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EPA Announces $7.5 Billion in Water Infrastructure Loans: Holland & Knight

Highlights

- The U.S. Environmental Protection Agency (EPA) on Sept. 6, 2024, announced the availability of $6.5 billion in Water Infrastructure Finance and Innovation Act (WIFIA) funding and $1 billion in State Infrastructure Financing Authority (SWIFIA) funding.
- WIFIA funds long-term loans to finance critical water infrastructure projects to address public health, replace lead service lines, improve climate resilience improvements, improve infrastructure in disadvantaged communities and address emerging contaminants such as per- and polyfluoroalkyl substances (PFAS).
- Given the increased attention to emerging contaminants and regulations setting limits on the presence of PFAS in water systems, this funding is expected to alleviate compliance costs.

The U.S. Environmental Protection Agency (EPA) on Sept. 6, 2024, announced the availability of $6.5 billion in Water Infrastructure Finance and Innovation Act (WIFIA) funding and $1 billion in State Infrastructure Financing Authority (SWIFIA) funding.

Continue reading.

Holland & Knight LLP – Dianne R. Phillips, Meaghan A Colligan, Amy L. Edwards, Michael Galano , Lauri A Hettinger and Molly Broughton

September 19 2024

Water-Challenged State Uses AI, Satellites to Find Leaks.

New Mexico will use artificial intelligence to monitor satellite images to identify leaks before they become major problems.

In 2022, residents in Chama, New Mexico, a Rocky Mountain village with less than 1,000 people near the Colorado border, seemingly overnight found their water taps had stopped working.

The state responded by sending in gallons of bottled water to prevent catastrophe. A subsequent investigation revealed that an unaddressed leak in the village’s water system caused the disruption. New Mexico sent Chama $800,000 in capital funds to fix it and other water infrastructure needs. But it wouldn’t be the last time the village suffered a water-related incident, this summer residents had to restrict their water use after a plant shutdown.

The fragility of the water supply statewide has been on display for a while now, a dam near Albuquerque, its largest city, has been out of commission for three years. That and the other water-related incidents prompted New Mexico to unveil a 50-year action plan in January to address water scarcity.

[Continue reading.](#)

Route Fifty

By Chris Teale

September 18, 2024

S&P Second Party Opinion: City of New York's General Obligation Bonds, 2025 Series D Taxable Social Bonds, Subseries D-1

S&P Global Ratings assesses City of New York's General Obligation Bonds, 2025 Series D Taxable Social Bonds, Subseries D-1 as aligned with Social Bond Principles, ICMA, 2023. The City, with a population of 8.3 million (July 2023 estimate), has the highest metropolitan area GDP of all U.S. metro areas and is a global hub for finance, leisure, and business tourism, universities, health care providers, and–increasingly–technology companies. The City established the HPD in 1978 to handle the development and maintenance of its affordable housing.

Download

Nuveen's Muni Funds Strike $3 Billion Deal to Sell Power Stock.

- **Company made up 8.4% of Nuveen's largest junk-muni fund**
- **Vistra will become the sole owner of its power subsidiary**

The municipal-bond market's largest high-yield fund is poised to offload its biggest position — equity shares of a power company called Vistra Vision LLC.

Nuveen LLC has reached an agreement to sell its 11% stake in Vistra Vision to Vistra Corp., in a deal expected to close in December, according to statement late Wednesday. The transaction will total about $3.25 billion, including a share from Avenue Capital Management.

After the sale is completed, Texas-based Vistra will become the sole owner of its subsidiary Vistra Vision and Nuveen will receive payments it can reinvest into its municipal-bond funds. Vistra is a developer and owner of power plants and the best performing stock in the S&P 500 Index this year.

Continue reading.

Bloomberg Markets

By Danielle Moran

September 19, 2024

Green Bonds Aren’t Driving Climate Action in US, Study Says.

- **Only 2% of proceeds initiate entirely unique green projects**
- **Global market for the bonds has grown to more than $3 trillion**

Almost all green bonds issued in the US fail to drive real action to tackle climate change, undermining the merits of a global market that’s grown to more than $3 trillion, according to a study.

An analysis of the first green bonds sold by corporate and municipal issuers between 2013 to 2022 found that about 2% of proceeds were used to fund projects that are genuinely unique or don’t replicate existing work, Pauline Lam and Jeffrey Wurgler said in a working paper published this month by the National Bureau of Economic Research.

Roughly 30% of proceeds from corporate green bonds and 45% in the case of municipal bonds were used to refinance ordinary debt, while in many other instances funds were directed to expanding existing projects or to new developments that were similar to previous work.

Continue reading.

Bloomberg Green

By Ishika Mookerjee

September 19, 2024

Kansas Development Finance Authority (State Revolving Fund): Fitch New Issue Report

The loan portfolio is large, with 307 obligors, but concentrated, with the top 10 obligors accounting for about 59% of the portfolio total. The top two obligors, the city of Wichita and Johnson County, make up 23.1% and 9.5% of the portfolio, respectively. Acting in conjunction with the Kansas Department of Health and Environment, the authority provides below-market financing to municipalities in the state of Kansas for water supply and wastewater projects. Bond proceeds are combined with recycled funds from prior loans, federal grants and an EPA requirement for the state to provide matching funds for such projects. In aggregate, the top 10 obligors represent about 59% of the pool, generally in line with Fitch’s ‘AAA’ median level of 57%. The city of Wichita’s water system (water and sewer revenue bonds not rated by Fitch but assessed to be of very strong credit quality) is the largest obligor, approximating 23% of the total pool. Johnson County (GO bonds rated ‘AAA’ by Fitch) and the city of Salina (bonds not rated by Fitch but assessed to be of very strong quality) are the next two largest participants, accounting for 9.5% and 4.4% of the pool, respectively.

Access Report

Wed 18 Sep, 2024

Indiana Finance Authority: Fitch New Issue Report

The ‘AAA’ rating reflects the ability of the Indiana Finance Authority’s (IFA, or the authority) clean water (CW) and drinking water (DW) State Revolving Fund (SRF) bond program’s (the program) financial structure to absorb hypothetical pool defaults in excess of Fitch Ratings’ ‘AAA’ stress scenario without causing an interruption in bond payments. Aggregate pool credit risk is measured using Fitch’s Portfolio Stress Model (PSM), and the strength of the program’s financial structure is measured using Fitch’s Cash Flow Model.

Access Report

Wed 18 Sep, 2024

State of California: Fitch New Issue Report

The state of California’s ‘AA’ Issuer Default Rating (IDR) reflects its large and diverse economy, which supports strong, albeit cyclical, revenue growth prospects, a solid ability to manage expenses through the economic cycle and moderately low long-term liabilities. Strong fiscal management — institutionalized across administrations and demonstrated through the buildup of the budgetary stabilization account (BSA) and elimination of past budgetary borrowing — allows the state to withstand economic and revenue cyclicality.

Access Report

Thu 19 Sep, 2024

How the Fed’s 50 Bps Rate Cut Impacts Muni Bonds.

Watch video.

Bloomberg Markets: The Close – Muni Moment

September 20th, 2024

Loop Taps Former Barclays, Ramirez Muni Bankers in Northeast.

- **Hires come during broad talent shift in municipal-bond market**
- **Scranton joins as head of surface transportation deals**

Loop Capital Markets has hired three public finance bankers as the Chicago-based investment bank expands in the Northeast amid a rebound in municipal-bond sales this year.

Jaimie Scranton joined Loop in Boston this month as a managing director and head of surface transportation deals, according to a statement from the bank. She most recently served as a senior banker at Barclays Plc.

Doug Adams joined in July to open a new office for Loop in Philadelphia. As a vice president, he will focus on higher education and transportation. He previously worked at Echo Financial Products, an advisory firm. Christopher Dinno joined Loop as an investment banking associate last month in New York. He previously worked for Ramirez & Co.

Representatives of Barclays, Ramirez and Echo didn't respond to emails seeking comment about the departures.

"We are looking to grow nationally, emphasizing Texas and the Northeast," Bo Daniels, Loop's head of public finance, said in the statement. "This new group of bankers further underscores that strategy, especially in the Northeast. The market is strong right now, and we expect that to continue into next year."

The hires come during a broader talent shift in the market after Citigroup Inc. and UBS Group AG largely exited the muni market. Loop is among a series of smaller banks now hiring from other competitors still active in the market, after recruiting earlier this year from the exiting firms.

In March, Loop announced it had hired three former Citigroup bankers and one from UBS to expand in Boston, Houston and San Antonio, according to a statement.

In Thursday's statement, Loop Chairman and Chief Executive Officer Jim Reynolds said the firm sees "tremendous growth opportunities" in the market.

Bloomberg Industries

By Shruti Singh

September 19, 2024

Muni Bonds to Stay Cheap After Rate Cuts.

