond Issuer and Underwriter Charged With Disclosure Failure, 8/23/2017.

In an Order Instituting Cease and Desist Proceedings, Making Findings and Imposing Sanctions and a Cease and Desist Order ("Order"), the SEC followed through on its commitment to focus on market participants that had not voluntarily self-reported under the MCDC initiative. The SEC's press release highlighted that the Municipal Finance Authority in Beaumont, California ("Beaumont"), its then-executive director and the underwriting firm behind certain offerings had settled charges that Beaumont had made false statements about compliance with continuing disclosure obligations and the underwriter failed to conduct reasonable diligence.

This Order (and the O'Connor Order demonstrate that the SEC is not done focusing on disclosure by issuers and diligence by underwriters and that the penalties for parties that did not voluntarily self-report under MCDC will be more severe.

In its Legal Discussion, the Order set forth the legal basis for holding the issuer accountable and, as emphasized below, noted that "negligence is sufficient to establish violations." The Order provided, in part: Section 17(a)(2) of the Securities Act makes it unlawful "in the offer or sale of any securities … directly or indirectly … to obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading." 15 U.S.C. § 77q(a)(2). Section 17(a)(3) of the Securities Act makes it unlawful "in the offer or sale of any securities … directly or indirectly … to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser." 15 U.S.C. § 77q(a)(3).

Negligence is sufficient to establish violations of Sections 17(a)(2) and 17(a)(3) of the Securities Act. See Aaron v. SEC, 446 U.S. 680, 696-97 (1980). A misrepresentation or omission is material if there is a substantial likelihood that a reasonable investor would consider it important in making an investment decision. See Basic Inc. v. Levinson, 485 U.S. 224, 231-32 (1988). Order at para. 17. Emphasis Supplied.

The SEC held the issuer, the City Manager and the underwriter accountable and, in each instance, imposed "undertakings" well beyond what was required of those that submitted and settled with the SEC under its MCDC initiative.

For issuers and their officials, there are several takeaways from these Orders that are beyond what was required by those that voluntarily submitted and were subject to Orders under the MCDC initiative:

- Imposition of undertakings that require, amongst other things, the retention of an independent consultant and to follow the recommendations of the consultant.
- An individual being held accountable — $37,500 fine and barred from participating in any future muni bond offerings (as cited in the SEC Press Release).

There is another message that shouldn't be overlooked. Accountability seemingly begins and ends with the issuer and underwriter even where, as in Beaumont, a dissemination agent was engaged by the issuer. A review of outstanding Official Statements shows Beaumont engaged a dissemination agent. While the Order does not discuss the role of the dissemination agent, it does highlight missed and late filings, the failure of the district to properly disclose the same and the fact that the Executive Director was responsible for reviewing and approving the content of the OS.

While many dissemination agents do a fine job filing on behalf of the obligated party, the mere fact that an obligated party uses a dissemination agent does not absolve it from having policies, procedures and practices to ensure obligations are met and, where not met, properly discussed. Over-reliance on a dissemination agent can be fraught with risk. The parties cannot simply point to a dissemination agent as being responsible to fulfill its legally required obligations.

What's an issuer and obligated party to do? As highlighted in our May 25, 2017 commentary and below, the MCDC Issuer Cease and Desist Orders ("MCDC Orders") and the GFOA's August 24, 2016 Alert to Members ("GFOA Alert") provide excellent starting points. In addition, the engagement of an *independent third party* to review CDA obligations and actual filings can be a critical part of your policies, procedures and practices. Having the party responsible for making the filings (be they an employee of the obligated party or a dissemination agent) conduct such a review puts that party in the awkward position of self-reporting their own failures where a filing is late or missed and, as some have opined, might be considered a conflict of interest.

The MCDC Orders, in part, require issuers to:

- Comply with existing continuing disclosure undertakings, including updating past delinquent filings and;
- Establish policies and procedures and periodic training regarding continuing disclosure obligations within 180 days.

The GFOA Alert provided "essential practices" that, combined with the SEC Orders, can serve as best practices for Issuers. It provides, in part:

- Understanding and discussing the issuer's policies and procedures on disclosure.

- Knowing who within the issuer is filing what, when and where.
- Knowing what the issuer has promised to do in its continuing disclosure agreement.
- Being aware of what the issuer has posted on EMMA.
- Recognize that each official statement must include a statement about whether the issuer failed to materially comply with previous commitments within the past five years.

As issuers and obligated parties digest the Beaumont Order in conjunction with the MCDC Orders and their obligations under 17(a)(2), it is prudent they contemplate a Disclosure Management policy and practice to ensure an understanding of filing obligations, an understanding of what has or has not been filed properly and a process to be alerted of current filing obligations. Any Disclosure Management policy and practice should include an independent review to confirm filings are done properly.

The Bond Buyer

by Gregg Bienstock

September 05 2017, 2:11pm EDT

Gregg Bienstock is chief executive officer and co-founder of Lumesis Inc.

MSRB Solicits Input on Retrospective Review of Primary Offering Practices.

Washington, DC – As part of its ongoing commitment to reviewing existing rules in light of an evolving municipal marketplace, the Municipal Securities Rulemaking Board (MSRB) today published a concept proposal to solicit input from market participants on MSRB rules on primary offering practices.

“Issuing a concept proposal is an important way for the MSRB to collect information that helps us understand the varied perspectives of municipal market participants and determine whether there are in fact issues to be addressed, either by advancing a rule proposal or considering alternative approaches such as providing guidance,” said MSRB Executive Director Lynnette Kelly.

Today’s concept proposal seeks insight on evolving primary offering practices and whether the current rules continue to operate effectively or whether changes to MSRB Rule G-11, on primary offering practices, and Rule G-32, on disclosures in connection with primary offerings, may be warranted.

“After a series of very helpful informal discussions with a diverse range of market participants, the MSRB came away with several questions that we want to put to the market more generally,” Kelly said. “Our goal is to learn what, if any, regulatory proposals, guidance or educational resources may be beneficial to enhance the fairness and transparency of the primary offering process for municipal bond investors, issuers and syndicate members.”

Comments on the MSRB’s concept proposal should be submitted no later than November 13, 2017. View the concept proposal.

Date: September 14, 2017

Contact: Jennifer A. Galloway, Chief Communications Officer

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[SEC, MSRB, FINRA to Hold Compliance Outreach Program for Municipal Advisors.]

Washington DC – The Securities and Exchange Commission (SEC), Municipal Securities Rulemaking Board (MSRB) and Financial Industry Regulatory Authority (FINRA) today announced the opening of registration for the Compliance Outreach Program for Municipal Advisors.

There is no cost to attend the program, which provides an open forum for municipal advisory industry professionals to discuss compliance practices with regulators and promote a more effective compliance structure for regulatory obligations of municipal advisors. The event will be held at the SEC's Atlanta Regional Office on **November 8, 2017 from 9:00 a.m. to 4:00 p.m. ET**, and webcast live on the SEC's website. Additional information, including the agenda, is available on the SEC, MSRB and FINRA websites.

The SEC's Office of Compliance Inspections and Examinations (OCIE) and Office of Municipal Securities are partnering with the MSRB and FINRA to sponsor the program. Topics of discussion include the duties and standards of conduct for non-solicitor municipal advisors under MSRB Rule G-42 and the Securities and Exchange Act of 1934, and municipal advisor compliance with supervision, registration, and books and records rules. The program also will include a roundtable discussion among the regulators and a question and answer session with participants.

"This program is designed to promote compliance with municipal advisor regulations and affords the industry the opportunity to hear from all three regulators on the regulatory obligations of municipal advisors," said Rebecca Olsen, Deputy Director of the SEC's Office of Municipal Securities. Suzanne McGovern, Assistant Director of the SEC's broker-dealer and municipal advisor examination programs, added, "This municipal advisor outreach will take a deeper dive into regulatory requirements and their practical implementation, helping municipal advisor professionals ensure proper regulatory compliance."

MSRB Executive Director Lynnette Kelly said, "This program is consistent with the MSRB's goal of assisting municipal advisors in understanding and complying with their regulatory obligations, and municipal advisors will benefit from getting first-hand feedback from our staff."

Mike Rufino, FINRA's Head of Member Regulation-Sales Practice, said, "Any firm that wants to enhance its understanding of the regulatory expectations in the important areas of fiduciary duty and supervision will benefit from participating in the outreach program."

Registration is being administered by the MSRB and is open to all municipal advisor industry professionals, with a maximum of two in-person attendees per firm. In-person attendance is limited to a first-come, first-served basis. For those who cannot attend in person, the program will be webcast live on the SEC's website.

Register to attend the program here. Information on accessing the webcast and the links to program materials will be posted on the SEC, MSRB, and the FINRA websites on the day of the program.

Date: September 11, 2017

Contact: Jennifer A. Galloway
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MSRB Begins Daily Release of Previously Unavailable Municipal Market Statistics: Webinar

Washington, DC – In support of its long-term effort to expand access to tools and information that help municipal market participants analyze industry trends, the Municipal Securities Rulemaking Board (MSRB) today unveiled market-wide trading statistics on its Electronic Municipal Market Access (EMMA®) website that have not previously been publicly available. The new data include a daily state-by-state view of municipal bond trading activity and the most actively traded municipal securities and bond issuers. The data are dynamic so that users can customize results based on date range, geographic location, tax status of bonds and type of transaction.

"We are very focused on transforming EMMA to meet the needs of our diverse marketplace," said MSRB Executive Director Lynnette Kelly. "The website was conceived as a platform for investors to find information about a particular security and make a more informed decision when buying or selling that bond. Now, investors and other market participants are seeking a broader view of market activity to inform their decision-making. The MSRB is in a unique position to provide free public access to interactive tools for understanding market trends."

The new statistics, which are updated daily, are available on EMMA's "Tools and Resources" tab, which also features third-party yield curves and indices, a calendar displaying upcoming bond offerings and an economic calendar showing economic events and market data releases. "Having these resources on EMMA helps all market participants look beyond individual securities to get a market-wide view," Kelly said.

To support user understanding of the new statistics, the MSRB will host a webinar on **September 21, 2017 from 3:00 p.m. – 4:00 p.m. ET** to demonstrate the functionality of the enhanced statistics. Register for the webinar.

The MSRB's EMMA website is the official source of data and disclosure documents on more than one million outstanding municipal securities. The MSRB operates the EMMA website in support of its mission to protect investors, state and local governments, and the public interest by promoting a fair and efficient municipal market.

Date: September 7, 2017

Contact: Jennifer A. Galloway, Chief Communications Officer
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Amendments to MSRB Rule G-3 on Professional Qualification Standards for Municipal Advisors: Webinar

Thursday, October 12, 2017

3:00 p.m.- 4:00 p.m. EDT

During this free webinar, MSRB staff will review amended MSRB Rule G-3, which requires municipal advisors to develop a continuing education program for covered persons, and for every covered person of a municipal advisor to participate in continuing education training. Amended MSRB Rule G-3 has an implementation date of January 1, 2018.

At the end of this webinar, participants will be able to:

- Explain the municipal advisors continuing education requirements
- Determine continuing education associated books and records requirements
- Consider appropriate mechanisms for delivering and documenting municipal advisor training

Register now.

NFMA Comment: GASB Proposed Statement No. 3-30, Certain Disclosures Related to Debt, Including Direct Borrowings and Direct Placements.

The National Federation of Municipal Advisors has responded to the Governmental Accounting Standards Board's Invitation to Comment: Proposed Statement No. 3-30, Certain Disclosures Related to Debt, Including Direct Borrowings and Direct Placements.

To read the letter, click here.

The State and Local Tax Deduction Doesn't Benefit Only Blue State Households.

The red-blue divide on these deductions is less apparent at the congressional district level.

The Trump Administration and key congressional Republicans have proposed repealing the itemized deduction for state and local taxes as one way to help pay for tax rate cuts for businesses and individuals. Treasury Secretary Steven Mnuchin frequently offers it as an example of a tax break that primarily benefits high-income households and one that should be on the chopping block in a tax reform plan. An added political advantage for Republicans is that the deduction is most valuable in states with high taxes and high incomes, which tend to be "blue states."

But the red-blue divide is less apparent at the congressional district level. Enclaves of high-income Republicans live in the New York suburbs, for example. In three Northern New Jersey GOP districts, more than half of residents claim the deduction for taxes paid. All told, 45 percent of the top 20 districts ranked by percentage of residents claiming the deduction have Republican representatives.

The following map shows the national distribution of taxpayers claiming the state and local tax deduction by congressional district. A district's residents can benefit if they itemize deductions, but only about one-third of individual income tax filers do so. The most common factor that leads to itemizing is high state income or property taxes; and most high-income households who live in states with income taxes have large state tax deductions. Homeownership is also a key attribute since mortgage interest and property taxes are deductible expenses. And large charitable deductions can also make someone an itemizer (that is why low-tax Utah has an unusually high percentage of returns that itemize deductions).

Continue reading.

Tax Policy Center

by Leonard E. Burman & John Iselin

September 12, 2017

Effects of a Federal Value-Added Tax on State and Local Government Budgets.

Abstract

A longstanding concern of state and local governments is that a federal value-added tax (VAT) could severely limit their reliance on sales taxes as a major source of revenue. This concern is too narrowly focused; a federal VAT could affect revenues from other sources and spending more than sales tax receipts. These broader budgetary effects have received little attention, even though they are a direct consequence of how a VAT would affect incomes, relative prices, and the value of existing assets.

Download PDF.

The Urban Institute

by James R. Nunns & Eric Toder

September 8, 2017

Bond Dealers of America Advocacy: 3rd Qtr – 2017

Read the BDA Advocacy Priorities.

September 5, 2017

Fitch Places 33 USPF Not-for-Profit Healthcare Ratings on Watch Upon Criteria Exposure Draft Release.

Link to Fitch Ratings' Report: Fitch Places 33 USPF Not-for-Profit Healthcare Credits on Ratings on Watch Upon; Criteria Exposure Draft Release

Fitch Ratings-Austin-08 September 2017: Fitch Ratings has taken action on 33 not-for-profit hospital and healthcare systems following the release of its 'Exposure Draft: U.S. Not-for-Profit Hospitals and Health Systems Rating Criteria' on Sept. 6, 2017. A total of 16 ratings have been placed on Rating

Watch Positive and 17 on Rating Watch Negative. These actions impact approximately $16.7 billion of total debt outstanding.

In a related action, Fitch has also placed the ‘A’ rating assigned to Northwell Health on Rating Watch Negative. Please refer to Fitch’s press release dated Sept. 8, 2017 for more details.

KEY RATING DRIVERS
CHANGE IN CRITERIA: The Rating Watches reflect those ratings with the greatest risk of transition under the upcoming criteria update. Following a six-week comment period, Fitch expects to publish final criteria on or about Nov. 6, 2017.

IDENTIFYING RATING WATCH CREDITS: The placement of the ratings on Watch reflects a preliminary, largely metric-based assessment of each hospital and health system’s operating profile (revenue defensibility and operating risk) against its current financial profile (leverage and liquidity) to identify issuers whose ratings have a greater risk of transition once reviewed under the new criteria. Credits that significantly deviate from the net leverage expectations for their current rating category as outlined in the rating positioning table in the exposure draft are most subject to transition.

POSITIVE WATCHES: Rating upgrades will likely be tied to issuers that have been identified with midrange revenue defensibility characteristics and low relative leverage profiles.

NEGATIVE WATCHES: Likely downgrades will be associated with issuers demonstrating elevated leverage profiles, including pension liabilities, in the context of their operating profiles.

ADDITIONAL AFFECTED CREDITS: Fitch’s regulatory policy requires all affected credits be reviewed within six-months of publication of final criteria. To this end, Fitch will review credits beyond the rating watch list that may have leverage profiles potentially inconsistent with their current rating given their operating profile.

FORWARD LOOKING & ASSYMTERIC RISK: Fitch’s review to determine the affected credits, including those on Rating Watch, did not incorporate forward-looking base and rating case analysis presented in the Fitch Analytical Sensitivity Tool (FAST) or assessments of asymmetric risk factors, both of which will be key to determining the final rating outcome under the new criteria.

RATING SENSITIVITIES
RATING CHANGES RESOLVED WITHIN SIX MONTHS: Rating Watches will be resolved and affected credits reviewed within six months of the final publication and implementation of the ‘Not-for-Profit Health Care Criteria’. The full rating review will be forward-looking and may reveal asymmetric risk factors or other characteristics supporting a different outcome for the key rating factor assessments (revenue defensibility, operating risk, and financial profile) and/or the ultimate rating than indicated by the Rating Watch.

For more information visit: https://www.fitchratings.com/site/uspf/comment

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

Fitch Ratings has revised its US Not-For-Profit Hospitals and Health Systems rating criteria to enhance its traditional, through-the-cycle, analytical assessment of a provider's key strategic direction, operating performance and financial characteristics. Notable benefits of the revised criteria include:

Anticipated Rating Impact Limited

Fitch expects criteria-driven rating changes to affect less than 15% of the portfolio, with a roughly equal mix of upgrades and downgrades. Upgrades are likely for issuers with enhanced revenue defensibility characteristics or less volatility in Fitch's through-the-cycle analysis, while downgrades are likely for issuers with elevated operating risk and leverage, which expose them to greater volatility in a through-the-cycle analysis.

Rating Changes More Predictable

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

Continue reading.

Fitch: U.S. Toll Road Performance to Remain Strong.

Fitch Ratings-New York-11 September 2017: The ride will remain largely smooth for U.S. toll road performance in the coming months, according to Fitch Ratings in its latest U.S. Toll Roads Peer Review.

Fitch has observed positive operating performance across the sector since the last Peer Review.

Favorable growth has led to ratings upgrades on three toll roads (E-470 Public Highway Authority, Rickenbacker Causeway and San Joaquin Hills Transportation Corridor Agency) and Positive Outlook on one other roadway (Central Texas Turnpike System) against zero negative rating actions. The Rating Outlook for Fitch's toll road universe is largely Stable. However, continued positive operating performance could result in Fitch raising the Rating Outlook on several other toll roads to Positive.

Several new toll road projects reached substantial completion this year and show encouraging early signs of ramp-up. 'Major construction works were completed by and large on or ahead of schedule for the vast majority of greenfield toll roads projects throughout the country,' said Director Tanya Langman.

Hurricane Harvey has resulted in Houston area toll roads like Harris County Toll Road, Fort Bend County Toll Road and Grand Parkway either temporarily waiving tolls or closing the roadways outright. 'The extensive flooding brought on by Hurricane Harvey will inevitably result in toll revenue losses and delay construction and passage on Houston-area toll roads for some time, though each roadway has ample financial cushion to absorb a short term interruption in operations,' said Langman. It is important to note, however, that the magnitude of financial impact from demand dislocation and the extent of structural damage may prove to be more extensive than historically seen with toll roads exposed to hurricane damage. Fitch will continue to monitor the aftermath of Hurricane Harvey and will incorporate its findings into its ratings as applicable.

Fitch's toll road universe has also expanded since its last Peer Review with the addition of three new toll roads; Delaware River Joint Toll Bridge Commission, Colorado's C-470 Express Lanes and Riverside County Transportation Commission's I-15 Express Lanes in California. Fitch's peer report provides a snapshot of Fitch's key rating factor assessments as well as selected operating and financial metrics for both large and small network facilities.

Fitch's latest 'Peer Review of U.S. Toll Roads' is available at 'www.fitchratings.com' or by clicking on the above link.

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Bloomberg Brief Weekly Video - 09/14

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

Watch video.

Bloomberg

September 14, 2017

U.S. Cities Report Least Optimism About Finances Since 2012.

- Survey finds those seeing improvement falls to five-year low
- Results 'point to the potential start of a contraction'

The financial gains for U.S. cities are showing signs of slowing, with the number reporting improvement dropping to a five-year low as revenue growth slows and they face pressure to spend more on infrastructure, according to a National League of Cities' annual survey.

City general-fund revenues are projected to increase by just 0.9 percent this year, compared with 2.6 percent in 2016, as property-tax growth slows and sales and income-tax collections drop, the report said. The share of cities reporting that they're more able to meet their financial obligations than they were a year ago slipped to 69 percent, the least since 2012, when many were still contending with some of the fiscal aftermath of the housing crash and recession.

"This year's results point to the potential start of a contraction in the municipal sector after optimism about growth hit a peak in 2015," according to the report, which is based on results from 261 cities.

The biggest drags on municipal finances stem from the need to rehabilitate aging infrastructure and the cost of employee wages and benefits: Ninety-two percent of officials reported that the cost of infrastructure increased and 93 percent said wages rose.

The projected pullback from the fiscal gains of recent years may not be as significant as suggested by the survey, given that officials frequently take a conservative approach to forecasting by underestimating revenue growth and overestimating projected spending. Over the past two years, municipal revenue increases have outpaced spending growth, giving governments an opportunity to shore up their reserves, the report said.

Growth in property-tax collections, typically the biggest source of municipal revenue, is anticipated to slow to 1.6 percent in 2017 from 4.3 percent the prior year. Meanwhile, the continued growth of Internet commerce is weighing on sales-tax revenue.

Loathe to raise property taxes or restrained by law from doing so, the most common action taken to boost city revenue is to increase fees. Two in five finance officials said their city raised fee levels, while one in four reported increasing the number of fees that are applied to services.

"Cities are stuck between a rock (property tax caps) and a hard place (limited online sales tax authority) often resulting in the increase of fees for services," the report said.

Bloomberg

By Martin Z Braun

September 12, 2017, 2:00 AM PDT

Puerto Rico Bonds Gain After Judge Rules Against Highway Debt.

- Price on general obligations with 8% coupon highest since July
- Ruled toll revenue can be used to repair roads, not repay debt

Some Puerto Rico general-obligations gained in value after a court ruled that the commonwealth's transportation agency would retain toll revenue to cover operations instead of paying bondholders.

Puerto Rico general obligations with an 8 percent coupon traded Tuesday at an average 59.3 cents on the dollar, the highest level since July 20 and up from 57.8 cents the day before, according to data compiled by Bloomberg.

U.S. District Court Judge Laura Taylor Swain last week ruled that the island's Highways and Transportation Authority will continue using toll revenue to maintain its system rather than pay bondholders as the agency works its way through bankruptcy.

Some investors may interpret that ruling as an indication that sales-tax revenue may ultimately be used for commonwealth expenses, which would be a positive for its general-obligation bonds, said Daniel Solender, head of municipals at Lord Abbett & Co., which manages $20 billion of state and local securities, including Puerto Rico debt.

"Maybe there's some kind of positive move toward G.O.s getting access to some of that revenue," Solender said.

Bloomberg Markets

By Michelle Kaske

September 12, 2017, 9:38 AM PDT

— With assistance by Steven Church

The Week in Public Finance: Troubling Economic Update, Major Online Tax Ruling and More.

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

GOVERNING.COM

BY LIZ FARMER | SEPTEMBER 15, 2017

MBFA Chair Contributes Op-Ed in The Hill.

Today, Steve Benjamin, Mayor of Columbia, S.C., and Chair of the Municipal Bonds for America (MBFA) Coalition, contributed an op-ed in The Hill, which can be read here. The article focuses on how those faced with the devastation left behind by Hurricanes Harvey and Irma can look to the traditional bond market to rebuild stronger, smarter and more resilient communities.

Specifically, the Op-Ed Highlights:

- How the city of Columbia, S.C., can be a blueprint for cities and communities to rebuild using tax-exempt municipal bonds after being faced with an historic flood in October 2015
- What the impact to state and local governments would be if the municipal tax-exemption is capped or removed altogether
- That members of Congress and the administration should support the tax-exemption of municipal bonds as they consider infrastructure and tax reform proposals in their upcoming debates

September 14, 2017

Florida Judge Refuses to Validate Poinciana CDD Bonds.

BRADENTON, Fla. – A Florida judge declined to validate bonds proposed by two community development districts, saying they failed to properly apportion special assessments they planned to charge homeowners.

Polk County Circuit Judge Randall McDonald found the Poinciana CDDs' assessment rate schedule to be "arbitrary and capricious."

In denying the districts' request to issue $102 million of tax-exempt bonds, McDonald said Friday there was no proof that homeowners paying a higher assessment fee would have greater access to the amenities being purchased than homeowners paying a lower fee.

Solivita is a retirement community in Polk County, about 25 miles south of Orlando.

"The court finds no testimony or record evidence of higher valued or additional special benefits, which the districts intended to retain or add of which there was a correlating higher cost and, consequently, justified the homeowners being specially assessed at different rates," McDonald said in a 25 page decision.

The uneven assessment scheme was one of several arguments residents in the Solivita retirement community near Orlando, led by Brenda Taylor and Bill Mann, used to challenge the bond validation by the CDDs.

The judge rejected their other arguments, including their contention that the purchase price for existing amenities being bought with bond proceeds was inflated.

The CDDs planned to use $73.7 million of bond proceeds to purchase amenities such as pools and parks from the developer, Avatar Properties, and its parent AV Homes. AV Homes was also selected to build a new wellness center and a performing arts center for an additional $11.2 million.

The bonds would have been backed by assessments on homeowners' tax bills over 30 years.

Taylor and Mann appreciated the ruling regarding the special assessments, said J. Carter Andersen, an attorney with Bush Ross PA.

"That is a victory for all Solivita residents and gives the CDD Supervisors a second chance to decide to not pay $73.7 million for community amenity properties – the same properties that the residents argue in the class action case the developer is required to turn over to the homeowners association in just a few years," Andersen said.

The assessments were based on a schedule of "club fees" charged by AV Homes that varied depending on when homes were purchased.

"The only basis for the club fee scheme – and sole basis upon which the districts' supervisor boards approved to specially assess the homeowners at different rates – is the developer's original subjective decision to implement the club fee scheme," McDonald wrote.

He cited testimony from a July 18-21 trial in which the chairmen of the Poinciana CDD boards said they did not recall consultants explaining how the club membership fees were set.

Michael Eckert, attorney for the CDDs, said the boards of supervisors will meet jointly on Sept. 20 to decide how they will respond to the ruling. The Florida Supreme Court would hear any appeal.

"Throughout the entire transaction, the district boards and developer have publicly stated their intent is for residents to pay no more in debt special assessments than they were paying in club fees," said Eckert, with Hopping Green & Sams PA.

Homeowners are charged according to four different levels of club membership fees based on when homes were purchased, he said. To structure the bond transaction and make the special assessments no more than the club membership fee each owner paid, Eckert said the developer agreed to make an "assessment equalization payment via a reduction in the purchase price" to pay down assessments for certain owners prior to the issuance of the bonds.

"Since the amounts in club membership fees were different for various properties based on when residents bought, not everyone would receive the same credit and some would receive no credit from the assessment equalization payment," he said.

Eckert also said an alternative to the assessment schedule that was employed would have required the developer to make the equalization payment after the bonds were issued, "but that would result in what the district believed to be unnecessary transaction costs."

"Nevertheless, the court took exception to the structure because it concluded that although the methodology consultant found that all units benefited equally from the project there was no rational basis for having different assessments levied on the various properties pre-issuance," he said. "This was the sole reason cited by the court for denial of the validation."

On the various elements of the law necessary to validate the bonds, Eckert said the court found that the Poinciana districts had the legal authority to issue the bonds and levy special assessments to secure the bonds, and that the CDDs demonstrated a valid public purpose for issuing the debt.

"The court expressly rejected the notion that the developer improperly controlled, unduly influenced, or coerced the boards and their consultants," he said.

Residents argued that emails and other communications showed evidence that the developer exerted improper control over the districts.

McDonald said he did not find evidence that the developer improperly controlled the district boards and consultants during negotiations "to secure their predetermined purchase price to maximize their profits."

"Beyond the expectant negotiated give-and-take and intimate cooperation and communication between individuals and entities involved in a complex real estate purchase and bond issuance process, at best it appears to the court that the developer may have engaged in tactics of persuasion on its behalf to maximize profits," McDonald said.

McDonald also said he found no harm in the fact that the private developer is a primary beneficiary by selling the existing amenities to the districts.

"The public purpose for purchasing and constructing the existing and prospective amenities is not overwhelmed by the districts' boards' acquiesce to the developer's firm stance on its targeted purchase price," he said.

On other points, Eckert said that McDonald rejected other arguments made by the residents, including an interpretation of Florida law as it pertains to "fair value" and an argument that existing club membership fees could not be valued as part of the transaction.

The residents contended that the "club plan scheme" is illegal, and as such could not support an income-based approach for purchasing the amenities.

McDonald said the legality of the club plan was collateral to the bond validation, and declined to rule on the issue.

A separate, class-action lawsuit has been filed by Bush Ross on behalf of Solivita residents challenging the club plan and the fees imposed by the developer for the use of amenities in the community.

"In their class-action lawsuit against Avatar Properties and AV Homes, [the residents] are seeking an order that the club fee scheme is illegal, and requiring that the property be turned over to the homeowners with no payment at all," Andersen said.

Andersen said the suit contends that the club plan violates the Florida Homeowners Association Act.

In the validation case, Eckert said the judge upheld the districts' use of the income-based approach to value the sale of existing amenities, saying it was not arbitrary or capricious.

Residents had claimed that the CDDs planned to use the inflated price of $73.7 million to buy 17 existing amenities by using the income approach to capitalize the developer's club membership fees over three decades.

The residents hired Urban Economics Inc., a state certified real estate appraiser, which found the market value of the amenities to be $19.25 million.

McDonald said the income approach to valuing the amenities was not arbitrary or capricious.

"The court finds defendants' objection of plaintiff's using an income based valuation methodology, rather than an alternative valuation methodology such as market value based on cost approach, is not sufficient in and of itself to invalidate bond issuance," McDonald said. "For the court, the dispute of valuation methodologies allowed for reasonable people's different opinion thereon."

Solivita resident Martin Kessler, who represented himself without an attorney in opposing the bond validation, said he may not have lost the case but he did not win, either.

"By that I mean the judge did not agree with my arguments on a particular section of Chapter 190," he said, referring to the Florida law that governs community development districts.

Kessler, 93, had argued that his interpretation of Chapter 190 required the Poinciana CDD and similar districts to perform a "just value" analysis of any real estate or property to be purchased from a contractor, engineer or any person. The CDDs argued that the "fair value" clause of Chapter 190 had no bearing on the case.