- **Ongoing wave of new issue deals will keep muni values cheap**
- **Strategists advise positioning portfolios now before election**

Municipal bonds are looking attractive compared to taxable debt, with valuations at or close to their cheapest levels this year.

State and local government securities are poised to get even cheaper in coming months following the Federal Reserve's 50 basis point cut this week, according to strategists at Bank of America Corp., as well as Goldman Sachs Asset Management and Barclays Plc, who are advising investors that it might be a good time to buy.

According to Bank of America strategists led by Yingchen Li, the current cheapening doesn't reflect weakness in the tax-exempt market but rather richness in the taxable space. Those valuations could shift if muni supply wavers.

"If the new issuance calendar shows any signs of slowing off the torrid pace when Election Day approaches, we believe significant ratio richening should be expected," wrote Li in a Friday note. "We continue to advise investors to take positions while the muni market rally remains slow and ratios are somewhat cheap."

The 10-year muni-Treasury ratio — a key measure of relative value — hit its highest level of the year earlier this week. The greater that figure, the cheaper municipal bonds appear on a relative basis.

So far in 2024, investors have piled into municipal bonds. Inflows into muni funds exceeded $700 million for the week ending Sept 18, marking 12 straight weeks of expansion, according to LSEG Lipper Global Fund Flows data.

Joseph Wenzel, head of municipal funds and institutional accounts platform at Goldman Sachs Asset Management, said he expects tax-exempt securities to cheapen as record-setting new issue supply continues to pick up, speaking in a webinar Wednesday.

Barclays' municipal strategists Mikhail Foux and Clare Pickering highlighted a similar sentiment in a Friday research note, saying that the "challenging" technicals of the muni market — namely record levels of supply — could buck the historical pattern of muni ratios declining after the first rate cut in an easing cycle.

"Even though investors should keep in mind the risk of 'red wave' in November, we would consider adding in October if valuations become more attractive," the group wrote.

Bloomberg Markets

By Erin Hudson and Maxwell Adler

September 20, 2024

Delayed Vacations, Long Hours Are Reasons to Be Cheerful for Muni Bond Pros.

- **New bond sales head for record year as pace quickens 38%**
- **Bankers, buyers happy for opportunity after lackluster years**

For Beth Coolidge, the record pace of municipal bond sales this year means only an occasional day off rather than week-long vacations. The head of public finance at Oppenheimer & Co. isn't complaining.

"You have to be available when the work is available, because we did see a drop in issuance the last few years," she said. "You don't want to take a week off because you feel like you are going to miss something."

Most bankers and investors say the crush of new deals is unlikely to ebb until after Election Day on Nov. 5. State and local governments are motivated to complete borrowing for infrastructure and other projects before a new president and Congress add the potential for market volatility.

Continue reading.

Bloomberg Markets

By Shruti Singh

September 18, 2024

Muni Buyers Pounce on Profusion of Bond Sales Ahead of Fed Cut.

- **Fed is expected to lower interest rates later this week**
- **Muni sales topped $14 billion in the week ended Friday**

Municipal bond buyers scooped up an abundance of debt sales last week, eager to lock in higher yields before the Federal Reserve is widely expected to lower interest rates for the first time in more than four years.

States and local governments sold more than $14 billion of debt in the week ended Friday, one of the largest weekly amounts of the year and 79% more than the five-year weekly average, according to data compiled by Bloomberg. Borrowers are rushing to market ahead of potential volatility before the US presidential election in November. Long-term municipal bond issuance is up more than one-third over 2023's pace.

"These next couple of weeks are basically the last chance to stock up on decent yields," said Dora Lee, research director at Belle Haven Investments. She said that recent transactions, including one by New York City, garnered healthy demand from investors.

Continue reading.

Bloomberg Markets

By Danielle Moran and Martin Z Braun

September 16, 2024

Orrick Summary Guide: Campaign Spending and Activity Rules for School District Employees

Introduction

School district employees and officers must adhere to strict rules regarding any campaign spending and activities, especially in the context of promoting a school district bond measure. The use of public funds and resources for partisan campaigning is heavily regulated to prevent an unfair advantage and to ensure compliance with legal standards.

View the Summary Guide

September.19.2024

Muni Bond Enthusiasm Rises Ahead of Fed Rate Cuts.

The Federal Reserve nearing its first interest rate cut since 2020. So enthusiasm for fixed income assets is increasing, and muni bonds are part of that trend. That could be good news for exchange traded funds such as the ALPS Intermediate Municipal Bond ETF (MNBD).

The actively managed ETF has been a steady performer over the course of this year. And it hit a new 52-week high on Monday. That confirms it has ample leverage to the concept of lower interest rates. That’s to be expected. But it’s still encouraging to see MNBD and other municipal bonds behave accordingly in advance of monetary easing.

MNBD’s recently encouraging price action is noteworthy for another reason. It’s also reflective of buyers proving receptive to a spate of new issuance in the municipal bond market. City and state governments have recently sold a significant amount of bonds. Those new issues have easily absorbed, indicating there’s increasing appetite for munis ahead of monetary easing.

MNBD Tailwinds Emerging

Municipal bonds, including MNBD holdings, are being boosted by the notion of lower borrowing costs. But the asset class is also catching a bid. That’s because some experts believe volatility for risk assets will increase as Election Day nears.

“States and local governments sold more than $14 billion of debt in the week ended Friday, one of the largest weekly amounts of the year and 79% more than the five-year weekly average, according to data compiled by Bloomberg. Borrowers are rushing to market ahead of potential volatility before the US presidential election in November. Long-term municipal bond issuance is up more than one-third over 2023’s pace,” reported Bloomberg.

Owing to its status as an actively managed ETF with a trailing 12-month yield of 3.38%, MNBD could be an ideal avenue for investors looking to skirt equity market turbulence while accruing benefits delivered by Fed rate cuts.

MNBD is relevant for other reasons. Its 3.38% trailing 12-month yield is well in excess of the average 2.61% found on the highest-rated munis with 10-year maturities. Additionally, municipal bonds are seen as attractively valued relative to Treasurys. As for the supply issue, it could fall in the coming days before rebounding.

“Sales are expected to drop off this week as governments generally avoid coming to market when the Federal Open Market Committee meets. However, issuance is likely to inch back up with about six weeks until the election. Borrowers have already lined up about $15.5 billion of sales over the next 30 days,” according to Bloomberg.

etftrends.com

by Todd Shriber

September 17, 2024

Texas Public Finance Authority: Fitch New Issue Report

Texas’ ‘AAA’ Issuer Default Rating (IDR) and general obligation (GO) bond rating reflect its growth-oriented economy and the ample fiscal flexibility provided both by its conservative approach to financial operations and the maintenance of substantial reserves, including in its budgetary reserve, the economic stabilization fund (ESF).

Access Report

Fri 20 Sep, 2024

[Preparing and Implementing a Capital Improvement Plan: GFOA In-Person Training]

September 30 & October 1, 2024

GFOA Training Center
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Click here to learn more and to register.

SEC Texting Sweep Hits 12 Muni Advisors.

The Securities and Exchange Commission's crackdown on texting and the use of unauthorized messaging apps continued Tuesday with 12 municipal advisors being charged more than $1.3 million in combined fines for failures by the firms and their personnel to maintain and preserve certain electronic communications.

The actions included employees at multiple levels of authority — including supervisors — communicating with regard to municipal advisory activities both internally and externally by text messages.

The firms admitted the facts set forth in their respective SEC orders, acknowledged that their conduct violated recordkeeping provisions of the federal securities laws, have begun implementing improvements to their compliance policies and procedures to address the violations, and agreed to pay the following civil penalties:

- Acacia Financial Group Inc., $52,000
- Caine Mitter and Associates Inc., $94,000
- cfX Inc., $42,000
- CSG Advisors Inc., $40,000
- Kaufman Hall & Associates LLC, together with Ponder & Co., $324,000
- Montague DeRose & Associates LLC, $40,000
- PFM Financial Advisors LLC, $250,000
- Phoenix Advisors LLC, $40,000
- Public Resources Advisory Group Inc., $184,000
- Specialized Public Finance Inc., $250,000
- Zions Public Finance Inc., $47,000.

"The books and records requirements are critical to facilitating Commission inspections and examinations of municipal advisors and in evaluating a municipal advisor's compliance with the applicable federal securities laws," said Rebecca Olsen, deputy chief of the SEC's Division of Enforcement Public Finance Abuse Unit, in a statement.

"Municipal advisors are encouraged to assess their recordkeeping practices relating to off-channel communications. Firms that believe their practices do not comply with the securities laws are encouraged to self-report to the SEC's Enforcement staff."

As described in the SEC's orders, the firms admitted that, during the relevant periods, they failed to maintain and preserve communications sent and/or received by their personnel relating to municipal advisory activity and that these communications were records required to be maintained and preserved under the federal securities laws.

ThinkAdvisor

By Melanie Waddell

September 17, 2024

[US SEC Fines 12 Municipal Advisors for Recordkeeping Violations.]

(Reuters) – The U.S. Securities and Exchange Commission on Tuesday fined 12 municipal advisors more than $1.3 million to settle civil charges that they failed to preserve electronic communications such as text messages.

All 12 firms were charged with violating recordkeeping provisions of the Securities Exchange Act and rules of the Municipal Securities Rulemaking Board, with supervisors responsible for some of the failures, the SEC said.

The largest fines included $324,000 against Kaufman Hall & Associates, together with Ponder & Co; $250,000 against PFM Financial Advisors, and $250,000 against Specialized Public Finance.

By Thomson Reuters

Sep 17, 2024 | 12:01 PM

(Reporting by Jonathan Stempel in New York)

[Unregistered Municipal Advisory Activity in Public-Private Partnerships.]

Good afternoon everyone. I want to thank The Bond Buyer for organizing this Infrastructure Conference and for inviting me today to talk about some important regulatory safeguards that were put in place a decade ago to help state and local governments make effective infrastructure investments.

But before I begin, I must remind you that my remarks are in my official capacity as Director of the Securities and Exchange Commission's Office of Municipal Securities, but do not necessarily reflect the views of the Commission, the Commissioners, or other members of the staff.

These types of events give me a unique opportunity to speak directly to the municipal securities market about an issue that has framed my tenure with the Commission, first as a staff attorney serving as a principal drafter of the municipal advisor rules and now as the Director of the Office charged with overseeing municipal advisor regulation, namely unregistered entities engaging in municipal advisory activity.[1]

Filling a Gap in the Regulatory Landscape

To begin, I thought I would spend a few moments laying out the municipal advisor regulatory framework.

Until the passage of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act" or "Dodd-Frank"), advisors[2] to municipal entities[3] and obligated persons[4] were largely unregulated and were generally not required to register with the Commission or any other federal, state, or self-regulatory entity with respect to their municipal advisory activity.[5]

Leaving the activities of these advisors generally unchecked, however, led to several cases of market abuses and economic damage to municipal entities and obligated persons.[6] For instance:

- Congress found that a number of municipalities suffered losses from complex derivatives products that were marketed by unregulated financial intermediaries;[7]
- The Commission brought action against a financial institution alleging payments by the financial institution to local firms whose principals or employees were friends of public officials in connection with a bond underwriting and interest rate swap agreement;[8] and
- The Commission settled several actions against major financial institutions for their role in a series of complex, wide-ranging bid rigging schemes involving derivatives utilized by municipalities and underlying obligors as reinvestment products.[9]

Dodd-Frank was enacted to generally strengthen oversight of the municipal securities market and to broaden current municipal securities market protections to cover, among other things, previously unregulated market activity.[10] Section 975 amended Section 15B of the Securities Exchange Act of 1934 ("Exchange Act") creating a new class of regulated person required to register with the Commission: municipal advisors.[11]

Who Are Municipal Advisors?

So, who are municipal advisors? Broadly speaking, municipal advisors assist municipal entities and obligated persons on the terms of bond offerings, investment of bond proceeds, and the structuring and pricing of related products.

A "municipal advisor" is any person (who is not a municipal entity or an employee of a municipal entity) that:

provides advice to or on behalf of a municipal entity or obligated person with respect to municipal financial products or the issuance of municipal securities, including advice with respect to the structure, timing, terms, and other similar matters concerning such financial products or issues; or undertakes a solicitation of a municipal entity or obligated person.[12]

Key here is advice. As you may suspect, "advice" is not subject to a bright-line definition.[13] Instead, the determination of whether a person provides advice to, or on behalf of, a municipal entity or an obligated person regarding municipal advisory activity will depend on all the relevant facts and circumstances.[14] For purposes of the municipal advisor definition, advice includes, without limitation, recommendations that are particularized to the specific needs, objectives, or circumstances of a municipal entity or obligated person with respect to municipal financial products or the issuance of municipal securities, based on all the facts and circumstances.[15] Advice excludes, among other things, the provision of general information that does not involve a recommendation regarding municipal financial products or the issuance of municipal securities.[16]

The focus of the advice standard is whether or not, under all of the relevant facts and circumstances, the information presented to a municipal entity or obligated person is sufficiently limited so that it does not involve a recommendation that constitutes advice.[17]

The Exchange Act provides that municipal advisors and any person associated with such municipal advisor has a fiduciary duty to their municipal entity clients, prohibiting municipal advisors from engaging in any act, practice, or course of business that is not consistent with their fiduciary duty.[18] Although the Exchange Act does not provide that municipal advisors are deemed to have a fiduciary duty insofar as their advice is to non-municipal entity obligated person clients, some state fiduciary or agency laws may, depending on the facts and circumstances, apply to municipal advisor engagements with such obligated persons.[19] Municipal advisors do have other obligations to obligated person clients, such as a duty of fair dealing and a duty of care under current Municipal Securities Rulemaking Board ("MSRB") rules.[20]

Now that I have laid out the regulatory framework, I want to summarize the key takeaways:

First, the Commission applies the term "municipal advisory activities"[21] to a range of activities, including, but not limited to developing financing plans, assisting in evaluating different financing options and structures, and evaluating and negotiating terms.[22]

Second, advice is not subject to a bright-line definition. Advice includes a recommendation regarding municipal financial products or the issuance of municipal securities. The determination of whether a recommendation has been made is an objective inquiry and a key factor that the Commission will consider is whether the recommendation reasonably would be viewed as a suggestion to take action or refrain from taking action.[23]

Third, any person engaging in municipal advisory activity will be considered a municipal advisor and have a fiduciary duty to their municipal entity client, unless an exclusion or exemption applies.

Finally, under federal securities law, a person must register with the Commission and the MSRB prior to engaging in municipal advisory activities. Any person that engages in municipal advisory activity prior to registering with the Commission and the MSRB as a municipal advisor violates Section 15B(a)(1)(B) of the Exchange Act.[24]

Observations on Public-Private Partnerships

The roughly $4 trillion[25] municipal securities market provides critical support to our nation's infrastructure. The funds raised by our states and local governments in the municipal securities market have helped remove lead from water pipes; built roads and bridges; modernized hospitals; built clean-energy infrastructure, and so much more to ensure that we have the infrastructure needed to access critical services. But for decades now, observers have noted that tight fiscal conditions and rising costs associated with maintaining and building infrastructure have prevented our states and local governments from investing in infrastructure at the levels needed.[26]

Recently enacted legislation has made funding and incentives available for a broad range of infrastructure development[27] and may also serve as a potential catalyst for the private sector to help in closing infrastructure gaps, including through public-private partnerships ("P3").[28]

As everyone in the room is aware, leveraging private capital to finance public infrastructure is not a new tool. Much of our nation's early infrastructure was built through partnerships between the public and private sectors.[29] More recently, P3s have been used as a delivery option for complex highway projects throughout the nation[30] and have been presented as a tool to finance projects in other sectors, such as energy infrastructure, affordable housing, school facilities, and telecom.[31]

Despite their widespread use, there is no universally accepted definition of a P3.[32] P3s are broadly described as any contractual agreement between a public entity and a private entity for the purpose of financing, constructing, operating, managing, and/or maintaining a public asset and related services.[33]

Let’s break that down a bit: P3s are long-term contractual arrangements between a public entity and private entity, where the private entity makes a financing commitment expecting to be repaid with future tax revenue or user fees or similar arrangement. The private entity signing and managing the P3 contract is typically a special purpose vehicle (SPV) created for the purpose of the P3 project and having equity investors.[34]

Pretty straightforward: instead of using public resources that may be limited by budget or debt restrictions, private financing steps in as an alternative to building much needed infrastructure, potentially using the same taxes and fees that the municipal entity or obligated person would have used to finance the project if it had decided to finance on its own.

Well, there is more to the story. Definitionally, P3s exist on a spectrum as an alternative form of procurement[35] but also on a spectrum as an alternative form of financing. Financing packages come in all types of configurations: equity, debt, or a combination sourced from both public and private sources, including private activity bonds (“PABs”), federal credit assistance, state, or local funding, which may include the issuance of municipal securities.[36]

Compared to more traditional financings of infrastructure – that is, using federal, state, or local funding, which more likely than not includes the issuance of municipal securities – P3s and other non-traditional methodologies that have been developed to deliver and finance infrastructure needs are a bit more complex.

This complexity has brought with it a range of concerns regarding the use of P3s. Public officials and state and local inspector generals and auditors have studied individual transactions and have issued findings identifying key areas of concern. These concerns include transferring too little or too much risk between the public and private sectors; not using the most efficient and lowest cost financing available to the municipal entity or obligated person; and having very costly long-term impacts to fix short-term budgetary issues.