McDonald agreed with the CDDs, and said that obtaining a licensed appraiser was not a legal requirement for the district boards to consider the choice of consultant and valuation method. He also said the developer is entitled to seek payment for its income stream when negotiating the sale of property.

"This case only serves to highlight the many reasons why I believe Chapter 190, Florida Statutes, needs to be revised to prevent cases like this one from coming to district courts in the future," Kessler said.

Daniel Fleming, a shareholder at Gray Robinson and lead attorney in the class-action litigation for AV Homes and Avatar Properties, said they were pleased with McDonald's ruling supporting the actions of the CDDs, even though the bonds were not validated because of the assessments.

"Our client, AV Homes, looks forward to working with the CDDs to address the court's concern so that the transaction can proceed," Fleming said in a statement. "Regarding the class-action litigation, we continue to believe that the claims raised in that matter are without merit and we plan to vigorously defend our client against them."

Fleming also said that claims by Andersen that Avatar is required to turn over club assets to the homeowners are "highly misleading and inaccurate."

"Mr. Anderson's contentions have not been substantively ruled upon by any court and we contend that they are directly inconsistent with Florida law," Fleming said.

The Bond Buyer

By Shelly Sigo

Published September 06 2017, 12:02pm EDT

Commentary: Move America will Leverage Private Investment in Infrastructure, Complement Strong Public Funding.

The poor state of America's infrastructure has been widely discussed and well-documented. The American Society of Civil Engineers has awarded our nation a cumulative grade of D+ in its 2017 Infrastructure Report Card and estimates that the United States is facing a $2 trillion infrastructure funding gap over the next ten years. This is a serious public safety concern. Moreover, it has severe implications for our economy and our ability to compete in the global market.

To tackle this challenge, it is vital that Congress support and provide strong public funding. That starts by ensuring the solvency of our infrastructure trust funds. But, this is a crisis that will require all hands on deck – we must also empower states and local governments to leverage private investment in public infrastructure. Expanding the tools available to states will give local leaders the ability to address their infrastructure needs in whichever way best meets the needs of their community. We recently introduced the Move America Act of 2017, which will do just this.

The Move America Act would unlock billions of dollars of investment for state and local governments to help grow and repair America's aging infrastructure. The bill expands tax-exempt private activity bonds and creates a new infrastructure tax credit, helping finance infrastructure projects through private-public partnerships. This would help stretch taxpayer dollars by lowering overall costs while also giving state and local governments flexibility to construct the infrastructure they most need, such as roads, bridges, transit, ports, rail, airports, water and sewer facilities and broadband.

Right now, arbitrary tax barriers prevent many cities from even contemplating public-private partnerships. Move America eliminates these barriers, opening the door for cities and states to pursue innovative arrangements to get the most value out of scarce funding dollars. The bill achieves this through an expansion of tax-exempt financing for public infrastructure projects, regardless of whether it is financed solely by the government or through a public-private partnership. Each state receives an annual allocation of these Move America Bonds, based on population, and can hold on to any unused bond authority for up to five years. The bonds' interest income is exempt from the alternative minimum tax, providing full parity with other forms of state debt.

For states looking for innovative ways to leverage more private equity, Move America Bonds can be traded in at a 25 percent rate for Move America Credits to attract equity investors. Modeled on the bipartisan Low Income Housing Tax Credit, Move America Credits can lower capital costs, reducing or eliminating the need for additional revenue streams like user charges or tolls. Alternatively, states can elect to use Move America Credits to capitalize state infrastructure banks, infrastructure revolving funds or similar entities, pooling capital to use for low-interest loans or grants to projects.

These tools are available for use regardless of who owns the project, making financing, management and leasing arrangements simpler and more cost-effective. An upfront injection of private capital can speed up construction start times and allow governments to more quickly work through the backlog of infrastructure projects. Risk-transfer to private parties can bring increased efficiency to the design, construction and maintenance process, lowering overall project costs.

Momentum continues to build within Congress to address this critical need in a bipartisan way. While there is no doubt that we face many hurdles in this effort, the Move America Act is a strong example of the common ground we should seek. Our measure will be paid for and leverages $8 billion in federal investment into $226 billion worth of bond authority over the next 10 years or up to $56 billion over 10 years in tax credits, according to the Joint Committee on Taxation.

Infrastructure investment creates jobs and grows the economy. Move America would provide a cost-effective complement to increased public funding. We are working to ensure the Move America Act is part of any infrastructure package advanced by Congress.

The Bond Buyer

By John Hoeven & Ron Wyden

September 11 2017, 11:29am EDT

MCDC Architect Chan Makes Muni Enforcement Predictions.

PHOENIX – The Securities and Exchange Commission and Department of Justice are primed to prosecute high-ranking public officials, bond lawyers, and other non-traditional targets of municipal bond enforcement cases, according to a former SEC enforcement division lawyer.

That is the prediction of Peter Chan, a lawyer in the Chicago office of Morgan Lewis who spent some 20 years with the SEC, including as chief muni enforcer in the commission's Chicago regional office.

Chan was the architect of the SEC's Municipalities Continuing Disclosure Cooperation initiative, which incentivized issuers and dealers to self-report instances in which issuers made misleading statements about their past compliance with continuing disclosure agreements.

In a lengthy interview with The Bond Buyer, Chan said he believes there has been no slowing of momentum for muni enforcement since MCDC's end and that regulators may become even more aggressive going forward.

"I think it is quite safe to say that there continues to be consensus and momentum on SEC enforcement of the municipal securities market," Chan said.

While some market participants had wondered if the commission's attitude might shift with the departure of former chair Mary Jo White, known as an aggressive criminal prosecutor, Chan said that it appears new SEC chair Jay Clayton is on board with the enforcement division's agenda and with projects like the MCDC initiative.

"Reading the tea leaves, he does not have any problem with the initiative," Chan said.

Republicans like Clayton have been historically receptive to the idea of holding individuals accountable, Chan said, which is in line with what the SEC has been trying to shift towards for several years in either charging firm or issuer officials or explaining why it declined to do so.

"If entities commit fraud that means individuals commit fraud," Chan said. "There will be a focus on that."

The SEC has sharpened the tools it uses to hold individuals to account. The commission can charge individuals for "causing" others to violate securities laws, and it can also use the doctrine of "control person liability," which the SEC deployed to charge the mayor of Allen Park, Mich. in November 2014. Control person liability comes from section 20(a) of the Securities Exchange Act of 1934 and provides that an individual may be liable for the securities law violations of persons over whom they exercise control.

"The Public Finance Abuse Unit can use that to go up the chain," Chan said. "Not only will they focus on individuals, they will look into how far up they can go. They're not going to want to go after just a low tier bureaucrat."

The SEC has charged a number of public officials over the years, but that has rarely extended to the upper floors of city hall.

The commission will not seek to charge an individual that way every time, Chan said, but will always be asking the question of whether it should be and taking a "holistic" view of every case.

"They basically ask a very holistic question: who are the people who contributed to the disclosure problems?"

Chan said he has observed an increasing willingness of the SEC to go after "gatekeepers" such as auditors in other markets, and expects that trend to carry over to the muni market. The SEC last year charged a New York-based audit firm and one of its senior partners in connection with municipal bond offerings by the town of Ramapo, N.Y. Bond lawyers might increasingly become targets of prosecution in some instances, too, Chan warned.

Last month, when the SEC charged Oklahoma-based municipal advisor Municipal Finance Services with breaching its fiduciary duty, the order mentioned that one offending continuing disclosure document was produced by bond a bond lawyer "who is now retired and no longer practicing law." Chan said that could be read as a justification from the SEC as to why it was not pursuing charges against the lawyer, though it could have been contemplating them.

"I thought that was a bit of a hint," Chan said. The SEC also charged the founder and president of the firm as well as its vice president.

When it comes to battling public corruption, the DOJ might be looking to increasingly take a page out of the SEC's playbook, Chan added. While courts have ruled that traditional criminal public corruption charges require evidence of a quid pro quo, the securities laws, which can also be the basis of criminal charges, do not.

Prosecutors merely have to show that an official withheld a material fact, including a conflict of interest. Prosecutors could make the case that an official should have disclosed a gift from, or financial relationship with, a party to a bond transaction, Chan said.

"The DOJ is going to get pretty interested in using federal securities law to go after public corruption," Chan said.

As for his own creation, the now-complete MCDC, Chan said he believes the SEC is likely to view it as a "resetting of the table." The program created a major market dialogue and forced issuers to confront their past errors, and the SEC will likely expect that their message was received, Chan said.

"I don't think the SEC will be very receptive to issuers claiming a lack of sophistication," he said, adding that disclosure violations taking place after the MCDC's 2014 reporting period are likely going to see harsh sanctions.

The MCDC may be a major intelligence tool for the enforcement division going forward, because so many deals were reported. The SEC has computer analytical tools to allow it to sift through that data and find things it might not otherwise have discovered, he said. The commission has used big data analytics in other markets and the public finance unit has those tools now as well.

"The are likely applying that same type of big data analytics to the treasure trove of data they received," Chan said.

The Bond Buyer

By Kyle Glazier

Published September 08 2017, 1:37pm EDT

An Overview Of S&P Global Ratings' Proposed Methodology For Special Assessment Debt.

On Sept. 14, 2017, S&P Global Ratings published a request for comment (RFC) on its proposed methodology for rating special assessment debt.

Continue reading.

S&P Request for Comment: Special Assessment Debt.

The proposed criteria would apply to U.S. ratings on debt issued by municipal governments, state governments, or other U.S. public finance obligors secured by special assessments or special, non-ad valorem taxes levied on property or land (special assessments).

Continue reading.

S&P: Are Electric Cars And Charging Infrastructure Bright Spots For U.S. Regulated Utilities?

Electric cars are an energizing disruptor for U.S. utilities. Everyone knows they are coming. Most observers believe that sales of electric cars will grow at an accelerated pace over the next few years.

Continue reading.

S&P Live Webcast: Request for Comment (RFC): Special Assessment Debt.

Sep. 25, 2017 | New York, NY

Please join S&P Global Ratings on Monday, September 25 at 1:00 p.m. Eastern Time for an interactive, live Webcast and Q&A. We will discuss the proposed criteria in detail, the potential impact on outstanding ratings, and specific questions for which we are seeking responses.

Register for this Audio Webcast.

The Rise of Public-Sector Crowdfunding.

Around the country, local governments are soliciting donations for everything from dog parks to public defenders. Is this a practical response to budget cuts or a sign that publicly funded services are in trouble?

Earlier this year, when the new sheriff of Travis County in Texas announced that her officers would not cooperate with federal immigration investigators (part of an ongoing battle over sanctuary city issues), Texas Governor Greg Abbott retaliated by slashing the county's criminal justice funding. The remaining $1.5 million in state grants for 2017 would have helped maintain programs for veterans, sex workers, and parents struggling with substance abuse.

Concerned about the loss of those programs, constituents called state Rep. Eddie Rodriguez for help. To try to make up for the governor's cuts, Rodriguez and a local nonprofit, the Austin Community Foundation, launched the crowdfunding campaign Travis County #StrongerTogether in February. By May, they'd raised more than $150,000, which will cover court program costs from October to mid-November.

Continue reading.

CITY LAB

VIRGINIA PELLEY

SEP 15, 2017

What Amazon's HQ2 Wish List Signals About the Future of Cities.

Amazon's big announcement that it will build a second headquarters has caught the attention of local officials, economic development professionals, and pundits across the U.S. and Canada. And for good reason: "HQ2," as it's being called, would create upwards of 50,000 high-paying jobs and billions of dollars of new investment in whichever city it locates in. The city that lands this historic deal will see its economic and physical landscape transformed, albeit for a hefty price tag in the form of tax breaks.

Thus far, public attention has largely focused on two aspects of Amazon's announcement: Speculation about which of the 50 eligible North American metropolitan areas are most likely to be chosen for HQ2, and how much public subsidy the winning city will offer the world's 4th-largest corporation to seal the deal.

But this announcement carries far more profound implications for regional and local economic developers, Amazon HQ2 hopefuls or not. Amazon's selection criteria, as described in the company's request for proposal, sets out a compelling list of the attributes cities must have if they aspire to be a serious part of the America's growing digital economy.

Continue reading.

Harvard Business Review

by Amy Liu & Mark Muro

September 08, 2017

SLGS! (For Now)

Treasury has re-opened the sale of SLGS, now that the debt limit has been lifted through December 8. The SLGS window likely will close again around December 8, unless Congress takes further action.

(Though the strictures of legal ethics and of logic would counsel us against insinuating that we had anything to do with it, we cannot help but notice the coincidence in timing between this announcement and Alexios's post on Friday about #SLGSforever.)

The Public Finance Tax Blog

By Johnny Hutchinson on September 12, 2017

Squire Patton Boggs

SLGS Forever?

For those of you keeping track, the SLGS window has been closed since March 8, 2017. With the recent discussions in Washington regarding a three-month debt limit increase, it is possible that the SLGS window will soon reopen, at least for a short time. (For prior coverage of the history of the SLGS window opening and closing, see here)

Recent news reports from Washington suggest that a permanent fix may be in the works. President Trump, Senate Minority Leader Charles E. Schumer, and House Minority Leader Nancy Pelosi are in discussions to eliminate the need for future debt ceiling votes by Congress. These news reports should be read with a grain of salt, or better yet with an entire salt block.[1] Any such legislation would be a significant departure from historical practices. According to the Congressional Research Service, "Congress has always restricted federal debt." Were the debt ceiling to be eliminated, Congress would presumably only have to pass appropriation bills. With no debt ceiling, it appears there would be no need ever to close the SLGS window. SLGS FOREVER!

[1] Don't get the salt anywhere near the SLGS, though, because it can kill them.

The Public Finance Tax Blog

By Alexios Hadji on September 8, 2017

Squire Patton Boggs

A Gift Idea for the Tax Advisor Who has Everything.

Are you struggling with what to get your hard-to-buy-for tax advisor for an upcoming birthday or holiday? Struggle no more, as I have the perfect gift idea. A PTIN. Why? Every tax return preparer needs one, and best of all, they are currently *free*.

Continue Reading

The Public Finance Tax Blog

By Cynthia Mog on September 13, 2017

Squire Patton Boggs

TAX - MINNESOTA

Phone Recovery Services, LLC on behalf of State v. Qwest Corporation

Court of Appeals of Minnesota - August 7, 2017 - N.W.2d - 2017 WL 3378870

Plaintiff brought qui tam action under Minnesota False Claims Act (MFCA) against various telecommunications service providers, arising out of collection of charges assessed for 911 services, Telecommunications Access Minnesota (TAM), and Telephone Access Plan (TAP).

The District Court granted defendants' motion to dismiss, and plaintiff appealed.

As matter of first impression, the Court of Appeals held that:

- Charges assessed for 911 services, TAM, and TAP were "taxes," and thus, statutes that required defendants to collect and remit those funds were "Minnesota statutes relating to taxation" not subject to MFCA, and
- Application of statutory definition of "tax" to charges, resulting in bar against qui tam action, did not impermissibly nullify MFCA liability for reverse false claims.

Charges assessed for 911 services, Telecommunications Access Minnesota (TAM) that provided devices and services to persons with communication disabilities, and Telephone Access Plan (TAP) that provided telephone assistance to low income individuals, were "taxes," and thus, statutes that required telecommunications service providers to collect and remit those funds were "Minnesota statutes relating to taxation" not subject to Minnesota False Claims Act; "tax" was statutorily defined as "fee, charge, exaction, or assessment imposed by a governmental entity on an individual," "tax" did not include "prices voluntarily paid by customers in return for receipt of governmental goods or services," charges were collected by Department of Public Safety, they were broadly imposed on customers who purchased telecommunications access lines and were not to tied to individual's use of services funded by those charges, and funds from charges benefited general public.

Application of statutory definition of "tax" to charges assessed for 911 services, Telecommunications Access Minnesota (TAM) that provided devices and services to persons with communication disabilities, and Telephone Access Plan (TAP) that provided telephone assistance to low income individuals, resulting in bar against qui tam action against telecommunications service providers under Minnesota False Claims Act (MFCA) as claim brought under "Minnesota statutes relating to taxation" did not impermissibly nullify MFCA liability for "reverse false claims"; rather, reverse false claims provisions remained effective for alleged violations involving claims, records, or statements that were not made under Minnesota Statutes relating to taxation.

TAX - INDIANA

City of Fort Wayne v. Southwest Allen County Fire Protection District

Court of Appeals of Indiana - August 10, 2017 - N.E.3d - 2017 WL 3428770

City filed complaint for declaratory judgment against a fire protection district and State auditor seeking a declaration that city was entitled to receive property tax revenues from territories that were annexed by city.

The Superior Court dismissed for lack of subject matter jurisdiction, and city appealed.

The Court of Appeals held that declaratory judgment action was under jurisdiction of superior court.

Declaratory judgment action brought by city against a fire protection district and State auditor, in which city sought a declaration that it was entitled to receive property tax revenues from territories that city annexed, was under jurisdiction of superior court, rather than tax court; although annexation affected the allocation of tax revenue, there was no tax law that needed to be applied for court to declare whether city was entitled to property tax revenue derived from the annexed territories

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Some Good News May Be Getting Off the Ground in Washington D.C.

Kroll Bond Rating Agency (KBRA) published a special report today that examines the impact of the U.S. Senate's proposed FY 2018 spending plan on America's airports. The current bill raises the cap on U.S. airports' Passenger Facility Charge (PFC) rate to $8.50 from $4.50 on non-connecting flights. The Senate spending measure also proposes to expand the overall Airport Improvement Program (AIP) grant funding to $3.6 billion from $3.35 billion where it's been stuck since 2012.

The Senate plan would require the thirty largest airports by passenger activity to give up their federal Airport Improvement Program (AIP) entitlement grants if they decide to exercise the right to raise the PFC above $4.50. KBRA estimates that the net effect of giving up the AIP entitlement grant and lifting the local airport PFC could bring more than $6.3 billion of new investment dollars to these airports over the next five years. The FAA will also be able to reallocate the freed up AIP entitlement grant dollars toward other airports' infrastructure needs across the country. So, as written, the Senate spending measure is a win-win for both the largest and for many smaller airports.

If the incremental PFC revenues are committed to funding proposed capital projects, KBRA estimates that at least nine large hub airports could have 25 percent or more of their currently projected five-year capital needs covered by the new PFC revenues.

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

Some Good News May Be Getting Off the Ground in Washington D.C.

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

Tax Reform: What Does it Mean for Main Street, Wall Street and K Street?

What:
A webinar presentation on the political and economic dynamics of tax reform and infrastructure and how prospective changes could impact municipal bond markets

When:
Thursday, September 21st, 2017
2:00pm ET

As tax reform discussions persist in Washington with little to no detail, Congress and the Trump Administration push for one major victory by the end of the calendar year in the form of a tax cut or comprehensive tax reform.

On Thursday, September 21st, Municipal Bonds For America will hold a webinar featuring experts who will discuss the prospects for tax reform, the potential changes to the municipal bond market, and how these changes could impact K Street, Wall Street and Main Street.

Register here.

Featured Speakers and Topics:

Robert Kyle, *Hogan Lovells*
Will discuss four important signs to look for in the political outlook for tax reform and infrastructure spending.

George Friedlander, *Court Street Group*
Will walk us through his latest research (attached) focusing on the economic impact of tax reform and the potential impact on municipal demand.

Alan Polsky, *Dougherty & Co., LLC*
Will deliver the "Main St." perspective on the impact that municipal bond financed projects have on state and local governments and the potential effects that tax reform will have on retail investors.

Matt Posner, *Neighborly*
Will moderate our panel and engage panelists and participants through a Q&A.

KBRA Releases Methodology for Rating U.S. Third Party Liquidity Facility-Supported Variable Rate Demand Obligations and Commercial Paper.

Kroll Bond Rating Agency (KBRA) announces the release of the methodology for rating U.S. third party liquidity facility-supported variable rate demand obligations and commercial paper.

The methodology describes the major factors that KBRA considers when assigning a rating to these state and local government-issued obligations. In these instances, an external third party (commercial bank or other financial institution) provides a conditional liquidity facility to support the demand feature (optional or mandatory tender) or CP roll-over.

Please click on the link below to access the full report:

[U.S. Third Party Liquidity Facility-Supported Variable Rate Demand Obligations and Commercial Paper Rating Methodology]

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

[SIFMA Submits Comments to SEC on Proposed New MSRB Fee for Dealers Underwriting 529 Plans.]

On August 25, SIFMA submitted comments to the Securities and Exchange Commission (SEC) on the Municipal Securities Rulemaking Board's (MSRB) proposed rule change to assess an underwriting fee on dealers that are underwriters of 529 college savings plans. SIFMA and its members strongly urged the SEC to institute disapproval proceedings regarding the filing in its current form, and does not believe the proposed fees as currently structured are appropriate, as they would stifle competition.

[SIFMA Comment Letter]

[Municipal Capital & Credit Markets Banker - Public Finance at UBS]

Description

Job Reference #: 150898BR

Business Divisions: Wealth Management Americas

Y**our role:** Are you a leader in innovation? Do you know how to come up with best in class solutions for clients? If so, we're looking for someone like you who can:

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– motivate and inspire others by providing a vision of shared goals

Title: Municipal Capital & Credit Markets Banker, Public Finance

City: New York City, New York

Job Type: Full Time

Country / State: United States

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Your experience and skills:

You have:

– a university degree in business administration, economics, finance or similar
– several years of experience in a similar position or related financial services position
– extensive banking experience in the Public Finance/ Municipal space supporting the Municipal Capital & Credit Markets
– familiarity with cross-border transactions, performing financial and valuation analyses, and utilizing financial services industry databases and tools
– experience providing client support, consultative and negotiation services

You are:

– an expert communicator, with experience presenting to clients and senior executives
– able to develop creative solutions to meet client needs by leveraging UBS's uniquely positioned global platform and cross-product opportunities

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APPLY

In the Municipal Market, Green Is the New Black: Fidelity White Paper

Liz Hanify, VP & Manager of Municipal Finance, and Christine LaFrance, Associate, explore the use and considerations related to "Green Bonds" in the municipal marketplace.

Read the White Paper.

Neighborly, Court Street Group Launch Commentary Service.

PHOENIX – Neighborly and Court Street Group have formed a joint commentary service focusing on public infrastructure, socially positive investments and municipal bonds.

The San Francisco-headquartered broker-dealer and the Brooklyn-based consulting group announced the new product, Neighborly Insights, Monday after quietly debuting it earlier this month. The new information platform, featuring commentary from the professionals of both companies, is available for free through Neighborly's website. The goal of the new venture is to provide to retail investors the kind of analysis that is traditionally mainly available through subscription services.

"Our mission at Neighborly is to provide a better way for individuals to invest directly in the civic projects they care about," said Jase Wilson, Neighborly's chief executive officer. "Through our new Insights platform, potential investors are now able to easily find valuable information about the municipal bond market, which will lead to a better understanding of the space, as well as better investments and borrowing decisions."

Neighborly Insights will feature weekly market commentary and news on federal legislation and policy, a focus on some specific credits, and news tailored for bond issuers.

"I am excited to distribute our industry-leading commentary on the municipal market, policy out of Washington, D.C. and the technological change that awaits the industry," said Court Street managing partner George Friedlander. "In all of my more than 40 years of experience as a leading strategist in the municipal space, it's refreshing to have the independence and broad reach through Neighborly to give insightful commentary to market participants, small to large. We hope that you find our reports valuable to your business and know that we are ever-evolving to explore new topics that will affect issuers, investors and policymakers alike."

BY SOURCEMEDIA | MUNICIPAL | 09/11/17 07:02 PM EDT

By Kyle Glazier

Munis Adapting to E-Trading, But Slowly.

Municipal bonds still lag behind corporates in electronic trading, two years after a prod from the Municipal Securities Rulemaking Board to take advantage of the technology to meet best price, execution, transparency, and liquidity goals. However, muni pros said the movement is still new and could gain in momentum soon.

"You have a lot of people in this industry who have gotten used to doing things the same way for decades now and it's hard to get some of them to change their mind about how they do business," said Robert Novembre, chief executive officer and president of Clarity Bidrate Alternative Trading System, a division of Arbor Research & Trading LLC which won its first municipal deal last year. That's "the challenge that we face each day, and we do our best to fulfill our mission one step at a time," he said.

Continue reading.

The Bond Buyer

By Aaron Weitzman & Christine Albano

September 05 2017, 10:53am EDT

Commentary: Don’t Be Selective About Disclosure.

A fair and efficient municipal marketplace depends on a shared commitment of all participants to disclose information fairly, equitably and in the public domain.

Bond issuers, for their part, support market integrity by disclosing certain important information to investors throughout the life of a bond. This information helps investors and others make informed decisions. Selective disclosure—an often-unintentional sharing of material, nonpublic information to a select group of investors—creates an information imbalance, giving certain market stakeholders access to more information than others.

As the regulatory agency responsible for preserving market integrity, the Municipal Securities Rulemaking Board encourages issuers to make important current information available to all. Our Electronic Municipal Market Access (EMMA®) website is the official nationwide repository for free public access to material information about municipal securities. It provides the means for full and fair municipal bond disclosure, and a simple means for issuers to address any inadvertent selective disclosure.

Federal regulations prohibit selective disclosure by public companies. Regulation FD —for “Fair Disclosure”—prohibits public companies from making intentionally selective disclosures and requires prompt public disclosure following any inadvertent selective disclosure. Issuers of municipal bonds are not subject to any similar regulations but can support market integrity by ensuring that all market stakeholders receive the same information at the same time. Adding a voluntary filing on EMMA is a simple step to ensure that information that may have been shared in a private setting is promptly available to the public at large.

Selective disclosure often occurs unintentionally. Municipal officials who stick around at the end of a town hall meeting with a few constituents and casually mention additional information about bond projects not raised during the public meeting could be inadvertently making selective disclosure. It also can happen when issuers or members of their deal team host roadshows, investor conferences and one-on-one investor calls or meetings. These events themselves are not inherently problematic, but they can become so if the information shared is material to all bondholders and not made public.

Selective disclosure in the municipal market can be more troubling in instances of credit distress, when some stakeholders’ interests may be at odds.

Take, for example, Puerto Rico, which is confronting an ongoing debt crisis with many competing interests at stake. In August 2014, the Puerto Rico Power Authority (PREPA) pledged to provide monthly cash reports, vendor agreements, budgets, and other information to owners and insurers controlling over 60 percent of its outstanding revenue bond debt. In exchange, the participating creditors that received confidential information were required to sign confidentiality agreements and waived their rights to sue PREPA for a period of time. Other stakeholders were not part of this arrangement, putting them at an information disadvantage.

The MSRB recommends that municipal bond issuers carefully manage their response to both intentional and accidental instances of selective disclosure. Issuers may open themselves up to federal fraud charges if they make material omissions or misstatements in their public disclosures. If something was material enough to mention in private, it may well have merited public disclosure.

Some market observers may fear that increasing regulatory attention on selective disclosure could cause issuers to choose to limit their contact with bondholders and ultimately provide less information to the marketplace. Fortunately, the experience of the corporate market under Regulation FD shows that corporations have become more transparent in the wake of greater regulatory focus on selective disclosure rather than less. Academic studies have tracked an increase in the frequency of companies providing earnings forecasts and continuing to hold conference calls, on an open basis, that were previously closed.

The MSRB provides resources to facilitate timely and complete disclosure of material information to bondholders by issuers on its EMMA website. Among the free tools available on EMMA are an email reminder service for recurring financial disclosures, customized issuer homepages to collect and display all disclosures from an issuer in a single page, and a dedicated submission process for voluntary disclosure of information about bank loans and other debt.

The MSRB also offers direct assistance to state and local government issuers to advance their knowledge on disclosure best practices through in-person educational events, webinars and an online education center.

When it comes to municipal market disclosure, it’s better to be inclusive than selective.

The Bond Buyer

By Lynnette Kelly

Published September 13 2017, 9:50am EDT

Lynnette Kelly is executive director of the Municipal Securities Rulemaking Board.

Report: Federal Public Investment is the Most Efficient Way to Finance Infrastructure.

Sept. 11, 2017 – In a new report, EPI budget analyst Hunter Blair finds that the state and local governments have taken a larger role in infrastructure spending, even though it is often more efficient for the federal government to lead the way. In 2015, 77 percent of public spending on transportation and water infrastructure came from state and local governments, and the Trump administration’s proposed infrastructure plan implies states would cover 80 percent of increased investment. Meanwhile, Senate Democrats’ proposal includes a $1 trillion federally funded and financed infrastructure investment.

“When done well, infrastructure investment by the federal government could give the economy a boost by increasing aggregate demand and boosting productivity growth,” said Blair. “The federal government is well suited to meet the needs of a large infrastructure investment.”

One of the strongest reasons for the federal government to lead in infrastructure funding is its ability to help mitigate funding challenges during economic downturns. 22 states fund infrastructure on a pay-as-you-go basis. During economic downturns—when states' tax revenues decrease and social services spending increases—states' budgets become strained and state-funded infrastructure may suffer from neglect. Because the federal government can run deficits, it is well positioned to help states maintain stable or increased infrastructure investment over the course of a business cycle.

Additionally, infrastructure is often provided as part of a network, and to maintain economic efficiency that network needs consistent quality throughout. Consistent quality ensures that disruptions are not multiplied throughout the production chain. These networks benefit the nation's efficiency as a whole and so shouldn't be allowed to vary in quality because of particular state and local government funding decisions.

The federal government is also better equipped to provide equitable access to infrastructure. For services such as clean drinking water, state and local governments might not be able to provide consistent funding, which could have implications for health and safety. In this case, the federal government can reallocate resources to areas that need them.

Finally, a significant public investment in green energy by the federal government would help combat global climate change. Current consumption levels can be maintained by decreasing investment in the conventional infrastructure as we increase our investment in green energy. However, if this investment is left to the states, it could be inconsistent, and thus, less efficient.

Economic Policy Institute

September 11, 2017

MSRB Publishes Market Advisory on Selective Disclosure.

Washington, DC – The Municipal Securities Rulemaking Board (MSRB) today published a market advisory to increase awareness among issuers of the importance of disclosing material information fairly, equitably and in the public domain. The practice of "selective disclosure" creates an information imbalance that favors a limited group of bondholders, which may include analysts for investment banking firms, investment advisers or institutional investors, who are given access to material information that others do not have.

"Issuers of municipal securities and their financial professionals share a responsibility to protect the integrity of the municipal market by making full and fair disclosures to all investors," said MSRB Executive Director Lynnette Kelly. "When selective disclosure occurs – often inadvertently – certain investors can be disadvantaged. The MSRB is a resource for issuers and their financial professionals seeking to implement practices to ensure that all investors and stakeholders have equal access to the same material information from the issuer in a timely manner."

Question-and-answer sessions during investor conference calls and invitation-only meetings with analysts are common scenarios in which selective disclosure could arise, according to the MSRB advisory. "These types of events are not inherently problematic," says Kelly. "However, issuers should make it a practice to consider whether material nonpublic information was shared in these circumstances and take steps to make that information public promptly after the event," Kelly said.

Selective disclosure, while not unique to the municipal market, is specifically prohibited in the corporate market under Securities and Exchange Commission Regulation Fair Disclosure (FD).

Municipal issuers are not subject to Regulation FD, but the MSRB's advisory cautions about the potential for federal fraud liability if, for example, known material information is omitted from required public disclosures. Further, if an investor were to make a trade based on improperly disclosed material nonpublic information, that could constitute insider trading.

The MSRB joins other municipal market participants in drawing attention to the practice of selective disclosure, including the Securities and Exchange Commission's Office of Municipal Securities, the National Federation of Municipal Analysts and the Government Finance Officers Association.

Read the MSRB's market advisory.

Date: September 13, 2017

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

U.S. Conference of Mayors Adopts Recommended National Energy Infrastructure Actions — "The New Bedford Principles"

Washington, DC—Today as part of a two-day national mayors' summit on smart cities and new energy technologies, sponsored by The United States Conference of Mayors (USCM) and hosted by USCM's Energy Chair New Bedford Mayor Jon Mitchell, mayors developed "The New Bedford Principles," a six-point energy recommendation to be included in the USCM National Infrastructure plan that will be presented to the nation by USCM President New Orleans Mayor Mitch Landrieu later this year.

The six principles include recommendations for tax reform and tax laws as well as infrastructure legislation.

The principles are:

1. Seek an energy-friendly tax reform package that doesn't undermine current progress:
2. Keep tax-exemption on municipal bonds
3. Keep state and local tax deductibility
4. Preserve and extend tax credits and other incentives to support renewable energy
5. Authorize additional tax and other incentives to promote more investment in microgrids, distributed generation, and storage systems.
6. Direct funding to support the development of local energy assurance plans to advance local resiliency efforts, especially those to combat climatic events.
7. Direct funding to municipal utilities or tax incentives to investor-owned utilities to modernize local grids, including microgrids, to increase resilience to climatic events.
8. Direct funding to support local energy block grants to support city energy independence goals
9. Restore federal challenge grants to incentivize smart grid efforts.

"Conference President New Orleans Mayor Mitch Landrieu called for an infrastructure proposal that includes not just roads, airports, and bridges – but to include water, ports, energy infrastructure," said Tom Cochran, USCM CEO and Executive Director. "Today here in New Bedford to answer the call of our President Mitch Landrieu, we have come forth with six points of energy recommendations to be included in our national infrastructure proposal that we hope to push forward after Congress gets tax reform behind them."

MSRB Addresses Selective Disclosure: Mintz Levin

On September 13, 2017, the Municipal Securities Rulemaking Board (the "MSRB") published a market advisory on selective disclosure (the "Notice"). The stated purpose of the Notice is to "increase awareness" of selective disclosure as a "market fairness" concern. Although the Notice acknowledges that selective disclosure by issuers of, or conduit obligors on, municipal securities is not prohibited or "inherently problematic", the Notice cautions issuers and obligors in the municipal market not to selectively disclose material nonpublic information.

The Notice's bottom line is to urge that issuers of and obligors on municipal securities voluntarily disclose to the broader marketplace information that is potentially material and is being disclosed or has been disclosed to a subset of actual or potential bondholders "by a method or combination of methods that is reasonably designed to effect broad, non-exclusionary distribution of the information to the public", including, for example, by posting the relevant information on the MSRB's EMMA website.

The Notice addresses the practice of certain municipal securities issuers and obligors of making selective disclosure, which occurs when certain classes of investors (the Notice singles out investment bankers, investment advisers and institutional investors as "typical" recipients) are given access to information but other investors are not. Selective disclosure may occur when the issuer presents information relating to an issue to current or prospective investors, for example, during road shows, investor conferences and one-on-one investor calls or meetings. The Notice states that "these events are not inherently problematic, but they can become so when the information conveyed is nonpublic and material".

The Notice addresses selective disclosure in both the primary and secondary markets. As an example, the MSRB notes that investor conferences and investor calls often include question-an--answer sessions, which may place the issuer at risk of discussing nonpublic material information, such as information that is not included in the preliminary official statement. As to secondary market selective disclosure, the MSRB uses the example of when an issuer might provide new nonpublic material information, which is not required to be disclosed pursuant to Rule 15c2-12 under the Securities Exchange Act of 1934 ("Exchange Act") or any other rule, to select investors or analysts.

As an example from other markets, the Notice outlines some of the requirements of the Securities and Exchange Commission's (SEC) Regulation Fair Disclosure, more commonly known as Regulation FD, adopted in 2000 to address, in part, selective disclosure by public companies. The regulation provides that, when an issuer discloses material nonpublic information to certain persons (e.g., brokers, dealers, investment advisers and investment companies), it must publicly disclose that information. If the selective disclosure was intentional, the issuer must make the public disclosure simultaneously; if it was unintentional, the issuer must make the public disclosure promptly.

The Notice acknowledges that Regulation FD does not apply to municipal issuers (or to obligors on municipal securities that are not public issuers of non-municipal securities), as municipal issuers are exempt from regulation by the SEC (other than antifraud provisions). Similarly, while the Exchange Act provides the MSRB with broad authority to write rules governing the activities of brokers, dealers, municipal securities dealers and municipal advisors, it does not provide the MSRB with authority to write rules governing the activities of issuers.

The Notice also acknowledges that selective disclosure, even of material nonpublic information, does not in and of itself constitute inside information for purposes of “insider trading” prohibitions, as such prohibitions generally have been construed as applicable only where the disclosure is made in breach of a duty to the issuer. However, the Notice appears to promote reducing selective disclosure by highlighting the risk that selective disclosure of nonpublic and material information might be indicative of material omissions or misstatements in offering documents or result in transactions that might be considered insider trading.

The Notice suggests that issuers and conduit obligors may wish to develop and follow guidelines for disclosure in a manner that disseminates all potentially material nonpublic information to all market participants. This is not unlike the push a few years ago by the Internal Revenue Service for issuers to establish post-issuance compliance guidelines. The Notice further suggests that issuers consider adopting, on a voluntary basis, the dissemination principles set forth in Regulation FD.

The MSRB claims that the purpose of the Notice “is not to discourage direct communications between issuers and investors and/or analysts, as road shows, investor conferences and other similar communications are legitimate market practices that are not inherently problematic.” Although the Notice is measured in tone and does not communicate any new legal requirements, it may prompt some issuers to decide that it is overly burdensome to sort through what good faith nonpublic communications might be deemed “unfair” selective disclosure, and to determine that their most efficient options are to err on the side of not entertaining calls or meetings involving individual analysts or investor groups or to post all nonpublic communications (presumably including transcripts of oral discussions) on EMMA. Although some issuers have adopted model standards to address these concerns; for some issuers, especially smaller issuers that are not in the market regularly, a policy of publicly posting everything that is said may well have a chilling effect on routine conversations between issuer representatives and investors. There also may be routine and follow-up conversations between issuer representatives and investor representatives that focus on details and monitoring of generally known items that an issuer may reasonably deem not to be material, and there is no reason to discourage such interactions.

It is to be hoped that the municipal market will continue to operate in a manner that acknowledges investor protection and market integrity and that continues to disclose material information to all without an overreaction that shuts down individualized discussions.

Mintz Levin

By Charles Carey

September 15, 2017

MSRB Issues Advisory on Selective Disclosure of Material Information: Day Pitney

The Municipal Securities Rulemaking Board (MSRB) published an advisory on September 13 highlighting to municipal issuers, dealers and municipal advisors the importance of disclosing material information “fairly, equitably and in the public domain.” The MSRB is concerned that “selective disclosure” creates an information imbalance favoring a limited group of bondholders, such as investment banking firms, investment advisors or institutional investors, who are given access to material information that others do not have. Selective disclosure can occur:

- during investor road shows, conferences and one-on-one investor calls or meetings;
- in the course of bank private placements of municipal issues;
- when there is a question/answer session, because the issuer might discuss information that is not included in a preliminary official statement;
- in the secondary market when the original disclosure documents were accurate and complete but new, nonpublic material information is provided by the issuer but not required to be disclosed pursuant to Rule 15c-2-12.

The MSRB advises that issuers make it a practice to consider whether material nonpublic information has been shared and to take steps to ensure any such information is made available to the general public promptly.

Selective disclosure, while not unique to the municipal market, is specifically prohibited in the corporate market under Securities and Exchange Commission Regulation Fair Disclosure (FD). Municipal issuers are not subject to Regulation FD, but the MSRB's advisory cautions about the potential for federal fraud liability if, for example, known material information is omitted from required public disclosures. Further, if an investor were to make a trade based on improperly disclosed material nonpublic information, that could constitute insider trading.

The MSRB stressed that along with issuers, dealers (acting as underwriters) and municipal advisors may incur liability for selective disclosure under anti-fraud provisions and MSRB Rule G-17, which requires that dealers and municipal advisors deal fairly with all persons and prohibits them from engaging in any deceptive, dishonest or unfair practice.

The MSRB noted that it is a common practice in the case of road shows and investor conferences for an attorney to review the oral script and distributed materials to be certain all the information is included in the disclosure documents available to the general market.

For your convenience, the advisory can be found here.

by Judith A. Blank, Namita Tripathi Shah, and Glenn G. Rybacki

September 14, 2017

Day Pitney

Executive Order Set To Expedite Permitting And Authorization Of Infrastructure Projects: Miles & Stockbridge

During the campaign and thus far in the current administration, the President has prioritized the modernization of the Nation's infrastructure and promised a $1 trillion investment plan to help fund that vision. There is rare bipartisan support in Congress for such a measure, as many agree that our roads, bridges, tunnels, railways, airports, energy, and water systems are in need of repair and replacement.

Although no legislation has been proposed to fund such projects, last week the President signed an Executive Order that may lead to a more efficient and effective permitting and authorization process and is viewed by many in Congress as a step toward the introduction of a long-awaited infrastructure funding package.

Executive Order "Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure"

The President's Executive Order streamlines the permitting process for infrastructure projects, such as transportation and water systems, by easing several environmental rules, regulations, and policies. The Executive Order states that it will "ensure that the Federal environmental review and permitting process for infrastructure projects is coordinated, predictable, and transparent." You can read the full Executive Order here, but we highlight the critical provisions below. Executive Order highlights:

Continue reading.

Article by Van P. Hilderbrand Jr and Christopher S. Denny

Last Updated: September 5 2017

Miles & Stockbridge

[Will Trump Target Muni-Bond Tax Break? Market Sees Little Chance.]

- President, Treasury Secretary have show support for subsidy
- Muni yields shows that tax-break most valuable since 2010

Donald Trump and Treasury Secretary Steven Mnuchin have expressed support for maintaining the tax break on municipal bonds. The market takes them at their word.

As the Republican president embarks on a push for tax cuts, top-rated state and local government bonds due in five years are yielding just 65 percent of comparable Treasuries, holding near a more than seven-year low, according to data compiled by Bloomberg. That shows that investors are still placing a high value on the tax exemption. If they expected the tax break to be eliminated — or chipped away at — municipal yields would rise closer Treasuries to compensate for that risk.

"We're not pricing in any scenario for the tax exemption to go away or be limited," said Matt Fabian, a partner at Municipal Market Analytics. "The statements out of the administration have been favorable."

Last week, Mnuchin told the Wall Street Journal that the preferential tax treatment is a subsidy for local governments, not wealthy bondholders. That echoed the arguments of state treasurers and city finance officers, who argue that it allows them to borrow cheaply for public works given that investors are willing to accept lower yields because they don't have to pay taxes on the interest they receive.

The Treasury Secretary and top White House economic adviser Gary Cohn left the tax-exemption out of a briefing on the broad outlines of the administration's tax plan in April. And Trump expressed support to U.S. mayors in a meeting before his inauguration.

Other factors have worked to hold up prices in the municipal market recently, too. The amount of new bond sales has dropped 15 percent this year, even though money has continued to flow into the market.

“It’s very difficult to tease out the worries of tax reform and how it’s going to affect municipal bonds,” said Stephen Winterstein, chief municipal fixed-income strategist at Wilmington Trust Co. “Investors probably aren’t putting a whole lot of weight to it.”

But, based on what’s known so far know, Trump’s push to slash corporate and individual taxes won’t have a dramatic impact on the market, Fabian said. Cutting the top personal rate to 35 percent from 39.6 percent, as previously proposed, would be too small to affect demand. And a corporate rate in the mid-to-low 20 percent range also “would not be overly negative for municipals, as banks and insurers would likely still find munis attractive at that tax rate,” Barclays Plc municipal strategists led by Mikhail Foux wrote in a Sept. 8 note.

What’s more, advocacy by state and local officials and Wall Street in support of the tax exemption has been strong. More than 150 members of Congress of both parties have signed a letter asking leadership to reject any proposal to cap or eliminate the exemption on municipal bonds. Such a change would also be at odds with another administration goal: channeling more money into infrastructure, which is financed by tax-exempt debt.

“There’s enough people in Washington who get how important it is for state and local governments to have a low cost of capital particularly if our governments are going to be the ones funding a lot of the infrastructure initiatives,” said Hugh McGuirk, who oversees $26 billion of municipal bonds at T. Rowe Price Group Inc. “If they’re a part of your plan why are you going to do something to make it more disruptive to them to raise money to fund your initiatives?”

Bloomberg Politics

By Martin Z Braun

September 13, 2017, 2:00 AM PDT

Muni Bonds' Tax Break Looks Safe For Now.

Donald J. Trump and Treasury Secretary Steven Mnuchin have expressed support for maintaining the tax break on municipal bonds. The market takes them at their word.

As the Republican president embarks on a push for tax cuts, top-rated state and local government bonds due in five years are yielding just 65 percent of comparable Treasuries, holding near a more than seven-year low, according to data compiled by Bloomberg. That shows that investors are still placing a high value on the tax exemption. If they expected the tax break to be eliminated — or chipped away at — municipal yields would rise closer to Treasuries to compensate for that risk.

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Bloomberg News

Sep 13, 2017 @ 5:06 pm

Hartford Says It Needs Debt Relief as Credit is Downgraded.

Matt Fabian of Municipal Market Analytics considers Hartford's bonds impaired since the city has indicated it can't handle all its debts.

The city of Hartford in Connecticut is still paying interest on its debt, but it notified bondholders this week that it won't be able to do so forever — even if it gets the state aid its waiting for.

It has hired bankruptcy attorneys who plan to meet with creditors later this month to discuss restructuring.

Matt Fabian of Municipal Market Analytics says Hartford's bonds are already impaired. He wrote to clients Friday afternoon:

> With a notice to bondholders that the city requires relief from its bonded indebtedness regardless of whether or not the state provides incremental aid, the city of Hartford CT has been added to the MMA database of defaulted and impaired municipal bonds. Hartford is in the Other category, which is for issuers still paying debt service in the normal way but where covenant violations, technical defaults, or other threats to repayment have arisen.

Credit rating agencies lowered the city’s ratings multiple notches in the past week. Moody’s lowered it to to the triple-C level — to Caa1 on its ratings scale from B2. S&P lowered it to B-minus from double-B.

S&P credit analyst Victor Medeiros comments:

> The downgrade to ‘B-‘ reflects our opinion that Hartford has capacity to pay on its obligations, but due to the current local and Connecticut political, economic, and financial environment, the city is more vulnerable to payment interruptions.

Barron’s

By Amey Stone

Sept. 15, 2017 5:17 p.m. ET

[Trump Administration Hosts Forum on State-Federal Relations.]

WASHINGTON — State officials from around the U.S. met here Wednesday with senior members of the Trump administration to discuss intergovernmental affairs.

Officials from 44 states and four territories attended the event—chiefs of staff, deputy chiefs of staff and policy directors among them. There were no governors at the meeting, which the White House dubbed a “forum on state and federal relations.”

Doug Hoelscher, a deputy director of intergovernmental affairs for the Trump administration, served as a point person for the event.

Energy Secretary Rick Perry, Health and Human Services Secretary Tom Price, Office of Management and Budget Director Mick Mulvaney, and Linda McMahon, who leads the Small Business Administration, were on hand and spoke about White House initiatives and priorities.

Anna Davis, director of the Office of Government Relations at the National Governors Association, attended the event.

“They clearly talked about that the federal government does have a role, but really decisions need to be made at the state level to the extent possible,” Davis said as she characterized the comments administration officials made at the forum.

“It was an opportunity for them to discuss how they think they have been successful in that and how they want to engage governors further,” she added.

Some of the specific policy areas brought up at the meeting included hurricane response and infrastructure.

Davis wasn't aware of any significant new information that was shared yesterday about the Trump administration's pending infrastructure investment plan, or the timeline for releasing it.

But she did say DJ Gribbin, an assistant to the president who is helping spearhead the administration's infrastructure efforts, made clear in his remarks "rural infrastructure is different."

"He was saying how the money that can be saved from having P3s in appropriate urban settings…can be used to help in the rural areas," Davis said, using an abbreviation for public-private partnerships.

About two weeks ago, state and local leaders visited the nation's capital to discuss the still-emerging White House infrastructure investment plan with administration officials.

Davis said she did not hear the income tax exemption for interest earned on municipal bonds come up Wednesday. Many state and local leaders are concerned about preserving the exemption as Republican members of Congress and Trump push to overhaul the U.S. tax code.

Staff members from the offices of House Speaker Paul Ryan, Senate Majority Leader Mitch McConnell and U.S. Rep. Rob Bishop also participated in the forum. Bishop, a Utah Republican, is currently leading a House task force on intergovernmental affairs.

White House press staff did not respond Thursday to requests for a list of the forum's attendees.

The meeting kicked off around noon and lasted until early evening. It was held at the Eisenhower Executive Office Building, which is located just west of the White House.

"The people that were there on both sides," Davis said, "both Republican and Democratic governors' staff, I think, appreciated the thought and effort that went into pulling it together."

ROUTE FIFTY

by Bill Lucia

September 14, 2017

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

GOP Lawmaker Calls For Audit Of Shadowy Wisconsin Bond Agency.

[Madison, Wis…] State Rep. Scott Allen (R-Waukesha) voted against his party's budget Wednesday for one reason: he couldn't support a measure that greatly expands the power of the Public Finance Authority – a shadowy, Wisconsin-based agency that he believes has done little to benefit Wisconsin.

Allen tells MacIver News Service that not only is he opposed to giving more authority to the Public Finance Authority, he will issue a memorandum to Assembly Speaker Robin Vos and the Joint Legislative Audit Committee seeking an audit of the PFA.

"I am voting against the budget, an otherwise good budget, because good government is more important than a good budget," Allen said in an interview Wednesday with MacIver News Service. "This should not be in the budget in my estimation."

As MacIver News first reported this week, the PFA is involved in some questionable investments around the country.

Allen's biggest concern, however, is that the Finance Authority, a political subdivision of Wisconsin, has done so little for the Badger State. Just 1.9 percent of the total bond debt issued by the PFA has been for Wisconsin projects, Allen said.

"I had representatives of the PFA in my office this morning and I asked them what is the public purpose of the PFA, and with a little hemming and hawing I got, 'Well, economic development.' Okay, great, let's examine the record."

The bond broker was ostensibly formed by four Wisconsin counties and the city of Lancaster. The Legislature in 2009 unanimously passed the law that created the PFA. It launched the following year. Its purpose: finding investors for tax-exempt and taxable "conduit bonds" for so-called "public benefit projects."

What is the public benefit of a Wisconsin organization that has done very little development in Wisconsin? It would seem very little, Allen said. Out of the scores of projects that the Finance Authority has issued bonds for, only two were located within the jurisdictions of the founding Wisconsin local governments, according to the lawmaker.

The PFA has been busy elsewhere. Earlier this year, it issued more than $1 billion in bonds for a 2.9 million square-foot shopping mall in East Rutherford, N.J., known as American Dream Meadowlands. The commerce monstrosity is to include an indoor ski slope and water and amusement rides in the mix of high-end retail.

Last month, Bloomberg reported that Goodwill Industries of Southern Nevada, which runs 50 donation centers and retail stores in Las Vegas, filed for bankruptcy 20 months after issuing $22 million of municipal bonds. The nonprofit issued the debt through the Public Finance Authority, which specializes in serving as a conduit for risky debt.

The PFA is one of more than a dozen third-party bond issuers doing business in the U.S.

"The authority, however, is uniquely lax in its filing requirements and has shown a tendency to issue bonds for projects outside its state when conduits there will not," Debtwire reported.

Despite its critics, the majority of PFA-connected bonds are performing, according to Debtwire's breakdown of Bloomberg data. In 2016, the issuer posted a record year of $1.79 billion in bonds issued.

Allen said he's not going to scrutinize every PFA investment, but he is bothered that the broker has done so much business outside the state that effectively created it.

"If the Wisconsin Legislature is going to act to create or expand the powers of a financing authority whose purpose or mission is economic development, the economic development ought to be occurring in Wisconsin," the lawmaker said. "Or there ought to be tangible benefits to the citizens and taxpayers of the state of Wisconsin or we shouldn't be doing it."

There are tangible benefits to PFA's founders and sponsors, the National Association of Counties, the League of Cities, the Wisconsin Counties Association, and the League of Wisconsin Municipalities.

Allen said PFA officials provided him a document showing the founding members and the sponsoring organizations help promote the authority's economic development efforts. For those services, they receive compensation. PFA officials would not disclose how much compensation.

Mark D. O'Connell, executive director of the Wisconsin Counties Association, did not return calls from MacIver News seeking comment. Jerry Deschane, executive director for the League of Wisconsin Municipalities, referred all questions to O'Connell.

"There's more to this than I have had time to investigate. That's why I'm calling for the audit because I think it deserves investigation. It deserves scrutiny before we consider expanding its powers," Allen said.

One of the powers sought in the legislation is the force of eminent domain – the ability of governments to take private property for public use in return for "just compensation" to the owner. Specifically, the provision would authorize "eminent domain to a commission created by contract under current law governing intergovernmental cooperation among Wisconsin entities that are acting under the provision of PFA statute." That would be the commission that oversees the PFA.

PFA directors have pledged to legislators that the Finance Authority would never actually use the power. Eminent domain is just a tool among a handful of IRS requirements needed to unlock PFA access to new market tax credits and receive tax-free financing status.

"They are giving this quasi-public, shadowy organization the power of eminent domain?" said Eric Bott, state director of the Wisconsin chapter of Americans for Prosperity. The libertarian organization has voiced its opposition to the Finance Authority legislation, asking Gov. Scott Walker to veto it, if it survives legislative debate.

Allen said the IRS is challenging the PFA's local government status, "and appropriately so." They need to have either the power to tax, policing power or the power of eminent domain authority. There's no specific language in the state statute that requires that, hence the move to change the law, Allen said.

"I don't know whether they have had the authority or whether they are trying to clean up the language to represent their authority," the legislator said. "Either way, it should not be in the budget and we should not be expanding their authority until we do a careful review of their processes and their mission and purpose."

Proponents of the modifications to Wisconsin's PFA statute say they provide greater transparency. The provisions do so by requiring quarterly bond activity reports to the state Department of Administration and the Legislative Audit Bureau. And the commission that oversees the Finance Authority would be considered an "authority" as defined under Wisconsin's open records law, which means it would be subject to the law. It also would be subject to Wisconsin's open meetings law.

In 2011, a year after its creation, the PFA branched out nationwide.

"The (PFA) partners with private borrowers and local governments to provide tax-exempt financing for public benefit projects that create temporary and permanent jobs, affordable housing, community infrastructure and improve the overall quality of life in local communities," according to the organization's website.

Traditional fees associated with securing tax-exempt financing are too often cost prohibitive, particularly for small projects. By “standardizing and streamlining the entire process,” PFA claims it can save local governments and nonprofits money. More important, PFA asserts its Wisconsin Small Bond Program can move from application to approval and issuance in “as little as six weeks.”

“The (PFA) is out there to create an alternative at a time when communities are really struggling to generate economic activity,” Liz Stephens, Finance Authority program manager, told the Bond Buyer investor newspaper in 2011. “Access to capital is really difficult, and the PFA is there to provide another tool and resource to help local governments.”

In a press release explaining his no vote on the budget, Allen described the PFA legislation as the “ugly” in the two-year state spending plan.

“What is ugly about this budget is that rather than curbing the authority of this so-called political subdivision the budget, in a non-fiscal item, greatly expands the authority and works to remedy PFA’s problems with the Internal Revenue Service,” the lawmaker said. “The obscure provision of the budget has been largely undetected by the public or by legislators. It has gained no attention, no debate, and no public scrutiny. It is yet another example of the need for budget transparency.”

MacIver News Service

By M.D. Kittle

September 13, 2017

AFP-WI to Lawmakers: Wisconsin Should Not Empower Shadowy Public Finance Authority.

Stealth Motion Gives WI Public Finance Authority Eminent Domain Authority, Expanded Powers to Engage in Foreign Economic Development

MADISON, WI – Americans for Prosperity-Wisconsin today urged lawmakers in the strongest possible terms to reject an 11th hour proposal to give sweeping new powers to the Wisconsin Public Finance Authority (PFA), an obscure, quasi-governmental agency that issues high risk bonds for government and non-profit construction projects. The motion was inserted into the budget after closed door meetings with no public discussion. Unanswered questions abound about the implications of giving the PFA vast new powers including eminent domain and an expanded ability to issue bonds for economic development projects in foreign countries.

Americans for Prosperity-Wisconsin State Director Eric Bott made the following statement:

“There’s something rotten in Madison today. This kind of legislative chicanery would make Tony Soprano proud but should outrage taxpayers. Our base of 130,000 grassroots activists is deeply troubled by the vast, unchecked, and undemocratic powers given to the PFA in this budget. They are also disturbed by the sneaky procedural tricks used to slip this motion into the budget with no public debate and countless unanswered questions. Our activists will be working around the clock for the next 48 hours to urge lawmakers stop this motion until some key questions are answered. If it should survive legislative debate in its current form, we will be urging Governor Walker to exercise his veto authority.

Bott continued:

"Wisconsinites have much to lose and nothing to gain by further empowering an entity best known for putting Wisconsin's reputation on the line through dubious, high-risk, out-of-state construction projects like a $1.2 billion bond for a New Jersey shopping mall and a $327 million bond for the University of Kansas campus. This motion invites further suspicion and concern about how it was slipped into the budget in the first place. Someone is trying to pull a scam on Wisconsin taxpayers and property owners and AFP-WI will not rest until we know why this is being done and which individuals or groups are doing it."

Bott added that AFP-WI is demanding that Assembly and Senate leadership provide public answers to the following key questions before any further legislative action takes place:

– Why does the legislature want to expand the PFA's ability to engage in economic development in foreign countries like China or Mexico?

-Why is the legislature seeking to subvert democracy in other states by financing development projects opposed by local officials in those states?

-Why is a so-called conservative majority in the legislature proposing to grant unprecedented new eminent domain authority to a shadow authority?

-Why are conservatives in the legislature going to bat for an organization that reportedly operates out of California, especially when nearly all jobs, profits, and tax revenues associated with the PFA appear to be bled out of Wisconsin and sent to California?

-Who is getting rich off the PFA and why is the legislature helping them get richer when there is little-to-no public benefit to the citizens of Wisconsin?

-Why were the PFA provisions added to the budget under the cloak of darkness without any public debate or discussion what-so-ever?

-Who is the author of the PFA motion? Who asked to put this in the budget?

-What is the public benefit of the PFA to Wisconsin citizens?

-Why is Wisconsin taking on this kind of unnecessary risk with its financial reputation? PFA is viewed by some in the market as a Wisconsin governmental issuer of bonds. Any problems they have will negatively impact the market's view of bonds issued by Wisconsin.

BACKGROUND:

PFA sought a similar but less dramatic expansion of its power through a budget motion inserted into the 2015-17 state budget. Governor Walker vetoed the provision in its entirety, stating:

I am vetoing this provision because I object to broadening the powers of [PFA] and do not support the decreases in accountability that would result from enacting this provision or the loss of local control and loss of state tax revenue. Such sweeping changes to current law decrease transparency and could create unintended consequences, the full extent of which are unknown.

The PFA's involvement in shady projects has been well-documented in recent years.

AMERICAN FOR PROSPERITY

SEP 13, 2017

How Governments Can Maintain Strong Public-Private Partnerships.

The biggest risk to public-private partnerships in governing is not financial or technical, but political, says Justin Marlowe, professor in the University of Washington's Evans School of Public Policy & Governance.

Marlowe is the author of a new Guide to Financial Literacy, his fourth, published in August by Governing magazine.

The first volume was a general primer on public finance, the second was about managing a jurisdiction's financial health and the third was an overview of public-private partnerships — which are called P3s for short. The new fourth volume continues that discussion and is subtitled "Ensuring Public-Private Partnerships that are Built to Last."

In the new guide, Marlowe writes that public-private partnerships "are here to stay … they're now a core part of the state and local government infrastructure tool kit." They're also more "complex and intricate" than ever, he writes, now being used for projects including "social infrastructure" like courthouses, affordable housing, university research facilities, stormwater management and more.

Government staff, Marlowe writes, can manage financial aspects of public-private partnerships with good contracts, insurance and service agreements and they can control technical risks with good designers and design processes.

Policymakers, however, are harder to manage — sometimes they just change their minds.