Public entities have also been exposed to all sorts of contingent liabilities, including compensation clauses, non-compete clauses, and availability payment escalation clauses, leading to potential increased financial and political burdens on the public entity. Uncontrollable external events, oftentimes impacting anticipated revenues, have seen public entities having to make the choice to either terminate, suspend, or take full control over a project, even though the risk of such events was supposed to be borne by other parties.[38]

Pathways to Public-Private Partnerships

In light of these potential hurdles, how does a municipal entity or obligated person go about deciding to finance an infrastructure project using a non-traditional form of procurement?

One way would be for municipal entities and obligated persons to rely on individuals and firms – advisors, consultants, banks, engineers, accounting firms, developers, real estate managers, investment specialists, diversified financial services groups – collectively, what I will be referring to as “P3 Consultants” that have positioned themselves as financial, legal, and technical experts on

P3s. Individual or groups of P3 Consultants are purportedly capable of providing tailored advice to municipal entities and obligated persons on the entire P3 lifecycle. However, various reports[39] have identified that P3 Consultants have engaged in concerning behavior, including:

- Failure by P3 Consultants to disclose conflicts of interest between the P3 Consultant and subcontractors hired to provide a VfM analysis, leading to the skewing of project costs in favor of a P3 procurement.
- P3 Consultants with no experience in municipal financing, failing to include a public sector comparator as part of the VfM analysis and resultingly being unable to demonstrate that the procurement would be maximizing VfM.
- P3 Consultants advising municipal entities or obligated persons that P3s that only used private debt and equity funding sources would be considered an “off-balance sheet” financing, despite the fact that projects procured with a mix of public and private funding sources would, under accounting standards be required to be includable on the municipal entities balance sheet.[40]

Soliciting a P3 Consultant

In staff’s review of P3s in the municipal securities market, one of the first questions that we asked ourselves is how does the process get started – how does a municipal entity or obligated person connect with a P3 Consultant and does that raise any regulatory issues?

Municipal entities and obligated persons often solicit a P3 Consultant through a competitive request for proposal/qualification (“RFP/Q”) process, where the municipal entity or obligated person has defined the infrastructure project scope; completed a preliminary VfM, or other process, which compares[41] the costs and benefits of a P3 or other non-traditional procurement method against a traditional procurement method; defined requirements related to construction, operation, and management of the project; and assessed potential financing arrangements. But P3 Consultants may also approach the municipal entity (or obligated person) through an Unsolicited Proposal (“USP”) process.[42]

So, how does the RFP/Q process tie back to our municipal advisor regulatory framework?

Well, responses to requests for RFP/Qs alone do not constitute municipal advisory activity.[43] Persons providing a response in writing or orally to a RFP/Q from a municipal entity or obligated person for services in connection with a municipal financial product or the issuance of municipal securities is exempt from the definition of municipal advisor provided that such person does not receive separate direct or indirect compensation for advice provided as part of such response.[44] However, Unsolicited Proposals that broadly seek input on any infrastructure project may not be a process that is consistent with the RFP exemption to the municipal advisor definition.[45]

We have previously spoken about the parameters and level of formality of the RFP/Q process that would be needed to qualify for the RFP exemption.[46] Staff is of the view that the USP process would need to meet the same standards to qualify any responses for the exemption. Municipal entities, obligated persons, or registered municipal advisors acting on their behalf, should apply a similar degree of formality by identifying a particular objective for the USP process. Otherwise, any person responding to a USP would need to consider if the substance of their proposal requires registration as a municipal advisor.

We have seen instances where P3 Consultants are originating an infrastructure project by identifying public asset gaps, proposing project design recommendations, providing project affordability analyses, and/or discussing the viability of a public infrastructure project in general terms. Without including material specifically tailored to the needs, objectives, or circumstances of the municipal entity or obligated person, this may not rise to the level of municipal advisory activity. However, some Unsolicited Proposals have included subjective qualitative and quantitative criteria specially tailored to the municipal entity or obligated person that includes descriptions of proposed business arrangements (i.e., ground lease, management agreements); market studies that support revenue assumptions and financial, economic and social benefits; advice with respect to sizing and structuring of the financing package, which may include consideration or use of municipal securities or municipal financial products; and models allocating risk transfer between the public and private entity. P3 Consultants should be aware that, depending on the facts and circumstances, such submissions could constitute municipal advisory activity.

Regardless of whether a P3 Consultant has been retained through an RFP/Q process or through a USP process, our overarching observation has been that municipal entities and obligated persons seem to rely heavily on the content of the proposals – and the implied expertise – of the P3 Consultant.

The Role of the P3 Consultant

What services do P3 Consultants provide? Well, services run the whole gamut.

We have observed instances where the P3 Consultant analyzes and makes recommendations on the most cost effective and appropriate financing package for the delivery of the project, including:

- Considering various financing alternatives to raise the necessary capital, which may include, without limitation: federal, state, or local funding, including the use of municipal financial products or the issuance of municipal securities; equity and lender commitments; and/or special facility financing; and
- Assisting with the sizing and structuring of the financing package, which may include consideration or use of municipal securities or municipal financial products and participating in the preparation of disclosure documents.

P3 Consultants should be aware that considering various financing alternatives and assisting with the sizing and structuring could constitute municipal advisory activity.

We have seen P3 Consultants be asked to independently, or in collaboration with the staff of the municipal entity or obligated person and other advisors, draft RFP/Qs for the solicitation of financial and/or technical private sector project delivery partners ("Private Sector Partners"). Assisting a municipal entity or obligated person with drafting – or simply drafting – an RFP/Q is municipal advisory activity requiring registration with the Commission, absent an available exclusion or exemption, because the P3 Consultant (or any other entity) could be providing advice with respect to the parameters of such RFP/Q which includes the issuance of municipal securities or the use of municipal financial products.[47]

Takeaways

The SEC's mission is to protect investors, maintain fair, orderly, and efficient markets, and facilitate capital formation. The Office of Municipal Securities remains dedicated to providing information to the municipal securities market to help persons and entities active in the market comply with the important safeguards that were put in place after the last financial crisis by Congress. The Exchange Act makes it unlawful for any municipal advisor to provide advice to or on behalf of, or to undertake a solicitation of, a municipal entity or obligated person without registering with the Commission.[48]

As you continue your partnerships to help meet the nation's infrastructure needs, I would like you to remember that addressing the risks that unregistered municipal advisory activity pose to municipal entities and obligated persons is a challenge that requires a whole municipal securities market approach.

P3 Consultants and Private Sector Partners who advise municipal entities or obligated persons on the issuance of municipal securities, the use of municipal financial products, and/or the use of debt financing alternatives that are tailored to the specific needs, objectives, or circumstances of the municipal entity during any stage of the P3 lifecycle should remember that they may be engaging in municipal advisory activity requiring registration as a municipal advisor with the Commission and the MSRB. The relevant timeline for advice to obligated persons is slightly different but still includes advice prior to the issuance of municipal securities until they are no longer outstanding.[49]

For other market participants, engaging persons acting as unregistered municipal advisors may have far-reaching consequences for themselves and others,[50] including eroding public trust, significant financial losses and inefficiencies, and undermining the legitimacy of the P3 process.

More information about the Commission’s regulation of municipal advisors is available at the Office of Municipal Securities website.[51] The MSRB also provides educational material on various topics related to municipal advisors at its Education Center website that may be helpful to municipal entities, obligated persons, P3 Consultants, and Private Sector Partners and any other market participant seeking additional information.[52]

Thank you again to The Bond Buyer for the invitation to address you today. I look forward to working with all of you toward our shared goal of regulatory compliance in furtherance of protecting the integrity of the municipal securities market.

Dave Sanchez, Director, Office of Municipal Securities
The Bond Buyer Infrastructure Conference
Philadelphia
Sept. 17, 2024

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[1] See Dave Sanchez, Director, Office of Municipal Securities, U.S. Securities and Exchange Commission, Closing Remarks – Compliance Conference (Dec. 7, 2023), available at https://www.sec.gov/newsroom/speeches-statements/sanchez-remarks-complia-ce-conference-120723.

[2] See Registration of Municipal Advisors, Exchange Act Release No. 70462 (Sept. 23, 2013), 78 FR 67468, 67472 (Nov. 12, 2013) (“Municipal Advisor Adopting Release”), available at https://www.govinfo.gov/content/pkg/FR-2013-11-12/pdf/2013-23524.pdf.

[3] See Exchange Act Section 15B(e)(8) [15 U.S.C. 78o-4(e)(8)] defining “municipal entity.”

[4] See Exchange Act Section 15B(e)(10) [15 U.S.C. 78o-4(e)(10)] defining “obligated person.”

[5] See Municipal Advisor Adopting Release 78 FR at 67472.

[6] Id. at 67475.

[7] Id. at 67475 n.102 (citing S. Rep. No. 111-176, at 38 (2010)).

[8] Id. at 67475 n. 104 and accompanying text.