"They can decide a P3 is longer a priority. They try to modify its core service delivery model. They can change the criteria to evaluate a P3's success," Marlowe writes. "All these changes are well within the purview of most state and local elected officials. If any of these happen, a P3 will quickly fall out of alignment and fall short of its objectives."

Marlowe pens the financial guides with newly elected or appointed government officials in mind. They have the job, but many come to office knowing little or nothing about public finance. The guides are meant to help such officials better understand their role in the world of government finance.

The new guide features "Ten Tools of P3 Governance," a set of techniques public managers can use to increase the chances that a public-private partnership will succeed. The list includes best practices such as key performance indicators, contingency payments and routine performance audits, among others.

Marlowe plans no further volumes of the financial guide — though he notes also that he's said after volumes two and three as well.

"I do hope that someone else can take the financial literacy format and run with it," he said. "There's no end to the demand for thoughtful, credible, accessible explanations of public finance."

UW News

by Peter Kelley

September 5, 2017

Detroit: The Tipping Point.

Detroit's struggles have been well chronicled, but new investments are contributing to an economic resurgence.

Timothy Thorland drives past the northwest corner of Porter and Hubbard most days on his way to work. Although most who see the abandoned row houses there as urban blight, Thorland envisions attractive residential units that could meet a public need, breathe new life into Detroit's Mexicantown neighborhood, and prove to traditional lenders that it's a viable real estate market worthy of long-term investment.

Like nearly all Detroit neighborhoods, Mexicantown began declining in the latter half of the 20th century and fell off a cliff when the housing bubble burst in 2008. But it sits adjacent to Downtown Detroit, which has experienced significant revitalization in recent years. The hope is that this positive growth will spread into surrounding neighborhoods.

But simply waiting for the downtown boom to spread won't save Detroit's neighborhoods. It takes financial creativity, long-term vision, and risk-taking from organizations like Thorland's Southwest Housing Solutions to push tipping-point neighborhoods like Mexicantown in the right direction.

Continue reading.

The Urban Institute

by Brett Theodos, Jay Dev, Sierra Latham

September 12, 2017

H.R. 601 Extends EB-5 Program and Provides $15.25B of Disaster Relief Funds: Ballard Spahr

President Trump has signed into law H.R. 601, a continuing resolution that funds the federal government through December 8, 2017, and thereby extends the EB-5 Regional Center Program beyond September 30, 2017—the end of the federal fiscal year.

The resolution—Continuing Appropriations Act, 2018 and Supplemental Appropriations for Disaster Relief Requirements Act, 2017—provides $15.25 billion in emergency funding for the Departments of Homeland Security, Housing and Urban Development, and Small Business Administration to support disaster response and assistance. With the President's September 8 signing, the Act also temporarily suspends the country's debt limit, among other provisions.

The EB-5 Regional Center Program extension comes with no further legislative changes at this time, though passage of an EB-5 reform bill before December 8 is possible. Indeed, H.R. 601 arguably hints at the possibility of legislative reform before its next sunset date in language that states, in part, that "appropriations and funds made available and authority granted pursuant to this Act shall be available until whichever of the following first occurs:

- The enactment into law of an appropriation for any project or activity provided for in this Act;
- The enactment into law of the applicable appropriations Act for fiscal year 2018 without any provision for such project or activity; or
- December 8, 2017."

Ballard Spahr will provide updates on these developments.

USCIS Issues Form I-924A Filing Tips. Also on September 8, 2017, the U.S. Citizenship and Immigration Services (USCIS) issued updated filing tips on its "Annual Reporting Information/Filing Tips" page in preparation for regional center annual compliance by issuing Form I-924A, Annual Certification of Regional Center.

One filing tip of note is the inclusion of supplemental materials to the I-924A. Supplemental documents would be of optimal advantage in any year in which the regional center is overdue to show indicia of economic activity promotion in the center's geographic area, and thus at risk of receiving a Notice of Intent to Terminate (NOIT). USCIS issues a NOIT when a regional center appears not to have promoted economic growth, demonstrated typically by a lack of I-526 filings (or systemic I-526 denials). Supporting documents could include records on pending projects with fundraising underway or imminent. Examples include copies of licenses, permits, record of property purchased in support of a project, or other evidence of ongoing regional center activity. The decision on whether such evidence is sufficient to demonstrate promotion of economic growth is made by USCIS on a case-by-case basis.

The deadline to file a Form I-924A is December 29, 2017, for the current fiscal year (October 1, 2016 to September 30, 2017).

USCIS Stakeholder Meeting. Please mark your calendars for USCIS's next EB-5 Program national meeting of stakeholders on Tuesday, November 7, 2017, from 1 p.m. to 2:30 p.m. ET, at the agency's New York City field office. Participants can attend the meeting in person or through teleconferencing, with the opportunity to send questions in advance to be answered during the meeting. Information on how to dial in will be made available as the date nears.

Ballard Spahr's EB-5 Group brings together attorneys experienced in securities, private equity, business and finance, real estate, tax credits, and corporate law to assist clients with utilizing the EB-5 Program to accomplish their goals. The EB-5 Program has led to more than $15 billion of foreign investment in the United States and more than 220,000 jobs.

Ballard Spahr's Securities Group advises private and public companies, underwriters, selling stockholders, and officers and directors, as well as private equity funds, venture capital firms, and institutional investors in compliance matters, capital-raising activities, and other transactions.

September 13, 2017

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This alert is a periodic publication of Ballard Spahr LLP and is intended to notify recipients of new developments in the law. It should not be construed as legal advice or legal opinion on any specific facts or circumstances. The contents are intended for general informational purposes only, and you are urged to consult your own attorney concerning your situation and specific legal questions you have.

Risk Expert Says There's One Budgeting Question Every City Must Now Ask.

Michael Berkowitz is no stranger to natural disaster, having responded to a West Nile Fever outbreak, tropical storm and major flooding as a deputy commissioner at the Office of Emergency Management in New York City. Today, as president of the Rockefeller Foundation's 100 Resilient Cities initiative, Berkowitz continues to help cities prepare for and respond to these types of disasters. He has led 100 RC since its founding in 2013. With a network of 100 selected cities across the globe, the program aims to better address the increasing "shocks" — sudden natural disasters like hurricanes, earthquakes and floods — and "stresses" — slow-burning crises like homelessness and water shortages — of the 21st century. 100 RC announced its final cohort of 37 cities last summer, and more than 50 cities, including non-participating cities, have appointed "chief resilience officers" in recent years.

I spoke with Berkowitz on Thursday, while he was in Athens, Greece, meeting with mayors, about a smart recovery strategy post-hurricanes Harvey and Irma, how chief resilience officers can leverage their small budgets to effect change, and projects he admires from New Orleans to Paris to Rotterdam and beyond.

Continue reading.

NEXT CITY

BY KELSEY E. THOMAS | SEPTEMBER 15, 2017

KBRA Affirms Rating on DFW International Airport's Joint Revenue Improvement Bonds.

Kroll Bond Rating Agency (KBRA) has affirmed the long-term rating of AA- with a Stable outlook on the Dallas/Fort Worth International Airport (DFW) Joint Revenue Improvement Bonds.

This affirmation is based on KBRA's U.S. General Airport Revenue Bond Methodology.

Please click on the link below to access the full report:

Dallas/Fort Worth International Airport's Joint Revenue Improvement Bonds

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

KBRA Rates Pennsylvania Turnpike Commission Turnpike Revenue Bonds.

Kroll Bond Rating Agency (KBRA) has assigned a long-term rating of AA- with a Stable outlook to the Pennsylvania Turnpike Commission Turnpike Revenue Bonds, Series A-1 of 2017 and Turnpike Revenue Refunding Bonds, Series A-2 of 2017. After issuance, PTC will have approximately $4.9 billion senior lien Turnpike Revenue Bonds outstanding, with final maturity in 2051.

At the same time, KBRA has assigned a long-term rating of AA- and Stable Outlook to all the Pennsylvania Turnpike Commission's outstanding senior lien Turnpike Revenue Bonds on a parity basis. KBRA's long-term rating excludes bonds backed by a letter of credit or liquidity facility, unless otherwise noted.

The turnpike revenue bonds are secured by net revenue of the turnpike system, consisting primarily of all tolls received by or on behalf of the Commission from the Pennsylvania Turnpike system.

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

Pennsylvania Turnpike Commission Turnpike Revenue Bonds

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

KBRA Assigns Ratings to the Industrial Development Authority of the County of La Paz, Arizona.

Kroll Bond Rating Agency (KBRA) has assigned a long-term rating of BBB- with a Stable outlook to the Imperial Regional Detention Facility Project Senior Lien Refunding Project Revenue Bonds (Federally Taxable) Series 2014 issued by the Industrial Development Authority of the County of La Paz, Arizona.

This rating is based on KBRA's General Revenue Bond Methodology. KBRA's rating evaluation focuses on the following key rating determinants.

- Management
- Service Area
- Operations
- Financials
- Debt and Capital
- Security Provisions

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

Industrial Development Authority of the County of La Paz, Arizona

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

KBRA Releases Surveillance Report: MTA Transportation Revenue Bonds.

Kroll Bond Rating Agency (KBRA) affirms the long-term rating of AA+ with a Stable Outlook on MTA's Transportation Revenue Bonds, except for bonds backed by a letter of credit or liquidity facility. KBRA also affirms the K1+ rating on the Series 2015B-2e (Taxable), Series 2015B-2f (Taxable), Series 2017A-2 and Series 2017B BANs. The affirmation takes into account additional disclosure since our June 15, 2017 report.

On June 15, 2017, Kroll Bond Rating Agency (KBRA) assigned a long-term rating of AA+ with a Stable Outlook on the Metropolitan Transportation Authority's (MTA) Transportation Revenue Refunding Green Bonds, Series 2017B ("the 2017B Bonds"). On that date, KBRA affirmed the long-term rating of AA+ with a Stable Outlook on all outstanding MTA transportation revenue bonds, except for bonds backed by a letter of credit or liquidity facility. KBRA also affirmed the short-term rating of K1+ on the Series 2015B-2e (Taxable), Series 2015B-2f (Taxable), Series 201A-2 and Series 2017B Bond Anticipation Notes (BANs. For additional information on the MTA's long-term credit, please see our report dated June 15, 2017.

Since our June report, MTA has disclosed further information including the appointment of a new Chairman and other management changes, and submitted the June 2017 Financial Plan to the MTA Board. As a result of the additional disclosure, KBRA is issuing an update to the June 2017 report.

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

Metropolitan Transportation Authority Transportation Revenue Bonds

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

Force Majeure and Similar Considerations for the Energy Industry in the Aftermath of Hurricane Harvey: Mayer Brown

As an initial matter, Mayer Brown offers its greatest sympathies to those affected by Hurricane Harvey. Mayer Brown has been a member of the Houston community for more than 30 years and is deeply committed to helping Houston rebuild.

At this point, it is impossible to assess the full impact of the devastation caused by Hurricane Harvey. However, we can predict that it will have wide-ranging effects on the ability of some members of the energy industry to fully perform contracts—from production, to transport, to the provision of oil- and gas-related goods and services. It is common knowledge that some of the largest oil and gas production operations and refining facilities in the United States were forced to shut in or shut down as a result of the hurricane. What is less obvious—so far—is how many ongoing contracts are likely to be unfulfilled as a result of the shutdowns and what the domino effect will be. It is also unclear how many other companies—including providers of goods and services—will be unable to perform their contracts because of the physical destruction and ongoing infrastructure issues caused by the hurricane and its aftermath. It is predictable, for instance, that manufacturing facilities that have suffered flood damage will suffer both loss of product and loss of or damage to the equipment necessary to manufacture more product quickly.

In short, the energy industry is likely to experience a rise in contract disputes across a range of Hurricane Harvey-related situations that will trigger force majeure or similar concerns, as occurred in the aftermath of Hurricane Katrina and Hurricane Ike. Force majeure concerns are likely to arise from, among other situations, production shutdowns as a result of the hurricane and subsequent flooding; flooding or other damage to the premises of goods and services providers, resulting in delayed or non-delivery of goods; and potential government actions. Of course, every instance of delayed, partial or non-performance by one party is likely to have a detrimental effect on others in the energy value chain.

Force majeure, and the related doctrines of impossibility and/or commercial impracticability, may be viable defenses to failure to perform a contract where the failure to perform is caused by a natural disaster. It is typical for a commercial contract to contain a force majeure clause. Where a contract contains a force majeure clause, under Texas law, the terms of the contractual force majeure clause, as opposed to any common-law definition, generally control the breadth of the defense. See, e.g., *Virginia Power En. Mktg., Inc. v. Apache Corp.*, 297 S.W.3d 397, 402 (Tex. App.—Houston [14th Dist.] 2009, pet. denied) ("The scope and effect of a 'force majeure' clause depends on the specific contract language, and not on any traditional definition of the term.").

Most contractual force majeure clauses cover "acts of god," such as hurricane, flood, other severe weather events, war, terrorist attacks or similar occurrences. Every force majeure clause is different, and the precise language of the clause should be the first consideration when assessing what to do if a company finds itself potentially unable to perform a contract in the wake of a weather event like Hurricane Harvey. Some force majeure clauses will add a specific requirement that the event be "unforeseeable," while others are drawn more broadly (although a court interpreting the provision may still read an unforseeability requirement into the contract). See, e.g., *Valero Transmission Co. v. Mitchell Energy Corp.*, 743 S.W.2d 658, 663 (Tex. App.—Houston [1st Dist.] 1987, no writ); *Hydrocarbon Mgmt., Inc. v. Tracker Expl., Inc.,* 861 S.W.2d 427 (Tex. App.—Amarillo 1993, no writ). Force majeure clauses frequently require the non-performing party to take reasonable steps to minimize delay or damages caused by the force majeure event. The force majeure clause may also require the party claiming force majeure to provide notice to the other contracting party, often by a certain method (for instance, in writing), and possibly within a certain period of time. Close attention should be paid to any such requirements.

Even if there is no force majeure clause in the contract, depending on the jurisdiction, common-law doctrines that are the functional equivalent of a force majeure clause may provide a defense to performance. For example, in Texas, impossibility is recognized as a defense to contract performance. Pertinent to the post-Harvey situation, this defense may be applied where the thing necessary for performance has been destroyed or deteriorated and where the action is prevented by government regulation. See, e.g., *Key Energy Servs., Inc. v. Eustace*, 290 S.W.3d 332, 340 (Tex. App.—Eastland 2009, no pet.). The impossibility defense may also be referred to as a force majeure defense or a "commercial impracticability" defense. Regardless of the nomenclature used by the parties and the court, at common law, a situation approaching true impossibility—as opposed to mere impracticability or inconvenience (such as financial inconvenience)—will typically be required for this defense to be successful.

Similar defenses are recognized across much of the world, which (depending on choice of law issues) may be pertinent when inability to perform is implicated in a transnational contractual relationship. For example, the United Nations Convention on Contracts for the International Sale of Goods (CISG), which applies to certain commercial transactions between parties who are citizens of signatory states, provides that a "party is not liable for a failure to perform any of his obligations if he proves that the failure was due to an impediment beyond his control and that he could not reasonably be expected to have taken the impediment into account at the time of the conclusion of the contract or to have avoided or overcome it or its consequences." CISG Art. 79(1). Like a typical force majeure provision, the CISG also includes requirements for proper remedial actions and notice to the other party.

Ultimately, whether a force majeure or a similar doctrine will excuse performance is likely to turn on whether the party claiming force majeure could reasonably have avoided either the causal situation or non-performance. Whether the event was foreseeable is one element of this inquiry, but it is not necessarily determinative. For instance, if an unforeseeable event were to cause a contract to become more expensive to perform (but not impossible), a force majeure defense is likely to be challenging to prove. See, e.g., *Valero Transmission Co. v. Mitchell Energy Corp.,* 743 S.W.2d 658, 663 (Tex. App.—Houston [1st Dist.] 1987, no writ) ("[A] contractual obligation cannot be avoided simply because performance has become more economically burdensome than a party anticipated.").

It is best practice for a party considering asserting force majeure to analyze and evaluate whether there are alternatives that would make partial performance possible. Good faith and honest communications with the other party(ies) to the contract are key. It is generally advisable for the non-performing party to retain any written communications detailing the efforts taken to perform; this evidence may become important in defending any resulting breach of contract action. A non-performing party should also be careful about industry perception: performing one's most lucrative contracts, while not performing the less lucrative ones on the basis of a force majeure event, may result in negative visibility if such "most favored nation" status is not part of the underlying contractual relationship(s). While none of these issues alone may be dispositive, they may have a practical effect on the outcome of any resulting disputes.

In sum, if Hurricane Harvey and its aftermath appear to have made performance of a contract impossible, consulting the relevant contract(s) for any governing force majeure language should be the first step. Alternative means of performance, even if difficult, should also be thoroughly considered. Communication with the other contracting party(ies) is key and should be done in as timely a manner as possible. And finally, if the ultimate determination is that performance is not possible due to a force majeure event, notice should be provided to the other party(ies) in the time and manner required by the contract and/or governing law.

Last Updated: September 7 2017

Article by Jessica Crutcher, Micheal P. Lennon Jr. and Charles S. Kelley

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Catastrophe Bonds Avoid Direct Hit From Hurricane Irma.

Recent events appear likely to affect only a few, if any, of the outstanding $26 billion

What looked like a dark turn in the booming market for catastrophe bonds may wind up being little more than a blip.

With damage estimates for Hurricane Irma tumbling, investors in "cat bonds" will likely avoid the significant losses they may have absorbed had earlier, more aggressive estimates borne out.

Cat bonds are essentially a vehicle for insurance companies to transfer some of their financial risk to the global capital markets. Wall Street and other middlemen help insurers sell these bonds to sophisticated investors with the understanding that they could lose some or all of their principal to help pay claims.

These high-yielding bonds have surged in popularity in recent years among investors including pension funds, endowments and wealthy families. The rally has also come during a long stretch of few hurricanes hitting the U.S.

So the past couple of weeks have tested investor appetite as North America suffered three of its worst natural disasters in a decade. Private-sector insurers face as much as about $60 billion in costs in the U.S. from Hurricane Irma, which landed in Florida Sunday, Hurricane Harvey with historic flooding in Houston, and an 8.1-magnitude earthquake in Mexico, according to some risk-modeling firms' estimates.

But these events appear likely to affect only a few, if any, of the outstanding $26 billion in cat bonds.

The spate of catastrophes "may cause some investors to rethink their positions in the market" and expect a higher rate of return, said Gary Martucci, a director at Standard & Poor's Global Ratings. But "these bonds are generally two to three times oversubscribed, so even if a few investors walk, there's still sufficient capital available to buy the risk that is being offered in the market."

Hurricane Irma made landfall in the Florida Keys early Sunday, then moved up the state's west coast. Even at the upper end of Monday's projections of roughly $40 billion of damage, the storm is well below the $130 billion mark that put cat-bond investors on edge last week as Irma barreled across the Caribbean and seemed destined to strike Miami.

Mr. Martucci said he doesn't expect any of the cat bonds rated by S&P, representing a slice of those outstanding, to suffer a principal reduction based on the current $40 billion upper-end damage estimate.

Many insurance executives and cat-bond promoters are gathered in Monte Carlo for one of the biggest annual industry confabs. As the conference began over the weekend, attendees said they were getting frequent updates on the storm's trajectory from various sources, and using smartphones to stay on top of the U.S. National Hurricane Center's forecasts of Irma's strength.

Which cat bonds might suffer, and how much will have to be paid out, will become clearer in coming days as the industry tallies up actual losses.

"There is a mountain of alternative capital on the sidelines that will be available to be deployed if the insured loss from Irma results in significantly higher expected returns for cat bonds," Tony Ursano, president of TigerRisk Partners LLC, a risk and capital adviser to insurers and reinsurers, said from the conference.

In simplest terms, a catastrophe bond works like this: An investor buys the bond, taking into account a calculation by an independent risk-modeling firm of the odds of a specified disaster occurring. The principal and interest are held in escrow and typically invested in Treasurys.

These bonds are typically sold in tranches, each with a different trigger. Triggers vary across the bonds. Some specify a deductible amount that an insurer must pay before tapping into the principal, while others are based on metrics tied to a weather event. Some are tied to a single event, while others reference damage accumulated over designated periods.

Florida hurricane risk is so large that around half of the $26 billion in outstanding cat bonds include that as a risk exposure. Bonds also cover other types of storms, wildfires, meteorite strikes and even solar flares among a growing array of choices for investors. In return for their investment, owners of the bonds are paid interest rates higher than conventional bonds for taking on the risk.

Aon Benfield's U.S. hurricane bond index had an 8.7% average annual return over the past 10 years, compared with a 6.9% average over the decade for high-yield bonds. But cat bonds returned less over the 12 months through June 30: 6.4% compared with 7.9% for the high-yield index.

Over the years, investors have lost some principal and as Irma barreled toward the U.S. last week, S&P said at the time that 13 cat bonds it rates totaling $1.35 billion could be at risk.

These included $250 million in a class of notes issued in 2014 by Kilimanjaro Re Ltd., an entity affiliated with the reinsurer Everest Re. Payouts from the bond would be made to Everest if insured industry losses in Florida exceed $68 billion, a figure that now seems unlikely.

Last week in thin trading on a secondary market, part of a series of bonds tied to Florida-focused Heritage Insurance Holdings traded as low as about 50 cents on the dollar before recovering to 68 cents, market participants said.

But as estimates of the insurance industry's costs fell Monday, "the cat-bond market has basically recovered," said Dirk Lohmann, chief executive of Switzerland-based insurance advisory Secquaero Advisors AG. Mr. Lohmann was among the pioneers of cat bonds in the early 1990s. "There will be some isolated hits" but not widespread loss of principal, he said.

For insurers, the growth of cat bonds has given them an alternative to traditional reinsurance, in which they pay other insurance companies to take responsibility for some of their claims. Many like that the bonds have increased price competition with reinsurers and make them less dependent on those reinsurers.

The bonds were born in the 1990s, when Mr. Lohmann and other then-colleagues at Hannover Re in

Germany were inspired to turn to the capital markets after Hurricane Andrew hurt many insurers' capital bases. That hurricane, which cut across southern Florida in 1992, counts as the second costliest U.S. storm, behind Katrina in 2005.The securities took off after the 2008 financial crisis because investors were attracted to their relatively high returns and to the fact that their performance was uncorrelated to market swings.

A record $11.3 billion of new cat bonds were issued in the 12 months through June, according to Aon Securities. Cat bonds and other "alternative" reinsurance investments collectively stand at roughly $90 billion, or about 15% of the $605 billion in capital within the global reinsurance industry, according to Aon.

By Leslie Scism and Anupreeta Das

Updated Sept. 11, 2017 10:04 p.m. ET

The Wall Street Journal

After Disaster Strikes, Munis Often Provide New Capital.

It has been a devastating hurricane season so far, and our hearts go out to the people and places for whom Harvey and Irma will be storms of lasting significance.

The first order of the day is to help meet the immediate needs of those affected, and people from across the United States have helped save lives, shipped necessities, and donated to various agencies that provide assistance. In Texas and other areas hit by Harvey, homeowners and businesses are filing insurance claims, and adjusters are busy assessing damages, a daunting task in the country's fourth-largest city.

Longer-term solutions in Texas, Louisiana, Puerto Rico, the U.S. Virgin Islands, Florida and elsewhere will require significant financing: The federal government has already agreed to provide $15.3 billion in disaster aid and that amount will certainly rise as the damage caused by the hurricanes is fully assessed. According to The New York Times, federal disaster aid related to Hurricane Katrina totaled $110 billion, and the $15.3 billion allocated so far represents "the first installment."

Sources of revenue

States typically supplement federal aid with money that has been set aside in aptly named "rainy day funds" for these types of emergencies. The rainy day fund in Texas is officially known as the Economic Stabilization Fund and will likely be tapped. As of June 30, 2017, its balance totaled nearly $10 billion, according to a recent Bond Buyer article by William Glasgall, the director of state and local programs at the Volcker Alliance in New York. Allocations from this fund – the biggest rainy day fund in any state, according to the state's Office of the Comptroller – can be allocated for hurricane relief by a two-thirds vote of the Texas Legislature.

At some point, depending on the degree to which affected municipalities have to (or choose to) retrofit or replace critical infrastructure, or embark on a master plan to rebuild areas that were largely destroyed, the municipal bond market may eventually become a source of capital as well.

In recent history, various restrictions in the Internal Revenue Code of 1986 have been relaxed to allow for special tax-exempt securities that could “foster economic recovery after natural disasters and other catastrophic events,” according to The Fundamentals of Municipal Bonds, a Securities Industry and Financial Markets Association reference book. As a result, the book explains, the U.S. Congress has occasionally authorized disaster recovery bonds: Gulf Opportunity Zone bonds were first sold in 2005 to help Alabama, Louisiana, Mississippi and other areas affected by Hurricane Katrina, and Midwest Disaster Area bonds were issued in 2008 to finance rebuilding efforts after severe storms, tornadoes and flooding occurred in seven Midwest states. A number of Texas and Louisiana counties that were damaged during Hurricane Ike were also eligible for financing from the 2008 issuance.

The relaxation of restrictions in the Internal Revenue Code of 1986 also helped New York City rebuild after 9/11. Non-rated Liberty Bonds were issued in 2005 by the NYC Industrial Development Agency to finance the completion of 7 World Trade Center, a skyscraper to replace one of the buildings that had been destroyed. By purchasing some of the $475 million in Liberty Bonds, which had coupons ranging from 6.25% to 6.75% and were backed by lease payments on the top 42 floors of 7 WTC, our team delivered shareholder value and something that we believe is equally important—the financing that helped rebuild a city that refused to be shattered by the events of that day.

Liberty Bonds and other bonds issued after natural disasters or catastrophic events, we believe, epitomize the essential character of the municipal bond market.

We believe similar bond structures may be created to help Texas, Louisiana, Puerto Rico, Florida and other areas rebuild, and we are confident that participating in this type of rebuilding will remain highly attractive to many municipal bond investors.

Market impact

Credit rating agencies have already begun to look at the bonds they rate to see if any of their assessments need to be adjusted. These agencies – S&P Global Ratings (S&P), Moody’s Investors Service and other Nationally Recognized Statistical Rating Organizations (NRSROs) – are focused on whether the securities issued by hospitals, toll roads and other issuers in the affected geographies still have the same credit quality after the storm as they did before it.

According to S&P, “There’s no question the hurricane’s devastation of the fourth-largest city in the U.S. could have a negative effect on the credit quality of various local government issuers, but it’s too soon to tell.”

While some credits may see downgrades if an NRSRO perceives a change in an issuer’s likelihood of maintaining its debt-service obligations, Moody’s notes that none of the municipal bonds it has rated has defaulted because of a natural disaster. Additionally, the number of credit upgrades issued by Moody’s one year after Katrina for bonds issued in the New Orleans region was greater than the number of downgrades issued in the hurricane’s wake, according to a report by RSM, which provides audit, tax and consulting services to the financial industry. RSM also reports that no natural-disaster-related defaults have occurred in at least 75 years. Some muni sales were postponed and some bonds experienced brief payment interruptions after Katrina hit, but those events were the result of logistical problems caused by flooding, not by changes in credit quality.

This track record goes a long way toward explaining why the muni market has remained calm amid the storms. Prices in the municipal market and among municipal securities issued in Texas have been rising overall during the third quarter, and Hurricane Harvey had little impact on the trajectory of either the Bloomberg Barclays Municipal Bond Index or its Texas component, Bloomberg Barclays Municipal Bond Texas Exempt Index.1 The end of summer is generally a quiet time for munis, but the market's reaction to Hurricane Sandy, which struck late October 2012, was similarly muted.

The Handbook of Municipal Bonds, often referred to as Fabozzi – an homage to Frank J. Fabozzi, one of its editors – provides an example of an uninsured Bond Anticipation Note (a BAN) that was issued at par in New Orleans in late July 2005. The evaluation for this BAN was just above par on August 29, 2005, when Katrina made landfall in Louisiana. The evaluation was adjusted after the next trade, at $94.40 on September 21, and again on September 22, when it traded at $98.00. The BAN was subsequently traded actively and quoted, in large part thanks to the extra effort of its evaluator to keep the market apprised of the bond's status.

It is too soon to tell what will happen to the prices of muni bonds in areas affected by this year's hurricanes. Analysts at S&P have cautioned that securities backed by property taxes may be at risk. Many school district bonds issued in Texas are guaranteed by the state's Permanent School Fund, which totaled $37.3 billion as of the latest annual report, according to Glasgall's Bond Buyer article. This fund guarantees more than $4 billion in public and charter school debt and provided $1 billion in state aid as of August 31, 2016, Glasgall reports.

Economic impact

Municipalities that have been damaged by a storm or other catastrophe often see an increase in spending as homeowners and businesses start to repair properties and replace goods that had been lost. Spending on household goods and construction materials often drives economic growth, especially if the population remains relatively constant. In the short term, it is likely that tourism will be adversely affected – which could have an impact on bonds backed by hotel taxes – but Americans have often demonstrated a willingness to show their support by showing up once the catastrophized municipality is back on its feet.

Some municipal officials have embarked on ambitious revitalization plans in the aftermath of a natural disaster, according to a 2013 article in Governing Magazine by Liz Farmer.

In Tuscaloosa, Alabama, city leaders used an ample reserve fund to meet immediate needs after a tornado struck in 2011 and, while waiting for federal funds, began to think about ways to revitalize the parts of the city that had been destroyed. Officials approved a high-density master plan for a mixed-use district. The new district surrounds CityWalk, a nearly 6-mile trail that traces the approximate path of the tornado and is scheduled to be completed next year.

Amid a contentious debate among stakeholders, San Francisco's mayor persuaded federal officials that it was economically sensible to replace (not retrofit) the Embarcadero Freeway, which was extensively damaged in the 1989 earthquake. According to the Governing Magazine article, "the waterfront where the Embarcadero once stood is a model of city planning, attracting billions of dollars in reinvestment and new development," including AT&T Park, home to the San Francisco Giants.

And the 1.5-square-mile farming town of Greensburg, Kansas, transformed itself after a tornado destroyed 95% of it, Governing Magazine reports. The small community took advantage of state and federal grants and appropriations, established a property tax incentive program for businesses willing to adhere to green building standards, and even issued bonds to fund projects that turned Greensburg into "a world model for sustainable, environmentally friendly development."

OppenheimerFunds

September 13, 2017

Municipal Finance is the Key to Rebuilding Cities After Disasters.

Much of our nation’s infrastructure is in great need of maintenance, repairs or rebuilding. This will be especially true as cities and communities in Texas, Louisiana, Florida and the Caribbean, as they start recovering after the damage left behind by Hurricane Harvey and Hurricane Irma. I know from personal experience that these communities will face the long and challenging task of rebuilding damaged roads, water and sewer infrastructure, bridges and public buildings to not only restore them to what they were, but also to make them stronger, smarter and more resilient.

In October 2015, my city faced the worst flooding disaster known in our history. More than 11 trillion gallons of water fell from the sky during the historic flood, which saw a record 16 inches of rain and caused $12 billion in damages in Columbia, South Carolina. While the historic flood was an incredibly devastating time for our city, it allowed our resilience to be shown. While this historic event occurred almost two years ago, Columbia residents and businesses still continue to face many challenges as we rebuild our homes, restore our businesses and regain normalcy in our lives.

As a part of our recovery efforts and continued investment in infrastructure, the Columbia City Council last year issued more than $210 million in water and sewer revenue bonds and will issue an additional $153 million in both revenue and general obligation bonds this year that includes $43 million in storm water improvements and $100 million in wastewater and general water improvements. This will help protect future generations from such catastrophes. Infrastructure investments like these could not be made without using tax-exempt municipal bonds.

Tax-exempt municipal bonds are the primary tool that state and local governments use to finance investment in schools, transportation, housing, health care clinics, water and wastewater treatment, police, fire, ambulance services and other public services that are vital support mechanisms to a growing and well-functioning economy. Keeping infrastructure costs low is critical to job creation and to the infrastructure investments that are the backbone of our economy. All Americans benefit from core infrastructure projects financed by tax-exempt bonds.

The City of Columbia and local governments across the nation make responsible public infrastructure investments with tax-exempt municipal bonds to create jobs, improve the quality of life and spur economic development in our communities, and we do not take this responsibility lightly. Our disaster recovery efforts would not be where they are today without the aid of this financial tool.

Removing or capping the tax exemption for municipal bonds would increase our borrowing costs significantly, an increase that would impact our taxpayers and utility ratepayers directly. If either proposal were enacted, we would have to choose between delaying needed investments or pushing these higher costs onto the public.

Taxing municipal bonds for the first time in history would be counterproductive to creating jobs and ensuring American competitiveness. This would ultimately discourage investments in infrastructure and increase costs that will be borne disproportionately by small businesses and low or fixed-income households that can least afford it. Given what is at stake in the Gulf Coast and cities across the nation, I urge members of Congress and the administration to support preserving the tax exemption of municipal bonds as they consider infrastructure financing and tax reform proposals this fall.

THE HILL

BY MAYOR STEPHEN BENJAMIN, OPINION CONTRIBUTOR — 09/14/17 10:00 AM EDT

Stephen K. Benjamin is mayor of Columbia, South Carolina. He is vice president of the U.S. Conference of Mayors and chairman of the Municipal Bonds for America.

Muni Market Holds Up Well During Hurricane Onslaught.

The municipal bond market actually rose last week, even as Hurricane Irma fears and the reality of Hurricane Harvey's path of destruction gripped the country.

The iShares National Muni Bond ETF (MUB) rose 0.38% last week bringing its total return to 4.8% year-to-date.

Much of that gain came because interest rates fell as investors rushed to safe haven government bonds. The The iShares 7-10 Year Treasury Bond ETF (IEF) rose 0.82%.

On Monday morning, when Irma passed through Florida without wreaking as much havoc as feared, the pattern was reversed. Rates were rising and munis were down, but by less than Treasuries.

IEF was down 0.5% to $108.13 at 12:30 p.m. ET, while MUB was down 0.13% to $111.51.

CreditSights' Pat Luby highlights these points Monday:

- Munis rallied last week, but underperformed Treasuries.
- On a relative basis, munis are cheap to Treasuries in the 5, 10 and 30 year spots.
- Muni trading volume last week was the slowest since the week of July 4th.
- The new issue calendar has picked up, with $7.4 bn scheduled for this week, including 20 long-term issues of $100 mn or more.
- Last week was the 9th week in a row with positive muni fund flows, but YTD flows are down 53% versus the same period last year.

And here's how Wilmington Trust summed up last week's muni market action:

> Despite worries over the potential damage caused by hurricanes Harvey and Irma, the tax-exempt municipal bond market forged ahead over the holiday -shortened week, to deliver the best return in seven weeks. In fact, last week ranked twelfth of thirty-six thus far in 2017. Certainly the risk-off tone prompted by the goings on in North Korea, and the consequent rally in the benchmark 10-year U.S. Treasury note helped move municipal interest rates lower. Per se, we think it entirely reasonable for domestic fixed income markets to begin the upcoming week with a positive tone. The new issue calendar for the next five days is heavier than last week's, as we would expect, but supply is running behind 2016 year-to-date levels, and demand appears strong enough to absorb it.

Barron's

By Amey Stone

Sept. 11, 2017 12:47 p.m. ET

How Will the Bond Market Hold Up Against the One-Two Punch of Irma and Harvey?

Investors are wondering how the bond market will handle the one-two punch of Hurricane Harvey and Hurricane Irma.

Some market participants expect the economic impact of the devastation to take a third Federal Reserve rate increase off the table for this year by slowing down the pace of inflation. Others have argued credits for municipalities hurt by the hurricanes may suffer a drop in their ratings, or at least a perceived drop in their ability to pay their debts.

See: Here’s what history says about Hurricane Irma and the stock market

To answer the question, John Mousseau of Cumberland Advisors and his colleague Gabriel Hament tested how bond yields reacted in the wake of hurricanes over the past 30 years. To do this, they tracked the 12 most destructive storms during that stretch and tracked how the U.S. 10-year Treasury note yield TMUBMUSD10Y, +0.76% and the Moody’s municipal bond yield, a gauge of the average yield for high-grade municipal bonds, changed after landfall.

They acknowledged that their experiment could prove flawed if only because the strength of Harvey and Irma are expected to surpass the strength and ensuing destruction wrought from previous hurricanes.

The pair of bond investors found that the data was more mixed and less conclusive than they had expected, even if the general trend suggested bond markets tended to experience a yield rise, meaning a fall in bond prices, more often than not six months after a hurricane (see table below).

Six months after a hurricane, long-dated Treasury yields increase even as municipal bond yields show little change

Treasurys felt the bigger blow with the 10-year benchmark Treasury yield rising more than 13 basis points after a hurricane. Kotok and Hament think this “points to overall better insurance coverage as well as quicker response by federal agencies with relief dollars. This response translates, of course, into a higher level of economic activity in the years after a storm, and the bond markets perceive a potentially higher level of inflation.”

The impact for municipal credits, however, was more muted as changes in muni yields have to be adjusted for their tax-exempt status. In effect, a move in municipal bonds is more pronounced relative to a move in Treasurys. But even after six months, the hurricanes barely moved the needle for municipal credits, in part because hard-hit areas make an eventual recovery.

Kotok and Hament’s overall findings jibe with New York Fed President William Dudley’s point that hurricanes “unfortunately” lifted economic activity through rebuilding efforts. But other economists have suggested the actual impact wouldn’t show up in gross domestic product figures, with the real blow being dealt to levels of household wealth in affected areas.

See: Fed's Dudley says hurricanes Harvey, Irma to give boost to U.S. economy

For example, Mark Vitner, senior economist at Wells Fargo, told MarketWatch a week ago that flooded automobiles after Hurricane Harvey would need to be replaced, putting Texans in a worse position overall. "When they buy a new [car] that shows up as stronger GDP and the person feels better. But the stock of wealth is not better. We destroyed a car," he said.

MarketWatch

by Sunny Oh

Published: Sept 8, 2017 4:23 p.m. ET

Commentary: Historic Hurricanes Present a Challenge for Muni Market.

As Hurricane Harvey's floodwaters begin to recede in Texas and Louisiana and Hurricane Irma bears down on Florida, we are just beginning to focus on the many tasks ahead. The focus of this comment is the consideration of public assets in everyday life; the prospects for accomplishing the rebuilding with municipal financing, and the effect on credit quality for the credits affected by these forceful and devastating storms.

I have a great deal of empathy for the challenges and the suffering that people face in the Greater Houston area and along the coast. Having had to deal with the tragedy of 09/11 and the damage and disruptions of Sandy first hand, I truly know what you are going through and I hope for the best for you.

In Texas, we will need to begin to focus on the fine points of damage estimates and the challenging tasks of recovery, debris removal and rebuilding. Given the fact that access at this point to properties is just not practical, drones are really proving their worth. Assessments must be made by claims adjusters no matter which approach is utilized. Early estimates of industrial and commercial damage have been in the $20 billion range for the commercial insurers, though at this point the number is just an educated guess. The number will be revisited many times before the aggregate total is more accurate.

The damage estimates when they become formal are likely to lead to property tax appeals that are likely to exert additional pressure on local property taxes. The latter is the fundamental support for school districts in Texas and for local governments.

In the municipal market we are concerned about all aspects that will affect the outcomes, especially for public assets. As reported, the preliminary ask to Congress is going to be approximately $180 billion. The rationale for this number will need to be strongly supported with facts and refined damage estimates. In a post Sandy world this aspect has become highly politicized. However, when the final vote comes I would trust that we will do right by the people in the zone.

The Municipal Promise

What can be accomplished by tax exempt financing? The programs authorized for the Sandy recovery were very specific as to amount, time and purpose. In the case of Harvey, this consideration may take more than one week when Congress is in session. The pressing needs will still dictate that swift action will be a factor in the process. But it is probable that the recovery package that is formulated by Congress will be patterned after what has come before.

The muni industry can get a lot of supply to market very swiftly. The market is starved for supply and a surge of Texas paper could be absorbed easily. It does not matter that the bond paper constitutes national names versus specialty state paper. There is the added kicker to the prospective buyer that in addition to sufficient yield that the buyer is assisting in the effort to rebuild.

The impact on the states and its localities is quite real and discernable. In a different market than the one we are in at present, bonds would potentially trade off more given the potential for credit concerns. In this market now, this condition is not quite the case.

Most local governments have some kind of specific event, blanket insurance, or self-insurance policies against property damage and loss. Flood coverage is often the most difficult to obtain and is not as prevalent. It is impossible to obtain flood when the improvement is in the flood plain. Ultimately, this means that the Issuer is question has to go out of pocket to the extent there are no other reimbursements pending.

In light of this event, we may want to revisit whether relaxing regulations for building in the flood plain should be acceptable. In the event there is no other coverage, FEMA is called upon.

Lessons Learned

The lessons learned from Katrina and Sandy are many. We should hearken back to some of those lessons but we should also be very cognizant of where we may make improvements in the recovery effort so as not to disturb the underlying credit quality.

I had the opportunity to visit New Orleans just a couple of weeks after Katrina. I did not fully appreciate what the Army Corps of Engineers was talking about when they referred frequently to the “bathtub”. There I was standing in the Ninth Ward viewing the destruction. I looked at the one structure that was standing on that block and realized that the lip of the levee was higher than the roof of that structure. All was clear. I just relay this experience because actual inspections will make a difference.

Different structures will have an array of specific damage incidents. Many structures will be affected by electrical and HVAC damage. Concerning the former, in the case of Sandy, the salt water did a great deal to compromise cables and systems. Generators were overcome by the flooding. HVAC systems were water logged.

The Potential Credit Impacts

In Texas, on average, the physical plant is much more youthful particularly in an area such as Houston that has experienced a great deal of growth in recent years. In many cases, the HVAC systems for schools, civic centers, and other important structures are on the roof. It is not likely that all of them are situated this way. Electrical cables generally are run from the street in heavy conduit, but, eventually they have to come above ground.

Primary and Secondary schools for the most part are among the best designed structures around. It is just that there is no way to fully design and prepare for an event such as this one. Most of the schools in the state have the Permanent School Fund backing for their bonds. The integrity of the payment stream for school bond payments is well protected. What will take time is what damage that is not covered by any kind of insurance will have to be repaired with the proceeds of a financing. Of course, some schools have relatively large fund balances but those balances are primarily maintained due to the unevenness of the cash flow. Some repairs will be done out of pocket or with bank loans. Extensive damage will require bonding of some kind.

I have focused on schools because there are just so many of them. Houston ISD on its own has 283 schools serving over 210,000 students.

Now we need to turn our attention to all of the other public assets out there. We cannot fully cover these in a commentary of this kind but they include roads, bridges, airports, governmental centers, civic centers, police & fire stations, water & sewer systems, levees, etc. You have the picture. Each asset has its own discrete set of considerations and challenges for recovery.

Turning to credit quality of the local issuers, most of the credits in the state are evaluated at an A or higher. Fund balances of 5% or more and relatively steady assessed valuation growth are common features. Most of the GOs at the local level are covered by specific millages that are dedicated to the repayment of debt. What this means is that the damage would have to be very significant before the GOs would have an insufficiency. However, downgrades for localities with weaker financial positions going into the event may be harder to forestall. There may be some cheapening in the trading of local paper.

The state itself is reliant on the sales tax for over 50% of its general fund revenues. A depressed level of activity in the Greater Houston area is likely to have some impact on the state's budget in the near term. In the longer term, the state is likely to experience a boost when the repairing, rebuilding and refurbishing commence. This effect would only be somewhat mitigated by any programs to grant sales tax breaks on the rebuilding materials. However, the hours paid for in the rebuilding will still yield some economic uptick. This effect is likely to be delayed for some months. Given the state is AAA, we do not think that these factors will have an overly pronounced effect on the state's creditworthiness.

Revenue bonds will need to cope with a diminution or cessation of revenues for a period of a couple of months or longer. Some of the outcome depends on whether the asset that is linked to the cash flow is in service or not. This is part of the reason that revenue bonds have excess coverage and reserve funds. Water & Sewer systems tend to operate with somewhat tighter coverage due to rate pressures. Most systems have more coverage than what is called for in the rate covenant as a buffer against events both large and small. Water & Sewer systems are also somewhat easier to repair and need to be due to public health considerations. We could discuss the other sectors, but, you have the idea by now. Some sectors may trade off than others for a time. Analysts will be poring over reports to see which bonds may be more subject to challenges.

Irma in some ways may pose an even greater challenge to Florida, Georgia and the Carolinas depending on the trajectory of the record winds associated with this event. Florida has anticipated a storm such as this one with the creation of the CAT fund. The fund has had the benefit of a long period of time to build assets without the incidence of any major events. The fund has also had a long standing practice of issuing relatively short term debt to have ready cash available for just this kind of event. The protection afforded by the presence of the CAT fund would prove its worth if a major event develops over this coming weekend.

In the end, the repairs and the rebuilding will be pursued apace. Few credits, if any, will experience such a degree of damage that even with the consideration of state and federal aid programs they cannot sustain their operations.

We are hoping for the best outcomes for all. The municipal market will do its best to create and place any financing that is required and we will do it in a fashion that is efficient and at the lowest possible cost. We know how to deliver.

The Bond Buyer

By John Hallacy

Published September 07 2017, 10:44am EDT

S&P: How Long 'Til We Get There? Major Post-Hurricane Recoveries In Recent Years.

As we write this, we don't know what's going to become of Hurricane Irma, which is currently churning through the Caribbean. But we do know that Hurricane Harvey inundated Houston and its environs with record rains for days last month, and now the fourth largest city in the U.S. is left to clean up and rebuild.

Continue Reading

Sep. 7, 2017

Kroll: Bond Insurers' Exposure to Harvey and Irma.

Kroll Bond Rating Agency (KBRA) has published a comment on the effect of hurricanes Harvey and Irma upon the bond insurers. KBRA sees no rating impact on the bond insurers it rates from the effects of Harvey and Irma. Natural disasters have not led to increasing defaults in the past although they can contribute to financial strain and downgrades. Nonetheless, it remains to be seen how deep and long lasting the impact will be given the scope and severity of these events.

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

The Bond Insurers' Exposure to Harvey and Irma

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

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S&P: No Respite For Re/Insurers As Hurricane Irma Prepares To Give A Big Jolt.

First and foremost, as Hurricane Irma unfolds, S&P Global Ratings continues to hope for the safety and wellbeing of the many people who will be affected by this devastating and potentially deadly event.

Continue Reading

Sep. 8, 2017

S&P: While Hurricane Irma Prepares For Landfall, Florida Is Already Braced For The Assault.

NEW YORK (S&P Global Ratings) Sept. 8, 2017—S&P Global Ratings today said that the State of Florida (AAA/Stable/–) is well-positioned, to the extent possible, to confront the potential demands of a catastrophic storm, namely Hurricane Irma, given the state's governing framework and infrastructure.

Continue Reading.

Credit FAQ: How To Evaluate Potential Rating Impacts For K-12 School Districts In The Wake Of Natural Disasters Like Harvey And Irma.

In the aftermath of any natural disaster such as a hurricane, we acknowledge that leading up to and immediately after the disaster, management teams are focused on emergency responses, public health and safety, and supporting the general welfare of residents in the area. While management teams address these issues, we recognize market participants' desire to understand …

Continue reading.

Sep. 11, 2017

S&P: In A Storm's Aftermath - Assessing The Impact On Local Government Credit Quality.

After tracking toward Miami for days, Hurricane Irma changed direction several times before making landfall and eventually deteriorating to a Category 1 storm before leaving Florida. The sheer size of the hurricane was enough to ensure destruction on some level, but even knowing now where the majority of damage was sustained cannot tell us what the impact on the affected credits will be.

Continue reading.

Sep. 13, 2017

S&P Bulletin: U.S. Virgin Islands Water & Power Authority Revenue Bonds' Credit Quality Will Likely Deteriorate After Irma.

NEW YORK (S&P Global Ratings) Sept. 8, 2017–S&P Global Ratings said today that the impact of Hurricane Irma on the credit quality of U.S. Virgin Islands Water & Power Authority's (WAPA) electric system revenue bonds will most likely be negative. However, we have not taken a rating action on the bonds as of yet.

Continue reading.

Visualizing Hurricane Harvey's Impact on Houston's Neighborhoods.

Questions loom about the Houston housing market after Hurricane Harvey dumped 9 trillion gallons of water on the city last week.

Questions loom about the Houston housing market after Hurricane Harvey dumped 9 trillion gallons of water on the city last week. Houston is the fifth-largest metropolitan area in the United States, and the housing market has rapidly expanded there in recent years.

Harvey's aftermath puts an enormous hurdle in front of all homeowners and renters but will be a particular setback for low-income, minority families recovering from the 2008 housing bust. As policymakers consider the path to rebuilding, here are five facts to keep in mind about the storm's impact.

(The maps below show the extent of Hurricane's Harvey flooding in Houston, along with key housing variables. Although the flood maps indicate which areas were hardest hit, not all homes in flooded areas will suffer flood damage.)

Continue reading.

The Urban Institute

by Sarah Strochak & Bhargavi Ganesh

September 15, 2017

Hurricane Irma Adds New Fiscal Strain for U.S. Territories.

Hurricane Irma's destructive path through the Caribbean is exacerbating financial crises in Puerto Rico and the U.S. Virgin Islands.

The storm downed power lines and left more than 1 million power customers in Puerto Rico without service on Thursday, forcing hospitals to activate backup generators and disabling water service for more than 221,000, according to the island's government. The coastal capital of San Juan in the north registered waves of up to 30 feet, and Governor Ricardo Rosselló warned of possible landslides and floods on the saturated terrain.

The physical damage is another stress on the island's dilapidated and inefficient power infrastructure, already weakened by years of neglect and underinvestment. Puerto Rico's central government and its public power monopoly are both under bankruptcy protection, the culmination of years of over-borrowing and economic stagnation on the island. Congress last year installed an oversight board to renegotiate roughly $73 billion in debt and coax business interests back to Puerto Rico.

“The government is incurring a lot of expenses to manage the emergency,” said Rep. Jenniffer González (R.), Puerto Rico’s nonvoting representative in Congress. “The major problem is our power grid is down.”

Not all the cost of rebuilding will fall on Puerto Rico. The U.S. Senate on Thursday advanced legislation providing $15.25 billion for relief and recovery efforts for the Harvey and Irma hurricanes as part of a compromise to keep the federal government open and the debt limit suspended until Dec. 8.

But the recovery effort will unfold against a financial crisis that has pitted Wall Street firms demanding repayment on Puerto Rico’s defaulted municipal bonds against its federal financial supervisors, who are trying to minimize obligations to creditors.

How the repair costs will affect this multibillion-dollar standoff will likely be determined by the courts. Creditors have criticized the oversight board’s plans to allow private partners to take over the Puerto Rico Electric Power Authority’s generation assets without fully repaying its $9 billion in debt.

Lengthy power outages “will have negative impacts on Prepa’s revenues” and ”could impact ultimate recovery for bondholders,” Rick Donner, senior credit officer at Moody’s Investors Service, said.

Electrical workers surveying the damage are estimating it may take six days to reconstruct concrete high-voltage lines destroyed in the storm and have no firm estimate on the time to restore service to residential and business consumers, according to a person familiar with the matter.

Gov. Rosselló said Thursday that officials were beginning the process of evaluating the damage and warned that another 5 inches of rain could come as Irma drifted toward Florida. Some regions in Puerto Rico had already received a foot of rain. Emergency officials are bracing for another possible hit from Hurricane Jose, which strengthened to a Category 3 storm Thursday.

Noel Zamot, the oversight board official tasked with encouraging private investment, said he was examining whether an expedited infrastructure permitting process established by Congress could be invoked to help critical energy infrastructure.

The process “was not meant for disaster recovery; it was meant for an emergency,” he said. “But…a disaster can constitute an emergency.”

Power service was also affected in the U.S. Virgin Islands, Puerto Rico’s smaller Caribbean neighbor. The U.S. Virgin Islands has never defaulted on its obligations but shares many of the same fiscal weaknesses as Puerto Rico. Emergency responders on Thursday were clearing roadways, distributing food, removing downed power lines and relocating occupants of damaged shelters.

The Roy Lester Schneider Hospital on the island of St. Thomas was no longer able to care for its patients after its roof was destroyed, the government said in a news release. Emergency responders relocated critical patients to another hospital on St. Croix and were finalizing plans to evacuate all other patients to hospitals in Puerto Rico.

The Wall Street Journal

By Andrew Scurria

Updated Sept. 8, 2017 11:09 a.m. ET

- **Ed. Note:** We will be off next week. See ya' on the 19th.
- Conduit Financing With Tax-Exempt Bonds: Orrick
- Recent United States Supreme Court Ruling Has Far-Reaching Ramifications for Bond Financing: Bryant Miller Olive
- Commentary: Duty of Care Enforcement for Municipal Advisors.
- MSRB Seeks to Clarify and Extend Requirements for Obtaining CUSIP Numbers.
- S&P Credit FAQ: What We Look At When Analyzing Cash Flow Notes.
- IRS Sets New Deadlines for Issuers to Recover Muni-Related Overpayments.
- *Kreutzer v. Aldo Leopold High School* – Court of Appeals holds – as a matter of first impression – that a charter school is a "public school" subject to suit only as permitted by an exception to the Tort Claims Act's (TCA) general rule of immunity
- And finally, Chief Judge Linda M. Vanzi, Literary Giant is brought to us this week by *Kreutzer v. Aldo Leopold High School*, in which Judge Vanzi gifted us this hauntingly poignant depiction of a student's post-altercation existence: "Marcelle missed three months of school as a result of her injuries, stopped participating in dance, and eventually moved to New Jersey." Hemingway. Carver. Vanzi.

REFERENDA - ARIZONA

Arizona Chamber of Commerce & Industry v. Kiley

Supreme Court of Arizona - August 2, 2017 - 399 P.3d 80 - 27 Wage & Hour Cas.2d (BNA) 717 - 770 Ariz. Adv. Rep. 12

Challengers to a voter-approved initiative on statutory changes regarding a minimum-wage increase and mandatory sick leave petitioned for a declaration that the initiative violated the state constitution's Revenue Source Rule, the Separate Amendment Rule, and the Single Subject Rule, and challengers sought to preliminarily enjoin implementation and enforcement of the initiative.

The Superior Court denied a preliminary injunction. Challengers sought special action relief.

The Supreme Court of Arizona held that:

- Initiative's requirements regarding actions by the Industrial Commission of Arizona (ICA) were a mandatory expenditure of state revenues under the Revenue Source Rule;
- Initiative's provision imposing civil penalties on employers that failed to pay earned sick time to employees was a source of funding that satisfied the Revenue Source Rule;
- The raising of payment rates by the Arizona Health Care Cost Containment System (AHCCCS), the state Medicaid program, was not a mandatory expenditure of state revenues under the Revenue Source Rule;
- Initiative did not violate Separate Amendment Rule; and
- Single Subject Rule applies to acts and does not address initiative or referendum petitions.

IMMUNTY - CALIFORNIA

Ramirez v. City of Gardena

Court of Appeal, Second District, Division 1, California - August 23, 2017 - Cal.Rptr.3d - 2017 WL 3614195 - 17 Cal. Daily Op. Serv. 8223

Vehicle passenger's mother brought wrongful death action against city after passenger died from injuries sustained while his vehicle was subject of police pursuit.

The Superior Court granted summary judgment to city. Mother appealed.

The Court of Appeal held that:

- Statute providing governmental immunity from personal injury or wrongful death claims resulting from law enforcement vehicular pursuit, when the governmental entity has adopted and implemented an appropriate vehicle pursuit policy, does not require, as prerequisite to immunity, proof of compliance by every single officer with requirement that all officers certify in writing that they have received, read, and understand the policy, and
- City's vehicular pursuit policy was sufficient to trigger immunity under the above statute.

ZONING & PLANNING - GEORGIA

Schumacher v. City of Roswell

Supreme Court of Georgia - June 30, 2017 - S.E.2d - 2017 WL 2822474

City property owners filed action against city that challenged city's approval of new zoning ordinance and map that rezoned owners' properties.

The Superior Court granted city's motion for judgment on the pleadings. Property owners appealed. The Court of Appeals dismissed appeal. Property owners sought writ of certiorari.

The Supreme Court of Georgia held that city's adoption of development code to govern land use issues was not a "decision" within meaning of statute requiring an application for appeals from decisions of the superior courts reviewing decisions of state and local administrative agencies. Suit challenging adoption of code sought no individualized zoning-related relief, there was no individualized determination by any level of city government, and city council was not acting as an administrative agency; disapproving *Outdoor West, Inc. of Ga. v. Coweta County*, 270 Ga. 527, 512 S.E.2d 604.

IMMUNITY - IDAHO

Hammer v. Ribi

Supreme Court of Idaho, Boise - June 2017 Term - August 25, 2017 - P.3d - 2017 WL 3662477

City administrator brought action against city council member for civil assault.

After granting member's motion to dismiss and administrator's motion for leave to amend, and denying administrator's motion to require member undergo a mental examination, the District Court granted member's motion to dismiss the amended complaint for failure to state a claim. Administrator appealed.

The Supreme Court of Idaho held that:

- The Supreme Court would consider merits of decision to dismiss original complaint;
- Proof of a violent overt action is not a required element of civil assault;

- Administrator was not required to plead facts sufficient to show that member was not entitled to immunity; and
- Member's mental health was not in controversy, and thus denial of motion to compel mental examination was not an abuse of discretion.

EMINENT DOMAIN - ILLINOIS

Kolton v. Frerichs

United States Court of Appeals, Seventh Circuit - August 22, 2017 - F.3d - 2017 WL 3647899

Claimant filed putative class action under § 1983 alleging that state's failure to pay interest on presumed abandoned property in its unclaimed property fund violated Takings Clause.

The United States District Court dismissed complaint, and claimant appealed.

The Court of Appeals held that:

- Claimant's failure to exhaust procedures under state law did not deprive district court of subject matter jurisdiction over action, and
- Claimant did not forfeit his claim.

Claimant's failure to exhaust procedures under state law before filing complaint alleging that state's failure to pay interest on presumed abandoned property in its unclaimed property fund violated Takings Clause did not deprive district court of subject matter jurisdiction over his putative class action.

Claimant did not forfeit contention that state had demonstrated that no compensation would be forthcoming on his claim that state's refusal to pay interest on presumed abandoned property in its unclaimed property fund constituted unlawful taking, where claimant asserted that state's unclaimed property statute precluded state treasurer from turning over interest and other income that had accrued on property in state custody, and cited state supreme court decision upholding statute's validity.

COUNTIES - INDIANA

Board of Commissioners of Union County v. McGuinness

Supreme Court of Indiana - August 15, 2017 - N.E.3d - 2017 WL 3484121

County board of commissioner sought declaratory judgment and injunction against commissioner of Indiana Department of Transportation (INDOT) and INDOT alleging that INDOT was negligent in its highway repair efforts.

The Circuit Court dismissed due to lack of standing. Board appealed. The Court of Appeals reversed and remanded. INDOT filed petition to transfer, which was granted.

The Supreme Court of Indiana held that:

- Trial court's failure to expressly exclude county's affidavit of its sanitarian as evidence outside of pleadings was harmless error;

- County lacked standing to seek declaratory judgment;
- County lacked third-party standing pursuant to public standing doctrine to seek injunctive relief;
- County lacked third-party associational standing to seek injunctive relief; and
- County board third-party standing pursuant to its parens patriae authority to seek injunctive relief.

LABOR & EMPLOYMENT - MONTANA

Folsom v. Montana Public Employees' Association, Inc.

Supreme Court of Montana - August 22, 2017 - P.3d - 2017 WL 3600625 - 2017 MT 204

Non-probationary police officer who claimed that city had wrongfully discharged him under a collective-bargaining agreement brought action against his labor union for breach of its duty of fair representation (DFR) and common-law fraud for allegedly inducing officer to waive his grievance rights through inaction.