[9] Id. at 67475 nn. 105-106 and accompanying text.

[10] Id. at 67626.

[11] See Section 975(a)(1)(B) of the Dodd-Frank Act [15 U.S.C. 78o-4(a)(1)(B)].

[12] See Exchange Act Section 15B(e)(4)(A) [15 U.S.C. 78o-4(e)(4)(A)]. The definition of municipal advisor includes financial advisors, guaranteed investment contract brokers, third-party marketers, placement agents, solicitors, finders, and swap advisors that provide municipal advisory services, unless they are statutorily excluded. See 15 U.S.C. 78o-4(e)(4)(B). The statutory definition of municipal advisor excludes a broker, dealer, or municipal securities dealer serving as an underwriter (as defined in section 77b(a)(11) of this title), any investment adviser registered under the Investment Advisers Act of 1940 [15 U.S.C. 80b-1 et seq.], or persons associated with such investment advisers who are providing investment advice, any commodity trading advisor registered under the Commodity Exchange Act or persons associated with a commodity trading advisor who are providing advice related to swaps, attorneys offering legal advice or providing services that are of a traditional legal nature, or engineers providing engineering advice. See 15 U.S.C. 78o-4(e)(4)(C). The Commission exempts the following persons from the definition of municipal advisor to the extent they are engaging in the specified activities: accountants; public officials and employees; banks; responses to requests for proposals or qualifications; swap dealers; participation by an independent registered municipal advisor; persons that provide advice on certain investment strategies; certain solicitations. See Exchange Act Rule 15Ba1-1(d)(3)(i) through (viii) [17 CFR 240.15Ba1-1(d)(3)(i) through (viii)].

[13] Municipal Advisor Adopting Release, 78 FR at 67479.

[14] Id.

[15] Id. at 67480. See also Exchange Act Rule 15Ba1-1(d)(1)(ii) [17 CFR 240.15Ba1-1(d)(1)(ii)] (advice excludes, among other things, the provision of general information that does not involve a recommendation regarding municipal financial products or the issuance of municipal securities (including with respect to the structure, timing, terms and other similar matters concerning such financial products or issues)).

[16] See Exchange Act Rule 15Ba1-1(d)(1)(ii) [17 CFR 240.15Ba1-1(d)(1)(ii)]. See also Municipal Advisor Adopting Release, 78 FR at 67479-67480 (Commission providing clarifying guidance regarding “advice” only with respect to municipal advisors and solely for purposes of the municipal advisor definition).

[17] See Municipal Advisor Adopting Release, 78 FR at 67480. See generally Answer to Question 1.1 The General Information Exclusion from Advice versus Recommendation from the Registration of Municipal Advisors Frequently Asked Questions (“MA FAQ”), available at https://www.sec.gov/info/municipal/mun-advisors-faqs.

[18] See 15 U.S.C. 78o–4(c)(1).

[19] See, e.g., Arthurs Lestrange & Co., Inc., Exchange Act Release No. 42148, 1999 WL 1038053 at * 4 (Nov. 17, 1999) (financial advisor also a fiduciary under Pennsylvania state law).

[20] See MSRB Rules G-17 (fair dealing) and G-42(a)(i) (duty of care).

[21] See Exchange Act Rule 15Ba1-1(e) [17 CFR 240.15Ba1-1(e)].

[22] See Municipal Advisor Adopting Release, 78 FR at 67472.

[23] Municipal Advisor Adopting Release, 78 FR at 67480 and accompanying note 165 (citing FINRA Notice to Members 01-23 (Mar. 19, 2001), and Notice of Filing of Proposed Rule Change to Adopt FINRA Rules 2090 (Know Your Customer) and 2111 (Suitability) in the Consolidated FINRA Rulebook, Exchange Act Release No. 62718A (Aug. 20, 2010), 75 FR 52562 (Aug. 26, 2010); FINRA Regulatory Notice 11-02 (Know Your Customer and Suitability), Jan. 11, 2011, available at https://www.finra.org/sites/default/files/NoticeDocument/p122778.pdf).

[24] See 15 U.S.C. 78o-4(a)(1)(B).

[25] Federal Reserve Board, Financial Accounts of the United States – Z.1, Table L.212 (First Quarter 2024), available at https://www.federalreserve.gov/releases/z1/20240607/html/l212.htm.

[26] While the federal government contributes with funding, states and local governments carry most of the burden for maintaining and building infrastructure. See generally U.S. Dep't of the Treasury, Infrastructure Investment in the United States (Nov. 15, 2023), available at https://home.treasury.gov/news/featured-stories/infrastructure-investment-in-the-united-states; American Society of Civil Engineers, Failure to Act, Economic Impacts of Status Quo Investment Across Infrastructure Investment Across Infrastructure Systems (2021), available at https://infrastructurereportcard.org/wp-content/uploads/2021/03/FTA_Econ_Impacts_Status_Quo.pdf and Bridging the Gap, Economic Impacts of National Infrastructure Investment, 2024-2043 (2024), available at https://bridgingthegap.infrastructurereportcard.org/wp-content/uploads/2024/05/202--Bridging-the-Gap-Economic-Study.pdf.

[27] The Infrastructure Investment and Jobs Act ("IIJA") and the Inflation Reduction Act ("IRA") make funding available for an array of projects. See Infrastructure Investment and Jobs Act, Pub. L. 117-58 (2021) and the Inflation Reduction Act of 2022, Pub. L. 117-169 (2022).

[28] In terms of private sector involvement in infrastructure development, the IIJA, for instance, provides planning grants for jurisdictions seeking to utilize P3 project procurement, requires projects with an estimated total cost of $750 million or more seeking either Transportation Infrastructure Finance and Innovation Act ("TIFIA") or Railroad Rehabilitation and Improvement Financing ("RRIF") funding to conduct a value-for-money ("VfM") analysis, and increased the federal cap on tax-exempt private activity bonds ("PABs") for highway or surface freight transfer facilities. See e.g., IIJA §§ 71001; 70701; 80403 [23 U.S.C. 611; 23 U.S.C. 601; 26 U.S.C. 142(m)(2)(A)].

[29] See John Forrer, James Edwin Kee, Kathryn E. Newcomer and Eric Boyer, Public Administration Review, Public-Private Partnerships and the Public Accountability Question (May/June 2010), 475-484, available at https://www.jstor.org/stable/pdf/40606405.pdf.

[30] See Congressional Budget Office, Report on Public-Private Partnerships for Transportation and Water Infrastructure (Jan. 2020), available at https://www.cbo.gov/system/files/2020-01/56003-C-O-PPP.pdf (discussing trends in public-private partnerships for transportation and water utilities); U.S. Dep't of Transp., Report on Highway Public-Private Partnership Concessions in the United States (Dec. 2016), available at https://www.transportation.gov/buildamerica/sites/buildamerica.dot.gov/files/2019-08/p3-toolkit_report_on_highway_p3s_122916.pdf.

[31] See, e.g., N.J. Senate Bill No. 3565 (introduced Feb. 9, 2023) (proposed establishment of the

Energy Infrastructure Public-Private Partnership Program); Colo. Senate Bill No. 23-035 (June 2, 2023) (CO housing authority has power to contract with private entities to facilitate P3s for affordable housing projects); Md. Prince George's County Public Schools, First-of-Its-Kind Public-Private Partnership Delivers New Schools for 8K+ Students (Sept. 18, 2023), available at https://www.pgcps.org/offices/communications-and-communi-
y-engagement/newsroom/news/newsroom-archives/20-
3-2024/news-release-first-of-its-kind-public-private-partnership-delivers-new-schools-for-8k-students; Brenton Foundation and Coalition for Local Internet Choice, The Emerging World of Broadband Public-Private Partnerships: A Business Strategy and Legal Guide (May 2017), available at https://www.benton.org/sites/default/files/partnerships_0.pdf; National Science and Technology Council, National Artificial Intelligence Research and Development Strategic Plan May 2023, available at https://www.whitehouse.gov/wp-content/uploads/2023/05/National-Artificial-Intellige-
ce-Research-and-Development-Strategic-Plan-2023-Update.pdf.

[32] In 1999, the U.S. General Accounting Office issued a glossary of the most commonly used terms in P3s to facilitate a better understanding of the terms as they are used. See U.S. General Accounting Office, Public-Private Partnerships, Terms Related to Building and Facility Partnerships (Apr. 1999), available at https://www.gao.gov/assets/ggd-99-71.pdf.

[33] See generally National Conference of State Legislatures, Report, Building-Up: How States Utilize Public-Private Partnerships for Social & Vertical Infrastructure (Feb. 16, 2017) ("NCSL Report"), available at https://www.ncsl.org/transportation/building-up-how-states-utilize-p-
blic-private-partnerships-for-social-ver-
ical-
infrastructure#:~:text=The%20Legislative%20Role%20in%20Public,policy%20is%20the%20next%2
0step; U.S. Dep't of Transp., Build America Bureau, Public-Private Partnership Concessions for Highway Projects: A Primer ("DOT Primer") (for an overview of the various contracting, project delivery and financing arrangements of P3s), available at https://www.fhwa.dot.gov/ipd/p3/toolkit/publications/primers/primer_highway_concessions_p3/.