The District Court granted summary judgment for officer, awarded compensatory damages for attorney fees on the DFR claim, denied damages for lost wages, benefits, and emotional distress on the DFR claim, awarded punitive damages on the common-law-fraud claim, and denied both parties' motions for post-judgment relief. Both parties appealed.

The Supreme Court of Montana held that:

- Officer's common-law-fraud claim was necessarily subsumed in his DFR claim;
- Record on summary judgment was insufficient to establish causation of damages on the DFR claim;
- Union did not judicially admit to causation of damages on the DFR claim;
- Officer could not recover attorney fees against the union on the DFR claim absent proof of breach, proof that the city wrongfully discharged him, and proof that breach caused him to incur attorney fees and costs to enforce his right under the collective-bargaining agreement against the city;
- Erroneous award of attorney fees made punitive damages on the DFR claim unavailable as a matter of law; and
- Fundamental fairness and equity warranted relief for union from trial court's judgment under rule on altering or amending judgment and rule on relief from judgment.

CHARTER SCHOOLS - NEW MEXICO

Kreutzer v. Aldo Leopold High School

Court of Appeals of New Mexico - August 7, 2017 - P.3d - 2017 WL 3392759

Student brought negligence action against charter school and others based on assault on student by another student in school parking lot.

The District Court granted school's motion for summary judgment. Student appealed.

The Court of Appeals held that:

- As a matter of first impression, a charter school is a "public school" subject to suit only as permitted by an exception to the Tort Claims Act's (TCA) general rule of immunity, and
- Exception to sovereign immunity did not apply.

Provision of Tort Claims Act (TCA) waiving sovereign immunity for damages resulting from bodily injury caused by negligence of public employees while acting within scope of their duties in operation or maintenance of any building, public park, machinery, equipment, or furnishings did not waive charter schools' immunity from student's claims against school for negligence arising from attack of student by another student in school parking lot; claim relied on theory of negligent supervision.

IMMUNITY - UTAH

Marziale v. Spanish Fork City

Supreme Court of Utah - August 22, 2017 - P.3d - 2017 WL 3613445 - 2017 UT 51

Husband and wife brought action against city, alleging negligence and loss of consortium after wife fell at city sports complex.

The city moved for summary judgment, alleging the action was not filed within the limitations period. The Fourth District Court granted the motion. Husband and wife appealed. The Court of Appeals reversed and remanded. City petitioned for writ of certiorari.

The Supreme Court of Utah held that:

- Dishonor of credit card payment after husband and wife electronically submitted their complaint did not affect the validity of the filing for purposes of preserving a claim under the statute of limitations, and
- Dishonor of credit card payment did not affect the validity of undertaking under the Governmental Immunity Act.

Dishonor of credit card payment after husband and wife electronically submitted a negligence and loss of consortium complaint against city via an electronic filing service provider did not affect the validity of the filing for purposes of preserving a claim under the statute of limitations; payment of a filing fee was not a jurisdictional prerequisite for the commencement of an action.

Dishonor of credit card payment after husband and wife electronically submitted a negligence and loss of consortium complaint against city via an electronic filing service provider did not affect the validity of the undertaking filed with the complaint, as required by the Governmental Immunity Act. A holding that dishonor of payment affected the validity of the filing of an undertaking could have serious due process problems if, as was alleged, the undertaking payment had been dishonored through no fault of the plaintiffs and the plaintiffs had received no notice of the dishonor of payment until after the statute of limitations had run.

ZONING & PLANNING - VERMONT

In re Langlois/Novicki Variance Denial

Supreme Court of Vermont - August 25, 2017 - A.3d - 2017 WL 3662437 - 2017 VT 76

Landowner sought review of town's development review board's decision denying his challenge to a notice of zoning violation for a pergola that he had already constructed on his lakeshore property and for which the board had denied a variance after construction.

After consolidating landowner's case with the town's subsequently filed enforcement action and after a trial in which an adjacent landowner participated as an interested party, the Superior Court estopped the town from requiring removal of the pergola and dismissed the notice of zoning violation. Adjacent landowner appealed.

The Supreme Court of Vermont held that:

- Town's zoning administrator was put on notice of the relevant facts surrounding the pergola, as required as an element of analysis of whether equitable estoppel precluded town's enforcement action;
- Zoning administrator intended that landowner rely on administrator's erroneous oral assurances that landowner did not need to have a permit to build the pergola, as required for equitable estoppel;
- Landowner lacked knowledge that a permit was actually required, as required for equitable estoppel;
- Landowner relied to his detriment on zoning administrator's erroneous oral assurances that a permit was not needed, as required for equitable estoppel; and
- Injustice would have resulted if town had been allowed to enforce its zoning regulations in regards to the pergola, as required for equitable estoppel.

Trump Infrastructure Plan Seeks to Shift Decisions - and Bills - to States, Cities.

White House puts localities in driver's seat for funding as it aims for $1 trillion goal, but some local officials raise alarms

Top advisers crafting President Donald Trump's infrastructure plan say they aim to upend the way U.S. public works are financed, shifting the bulk of the decision-making and costs to states and cities and away from Washington.

The administration is proposing $200 billion in new federal funding as the central piece of its $1 trillion plan to improve the nation's infrastructure. President Donald Trump frequently cited the need for upgrades on the campaign trail.

Most of the $200 billion, White House officials say, will be parceled out as incentives to localities that raise their own funding for building projects, with the aim of reaching the administration's overall goal. Cities and states could turn to private-sector financing or levying tolls and taxes to pay for new bridges and roads instead of relying on the federal government for the bulk of the funding.

"Right now the dynamic is: Come, ask for a whole lot, bang on the table, have your economic studies showing the tens of thousands of jobs that will be created, have your regional study saying this will transform America, bang on the table some more, hire some lobbyists and you get money," a senior White House official said in a recent interview. "We'd rather have people come and say, 'Listen, we're chipping in this much, give us this little increment and we can make this thing happen.'"

The administration's approach—which it hopes to deliver this fall to Congress as a set of "principles" for legislative action—alarms supporters of some of the country's biggest planned projects, who say that local cost-sharing and private financing efforts would fall well short of making up for sharply reduced federal funding.

Funds for roads, bridges and other infrastructure currently come from a variety of sources, including the Federal Highway Trust Fund and formula grants that the administration says it will maintain.

The proposed 20-80 split of federal to local contributions would dramatically change parts of the current system. Though funding levels vary, the federal government generally pays about 80% of highway projects and up to 90% of projects at airports, with the remainder coming from local government. In mass transit and passenger rail, there is no formula funding, and the federal share of funds varies widely, as local systems compete for grants by offering to accept smaller shares of federal money.

The Trump White House wants to continue and expand some priorities of the Obama administration, including encouraging the use of public-private partnerships where possible, and expanding low-cost federal loan programs to help pay for major building projects.

At the same time, the White House wants to change the way states and cities approach the pools of federal capital that are used to initiate large projects, saying Washington can encourage local governments to make smarter investments by awarding grants to communities that compete based on how much of the cost they are willing to take on themselves.

“If we’re putting in a dollar, we want a state or a locality to have ideally four dollars that they’re putting in,” the senior official said. “This gets us to the trillion.”

Talking to local government officials about the incentive plan earlier this week, White House Budget Director Mick Mulvaney said he had spoken to a governor who was nearly ready to begin a $200 million bridge project, and needed just $20 million from the federal government to complete the financing.

“That’s the kind of thing that we want to put at the top of the list,” Mr. Mulvaney said.

Still uncertain is whether that approach will work on projects with much larger price tags. Officials working on a proposed new railroad tunnel under the Hudson River and related improvements say they were concerned at the White House’s refusal so far to commit to a large share of the more than $29 billion cost.

Republican New Jersey Gov. Chris Christie and Democratic New York Gov. Andrew Cuomo have said they expect the federal government to cover half the cost of the Gateway project, which also includes bridges and track improvements. The White House looks on such calls for funding as just the sort that they would like to curtail.

“There’s no people or economic activity in that region that could possibly cover the cost of that?” said the administration official, when asked about a recent appeal by Mr. Cuomo for federal aid for the project. “I think that’s a tough sell, would be my response.”

The suggestion that New York and New Jersey could pay their own way on the project, while not a final decision on federal funding, shocked some of the tunnel’s advocates. Already, local officials say the state and local share of infrastructure investment has been rising, thanks to congressional gridlock and no increase in the federal gasoline tax to help pay for public works.

“You’re just not going to be able to raise the level of funding that’s necessary” without federal support for the tunnel, Amtrak Co-Chief Executive Richard Anderson said in an interview.

Even with project leaders seeking private investors to help finance the tunnel project, direct federal funding is essential to making the project feasible, said Scott Rechler, the chairman of the Regional Plan Association, a research organization that studies mobility and transportation in the greater

New York region.

“It’s an absolute impossibility for the states to be able to handle these projects on their own,” he said.

There have been early signs of resistance from the Republican-controlled Congress, which will draft and ultimately vote on the administration’s plan. A Senate transportation subcommittee reversed an array of 2018 budget cuts proposed by the White House, including in infrastructure grant programs relied on by states and cities for new transit lines.

The White House also acknowledges that it faces a crowded autumn calendar. The senior official said that the administration still plans to take up infrastructure only after it tackles a proposed overhaul of the tax code. And Congress must also handle more immediate responsibilities first, including raising the federal borrowing limit and agreeing on a budget for fiscal year 2018. The administration still plans to send its principles to congressional leaders some time this fall, but the timeline will be dictated by the progress of the tax bill.

The Trump administration points to the rising number of local initiatives raising funds for infrastructure, including in regions with Democratic leaders, as evidence for the wisdom of its approach.

In Los Angeles, a 2016 ballot initiative to raise taxes for a 40-year, $120 billion plan to maintain and expand the region’s mass-transit system passed with more than 70% of the vote. Officials in the administration of Mayor Eric Garcetti, a Democrat, have spoken with Trump administration officials to express their enthusiasm for a federal funding formula that rewarded cities and regions that help raise their own capital, according to city and White House officials.

On top of the local funding, the Los Angeles plan still anticipates billions in grants from the federal government over the next several decades, a city official said.

In West Virginia, Gov. Jim Justice, a Democrat who turned Republican this summer in a show of support for Mr. Trump, helped push through a package of tax and fee increases to expand the state’s capacity to repair and extend its highway network.

“The days of the federal government bailing us out on infrastructure are gone,” said Illinois Transportation Secretary Randall Blankenhorn, an appointee of Republican Gov. Bruce Rauner.

Mr. Blankenhorn has urged the state legislature to consider options from new tolls to increased taxes to support investment in the state’s highways and railroads.

“We’re going to have to find other sources” of funding, Mr. Blankenhorn said. At the same time, he said: “I do think that there’s still going to be a role for the federal government in those major, mega projects.”

THE WALL STREET JOURNAL

by TED MANN

Sept. 1, 2017 2:43 p.m. ET

[City of Aurora – A Metro Growth Magnet Builds Its Water Future through Strategic Investment, Innovation and Hard Work.]

The City of Aurora (CO) joins with Denver and Lakewood to form one of 381 Metropolitan Regions in the United States. Aurora's is a major contributor to the metro economy. The US economy added 2.3 million jobs in 2016; and Metro areas generated over 2 million, accounting for more than 95% of all US gains. The Denver-Aurora-Lakewood Metro area ranked 18 out of 381 Metro areas in annual employment growth. (1) Growth in employment is expected to follow rapid population growth. Projections indicate Aurora's population will double from 359,407 in 2017 to three quarters of a million people by 2070. These growth trends require more public services and modern infrastructure to deliver them. In a high prairie desert city any mayor and council will address water supply and demand, now and in the future. Steve Hogan, Mayor of the City of Aurora says, "We don't sit around and wait. We take action." Mayor Hogan and city leaders are making decisions based on local priorities – survival and quality of life – as they identify, commit funding, and sequence major capital investments and operations logistics to keep the water flowing.

An early May 2017 interview with Mayor Steve Hogan and Marshall Brown, Director of Aurora Water, in the impressively modern and expansive Aurora Civic Center, revealed a legacy of forward thinking about water needs. Aurora now employs an ever-evolving mix of advanced water management planning tools to achieve an adequate supply at constant demand regardless of population growth. The diversification of water supply is necessary but nonetheless logistically challenging. This review describes how a 20th Century legacy articulated by elected leaders became the cornerstone for advanced water supply planning by today's leaders; and what they are doing now to secure their water future.

Continue reading.

[Cities to Congress and the Administration: Tax Reform Must Respect Local Authority.]

WASHINGTON — August 30, 2017 — This afternoon, during a speech in Springfield, Missouri, President Donald Trump outlined his plan for tax reform. While the speech did not provide many details on specific measures the president hopes to advance, it did reinforce the president's intention to simplify the tax code through comprehensive reform. In response to today's speech, National League of Cities President Matt Zone, councilmember, Cleveland, released the following statement:

> "City leaders applaud any effort to streamline our tax code, and welcome the president's emphasis on Main Street in the tax reform process. The federal government, however, should not attempt to place the burden of reform on cities and the hundreds of millions of residents who call them home.
>
> "While the administration and Congress have yet to provide details, the president has reiterated his plan to broadly target key deductions for elimination. As local leaders, we remain deeply concerned that the tax exempt status of municipal bonds and the state and local tax deduction may be eliminated in a misguided attempt to offset the costs of lower tax rates for top income brackets and corporations.

> “Each day, state and local governments rely on these critical provisions of the current tax code to calibrate their own local tax rates and raise the revenues necessary to keep housing prices and markets stable, build and maintain infrastructure along main street, fund our schools and educate our children, and keep our communities and law enforcement officers safe. Eliminating these deductions would place tremendous pressure for cities to lower taxes and further strain local budgets already bracing for cuts to city funding in the Fiscal Year 2018 federal budget.
>
> “Cities, states and counties are not a special interest tax loophole. Rather, they are the bedrock of our federal democracy that expect the continued flexibility to raise the necessary funds to address the concerns and challenges unique to their communities. We urge Congress to respect local authority and include city leaders in their ongoing discussions on tax reform.

# # #

The National League of Cities (NLC) is dedicated to helping city leaders build better communities. NLC is a resource and advocate for 19,000 cities, towns and villages, representing more than 218 million Americans

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The Untold Story of Mid-Sized Economies.

The National League of Cities’ latest report, Local Economic Conditions: The Untold Story of the Varied Middle, finds that 84 percent of cities say their local economies have improved since 2016. The new analysis reveals a dynamic economic landscape that has given rise to five distinct types of local economies: a highly rural cluster; a large central city cluster; and three types of mid-sized economies.

Rural vs. urban. It’s a simple yet compelling narrative about the dichotomous relationship between place and economic growth.

But digging deeper reveals an even more dynamic economic landscape, particularly among mid-sized cities. We explore these nuances in our new report, Local Economic Conditions: The Untold Story of the Varied Middle.

The drivers of both economic growth and decline in places with populations between 50,000 and 300,000 are quite varied, changing rapidly and leading to divergent economic outcomes. Until now, our glimpse into mid-sized cities has been limited to a fuzzy picture of places that are not rural, not mega-cities, but someplace in between.

To better understand the forces undergirding the condition of local economies of all types, the National League of Cities (NLC) conducted a survey to gauge the performance of key local economic indicators in cities. We then performed a cluster analysis to clearly identify how specific economic factors converge and give rise to distinct types of local economies.

Five groupings of local economies emerged. a “Rural Brain Drain” cluster of highly rural cities with shrinking populations; a large central city cluster of “Major Job Centers”; and three distinct types of mid-sized local economies. We define these three mid-size economies as “Room to Grow,” “Mid-sized Business Boomers” and “Cities on Par.”

Change in Local Economic Conditions By Economy Type Since 2016

Looking more closely at the mid-size local economies, the Room to Grow economies are defined by favorable commercial property values, affordable housing stock and population growth. Cities in this cluster are known for their office parks and outlet malls. These areas are under threat as corporate headquarters look to move from spacious suburbs into core-city downtowns. They are also experiencing a significant decline in the health of their retail sectors. Interestingly, this is the only cluster in which affordable housing availability is identified as a positive economic driver: these suburbs appear to be key exhaust valves for otherwise tight regional housing markets, reaping the benefits of affordability challenges in core cities that are forcing people out.

Meanwhile, the Mid-Sized Business Boomer city cluster comprises hotbeds of business expansions located mostly in core cities of mid-sized metro areas. Business boomers have adapted to the new tech and small-scale manufacturing economies and are attracting business travel and tourism. Their business sectors, however, seem to be growing more quickly than the available talent, leading to a significant misalignment of workforce skills and business demands. And as business boomers become more concentrated business centers, their housing markets are tightening, presenting significant challenges related to affordable housing and homelessness.

Lastly, the economies of the Cities on Par cluster tend to have populations between 50,000 and 100,000 and are defined largely by their high residential property values. With fewer distinguishing characteristics than other clusters, cities on par seem to be more or less experiencing the national trend of slow, positive growth following the Great Recession. They rely on new business starts to drive growth and have noted reductions in commercial and residential property vacancies and crime over the past year. But much like many other cities across the country, they suffer from a lack of affordable housing and are having trouble meeting the needs of at-risk populations.

Our analysis of local economies presents a picture of both promising economic trends and the complexities that lie beneath. Illuminating the differences driving local economics, particularly of mid-sized cities, is important because it helps inform local-level policymaking and strategic planning. More broadly, unlocking the latent economic potential of the United States will require enabling cities and regions, particularly mid-sized economies, to localize solutions to meet their specific needs and harness their assets.

National League of Cities

August 30, 2017

The Effect of Vacant Building Demolitions on Crime Under Depopulation.

Abstract

Many policymakers argue that vacant or blighted houses are havens for crime and that to make people and communities safer, we just need to tear them down. But is improving public safety as simple as turning vacant buildings into vacant lots? The answer is yes, according to a new study, which analyzes data from Saginaw, Michigan—the most violent city in America from 2003 through 2008.

Read the full article here.

by Christina Plerhoples Stacy

August 25, 2017

The Urban Institute

Fitch Focus on Munis: Shift in Federal Trade Policy Could Hurt Select State and Local Economies.

Fitch Ratings-New York-30 August 2017: Some U.S. States and metropolitan markets could face economic challenges if U.S. trade policy – notably related to NAFTA – shifts dramatically, according to Fitch Focus on Munis, a monthly series that examines the major forces effecting change across municipal finance.

For 2017, the series concentrates on three issues: healthcare, pensions and federal policy.

"Even before taking office, President Trump and his cabinet nominees struck a decidedly different rhetorical tone on trade than their predecessors," said Michael D'Arcy, a Director in Fitch's US Public Finance group. "While many details of the Trump administration's policy shifts remain unclear, current regional exposure to trade and border traffic with Mexico and Canada can illustrate where federal policy change could have the greatest impact."

Michigan is most at risk to changes in NAFTA because its economy is the most interconnected of all U.S. states with Canada and Mexico. Potential risks include lower sales and income tax revenues, which would likely transfer to localities through curtailed state revenue sharing and lower school funding. The tax bases and income tax collections of its most export-dependent localities, particularly those in the Detroit-Warren-Dearborn area, would also be affected.

Other states most at risk include North Dakota, which sends 82 percent of its exports to Canada, and New Mexico, which sends 43 percent of its exports to Mexico.

Texas's vast size and economic diversity, and the global reach of its petroleum and chemical industries, provide it with a degree of insulation from NAFTA, despite sending Mexico 40 percent of its exports.

California would also be isolated by its size and economic diversity, notably its overseas exporting relationships. Border traffic is an economic factor in only a handful of counties and localities situated at the state's southern tip.

Click here to view Fitch's "Trade in the Time of Trump" infographic.

For the September 2017 report, Fitch Focus on Munis will address additional, potential challenges associated with shifts in federal trade policy.

About Fitch Focus on Munis
Fitch Focus on Munis is a monthly report series that explores the critical issues faced by U.S. public finance.

Fitch Focus on Munis leverages Fitch's unique insights backed by data and experience, and a commitment to providing forward-looking analysis, to deliver an in-depth examination of emerging opportunities and challenges in U.S. public finance.

For more information, the special report "Fitch Focus on Munis: Federal Policy – Trade in the Time of Trump, Part 1" is available at www.fitchratings.com.

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Additional information is available on www.fitchratings.com

Bloomberg Brief Weekly Video - 08/31

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

Watch video.

Bloomberg

August 31, 2017

Chicago Schools Get Lifeline From State to Cover Pension Costs.

- **Move extends rally in the school district's bond prices**
- **State to provide $1.1 billion more over next five years alone**

A school bus drives by a school in Chicago, Illinois. Photographer: Scott Olson/Getty Images
Chicago's cash-strapped school district is set to receive an additional $1.1 billion from Illinois over the next five years alone to pay for its teachers' pensions, providing significant relief from the

escalating costs that have reduced its bond rating to junk.

The changes to how aid is distributed, ushered in by legislation Republican Governor Bruce Rauner signed Thursday, triggered a rally in Chicago school bonds, pushing the price of some securities to a more than two-year high. The amount to be provided by the state marks an 18-fold increase from the $62 million it had previously been set to pay into the teachers fund, according to pension documents.

“It’s a big dose of good news for a change,” said Richard Ciccarone, the Chicago-based president of Merritt Research Services, which analyzes municipal finances. The law “provides a meaningful mitigation of the burdens that they have at the school district.”

Rising pension liabilities, triggered by years of shortchanging the retirement plan, have ravaged the finances of Chicago’s school system, the nation’s third-largest, with about 400,000 students. It’s been borrowing at punishing interest rates and raiding reserves to stay afloat.

Chicago has been receiving far less help than other school systems with its pension costs because it’s the only one in the state with its own teachers fund. The rest participate in the Illinois Teachers’ Retirement System. Last year, the state made a $4 billion contribution to that fund, which breaks down to about $2,447 per student, while Chicago got only $12 million, or $32 per student, according to figures from the Chicago district.

Officials from Forrest Claypool, the schools’ chief executive officer, to Mayor Rahm Emanuel have blamed what they viewed as an inequitable state funding system for the district’s distress. The school board unsuccessfully sued Illinois this year, trying to wrest more cash from the state. The judge rejected the board’s assertion that the system discriminated against the heavily minority-student district.

“In terms of us being able to make plans and plan with greater certainty, I think we’re in a better place today than we were,” Charles A. Burbridge, executive director of the Chicago Teachers’ Pension Fund, said in a telephone interview.

The aid increase comes as Illinois contends with a $14.8 billion backlog of unpaid bills after going two years without a budget. The spending plan enacted in July over Rauner’s objections included an income-tax hike that’s expected to generate about $5 billion and gave Illinois authority to issue debt to pay down some of the unpaid bills.

Bondholders applauded the school funding revamp. The price of the school system’s bonds that mature in 2042 traded for an average of 97.3 cents on Thursday, the highest since April 2015, for a yield of 5.2 percent, according to data compiled by Bloomberg. That price is up from 76 cents at the end of June.

Beyond the state help, the funding bill allows the city’s board of education to raise property taxes to generate revenue for pensions.

“This is above expectations for even the people who are bullish on the city of Chicago public schools,” said Paul Mansour, head of municipal research at Conning, which oversees about $9 billion of state and local debt, including some Chicago school securities. “With these new sources of revenue in play, this should reduce their future borrowing costs. And give them access to the mainstream municipal market in the future.”

Bloomberg Politics

By Elizabeth Campbell

September 1, 2017, 2:00 AM PDT

New Math Deals Minnesota’s Pensions the Biggest Hit in the U.S.

- **State’s public pensions go to 7th-worst funded from 30th**
- **“It’s a crisis,” says director of pension commission**

Minnesota’s debt to its workers’ retirement system has soared by $33.4 billion, or $6,000 for every resident, courtesy of accounting rules.

The jump caused the finances of Minnesota’s pensions to erode more than any other state’s last year as accounting standards seek to prevent governments from using overly optimistic assumptions to minimize what they owe public employees decades from now. Because of changes in actuarial math, Minnesota in 2016 reported having just 53 percent of what it needed to cover promised benefits, down from 80 percent a year earlier, transforming it from one of the best funded state systems to the seventh worst, according to data compiled by Bloomberg.

“It’s a crisis,” said Susan Lenczewski, executive director of the state’s Legislative Commission on Pensions and Retirement.

The latest reckoning won’t force Minnesota to pump more taxpayer money into its pensions, nor does it put retirees’ pension checks in any jeopardy. But it underscores the long-term financial pressure facing governments such as Minnesota, New Jersey and Illinois that have been left with massive shortfalls after years of failing to make adequate contributions to their retirement systems.

The Governmental Accounting Standards Board’s rules, ushered in after the last recession, were intended to address concern that state and city pensions were understating the scale of their obligations by counting on steady investment gains even after they run out of cash — and no longer have money to invest. Pensions use the expected rate of return on their investments to calculate in today’s dollars, or discount, the value of pension checks that won’t be paid out for decades.

The guidelines require governments to calculate when their pensions will be depleted and use the yield on a 20-year municipal bond index to determine costs after they run out of money.

The Minnesota’s teachers’ pension fund, which had $19.4 billion in assets as of June 30, 2016, is expected to go broke in 2052. As a result of the latest rules the pension has started using a rate of 4.7 percent to discount its liabilities, down from the 8 percent used previously. Its liabilities increased by $16.7 billion.

The worsening outlook for Minnesota is in line with what happened nationally. Pension-funding ratios declined in 43 states in the 2016 fiscal year, according to data compiled by Bloomberg. New Jersey had the worst-funded system, with about 31 percent of the assets it needs, followed by Kentucky with 31.4 percent. The median state pension had a 71 percent funding ratio, down from 74.5 percent in 2015.

For a look at Bloomberg’s pension ranking, click here.

While record-setting stock prices boosted the median public pension return to 12.4 percent in 2017, the most in three years, that won’t be enough to dig them out of the hole.

Only eight state pension plans, in Minnesota, New Jersey, Kentucky and Texas, used a discount rate “significantly lower” than their traditional discount rate to value liabilities, according to July report by the Center for Retirement Research at Boston College.

“Because of that huge drop in the discount rate under GASB reporting, their liabilities skyrocket,” said Todd Tauzer, an S&P Global Ratings analyst. “That’s why you see that huge change compared to other states.”

Public finance scholars at George Mason University’s Mercatus Center have found “considerable variance” in how states were applying the new standards. In Illinois, for example, despite the state’s poor history of funding its plans, actuaries project they won’t run of money until 2072.

In Minnesota lackluster returns and years of shortchanging have taken a toll. The state’s pensions lost 0.1 percent in fiscal 2016.

But other factors also helped boost Minnesota’s liabilities: Eight of Minnesota’s nine pensions reduced their assumed rate of return on their investments to 7.5 percent from 7.9 percent, while three began factoring in longer life expectancy.

Minnesota funds its pensions based on a statutory rate that’s lower than what’s need to improve their funding status. School districts and teachers contribute about 85 percent of what’s required to the teacher’s pension, according to S&P Global Ratings.

“It’s woefully insufficient for the liabilities,” said Lenczewski, the director of Minnesota’s legislative commission on pensions. “You just watch this giant thing decline in funding status.”

Bloomberg Markets

By Martin Z Braun

August 31, 2017, 2:00 AM PDT

Trump Wants States and Cities to Pay More for Infrastructure.

The White House said this week that it also aims to cut red tape. Many state and local officials like the idea of less regulations but fear less funding.

The White House envisions that a long-promised infrastructure package would streamline the federal approval process for major projects and also require states and localities to shoulder more of the financial burden for building them. It’s a shift in focus from the Obama administration, which had pledged to increase infrastructure funding but never came up with a long-term solution.

“I can assure you that building a road, building a bridge, building a sewer plant, is the easy part,” said Mick Mulvaney, director of the Office of Management and Budget to a gathering of 150 state and local transportation leaders on Wednesday. “Getting permission to build it is the really, really hard part.”

Mulvaney not only said they wanted to reduce Washington’s role in state and local projects but also offer new “incentives” to help them complete projects.

“We’re trying to figure out how to use a little bit of [federal] money to generate a lot of money, to give state and locals the incentives to do stuff you might not otherwise do," he said.

One East Coast governor told Mulvaney, for example, that his state needed another $20 million to complete a $200 million road project.

"That's the kind of thing that we want to put at the top of our list, where our money gets you over the edge," Mulvaney said.

The administration called the group to Washington to gather ideas and feedback for the infrastructure bill that President Trump has talked about since his campaign. Over the last year, though, Trump and his team have provided few concrete details about the proposal.

While many state transportation leaders welcome streamlined regulations, nearly all of them also worry about federal funding for future projects. The federal highway trust fund — the main source of transportation funds — is running a deficit because Congress hasn't raised the gas tax since 1993. Those fears were compounded by Trump's budget proposals, which called for cuts in transportation spending, particularly grants to launch new transit systems and other big-ticket projects.

The president insists infrastructure is one of his top priorities, but it is on the legislative backburner for now. Congress must deal with several time-sensitive issues, like hurricane relief, raising the debt ceiling and passing a federal spending plan for the fiscal year starting in October. Republican leaders have also said they would like to overhaul the country's tax code — no easy task — before moving onto infrastructure.

Trump himself has tried to stoke interest in a new infrastructure initiative. He appeared at Trump Tower earlier this month with a flowchart meant to show the complexities of the federal approval process for major infrastructure projects. He signed an executive order to encourage agencies to speed up their decision-making, by, for example, issuing rulings on environmental issues within two years, on average. The order also instructs the government to designate one lead federal agency to shepherd all of the needed approvals for a project and come up with a single federal decision on whether it can proceed.

Many state and local officials praised those changes, but they were overshadowed when Trump used the press conference announcing them to revive a debate over his response to the white supremacist rally in Charlottesville, Va.

The same executive order has also come under scrutiny, especially since Hurricane Harvey hit Texas and the Gulf Coast, because it revoked a federal flood management standard established by the Obama administration that would require officials to plan for climate change.

At the White House meeting, U.S. Transportation Secretary Elaine Chao said the country needs a new approach for dealing with aging, congested and technologically lagging infrastructure.

"Previous attempts to address this problem relied upon massive borrowing and top-down federal control. This administration takes a different approach," she said, repeating the administration's pledge that it will use $200 billion in new federal spending to generate $1 billion over the next decade.

"To avoid saddling future taxpayers with unsustainable debt, the plan seeks to unleash billions of dollars in private capital for infrastructure investment," she said.

Along with new incentives, the administration plans on pushing for dedicated funding for infrastructure improvements in rural areas because sparsely populated areas would generally have a harder time coming up with money to match federal dollars, Mulvaney said.

The White House will also push for greater use of loan programs and investments in “transformative” technologies that could make infrastructure projects cheaper in the future. Mulvaney gave the example of NASA’s move to privatize missions to Low Earth orbit using prizes and federal contractors.

“We should see if there’s not new ways to build bridges, new ways to build tunnels, new ways to build ports and improve the stuff we have,” he said.

GOVERNING.COM

BY DANIEL C. VOCK | AUGUST 31, 2017

The Week in Public Finance: Predicting Harvey's Fiscal Impact and More.

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

GOVERNING.COM

BY LIZ FARMER | SEPTEMBER 1, 2017

In Kentucky's Drastic Pension Reforms, No One Would Be Spared.

Previous attempts to address the state’s pension crisis haven’t gone far enough. This time around, past, present and future employees could take a hit.

It was a busy week for many Kentuckians. With the state facing yet another public pension crisis, Gov. Matt Bevin spent five hours answering questions on Facebook Live, while retirees were lawyering up and legislators packing their bags for a special session.

This is the third time in a decade that Kentucky has tried to address its woefully underfunded pension systems. Each time, the solutions have become more drastic as the financial health of its pensions have continued to decline. Now, a consulting group is recommending the state’s lawmakers cut retirees’ pension checks by as much as 25 percent. Between its plans for workers, police officers, firefighters and teachers, the state owes roughly $33 billion in pension debt.

Continue reading.

GOVERNING.COM

BY LIZ FARMER | AUGUST 31, 2017

Sewerage and Water Board of New Orleans Debt Ratings Not Immediately

Affected By Rain Impact, Leadership Turnover.

DALLAS (S&P Global Ratings) Aug. 31, 2017–S&P Global Ratings said today that the operational struggles related to extraordinary rainfalls in July and August, including from the remnants of Hurricane Harvey, are not likely to impair the credit quality of the Sewerage and Water Board of New Orleans (SWBNO)'s waterworks or sanitary sewer system revenue bonds or its special ad valorem tax drainage system…

Continue Reading

How Green Bonds Can Bridge Infrastructure Financing Gaps.

The Rockefeller Foundation, along with two financial partners, is launching a new challenge to fund so-called green infrastructure and resilience efforts in the United States.

This comes at a portentous time, given the devastating flooding in Houston and President Donald Trump's rollback earlier this month of an Obama-era order requiring resilient building standards for infrastructure projects in areas exposed to floods or rising sea levels. Trump also promised to allocate $1 trillion to fortify U.S. roads, tunnels and bridges, but has so far failed to offer a plan to funnel public and private investment into these much-needed projects.

With the Rockefeller-backed project, two cities or counties will be selected to issue the first publicly marketed environmental impact bonds (EIBs), enabling them to use a "pay-for-success" model to fund these projects by sharing performance risks with private investors.

By purchasing a bond, investors have a stake in the successful outcomes of local municipal projects — and governments help green infrastructure get off the ground that needs to be piloted before it is widely adopted.

Continue reading.

GREENBIZ

by Anya Khalamayzer

Thursday, August 31, 2017 – 1:28am

IRS Sets New Deadlines for Issuers to Recover Muni-Related Overpayments.

WASHINGTON – The Internal Revenue Service has extended the deadline for issuers of tax-exempt and tax-advantaged bonds that file claims for the recovery of excess arbitrage they may have inadvertently rebated to the federal government.

Revenue Procedure 2017-50, which takes effect on Aug. 25, also applies to claims for the recovery of excess yield reduction payments or penalties in lieu of arbitrage rebate that issuers made to the federal government.

The IRS extended the deadline to two years and sixty days from two years for issuers who make these three types of payments to the federal government in a timely manner, that is, within 60 days after the issuer's final computation date of whether it has earned arbitrage. The final computation date is when a bond matures or is redeemed.

The new revenue procedure also allows issuers for the first time to file claims for recovery of overpayments if they made late payments to the federal government. These would be payments made after 60 days from their final computation date. They would have within two years after the late payment to file the claim.

The IRS said the changes were made "in the interest of sound tax administration.''

The deadline extension for claims for recovery of overpayments when payments were made on time was made to include the 60-day grace period to the existing two-year period. And the new procedure establishes a program to recover overpayments for late payments made to the federal government, which previously did not exist.

The revision covers tax-exempt as well as direct-pay and tax credit bonds, the latter two of which include Build America Bonds, Qualified Zone Academy Bonds, Qualified School Construction Bonds, Qualified Energy Conservation Bonds, Clean Renewable Energy Bonds, and New Clean Renewable Energy Bonds. Even though direct pay and tax credit bonds are taxable, they must still comply with arbitrage requirements.

Arbitrage can be rebated to the federal government over many years that the bonds are outstanding. The tax law requires arbitrage to be rebated in installments of at least once every five years during the life of the bond issue.

Sixty days were added to the claim deadline for overpayments of timely payments because the previous two-year deadline had failed to take into account the 60-day grace period.

The new deadline gives issuers that made a final rebate payment 60 days after the final discharge a full two years and sixty days to determine if there was an overpayment and file a claim with the IRS.

In addition, in cases where a late excess rebate payment is made after the 60-day window for final rebate payments, the revenue procedure now allows claims for overpayments to be made during a two-year window.

Before this revenue procedure took effect, there was no way for a bond issuer who made a late final payment to file a claim if it later discovered it to be an overpayment.

Arbitrage occurs when an issuer invests its bond proceeds at a higher yield than the bond yield. Bond issuers frequently invest their bonds proceeds until the money is needed. For instance, bond proceeds may be used on an ongoing basis as a contractor sends invoices for completed parts of a project.

The arbitrage earnings from those from higher yielding investments must be rebated to the federal government. The tax law permits issuers of certain construction issues to pay a penalty in lieu of arbitrage rebate. Issuers are also permitted to make yield reduction payments.

Some bond issuers miscalculate the amount of amounts they owe and discover the overpayments at a later date.

The Bond Buyer

By Brian Tumulty

Published August 29 2017, 2:16pm EDT

Commentary: Duty of Care Enforcement for Municipal Advisors.

The Securities and Exchange Commission this month announced a significant enforcement action against an Oklahoma municipal advisor, Municipal Finance Services, Inc., and two officers of the firm, including its founder and president.

The action, announced on Aug. 24, offers helpful guidance for municipal advisors regarding the fiduciary duty of care. Prior municipal advisor enforcement has focused on disclosure to issuer clients of advisors' conflicts of interest, an important duty of loyalty element. As a whole, these actions reflect the SEC's constructive concerns for issuer protection pursuant to Dodd-Frank.

The SEC summarized: "Fiduciaries must act in the utmost good faith and use reasonable care to avoid misleading clients." Issuers will benefit from advisor competence and affirmative provision of informed advice.

The MFSOK action also illustrates how advisors' professional obligations to issuers can be expected to benefit investors when advisors assist issuers with disclosure. The SEC stated in its 1988 release proposing the Commission's interpretation regarding underwriter investigatory responsibilities that financial advisors "hav[ing] access to issuer data and participat[ing] in drafting the disclosure documents" in competitive sales "will have a comparable obligation [to the investigatory responsibilities of underwriters] under the antifraud provisions to inquire into the completeness and accuracy of disclosure presented during the bidding process."

Some advisors disagreed strongly, but the MFSOK action shows that the Commission is persisting, appropriately using the municipal advisors' fiduciary duty as a vehicle. Since 1988, the SEC also has undertaken disclosure enforcement against financial advisors in negotiated offerings.

MSRB Rule G-42 was not in effect at the time of the MFSOK events beginning in 2011. So, the action is based on the statute. Nevertheless, several important Rule G-42 themes appear in the SEC's release.

At the outset, it is important to consider MFSOK's contracted scope of services with a City. The SEC's release states that, pursuant to a 2011 agreement, MFSOK "was responsible for preparing the City's official statements, … reviewing and commenting on all legal documents" related to bond issuance, and "assisting the City in complying with its continuing disclosure agreements."

The City had entered into continuing disclosure agreements in 2005, 2008 and 2012 requiring audited financial statement filings within 180 days after fiscal year end. In accordance with SEC no-action guidance, the 2005 and 2008 CDAs could be amended only "with (1) bondholder consent; or (2) an opinion of bond counsel that the amendment would not materially impair the interests of bondholders."

The amendment and bond counsel opinion were required to be filed with repositories. The 2012 CDA omitted amendment by bondholder consent, looking to bond counsel or paying agent determinations. Each CDA required filing of an event notice upon a modification of bondholder rights.

MFSOK assisted the City with competitive sales in 2012 and 2013. In 2013, MFSOK's officers reviewed and commented on a CDA draft. The 2013 CDA, which was "prepared by bond counsel," "purported to" amend the three prior CDAs to extend the City's filing date to 360 days. The Commission concluded that the amendment was adverse to investors because it "had the effect of delaying significantly the date by which investors in the 2005, 2008 and 2012 bonds had access to the City's annual reports." The Commission observed that "some investors in the earlier bonds engaged in transactions without the benefit of the updated financial information … that had been promised … ."

MFSOK's officers had never seen such an amendment and had concerns. Yet, they "did not conduct further investigation and did not seek further information from bond counsel or otherwise attempt to determine whether the amendment complied with the terms of the City's three prior CDAs." The preparation of the 2013 amendment by bond counsel did not equate with the required bond counsel opinion.

Importantly, MFSOK's officers did not communicate their concerns to the City. They "failed to advise their client of the prerequisites for amendments … and failed to ensure that their client was in compliance." Instead, MFSOK "recommended" that the City sell the 2013 bonds to an underwriter in a competitive sale using an official statement that summarized the 2013 CDA. The City executed the 2013 amendment, "relying in part on MFSOK's advice."

Although MFSOK had begun in 2011 to assist the City "with the submission of annual reports on EMMA," MFSOK did not advise the City until 2016 to file the 2013 CDA amendments, with the result that investors holding the prior bonds "were not informed of the new 360-day deadline" for three years.

All Respondents were ordered to cease and desist violations; MFSOK was censured; MFSOK was ordered to pay a $50,000 civil penalty; each of its two officers were ordered to pay $8,000 civil penalties; and MFSOK entered into undertakings to establish written policies and procedures and periodic training "regarding the fiduciary duty" and to appoint an official responsible for ensuring compliance with the policies and procedures and maintenance of records regarding training.

The MFSOK action provides significant food for thought for advisors. It applies the advisors' fiduciary duty of care strictly, but fairly, requiring due care in the provision of advice, the provision of informed advice, and the conduct of due diligence as a basis for recommendations to issuers. MFSOK's investigatory responsibilities to assist the City in making disclosure provides important investor protections.

Of course, every action depends upon specific circumstances. Advisors' responsibilities to issuers depend upon contractual scopes of services. Still, the MFSOK action provides an excellent template. One may expect that, as future actions apply MSRB Rule G-42, with its granular elaboration of advisors' duties, issuers, investors and the market as a whole will benefit from substantially increased professionalism.

The Bond Buyer

By Robert Doty

Published August 30 2017, 12:56pm EDT

S&P Credit FAQ: What We Look At When Analyzing Cash Flow Notes.

With a sluggish economy leading to sluggish revenue growth, cash and liquidity can be of greater importance when analyzing a state's or local government's (SLG) credit profile. S&P Global Ratings assigns ratings to cash flow notes that local governmental entities use to bridge the cash troughs in their budget cycles …

Continue Reading

Aug. 28, 2017

S&P Median And Credit Factors: Midwest Community College Districts.

S&P Global Ratings maintains active general obligation (GO) ratings on many Midwest community college districts. The following tables and charts provide data for publicly rated community college districts across the Midwest as of Aug. 30, 2017. We note most of the rated universe is within Illinois.

Continue Reading

Aug. 30, 2017

S&P: Refinancing Some Of Its Unpaid Bills Could Partially Preserve A Crucial Cash Management Tool For Illinois.

SAN FRANCISCO (S&P Global Ratings) Aug. 22, 2017–Enactment of a fiscal 2018 budget in Illinois did not bring an end to the ongoing political stalemate that caused its two-year budget impasse. The governor and General Assembly remain at odds over funding policy for the state's school districts.

Continue Reading

NABL Proposes "Enhanced Infrastructure Bonds" (or Build America Bonds 2.0)

The National Association of Bond Lawyers submitted eight legislative proposals to Treasury on August 22 with the stated purpose of improving the efficiency of tax-advantaged financing of much-needed public infrastructure projects (here is a link to the proposals). The proposals would broaden the availability and simplify the existing forms of tax-exempt bonds as well as create new forms of tax-advantaged bonds. One of the new forms would be Enhanced Infrastructure Bonds ("EIBs"), which could just as easily be called new and improved Build America Bonds ("BABs"). EIBs and direct-pay BABs share many characteristics, including generating federal payments to the issuer while paying taxable interest to holders, with the differences intended to make EIBs an even more attractive financing option and to eliminate the shortcomings of BABs that were discovered over the course of issuing more than $185 billion of direct-pay BABs during the brief period they were available – April 2009 through December 2010. The similarities and differences in EIBs and BABs are identified and explained below.

Continue Reading

The Public Finance Tax Blog

By Bob Eidnier on August 31, 2017

Squire Patton Boggs

CDFA Webcast: Housing Finance 101

Housing Finance 101
October 17, 2017 @ 1:00 PM Eastern

Financing housing development has shown to not only create valuable assets in the community but also become a large driver of economic development. Numerous tools are available to aid the development of housing in the communities across the country from affordable to market rate. In this installment of the CDFA//BNY Mellon Development WebCast Series, development finance practitioners will survey finance tools utilized to finance housing and provide a brief introduction to the world of housing finance.

Speakers:

Rena Nakashima, Moderator
Vice President & Senior Product Manager
The Bank of New York Mellon

Register in advance to confirm your participation and receive login information. Registration is free and open to all interested stakeholders.

Register

Appellate Division Clarifies NJ State University's Qualified Immunity From Local Land Use Regulation.

The Appellate Division recently reaffirmed and clarified the concept of a public university's qualified immunity from local land use regulations initially espoused in the New Jersey Supreme Court's seminal decision in *Rutgers University v. Piluso*, 60 N.J. 142 (1972). In this recent opinion, *Montclair State University v. County of Passaic*, Docket No. A-3318-15T3 (August 23, 2017), the court reviewed the nature and extent of local and county review with regard to a connector road proposed by Montclair State University (MSU) from its campus to Passaic County Route 621 (Valley Road) in Clifton. MSU spent approximately six years consulting with defendants Passaic County and the City of Clifton regarding the proposed road and working through objections and concerns raised by both the county and the city.

Ultimately, MSU believed it had satisfied defendants' concerns and in 2014 submitted an application to the county for approvals relating to the proposed intersection with County Route 621. The county failed to respond, and MSU filed a complaint for declaratory judgment with the Law Division seeking a determination that the county's refusal to issue the permit was inconsistent with settled law which granted MSU qualified immunity. The trial judge ordered MSU to provide updated traffic studies, and to appear before both the city and county planning boards in connection with the road project. After MSU produced an updated traffic study, the county refused to issue a permit because it believed the roadway design did not meet the governing engineering standards, and because the city's approval was required for a traffic signal which would impact local roadways.

Continue reading.

Day Pitney Author(s) Katharine A. Coffey Christopher John Stracco Craig M. Gianetti

August 28, 2017

Day Pitney

Conduit Financing With Tax-Exempt Bonds: Orrick

The purpose of this pamphlet, part of our Public Finance Green Book Series, is to assist conduit issuers in identifying issues and setting up policies and procedures related to their tax-exempt bond programs and their relationships with other participants in conduit financings.

Download the Pamphlet.

by Justin Cooper

September 1, 2017

Orrick, Herrington & Sutcliffe LLP

St. Louis City Hall Sides With the Blues in Scottrade Center Lawsuit.

St. Louis City Hall is standing by a deal with the Blues to renovate Scottrade Center as the pact faces a legal challenge, the city's top attorney said Friday.

City Counselor Michael Garvin said a lawsuit against the public financing agreement "has no merit." The city and the Blues hockey ownership are both named as defendants in the petition filed Aug. 11, but Friday was the first time the city weighed in on the merits of the case.

Also Friday, plaintiffs in the case sought to make additional claims against the renovation plan's constitutionality.

In an amendment motion, plaintiffs' attorneys say the $64 million deal relies in part on funding from a Community Improvement District they claim violates the Missouri Constitution. They say the terms of bonds to finance the project are also unconstitutional.

The CID, others of which are usually formed by land developers or other private entities with city approval, would include only Scottrade Center. Because the city owns Scottrade Center, the deal's opponents say the city is in effect imposing a sales tax without voter approval.

The Blues argue in court filings that there is no uncertainty about the city's standing as owner of Scottrade Center, and opponents appear now to be using those words against them in the amended petition.

"To the extent that Hockey Ownership claims that the City is the owner of Scottrade Center, the CID fails for two reasons," the amended petition states.

The second challenge to the CID is that such taxing districts need the signature of the comptroller, Darlene Green, to take effect. Green has not signed any of the documents needed for the financing agreement to take effect, which the Blues owners Kiel Center Partners are now challenging in court in a separate lawsuit.

In a news release, Kiel Center Partners said that the amendments "are as shallow and embarrassing to our city as the original lawsuit itself."

The plaintiffs are Alderwoman Cara Spencer, former state Rep. Jeanette Oxford and former city counselor James Wilson.

Friday's motion from the plaintiffs also adds an allegation that the amount of debt the city would incur for the Scottrade Center renovation, totaling $105 million with interest, is an unconstitutional proposal unless it gets voter approval.

They say the financial agreement between the city and the Blues constitutes "an unconditional promise to pay" the amounts without making them subject to annual appropriations. Without a public vote, that's unconstitutional under state law, attorneys wrote.

Garvin said he had not reviewed the proposed amendments fully, but at first blush believed the plaintiffs were confusing different statutes when it comes to bonds.

"The language they're suggesting is required for certain types of deals, but I don't think it is for this kind," Garvin said.

It's unclear yet whether the new counts brought by the plaintiffs will be allowed to be added to their lawsuit. That decision is now up to a judge, who is likely to let the Blues weigh in before taking action.

Kiel Center Partners did not elaborate on the Blues' qualms with the proposed amendments, but said, "It is clear the plaintiffs and their attorneys have either failed to read or are disregarding underlying documents and statutes."

In court filings, the Blues argue that the financing agreement does not violate the law, and they allege that the plaintiffs have no standing because they aren't part of the Blues' lease with the city.

In court filings, attorneys for the Blues say the case hearkens back to a 2006 case involving public funds for the new Busch Stadium, *Moschenross v. St. Louis County. Oxford*, a longtime advocate against public funding for major sports venues, was one of the defendants in that case, losing both in trial court and on appeal.

Relevant to the current lawsuit is the judge in *Moschenross* said public financing for professional sports venues aren't unconstitutional if private profits are incidental and the project ultimately serves economic development. Blues attorneys said the current financing agreement "furthers recognized public purposes."

The result of the *Moschenross* case was the undoing of a county voter-approved proposition requiring voter approval for publicly financing professional sports venues. In February, Oxford was one of two plaintiffs in a lawsuit against the Scottrade Center renovations that was [dropped] less than 24 hours after it was filed.

Court hearings on motions in the Spencer case and the Blues' lawsuit against the comptroller are both set for Sept. 8.

By Mike Faulk

Sep 2, 2017

St. Louis Post-Dispatch

[Municipal Bonds, Big Squeeze Getting Tighter - Bankruptcy No Longer Rare.]

Summary

- Local general obligation bonds can be swept up in bankruptcies necessitated by an inability to pay other contractual obligations.
- Nationally, spending for health insurance has reached $3.2 trillion, or $10,000 per person.
- The negative impact on local governments that provide lifetime private health insurance for retired employees is substantial and growing.

Local taxation is higher than ever. Taxes go up or remain the same, but never go down. Yet, most of our local roads, bridges and other government infrastructure are in poor condition. Municipal bond issuance is not growing in line with capital needs, even though interest rates are still at historic lows. What else is happening that would make sense out of these seemingly contradictory facts?

Contractual financial obligations of municipalities (school districts, villages, towns and counties) include, but are not limited to, bonds and promissory notes issued to investors in exchange for cash. Bond proceeds are, for the most part, used to build and maintain infrastructure.

Another large category of municipal contractual obligations is defined benefit pension plans and the cost of lifetime health insurance for retired employees. Defined pension benefit versus defined contribution plans and lifetime health insurance have been long gone from America's private sector because they became unaffordable.

In nearly every municipal failure since Orange County, CA, in 1994, the entity could not afford to pay the sum of principal and interest, pension fund contributions, and the non-deferrable, ever-rising annual health insurance premiums for retirees. These municipalities used appropriation bonds to fund deficiencies in their pension plans. All the structures failed. In fact, most major losses suffered by bond holders were on appropriation-backed bonds, not general obligation bonds.

For more information on appropriation-backed debt used by many states and localities to circumnavigate constitutional limits on indebtedness, [click here].

General obligation principal and interest payments and pensions contributions are fixed or predicable costs, depending on long-term investment performance for the latter. Contractual obligations are unsecured but have the borrower's unconditional promise to pay – the only way to obtain debt relief is in bankruptcy court. However, most of local and state pension plan benefits are granted under statutory laws whose terms can be changed at will by legislative action. It remains to be seen whether that legal distinction would protect unsecured general obligation bonds in a bankruptcy.

Health insurance, on the other hand, is a variable cost that only goes up. This is just as big a problem for states and the federal government who pick up the tab for Medicare and Medicaid for persons over 65 years of age. But that is not the case with many of the largest local and state retired employee health insurance plans.

Incredibly, these plans have not elected to switch to Medicare insurance from the much more expensive private health insurance. The result is states and the federal government save money, and the local government pays much more than necessary for retired employees' health insurance. Post-retirement benefits, excluding pension payments, are for the most part, agreements that are subject to negotiation and re-negotiation each year, with the employer having the final say. However, there doesn't appear to be any local political will to address the issue except in bankruptcy.

As it is, the current federal budget and structural deficits are the result of current and projected spending on health insurance premiums, which continue to be paid from Treasury borrowing.

In many cases, the cost of health insurance and pension funding can exceed by a wide margin the amount due each year on general obligation bonds. Thus, bankruptcy may be petitioned even when bonded debt is modest but employee benefit funding is unaffordable.

Growth in the cost of health insurance for the public and private sectors is so great (see chart) that it is the chief cause of the shrinking or slow growth in government capital improvement borrowing and a major contributor to local bankruptcies.

Characteristics that you don't want in an issuer of general obligation bonds, of which the presence of any two suggest looking elsewhere, are:

- Population loss of 5%+ in the past five years
- Declining real estate values
- Unemployment greater than or equal to 140% of the national average
- High overall real estate taxation. Total real estate taxes paid as a percent of the current market value of all taxable property yields the overall tax rate, which typically ranges from 1% to 3% of current or fair market value. Stay away from municipalities having overall property taxes greater than 2%, unless it's a high-income jurisdiction. Taxation approaching, equaling, or exceeding 3% is a major indicator of financial distress or inability to increase taxation without further damage to the local tax base.

These characteristics, in my experience, highly correlate to local governments in or heading toward serious financial distress for any number of causes.

Seeking Alpha

by Carl Dincsesen

Aug. 29, 2017 7:50 PM ET

Disclosure: I/we have no positions in any stocks mentioned, and no plans to initiate any positions within the next 72 hours.

I wrote this article myself, and it expresses my own opinions. I am not receiving compensation for it (other than from Seeking Alpha). I have no business relationship with any company whose stock is mentioned in this article.

Illinois Overhauls System for Funding Public Schools.

Long the financial disgrace of the nation, Illinois made its mark in another way on Tuesday by passing landmark education-funding reform that will pump more state money into the neediest districts, give a major boost to Chicago's struggling school system and deliver one of the widest-reaching private scholarship programs in the country.

The Illinois Senate passed the measure on Tuesday, one day after the House. Gov. Bruce Rauner, a Republican, has said he will sign the bill.

The legislation adopts a new "evidence-based model" that delivers more state dollars to low-income school districts. Illinois schools have long relied heavily on local property taxes to finance their education system, creating what reform advocates have called the most inequitable school-funding system in the country. The legislation establishes a new formula by which state money will shore up districts lacking a robust property tax base.

The governor vetoed the original legislation, calling it a bailout of Chicago Public Schools, which he has long criticized as financially mismanaged. Lawmakers largely ignored Rauner's veto, which included amendments to the bill. Instead, they focused on securing a union-opposed, $75 million private scholarship fund — a pilot for five years — as part of the deal. Cardinal Blase Cupich, the archbishop of Chicago, lobbied heavily for the private program, which would allow individuals and corporations to earn tax credits for donating to a scholarship fund that benefits eligible families who send their children to private schools.

"This has been a long and cumbersome process," said state Sen. Andy Manar, a Democrat who championed the education-funding overhaul.

The deal has the potential to drop a political lifeline to Rauner.

"For far too long, too many low-income students in our state have been trapped in underfunded, failing schools," the governor said in a statement. "The system needed to change. We have changed it. We have put aside our differences and put our kids first. It's a historic day for Illinois."

"Our leaders worked together to provide school-choice protection for parents who want the best education possible for their children," Rauner said. "This is accomplished by ensuring that district-authorized charter schools receive equal funding, and by providing families with limited financial resources the same access to private schools. The Tax Credit Scholarship program encourages individuals and businesses to enable families to choose the school that best meets the needs of their children."

Opponents criticized Rauner, saying he had criticized the legislation as recently as Friday.

"Today lawmakers overcame another of Bruce Rauner's manufactured crises," said Sam Salustro, a spokesman for the Democratic Governors Association. “After the legislature overrode his veto of the state’s first budget in two years, Rauner could have refocused his administration toward making progress. Instead he pushed the state right back into crisis by vetoing funding for schools and making demands even Republicans would not support. Illinois families will not forget how Rauner’s failed leadership threatened public schools’ ability to stay open for political gain.”

The deal is a boon for Chicago Mayor Rahm Emanuel, giving the city’s struggling school system more money to cover pensions, as well as allowing Chicago to levy another property tax.

Teachers unions in Illinois criticized the bill for allowing what they call a backdoor voucher program, taking potential tax dollars out of public classrooms.

POLITICO

By NATASHA KORECKI

08/29/2017 06:28 PM EDT

Bond Insurers Seek Investigation of Puerto Rico's FInances

Bond insurers for Puerto Rico’s debt are seeking a court order that would allow them to crack open the books for the broke U.S. territory, arguing it is withholding key financial information while releasing fiscal reports that don’t add up.

National Public Finance Guarantee Corp and Assured Guaranty on Friday filed motions seeking, under federal bankruptcy Rule 2004, an exam of Puerto Rico and its Federal Oversight and Management Board to compel the release of information related to the island’s fiscal plan.

To read the full story on WestlawNext Practitioner Insights, click here: bit.ly/2wcTSvD

REUTERS

BY JIM CHRISTIE

AUGUST 28, 2017

Recent United States Supreme Court Ruling Has Far-Reaching Ramifications for Bond Financing: Bryant Miller Olive

TAMPA, Fla., Aug. 28, 2017 /PRNewswire/ — A recent U.S. Supreme Court ruling has paved the way for religious entities to potentially use tax-exempt bonds for secular projects on their properties, leading to questions about how this will play out as organizations consider bond financing for new projects.

Many church leaders are wondering if bonds could be used for everything from playgrounds to buildings as legal experts determine exactly what is covered in the recent *Trinity Lutheran Church v. Comer* decision.

On June 26, the U.S. Supreme Court, in a 7-2 decision, held that the government cannot exclude religious institutions from generally available, secular government programs solely because of the institutions' religious character.

A key potential ramification of this ruling is that religious institutions are now on solid legal footing to apply for tax-exempt bonds for building projects that are unrelated to religious instruction or ministry.

Historically, religious entities – most often a church and adjoining school – struggled to obtain bond financing due to uncertainty surrounding the breadth of the U.S. Establishment Clause and Blaine Amendments. The U.S. Establishment Clause and the Blaine Amendments (enacted in more than 35 states) were enacted to further the separation of church and state, including prohibiting direct government aid to educational institutions whose religious mission cannot be separated from their purpose.

In *Trinity Lutheran Church v. Comer*, the U.S. Supreme Court opinion highlighted a distinction between the status of the applying entity and the actual use of the facility being financed. In essence, the ruling stated that the intended use of the facility carries significantly more weight than the religious status of the applying entity.

"Previously, even if religious entities were not explicitly ineligible for bonds, financiers would shy away from these potentially controversial projects," said Kareem Spratling, Bryant Miller

Olive shareholder and public finance expert. "With this decision, I am now confidently recommending bonding as a potential funding avenue for clients trying to fund secular projects such as playgrounds and gymnasiums."

Spratling says several things for religious institutions to consider include the specific use of the project, if the facility would be open and available to the public, and if the project, while not directly tied to religious instruction, may have some crossover with religious instruction – for example, a roof that covers both a church and gymnasium.

As with any landmark decision, Spratling advises there is a strong possibility of further clarifying litigation on this issue around the country as religious entities move to utilize tax-exempt bonding for their projects. Due to the complex nature of bonding and the legal uncertainty of the landscape, entities should seek legal advice from bonding experts to determine if their project qualifies.

About Bryant Miller Olive: With a distinguished 45-year history of serving its clients' needs, Bryant Miller Olive represents governments, businesses and agencies in legal matters relating to public finance, state and local government law, complex transactions, project finance, and litigation. The firm has served as Bond Counsel on more deals than any other firm in the Southeast over the past five years, and more than any other firm in Florida over the past decade. Members of the firm are often called upon to handle some of the most complex legal issues in the boardroom and in the courtroom. The firm has offices in Tampa, Tallahassee, Orlando, Miami, Jacksonville, Atlanta and Washington, D.C. For more information, visit http://www.bmolaw.com.