[34] See generally U.S. Dep't of Transp., Federal Highway Administration, Guidebook on Financing of Highway Public-Private Partnerships Projects (Dec. 2016) ("DOT Guidebook on Financing"), §2.4, available at https://www.fhwa.dot.gov/ipd/pdfs/p3/p3-
toolkit_p3_project_financing_guidebook_122816.pdf.

[35] See, e.g., Dominique Custos & John Reitz, Public-Private Partnerships, 58 Am. J. Comp. L. 555 (2010); NCSL Report; DOT Primer.

[36] See generally DOT Primer; DOT Guidebook on Financing.

[37] See, e.g., Denver International Airport, Great Hall After-Action Report (Aug. 9, 2022), https://www.flydenver.com/app/uploads/2024/06/greathall_AfterActionReport-2.pdf; Office of the Inspector General, City of Chicago, Report of Inspector General's Findings and Recommendations: An Analysis of the Lease of the City's Parking Meters (June 2, 2009), https://igchicago.org/wp-content/uploads/2011/03/Parking-Meter-Report.pdf; State of Texas, State Auditor's Office, Audit Report on The Department of Transportation and the Trans-Texas Corridor, Report No. 07-015 (Feb. 2007), available at https://sao.texas.gov/reports/main/07-015.pdf.

[38] See generally supra note 37. See also Denver International Airport (Great Hall Project), City and County of Denver Auditor, Audit Report Denver International Airport Great Hall Construction (Apr. 20, 2023), available at https://www.flydenver.com/app/uploads/2023/09/greathallconstruction_Auditapril2023-1.pdf; Kevin

DeGood, American Progress, When Public-Private Partnerships Fail: A Look at Southern Indiana's I-69 Project (Feb. 15, 2018), available at https://www.americanprogress.org/article/public-privat--partnerships-fail-look-southern-indianas-69-project/; Hearing, California Senate Transportation and Housing Committee, Tolls, User Fees, and Public-Private Partnerships: The Future of Transportation Finance in California? (Jan. 17, 2007), available at https://archive.senate.ca.gov/sites/archive.senate.ca.gov/files/committees/2015-16/stran.senate.ca.gov/sites/stran.senate.ca.gov/files/01-17-07Background.doc; Texas State Auditor's Office, An Audit Report on The Department of Transportation's Purchase of the Camino Colombia Toll Road (June 2, 2006), available at https://sao.texas.gov/reports/main/06-041.pdf. Concerns regarding P3s have been raised outside of the United States as well. See, e.g., Office of the Auditor General of Ontario, Annual Report 2014, available at https://www.auditor.on.ca/en/content/annualreports/arreports/en14/2014AR_en_web.pdf; Canadian Centre for Policy Alternatives | Nova Scotia, Many Dangers of Public-Private Partnerships (P3s) in Newfoundland and Labrador (Sept. 2020), available at https://policyalternatives.ca/sites/default/files/uploads/publications/Nova%20Scotia%20Office/2020/10/HiddendangersofP3s.pdf.

[39] See generally supra notes 37 and 38.

[40] See generally Governmental Accounting Standards Series, Statement No. 94 Public-Private and Public-Public Partnerships and Availability Payment Arrangements (03/20), available at https://gasb.org/page/ShowPdf?path=GASBS94.pdf&title=GASB%20Statement%20No.%2094,%20Public-Private%20and%20Publi--Public%20Partnerships%20and%20Availability%20Payment%20Arrangements.

[41] See U.S. Dep't of Transp., Federal Highway Administration, Value for Money Assessment for Public-Private Partnerships: A Primer, 2-1, https://www.transportation.gov/buildamerica/sites/buildamerica.dot.gov/files/2019-08/p3_value_for_money_primer_122612.pdf.

[42] A USP process refers to a proposal submitted by an offeror (often a P3 Consultant but can be any private entity) for a P3 project that is not in response to any RFP/Q issued by a municipal entity, obligated person, or municipal advisor on their behalf.

[43] See Municipal Advisor Adopting Release, 78 FR at 67509.

[44] See Exchange Act Rule 15Ba1–1(d)(3)(iv) [17 CFR 240.15Ba1-1(d)(3)(iv)]. See also Municipal Advisor Adopting Release for a discussion on the RFP exemption. Municipal Advisor Adopting Release, 78 FR at 67508-67509.

[45] See generally Answer to Question 2.1 of the MA FAQ.

[46] Id.

[47] See Municipal Advisor Adopting Release, 78 FR at 67509.

[48] See Exchange Act Section 15B(a)(1)(B) [15 U.S.C. 78o-4(a)(1)(B)].

[49] Whether a person that advises clients about conduit financings or other financing options would be required to register as a municipal advisor is dependent on certain facts and circumstances. See Municipal Advisor Adopting Release, 78 FR at 67485. For conduit financings, a person will not be a municipal advisor to an obligated person until (among other things) the obligated person has begun applying to, or negotiating with, a municipal entity to issue conduit bonds on behalf of the obligated

person. Id.

[50] As part of its toolbox, the Commission brings enforcement actions against individuals and firms engaging in unregistered municipal advisory activity. A list of unregistered municipal advisor enforcement actions is available at https://www.sec.gov/about/divisions-offices/office-municip-l-securities/unregistered-municipal-advisor-enforcement-actions.

[51] See U.S. Securities and Exchange Commission, Office of Municipal Securities, available at https://www.sec.gov/about/divisions-offices/office-municipal-securities.

[52] See Municipal Securities Rulemaking Board, available at https://www.msrb.org/.

SEC Warns Advisors: Play By the Rules.

The Securities and Exchange Commission's Office of Municipal Securities director Dave Sanchez has a warning for advisors working on municipal market-adjacent deals like public-private partnerships or workforce housing: we're watching you.

Issuers, though not responsible for their municipal advisors, should be proactive in ensuring the firms are playing by the rules, said Sanchez, speaking Tuesday during a regulatory panel at The Bond Buyer's infrastructure conference in Philadelphia.

"Double check you're really playing by the rules; there are a lot of potential pitfalls," he said. The mere consideration of a municipal bond borrowing as any part of project financing requires registration as a municipal advisor. "The rules still apply," he said.

The SEC is set to post formal comments on the topic this week, he said.

The warning comes the same day that the SEC announced charges against 12 municipal advisory firms for failing to maintain and preserve certain electronic communications.

Commenting on the charges, Sanchez said "it will be a continued message from our office over the next few months for issuers to know what a municipal advisors' responsibilities are to them," while adding that it's not an issuer's responsibility to ensure that an MA is qualified.

"But it is important for an issuer to know how they're supposed to be protecting [them] and what they should be looking out for," he said.

On the P3 front, Sanchez said the office has received complaints, many from within the municipal bond community, about advisors not playing by the rules. The workforce housing sector is another area the SEC is keeping an eye on, he said.

"If you're looking at ways to cobble together grants and private activity bonds and you're considering bonds – that is municipal advisory activity, and this is the place where we're seeing a high volume of unregistered activities," he said. Some global P3 experts and accounting firms and others are not registered but are still "engaged in this type of activity," he said.

Leslie Norwood, managing director and associate general counsel of the Securities Industry and Financial Markets Association, who was also on the panel, said some firms "are just ignorant of the rules" while others are knowingly trying to sidestep registration.

“The rule is quite complex and it’s an activity-based rule, not a contractual-based rule, and there a lot of different provisions and exemptions for firms to comply with,” Norwood said. “Issuers should really be taking a proactive stance that the people they work with should be registered – and if [the firms] say they don’t need to be, that should raise a red flag.”

The SEC is attuned to other P3-related unlawful activity like recommending issuers take on more expensive debt than needed, conducting a value-for-money analysis that “puts the thumb on the scale for the P3 procurement” and inaccurate statements to governments about risk transfer, Sanchez said.

The SEC is also watching for violations of federal securities laws, particularly when it comes to workforce housing deals, he said.

“Every government issuer has heard this ? pitches where people promise things that are too good to be true and that can be a violation of securities laws,” he said. “It’s great people are thinking about creative solutions, but don’t forget the rules still apply.”

By Caitlin Devitt

BY SourceMedia | MUNICIPAL | 09/18/24 02:55 PM EDT

Don’t Shy Away From Munis to Avoid Election Volatility.

Forthcoming market volatility from an election year may have fixed income investors shying away from bonds. However, it’s an ideal time to get municipal debt exposure, especially in the current market environment.