[Smart Infrastructure is Focus for Smart Cities Week in Washington D.C.]

Smart infrastructure is the theme for Smart Cities Week 2017, which takes place in Washington D.C. in October 2017. It brings together North America's visionary leaders and thinkers from all levels of government to hear real-world examples of smart infrastructure solving tough urban challenges.

"Today we have the opportunity to create more advantages for our citizens, our cities and towns, our business and industry – and along the way, our planet," says Jesse Berst, chairman of the Smart Cities Council, which hosts the event. "We can do all of that with smart infrastructure," Berst adds. "Smart infrastructure is the foundation for future success, for better paying jobs and for a new era of prosperity for all."

Attendees will hear from public, private and non-profit leaders and subject matter experts from around the world during keynote addresses, workshops, roundtable discussions and panel sessions aligned to six tracks:

- Infrastructure Innovation
- City Showcase
- Climate Resilience
- Compassionate Cities
- Investing for Change
- Built Environment

In particular, it will look at areas like readying the roads and planning for autonomous vehicles. Communities still lack understanding of and readiness for this transformative new technology. Research, education, and development of resources are needed to help communities prepare to minimize the costs and maximize benefits of autonomous vehicle deployment, through solutions based on planning, policy, and financial strategies. The American Planning Association (APA) will convene a conversation around issues and opportunities related to preparing smart infrastructure for the advent of autonomous vehicles.

One of the conference sessions will explore smart energy analytics for cities. In the US, buildings consume up to 75 percent of the primary energy use for cities. This session will showcase and seek dialogue on cities-related research done at the US Department of Energy National Laboratories focusing on data, tools, analytics, and case studies to demonstrate technologies. These technologies include energy efficiency, district energy systems, renewable energy, storage, and demand response.

Integrating these strategies can reduce energy use in city building stocks by up to 50 percent. Resiliency of energy infrastructure and energy flexibility of buildings will also be discussed. The session is based on real projects from the DOE labs that involve collaborating with US cities on energy, sustainability, and resiliency.

It will also look at funding smart infrastructure investment. Digital infrastructure requires significant financial resources, however, cities that do not make these critical investments will get left behind. Experts in municipal finance and green bonds will explain about alternatives to traditional taxpayer-financed smart city infrastructure projects.

The October event follows on from Smart Cities Silicon Valley in May 2017, where US Rep. Suzan DelBene (D-WA) – a leading technology advocate in Congress who co-chairs the House internet of things caucus as well as the Congressional Caucus on virtual, augmented and mixed reality technologies – said it's important to understand the opportunities that advanced technologies and connectivity can unleash in communities large and small across the country.

Conference participants in Silicon Valley had a deep-dive into the new technologies the congresswoman championed, including what breakthroughs in artificial intelligence will mean for cities, how leaders can prepare for the arrival of self-driving cars, new technologies that are helping tackle homelessness and the latest advances in 3D urban modeling, among many others.

The conference was the first West Coast Smart Cities Week hosted by the Smart Cities Council, an advocate for more liveable, workable and sustainable cities that benefit all citizens. Major sponsors of the event included Deloitte, Hitachi, Comcast/machineQ, Fybr, Microsoft and Victor Stanley.

Program details for Smart Cities Week in Washington D.C. in October 2017 can be found here.

Posted on August 28, 2017 by Nitin Dahad

Neighborly is Working with California to Return Bond Financing to Individual Investors.

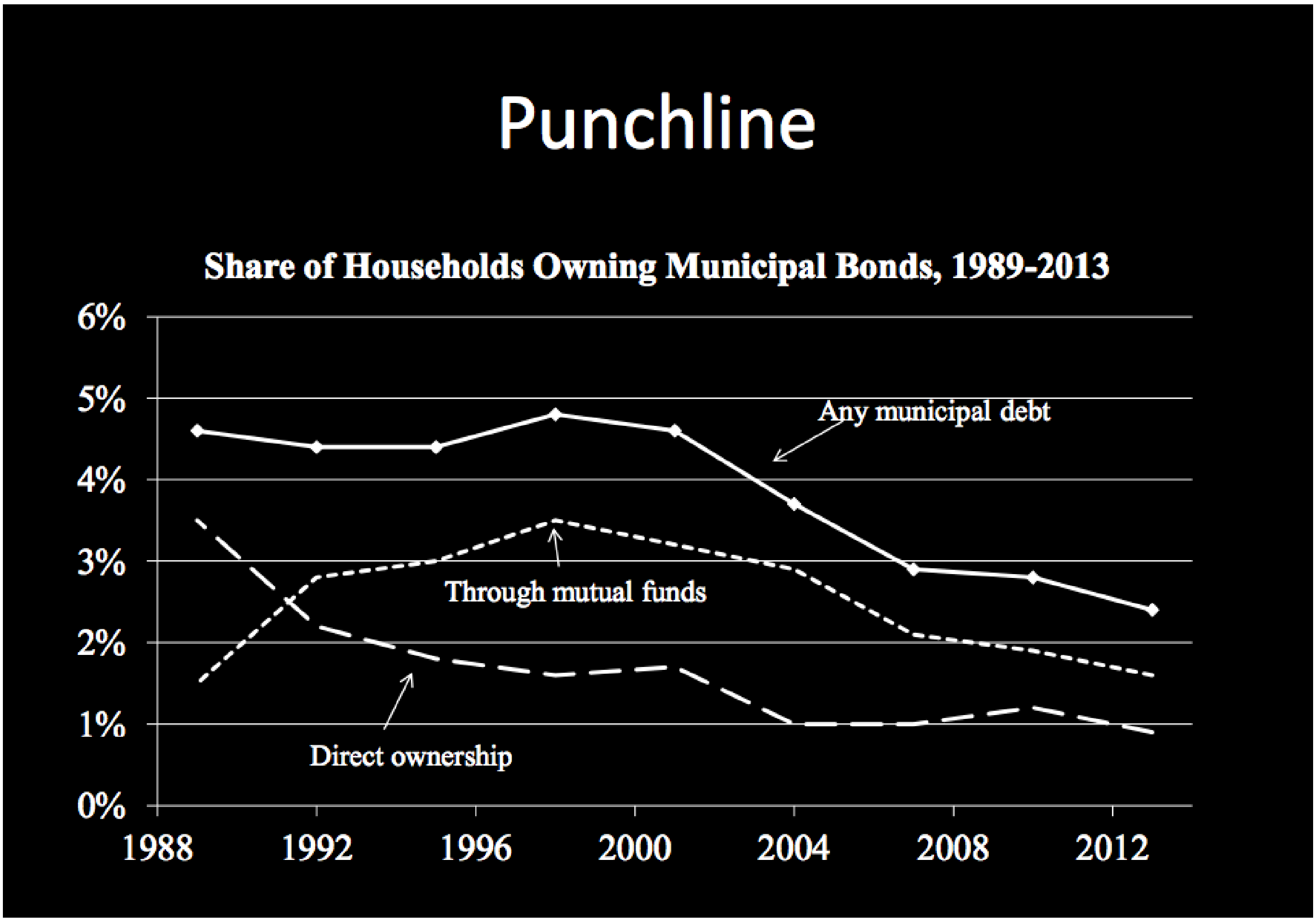
Looking to increase local participation in public financing, the State of California is adding early stage startup Neighborly as a certified bond seller to make municipal bond investments available to any and all backers.

Over 100 years ago, when the Golden Gate Bridge was just a glimmer in an urban planner's eye, residents from all walks of life banded together to buy municipal bonds to support the massive construction project.

People were mortgaging their houses to buy into the future growth of San Francisco and its surrounding regions.

Today the rates of participation of citizens paying for infrastructure projects are far lower.

Since its inception, Neighborly has billed itself as 'modern public finance' and the idea is an incredibly persuasive one.



The public bond market is massive — clocking in at roughly $3.7 trillion in 2016 — and it should be easier for citizens to invest in public works that will benefit their local community.

The California state site provides information about the bond offerings that are coming up, but the process for signing up for a service that sells the bonds is complicated and unwieldy.

Bond investment opportunities range from at least $5100 on the low end to at least about $6300 on the high end for the California General Obligation Bonds that are available this month.

When Neighborly raised its initial $5.5 million in funding two years ago from Joe Lonsdale's 8VC and Ashton Kutcher's Sound Ventures there was nothing even close to its easy functionality available in the bond market.

According to our story at the time:

> "I thought — why isn't there an AngelList for this?" Wilson said at the time, adding that 2.2 percent of a cities' total debt issuance goes toward the cost of borrowing on top of interest. On top of that, city governments can end up on the bad side of a deal that they are unable to evaluate as well as investment banks, which see deals day after day.

TechCrunch

Posted Aug 29, 2017 by Jonathan Shieber

Research Fellow - Public Finance

Job Code: B27890
Location: USA – CA, San Francisco or Sacramento
Job #: 201804
# of openings: 1

Description –

PPIC research fellows contribute directly to the mission of the Public Policy Institute of California. They are highly trained professionals with strong quantitative and analytical skills and with a driving interest in using those skills to create and communicate knowledge that informs California's policymaking processes.

Qualifications

PPIC aims to recruit a research fellow with a background and strong interest in Public Finance, who is able to demonstrate significant interest in connecting research to policymaking. Ideally, the candidate will bring substantive knowledge and interest in state budgeting, taxes, public pensions, fiscal reforms, and the federal/state/local fiscal relationship in California. The successful candidate also will demonstrate an ability to independently conduct policy research in these public finance areas as well as work with PPIC researchers to apply public finance principles in other policy areas, including K12 and Higher Education Policy, Health and Human Services Policy, and Corrections and Criminal Justice Policy.

Successful candidates for the position will bring excellent skills in quantitative research, qualitative research, writing, external policy engagement, and communications, as well as a Ph.D. in demography, economics, education policy, health policy, political science, public policy, sociology, or a related discipline.

We seek applicants at various stages in their careers, from recent Ph.D. graduates to mid-career and senior level researchers. While a background in California policy research is an advantage, we also seek applicants with federal or other state-level research experience that could be translated to the California context.

PPIC offers a collaborative, intellectually stimulating, impactful work environment with a competitive compensation and benefits package. The position is based in PPIC's San Francisco or Sacramento office.

PPIC values the wide variety of backgrounds and experiences of our research staff. Key elements in the consideration of qualified candidates include excellence; diversity of talents, backgrounds, and viewpoints; and a strong fit with the institute's mission, values, and goals.

To Apply

Please submit your application letter, your C.V., a brief writing sample, and the names and contact information of three references. References will not be contacted without your prior approval. Applications will be considered as they are received and until the position has been filled. Please note in your letter if you plan to attend ASA, APSA, APPAM, or AEA. APPAM attendees should submit their material by October 15th and AEA attendees should do so by November 15th.

As an Equal Opportunity and Affirmative Action employer, PPIC is committed to excellence through diversity. We encourage women and members of minority groups to apply.

AA/EEO/Veterans/Disabled employer.

To Apply: Click here

MSRB Seeks to Clarify and Extend Requirements for Obtaining CUSIP Numbers.

The Municipal Securities Rulemaking Board (MSRB) today filed with the Securities and Exchange Commission (SEC) proposed amendments to MSRB Rule G-34, on obtaining CUSIP numbers, which aim to clarify existing requirements and improve market consistency. If approved, the rule would codify the MSRB's longstanding interpretation that municipal securities dealers are required to obtain CUSIP numbers for new issue securities sold in private placement transactions, including direct purchases. Additionally, if approved, non-dealer municipal advisors advising on competitive offerings would be required, like dealer municipal advisors under the current rule, to apply for CUSIP numbers.

The proposed amendments take into consideration feedback received from the industry and public in response to two requests for comment in March 2017 and June 2017. The MSRB's proposal includes a principles-based exception from the requirement to obtain CUSIP numbers for direct purchases of municipal securities by banks – as well as their non-dealer control affiliates – that are intended to be held to maturity.

The SEC will publish the MSRB's proposal in the Federal Register and invite additional public comment. The MSRB reviews and responds to these comments as part of its participatory rulemaking process.

View the filing.

Pioneering Proposal: Kalamazoo Becomes 'Laboratory' for Philanthropy-Backed Municipal Finance.

KALAMAZOO — About a year ago, William Johnston and Bill Parfet, two local businessmen with long-time connections to Southwest Michigan, approached the city of Kalamazoo with a potentially transformational proposal.

If the city created a nonprofit foundation, they committed to give a lead gift of more than $70 million and pledged to help raise upwards of $500 million by 2019 that the city could use to fund operations and supplement its normal sources of revenue.

In signing the articles of incorporation for the Kalamazoo Foundation for Excellence on Aug. 23, the city unlocked a funding mechanism that it will use to address generational poverty in Southwest Michigan's largest city. But aside from that lofty goal, the foundation funding will also have a more direct, tangible benefit for taxpayers: Immediately, the city plans to cut its property taxes nearly in half, using the foundation to make up the difference so it can pay for basic municipal services.

It’s an unprecedented model — and far beyond the one-time donation Mayor Bobby Hopewell initially requested — but the structure of the funding has also drawn its share of critics, including within the ranks of the Kalamazoo City Commission. Still, if the foundation funding model proves to be successful in the coming years, it’s sure to serve as an example for other cash-strapped cities around the country, according to Michelle Miller-Adams, a research fellow at the Kalamazoo-based W.E. Upjohn Institute for Employment Research.

“Other communities do have philanthropists and they make choices all the time about how they spend their money,” Miller-Adams said. “Once they find out that this Foundation for Excellence transforms the community (and) reduces poverty, philanthropists in other communities may look and say, ‘build an arena, or put money into the city budget?’ We’re kind of a laboratory for some extreme generosity approaches to urban governance. It’s pretty interesting to watch.”

Sources contacted for this report largely agreed that the Foundation for Excellence has the potential to pay significant dividends for the city of Kalamazoo, particularly when combined with the Kalamazoo Promise, the anonymously endowed foundation that offers free tuition to any graduate of Kalamazoo Public Schools who attends one of Michigan’s public universities.

According to Kalamazoo City Manager, the creation of the Foundation for Excellence allows the city to solve multiple problems, including tackling complex societal issues such as poverty and access to housing, as well as to lower its property tax rate to a level that’s competitive with many surrounding municipalities. What’s more, the city gets to do it without having to implement an income tax, as officials had long discussed, he said.

The foundation also sends a powerful message to the private sector that might consider investing in Kalamazoo, Ritsema said.

“We’re competitive and we’ll remain competitive,” he said. “We have so much to offer beyond taxes. We have a community that works on social issues.”

For some local critics, the merging of municipal finance and philanthropy poses its share of concerns.

“I’m very hopeful it works out for Kalamazoo, but honestly, in the generic sense, it’s really not a direction anyone should be going toward,” City Commissioner Matt Milcarek told MiBiz.

Milcarek was one of two commission members to vote against incorporating the foundation.

“I think we already have some pretty blurred lines (around) wealthy control over government,” he said. “If it works in Kalamazoo, it’s going to work because of the benevolence of our particular donors. But to sort of promote a governmental finance system that relies on billionaires being benevolent is really a dangerous model to replicate.”

‘A TEST,’ OF SORTS

In providing the lead donation, philanthropists Johnston and Parfet saw an opportunity to support a city where they have considerable financial and family roots.

“(T)he Donors are concerned with the long term viability of the City of Kalamazoo and its ability to meet only the basic needs of its residents but also its inability to invest in efforts to help create a dynamic and growing city,” the two wrote in a Statement of Donor Intent last month.

Attempts to reach both Johnston and Parfet for comment were unsuccessful at the time this report went to press. Their avoidance of the spotlight comes as no surprise, said Miller-Adams, who believes the two businessmen would have preferred to fund the foundation anonymously. That the donations went to a public entity likely made preserving their anonymity challenging from a legal perspective, she said.

Johnston, the chairman of Greenleaf Companies, is married to Ronda Stryker, a scion of the Stryker Corp., a medical device manufacturer where she serves as a board member. Parfet, meanwhile, is an heir to pharmaceutical maker Upjohn Co.

Parfet, who founded MPI Research Inc., also served on the board of Stryker Corp., but resigned last year after becoming embroiled in a sexual harassment lawsuit involving a former employee. That case was settled out of court last week, according to a docket report for the U.S. District Court for the Northern District of California.

Both families hold considerable business interests in Southwest Michigan, meaning that if the foundation proves attractive for economic development, they could see financial benefit, according to sources contacted for this report.

Rob Collier, president and CEO of the Grand Haven-based Council of Michigan Foundations, noted that tax advantages often serve as a driver for philanthropic giving, but are not the primary reasons behind it.

It’s common for philanthropic donors to seek some sort of return from giving, said Miller-Adams, adding that Johnston and Parfet have shown no interest in micromanaging the foundation.

“The preferences of powerful, wealthy citizens are always there. Things like the Western Michigan University medical school don’t happen without those in power,” said Miller -Adams, referring to the Stryker/Johnston family providing the lead $100 million gift for the Homer Stryker M.D. School of Medicine.

Nationwide, foundations and philanthropic ventures have long supported municipalities in various narrow capacities. Several sources cited organizations such as The Kresge Foundation and The Ford Foundation, which played key roles in helping engineer the so-called “grand bargain” that protected the artwork in the Detroit Institute of Arts and allowed Detroit to emerge from bankruptcy in 2014. However, there’s no precedent for a foundation stepping in to fund operations at the scope that could happen in Kalamazoo.

“I do think this is unique, innovative and in some ways a test,” said Carrie Pickett-Erway, president and CEO of the Kalamazoo Community Foundation. “Communities need to be reinventing themselves these days in a lot of ways. Figuring out the funding structure to make communities vibrant, that’s a big challenge. I do think the taxing structures that exist today are making it really hard for cities, counties and others to really be the community they want to be. I think we need to be innovative and creative and try something.”

Pickett-Erway said her organization likely will be involved in engaging community members to sit on the 15-person board for the Foundation for Excellence, as well as potentially in helping to manage the endowment.

IDENTIFYING PARTNERS

Under the terms of an agreement with Parfet and Johnston, the city of Kalamazoo will get an initial $70.3 million over the next three years as initial funding for the Foundation for Excellence. The funding will allow the city to stabilize its budget and lower the property tax rate from 19.2705 mills to 12 mills, according to public documents. The city will also use $10 million of the initial donation to fund community projects over the three-year period, starting in 2017. Those projects will largely come about as part of the ongoing implementation of the Imagine Kalamazoo 2025 master planning process.

That money comes with “no strings attached,” meaning the donors have no say over how the city spends it. At the same time, the philanthropists plan to raise a permanent fund of around $500 million from unspecified donors, including corporations, individuals and private foundations.

The nature of the funding continues to pose concerns for Commissioner Milcarek, who said he’d prefer the city implement an income tax rather than go the philanthropic route.

Milcarek’s specific concern lies in the influence that donors to the fund could in theory exert over how it’s spent, leaving insufficient funding for operations or basic services.

Kalamazoo City Attorney Clyde Robinson cited that scenario in a memo to the commission, noting the foundation’s 15-member board should decide how to deal with restricted funds versus adding various stipulations to the group’s bylaws.

“Rather than tie the hands of the FFE Board with language in the Articles or Bylaws precluding the acceptance of restricted gifts, some of which may be acceptable and consistent with the FFE purposes, this issue is best left to the FFE Board to craft a gift acceptance policy that can be reviewed and modified as circumstances dictate,” Robinson wrote in the memo.

While critics likely will continue raising questions about the creation of a foundation to fund municipal operation, others see the merging of philanthropy and local government as a natural step, particularly given their shared goals of addressing social issues.

“We see cities with this overall set of objectives that they’re trying to accomplish,” said Chris Fabian, co-founder Denver-based municipal consulting firm ResourceX.

The firm worked with Kalamazoo for the last three years to identify community priorities and to align budgets based on those priorities.

“We encourage cities (to understand) that they can’t be everything to everybody,” he said. “That’s the hardest thing. We encourage cities to find partners that can provide services … and accomplish similar goals. So long as the city is assured that the goals they’re trying to achieve with this foundation money are congruent — in alignment — with the (community’s goals), then it’s all good.”

MiBiz.com

Written by Nick Manes

September 3, 2017

Maximizing the HUD Section 108 Loan Program.

Maximizing the HUD Section 108 Loan Program
– Listen & Learn from Experts –

The HUD Section 108 Loan Program is a uniquely flexible federal financing tool that enables communities to invest in economic development, housing rehabilitation, public facilities, and other physical development projects. While loan sizes vary depending on the project, most loans generally fall in the $500,000 – $140 million range, and can be easily layered with other development finance tools to support community development.

Alongside its flexibility, the Section 108 Program is a federally guaranteed loan program that enables communities to apply for up to five times their latest CDBG entitlement amount, with flexible repayment terms and low interest rates.

So are you interested in taking advantage of the Section 108 Loan Program, but are unsure where to start? CDFA is here to help you! On **Thursday, September 21 and 1:00 PM Eastern**, CDFA will host Maximizing the HUD Section 108 Loan Program with an expert panel of speakers from HUD and major cities to give you thorough overview of the Section 108 Loan Program. You'll learn how the program works, how it can be used with other development finance tools, and how cities around the country are using it. Don't miss this opportunity to learn and find answers from the experts!

Register today!

T+2 Settlement Cycle Goes Into Effect Tuesday.

Financial firms will take advantage of the long Labor Day weekend to update their systems for Tuesday's start of the T+2 settlement cycle, which will require transactions to be settled two days instead of three days after a trade is executed. "The project is changing the market structure that touches every market participant whether they are buy side, sell side, service providers, utilities, big firms, small firms or custodians," says Tom Price, a managing director at SIFMA.

Learn more at SIFMA's Shortened Settlement Cycle Resource Center.

MSRB Reminds Municipal Market Participants that the Two-Day Settlement Cycle Becomes Effective September 5, 2017.

In support of the industry-wide effort to shorten the settlement cycle for all securities transactions, the Municipal Securities Rulemaking Board (MSRB) amended its rules to define regular-way settlement for municipal securities transactions as occurring on a two-day settlement cycle ("T+2"). The MSRB is reminding municipal securities dealers that these amendments will become effective September 5, 2017, which corresponds with the broader industry transition to T+2. The MSRB began its early support of this industry initiative by proposing amendments to its uniform practice rules, MSRB Rules G-12 and G-15, in March 2016.

Read the regulatory notice announcing the transition date.

View the order granting approval of the MSRB's rule amendments.

The Puerto Rico Debt Crisis – An Update.

Sept. 20, 2017 | 12 PM ET/9 AM PT

The Commonwealth of Puerto Rico is experiencing the most drastic fiscal crisis in the Commonwealth's history. Please join **Orrick** and **The Bond Buyer** for an informative webinar that will focus on the latest issues that have come into play as the financial markets look to solve Puerto Rico's debt crisis.

Topics to be discussed:

- Outstanding Debt Obligations
- Priority of General Obligation Bonds & other "Public Debt"
- Exercise of Clawback by Commonwealth
- Oversight Board
- Summary of PROMESA Restructuring Provisions
- Constitutional Challenges

Presenters:

Lorraine S. McGowen
Partner, Restructuring
Orrick

Kevin Roche
Partner, Public Finance
Orrick

Rob Loeb
Partner
Supreme Court & Appellate
Orrick

Register Now

Muni Prices Stable Amid Texas Floods, but Investors Watch for Risks.

Longtime municipal finance maven Marilyn Cohen unloaded several million dollars worth of Houston-area utility bonds on Tuesday even though she did not see a high risk to the debt – because a few of her clients were getting nervous.

The concerns were "not what you want to hear in muni-land," said Cohen, president of Envision Capital Management in California, who like other investors has been reviewing the storm's potential impact on payments from securities meant to be safe and boring.

The sales were, however, just a small piece of her total Houston holdings, and so far prices in the space have not changed dramatically. "It's an orderly market," she said.

Her views are common as municipal bond investors and analysts try to assess the overall damage to Houston, the fourth-largest city in the United States.

Television news has shown nonstop footage of flooded freeways, submerged homes and dramatic boat rescues.

However, data from the Municipal Securities Rulemaking Board shows that large debt issues in the area have not traded heavily, reflecting expectations that insurers and government agencies will make sure critical infrastructure, schools and hospitals can continue to operate.

Texas' credit spreads are unchanged this week, versus prior to the storm, with the credit quality of the state's taxpayer-backed debt remaining around 11 basis points over top-rated 10-year U.S. municipal debt.

Major credit rating agencies said it is too soon to know whether they will downgrade issuers as a result of the storm.

Historically, the market impact of major natural disasters has varied widely depending on the government's response, said Daniel Berger, a senior market strategist with Thomson Reuters Municipal Market Data.

In the three months after Hurricane Katrina, the spread of Louisiana's general obligation bond widened by 14 basis points, signaling a sharp spike in risk and uncertainty, according to Berger's research. Texas, which was also struck by the 2005 storm, saw a widening of only one basis point by the end of those three months.

Craig Brandon, co-director for municipal investments at Eaton Vance Corp in Boston, said investors expect little long-term disruption. "You don't see a lot of bonds out there at a discounted price," he said.

Nor are there signs of property insurers looking to sell munis to pay their own claims, he said, a step that could signal market stresses ahead.

The biggest risk for credit investors could be faced by high-yield projects like nursing homes, charter schools or jails that may not be able to replace their patients, students or inmates once repairs are completed, according to an investor note by researcher Municipal Market Analytics.

"Larger credits like the city, county, school districts, will have lots to deal with, but it is still a safe assumption they will continue to make debt service payments when due. Other smaller credits like municipal utility district bonds may be more impacted," John Bonnell, vice president of fixed income investments at USAA in San Antonio, said via email.

Jim Schwartz, head of municipal credit research at BlackRock Inc's Global Fixed Income group, said he was reviewing the asset manager's $1.8 billion worth of municipal bondholdings from the city of Houston, Harris County and other areas, but that "it's a little too early" to make buy or sell decisions.

By REUTERS

AUG. 31, 2017, 9:42 A.M. E.D.T.

(Reporting by Ross Kerber in Boston and Laila Kearney in New York. Additional reporting by Hilary Russ; Editing by Steve Orlofsky)

S&P: Ratings Of Texas Municipal Utilities In Harvey's Path Are Unaffected For Now.

DALLAS (S&P Global Ratings) Aug. 31, 2017–S&P Global Ratings said today that it will continue to track the operational status of Texas municipal waterworks and sanitary sewer utilities that were affected by Hurricane Harvey's widespread and ongoing damage. We will also work with management of those utilities to ascertain financial impacts, and, if we believe relevant, credit implications.

Because many management teams are focused on emergency response, addressing public health and safety considerations, and restoring service, it could take some time for us to assess the recovery costs and the impact on these utilities' near- and long-term credit quality. We first look to the existing financial condition of the utility systems and access to immediately available liquidity until such time that eligible outlays are reimbursed. Generally, because most systems exhibit strong available reserves and many storm-related costs could be eligible for some degree of reimbursement, we don't expect near-term rating pressures. However, once management evaluates the extent of the damage and makes updates to long-term capital plans, we will incorporate expected future infrastructure investments and the ability to finance them–beyond any hazard mitigation grants or similar funding–into our assessments.

Continue reading.

S&P Global Ratings Monitoring Ratings On U.S. Not-For-Profit Transportation Infrastructure Issuers Affected By Harvey.

NEW YORK (S&P Global Ratings) Aug. 29, 2017–S&P Global Ratings today said that it is monitoring ratings on not-for-profit transportation infrastructure enterprises in southeastern Texas, southern Louisiana, and southern Mississippi following the initial impact of Hurricane Harvey.

Continue Reading

S&P: As Hurricane Harvey Hammers Houston, Its Final Impact On Texas Municipalities' Credit Quality Remains Unclear.

S&P Global Ratings) Aug. 29, 2017—While Hurricane Harvey's assault has had a quick and brutal impact on Houston (AA/Negative) and its environs, the storm's long-term impact on the area's credit picture is unclear. S&P Global Ratings rates 25 of the 54 counties included in Texas' emergency declaration.

Continue Reading

Harvey's Havoc May Bypass the Muni Market.

Investors weren't too worried Monday about the hurricane's impact on the broader muni market, or even Houston's munis.

Devastating flooding in Houston, the country's fourth largest city, is bound to have an impact on the municipal bond market, but it hasn't shown up yet.

Munis traded flat Monday with the iShares National Muni Bond ETF (MUB) up 1 cent in late afternoon trading to $111.32. Surprisingly, a newly issued block of Houston school bonds traded well, says Peter Block, credit strategist with Ramirez & Co. He says investors are well aware that federal and state funds will stabilize the economy.

"Investors also know that Houston is such an important economic hub," he adds. "Given that, rebuilding efforts should occur in a (relatively) timely and adequate fashion. Therefore, I think the market would only react if recovery is slower or worse than expected in the coming weeks, months, years."

If there is a short-term selloff, it would likely be a buying opportunity, beleives Matt Fabian of Municipal MarketAnalytics. He writes Monday:

> The effects of Hurricane/Tropical Storm Harvey are unlikely to: 1) interrupt national municipal market outperformance; or 2) create a material break in strong southeastern Texas growth trends and/or related issuer credit quality improvements. To the extent local bonds cheapen by more than a few points, they will reasonably present value to both income and performance-oriented investors (meaning that, in this market, any depressed prices probably won't last long).

Nonetheless, he isn't so sure munis will experience the usual medium-term tax revenue and credit improvements that regions often see following natural disasters. He writes:

> Traditional municipal strategy expectations for major storms producing medium-term credit and tax revenue improvements (as insurance policy proceeds are spent on rebuilding) come with somewhat less confidence here, noting the extreme size and duration of the ongoing disaster. Houston public infrastructure may take a decade or longer to fully repair. Because this is the third major flooding event in Houston in as many years, immediate private sector rebuilding efforts may not seek to recapture 100% of the property being lost today, even in the downtown area. That a great deal of Houston's recent private construction occurred within or nearby 100 year flood plains (as reported by ProPublica) amplifies this point.

One possible impact to municipal bond market could come if insurance companies sell munis held in reserve to fund claims. Current estimates are that Harvey could cause $40 billion in damage.

Barron's

By Amey Stone

Aug. 28, 2017 3:47 p.m. ET

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