“In the current environment, which includes a too-close-to-call U.S. election and trillions of investable assets parked in cash, there’s opportunity in municipal bonds,” noted James M. D’Arcy, an active municipal fixed income portfolio manager at Vanguard.

At the start of 2024, private and public entities have issued bonds with the expectation of coming rate cuts. Now, municipalities are issuing bonds at increased pace. That’s providing a plethora of opportunities for fixed income investors to scoop up these debt issues.

“Usually, we see an annual increase in new municipal bond issues around October and November. However, this year, we’re seeing that increase now, particularly as issuers rush to complete new deals before Election Day,” added D’arcy. “At the same time, municipalities are issuing more bonds than they have for years.”

Underpinned by Strong Fundamentals

Situated between safe haven Treasury notes and investment-grade corporate bonds are munis. Currently, strong fundamentals currently underpin these local government debt issues. And that makes funds like the Vanguard Tax-Exempt Bond ETF (VTEB) an ideal option.

“In many ways, the fundamentals that support local governments are stronger today than we’ve seen for a long time,” D’Arcy said. State reserves and rainy-day funds are the highest we’ve seen in decades.

VTEB tracks the Standard & Poor's National AMT-Free Municipal Bond Index. That index measures the performance of the investment-grade segment of the U.S. municipal bond market. With volatility ahead in the election year, this getting quality is ideal to weather any market fluctuation storms.

"Munis are a high-quality asset class—more than 85% of the market is rated A or higher—with a strong fundamental risk profile," D'Arcy added. "That's particularly true when compared to corporate bonds. Even the amount investors are compensated for going down in credit quality—credit spreads—remains attractive in the muni space, even in the current yield environment."

VTEB is an ideal solution for investors wanting muni exposure but not wanting to sift through the mass of options available to them. The fund tracks an index including municipal bonds from issuers. Those issuers are primarily state or local governments or agencies whose interests are exempt from U.S. federal income taxes and the federal alternative minimum tax.

etftrends.com

by Ben Hernandez

September 20, 2024

What's Missing from Passive Muni ETFs?

Some of the largest municipal bond ETFs are passively managed, but did you know that these index-tracking funds exclude a significant portion of the muni bond market?

Notably, the two largest ETFs in this category are passively managed and account for nearly 75% of overall municipal bond ETF assets.1 While passive ETFs, including these giants, are attractive due to their low fees, these funds miss out on some compelling areas of the municipal bond market due to the rules that define their construction.

What sectors are often excluded from passive muni ETFs?

By design, a passive ETF's portfolio is tied to its underlying benchmark. Examining the rules governing these benchmarks can shed light on which segments of the municipal bond market aren't represented within their associated ETFs.

Commonly excluded areas of the market include housing bonds, tobacco bonds, and bonds that are subject to the alternative minimum tax. Conduit bonds, which are a specific type of municipal bond issued by a governmental entity but primarily for the benefit of for-profit institutions like hospitals and universities, can also be excluded from the index. Due to these exclusions, it's estimated that the largest passive municipal bond ETFs lack exposure to around one-fifth of the municipal bond market.

Continue reading.

jhinvestments.com

September 20, 2024

BlackRock Reshapes Two Muni Bond Funds for ETF Market.

BlackRock Inc., the world's largest asset manager, is converting a municipal bond mutual fund into an ETF and revamping another, following a trend among issuers seeking to capitalize on growing demand for exchange-traded funds.

The New York-based firm plans to convert its $1.7 billion BlackRock High Yield Municipal Fund into an ETF and revamp its existing $195.84 million BlackRock High Yield Muni Income Bond ETF (HYMU) into an iShares-branded product. The mutual fund conversion, set to close on Feb. 7, will result in the creation of the iShares High Yield Muni Active ETF, according to a filing with the Securities and Exchange Commission.

ETFs are snatching an ever-increasing market share from mutual funds—so far this year ETFs raked in $588.1 billion and mutual funds bled $217 billion, Morningstar said recently. To accommodate demand issuers have converted dozens of mutual funds to ETFs since the first transition from Guinness Atkinson in March 2021, and Bloomberg ETF analyst Eric Balchunas has said that $1 trillion worth of mutual funds may convert to ETFs, which are easier to trade, by 2033.

Continue reading.

etf.com

by DJ Shaw
Finance Reporter

Sep 20, 2024

ICE: Municipal Bonds – Reliable Pricing for a Fragmented Market

ICE's rules-based, transaction-driven approach provides a transparent representation of municipal market movement.

The complex and fragmented municipal bond market – comprised of around one million securities and 50,000-plus issuers – has long been a challenge to price. Data can be scarce, dated, and not standardized. ICE has been working to address this challenge over the past few years, drawing on our expertise in evaluations and depth of our pricing data. Today, our expanded range of Municipal Coupon & Callability Curves cover four ratings buckets (AAA, AA, A, BBB) three coupon rates (3%, 4%, 5%) and nine call structures (from 10 to 2 years to first call). The curves are mid yield, yield to worst (YTW) curves, with a methodology that is rules-based, transaction-driven, and updates based on certain round lot trades reported to the MSRB's Real-time Transaction Reporting System (RTRS).

To appreciate what distinguishes our methodology, it's important to understand how municipal bonds are priced for trading in the secondary market, where a market participant typically refers to recent trades for the price paid in conjunction with other factors such as the size of the trade and spread to the municipal bond (or "muni") reference curve. The typical muni reference curve is a AAA 5% coupon with a 10-year par call which has traditionally been the most common new issuance borrowing structure of municipalities. If no recent trades are available or market conditions have changed so the last trade price is no longer relevant, other sources are consulted – such as trades involving bonds with similar characteristics. That's where yield curves have a part to play in collating market color. Many participants are turning to ICE's AAA Municipal Yield Curve as the key reference curve in both primary and secondary markets due to its rules-based, transaction-driven framework. This provides a more transparent representation of municipal market movement than traditional methods of curve construction, which typically use a consensus approach.

Following the launch of ICE's AAA Municipal Yield Curve, its live pricing could be applied to as much as 80% of the one million active municipal bond securities universe. Yet ICE's municipal bond team recognised its limitations: not every bond has a 5% ten-year par call structure throughout its life. Using the AAA curve as a base, they built lower-level coupon and call curves from observed trades that met certain criteria. As criteria-acceptable trades are applied to the model, the curves are updated to reflect changes in current market conditions. This means the impact of any curve movements can be applied to a large swathe of bonds quickly- a more effective way to pass through market color to a larger set of comparable bonds. A survey-based approach would struggle to reflect market conditions in this manner.

The spreads from ICE's expanded curve set can update several times a day – but no less frequently than daily – and ICE's team aims to track and reflect the institutional mid yield of each maturity point of the curves. Trades fitting the selection criteria are each associated with a curve and its interpolated tenor yield. Several checks are included to maintain curve consistency across rating, coupon, call and curve shape, while a proprietary optimizer solves for the best suite of curves that minimizes total trade to curve spread differences. The curves are fitted through the middle of the selected trades for a particular curve, so each curve represents the average, or mean credit. ICE's evaluators are also on hand to provide oversight on curve behavior. Importantly, these curves are used daily to apply intraday and end-of-day market moves to most of the investment grade municipal bond universe evaluated by ICE. Intraday updates to the curves support ICE's Continuous Evaluated Pricing™ while the end-of-day curves are used to support ICE end-of-day municipal evaluation.

The development of ICE's expanded municipal curve offering was well underway when the most recent rate hike cycle began in March 2022. These rate hikes – unprecedented in their pace and magnitude – contributed to a market sell-off amid fears of a potential recession. This saw a growing number of outstanding municipal bonds fall into de minimis territory, with ICE estimating a third of tax-exempt munis were affected at the height of the sell-off. In addition, December 2022 saw the ICE Municipal AAA yield curve invert for the first time in history; a dynamic that persists with the two-t--10-year segment of the municipal yield curve. These factors – a drastic rate hike cycle, muni yield curve inversion, and thousands of bonds breaching de minimis – upended recent pricing relationships, underscoring the need for a broader set of municipal bond curves for use in evaluated pricing. These curves can be a valuable input for firms looking to partially or fully automate their trading on municipal securities. While ICE's evaluations take in and apply more market data than just the curves, the curve suite is now one of the main drivers of evaluation movement.

By Patrick Smith, Senior Director, Head of Municipal Evaluations, ICE

By fidesk -September 17, 2024568

SOLVE Debuts AI-Driven Predictive Pricing Platform for the Municipal Bond Market.

NEW YORK, Sept. 17, 2024 (GLOBE NEWSWIRE) — SOLVE, the leading provider of pre-trade data and predictive pricing for fixed income securities markets, is debuting SOLVE Px™, the firm's proprietary, AI-driven predictive price data for the municipal bond market. SOLVE Px will provide SOLVE's buy and sell-side customers with unprecedented visibility into "next-trade" pricing data on over 900,000 municipal bonds.

SOLVE's platforms–including SOLVE Quotes™, which provide price transparency data on over 20 million daily quotes and more than 1,250,000 securities across different asset classes–are already being used by investment, trading, and valuation experts across the fixed income market. SOLVE Px is the newest addition to a slate of products designed to give the fixed income investment ecosystem access to insights that enable better trading decisions, including for municipal bonds that are infrequently quoted and traded.

"One of the unique challenges in the municipal bond market is the sheer number of outstanding CUSIPs and the lack of pricing transparency on the vast majority of them. This makes valuing specific munis very time-consuming and market participants do not have the confidence that they have all the relevant information to make sound relative value decisions," said SOLVE founder and CEO Eugene Grinberg. "By tapping into our unparalleled quotes data and leveraging AI's ability to see in many dimensions, SOLVE Px lets front-office municipal bond professionals price munis with confidence and identify investment opportunities."

SOLVE Px leverages data from the extensive SOLVE Quotes database and is based on an AI Prediction Model powered by nearly 300 feature inputs. This Prediction Model is re-trained daily to adjust dynamically to constantly evolving market conditions. SOLVE Px incorporates real-time Quotes, trades, and reference data to produce predictive prices in real time.

"We leveraged our deep muni market relationships as we developed our predictive pricing platform, sought industry feedback, and performed rigorous back-testing to ensure Px meets the high standards of our diverse client base. Our output, Px, is a unique platform that delivers predictive prices for the buy and sell sides and at the trade size that makes sense to our clients," said Gregg Bienstock, Group Head of Municipal Markets. "This is just the beginning as we move to expand this offering with tools for relative value and as we move to other asset classes."

SOLVE Px has proven highly accurate over its year-long testing period and will bring many competitive advantages to SOLVE's customers.

Key Benefits Include:

- Unmatched predictive accuracy – SOLVE Px is a highly accurate prediction model that enables sell-side and buy-side investors to execute trades with better and more informed data. SOLVE Px's median absolute yield error of just 5-6 bps significantly improves trading outcomes.
- Relative Value – SOLVE Px, by accurately pricing virtually every security in the municipal asset class, is uniquely suited for various Relative Value exercises, including rich/cheap bond vs. bond, bond vs. cohort, or cohort vs. cohort analyses and visualizations.
- Breadth of coverage – Access to the largest suite of price transparency-driven data and analytics – Including Quotes that come from parsing a client's own messages with AI, Quotes that come from other contributing clients, and tools to identify comparisons and generate representative pricing.

SOLVE Px is available now and predicts the next trade price for over 900,000 fixed coupon bonds, representing 99% of all fixed coupon bonds and over 93% of the entire universe of live municipal bonds.

To learn more about SOLVE Px, please visit https://solvefixedincome.com/solve-px.

About SOLVE
SOLVE is the leading market data platform provider for fixed-income securities, trusted by sophisticated buy-side and sell-side firms worldwide. Founded in 2011, SOLVE leverages its proprietary Deep Market Insight™ to offer unparalleled transparency into markets, reduce risk, and save hundreds of hours across front-office workflows. With the largest real-time datasets for Securitized Products, Municipal Bonds, Corporate Bonds, Syndicated Bank Loans, Convertible Bonds, CDS, and Private Credit, SOLVE empowers clients to transform the way they bring new securities to market, trade on secondary markets, and value highly illiquid securities. Headquartered in New York, with offices across the globe, SOLVE is the definitive source for market pricing in fixed-income markets. For more information, visit https://solvefixedincome.com.

SOLVE Px does not constitute Investment Advice and does not seek to value any security and does not purport to meet the objectives or needs of specific individuals or accounts.

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MSRB Receives SEC Approval to Shorten the Timeframe for Trade Reporting to One Minute.

Amendments Include Exceptions for Manual Trades and Firms with Limited Trading Activity

Washington, D.C.– The Municipal Securities Rulemaking Board (MSRB) today received approval from the Securities and Exchange Commission for amendments to MSRB Rule G-14, shortening the time for municipal securities trades to be reported to MSRB. The amendments change the current 15-minute standard to as soon as practicable, but no later than one minute after the time of trade, subject to certain exceptions, including new exceptions for manual trades and firms with limited trading activity.

“Today’s approval order represents the culmination of our rulemaking initiative to amend MSRB Rule G-14 to establish a new one-minute standard of trade reporting,” MSRB Chair Meredith Hathorn said. “I want to acknowledge the invaluable feedback we received from our stakeholders during the comment period, which resulted in a rule that is not only more fair and equitable but also one that advances the public interest in a more transparent municipal securities market.”

MSRB will announce the effective date of the rule change in a future MSRB notice. Manual trades will be subject to a phase-in period to an eventual 5-minute standard over the course of several years.

MSRB initially sought comment from stakeholders on its one-minute trade reporting proposal in August 2022, which resulted in a robust response from market participants. After reviewing the comments, MSRB engaged in additional analysis and extensive engagement with market stakeholders to understand why certain types of voice-brokered, block and other trade types might not currently be readily reportable within one minute, and to understand potential resource or other barriers to meeting a new one-minute timeframe that might exist for some firms, including smaller or less active firms.

“As we strive to enhance transparency in the municipal securities market, it is important to acknowledge the critical roles served by firms of all types and different manners of trading,” MSRB Chief Regulatory and Policy Officer Ernesto Lanza said. “The amendments approved today represent a significant modernization of the trade reporting paradigm. They allow investors and other market participants to have access to more contemporaneous prices, while ensuring firms executing manual trades and those with limited trading volumes can continue to effectively serve the diverse range of customers participating in this market.”

Trades reported to MSRB’s Real-time Transaction Reporting System (RTRS) are made available for free to the public via the Electronic Municipal Market Access (EMMA®) website, providing investors, dealers, municipal advisors and other market participants with the information they need to make informed decisions about the pricing of municipal securities.

Read the notice.

Date: September 20, 2024

Contact: Aleis Stokes, Chief External Relations Officer
202-838-1500
astokes@msrb.org

- Ballard Spahr: Proposed Joint Standards for Financial Regulatory Data Under FDTA by SEC and Agencies
- S&P U.S. Public Finance: Methodology For Rating U.S. Governments
- S&P Institutional Framework Assessments For U.S. Local Government Portfolios.
- Posh Real Estate Deals Boom in High-Flying Junk Muni Market.
- Bank Holdings of Muni Debt Fall to Nine-Year Low on Tax Changes.
- Empty Downtowns Are Still Depleting Local Coffers.
- And Finally, Did You Know That Chutzpah Is Faccia Tosta In Italian? is brought to us this week by *Hartnett v. Contributory Retirement Appeal Board*, in which Susan Hartnett argued that she had met the pension benefits accrual requirement that she be employed in “consecutive” years. Ok. Cool. Pretty basic concept, the whole “consecutive” thing. Let’s take a look. Left governmental service in 1990. Ok. Returned to government service in 2022. Ok. Let’s break out the old HP and … wait just a minute. We’re not sure what it is, but something feels off here. One can only stand in awe of the blatant disavowal of language and logic. Ms. Harnett, you have a bright future in politics.

ZONING & PLANNING - CALIFORNIA

San Pablo Avenue Golden Gate Improvement Association, Inc. v. City Council of City of Oakland

Court of Appeal, First District, Division 4, California - June 28, 2024 - 103 Cal.App.5th 233 - 322 Cal.Rptr.3d 870

Neighborhood organizations petitioned for a writ of administrative mandamus following dismissal of administrative complaint against city in which they sought initiation of revocation review process for zoning clearance issued to applicant to operate commercial kitchen in “Housing and Business Mix-1

Commercial Zone," on basis that applicant's proposed use was incorrectly classified as "Light Manufacturing Industrial" and that zoning clearance contravened zoning regulations.

The Superior Court denied petition, and organizations appealed.

The Court of Appeal sitting by assignment, held that section of municipal code governing enforcement of zoning regulations, which was the provision relied upon by organizations, did not provide a legal basis to challenge city planning department's interpretations and determinations of zoning regulations, including use classifications and zoning clearances.

PUBLIC EMPLOYMENT - MASSACHUSETTS

Hartnett v. Contributory Retirement Appeal Board

Supreme Judicial Court of Massachusetts - September 11, 2024 - N.E.3d - 2024 WL 4138001

Retired public employee sought judicial review of decision by Contributory Retirement Appeal Board (CRAB) which affirmed the Division of Administrative Law Appeals (DALA) administrative magistrate's decision that the anti-spiking provision of the public employee pension statute limited her entitlement to pension benefits.

The Superior Court Department agreed with CRAB that the anti-spiking provision generally would apply, but that to do so would violate employee's vested pension rights. CRAB appealed and employee filed a cross appeal.

The Supreme Judicial Court held that employee's last year of public employment with the state before she left to work in the private sector and the first year of her reemployment with city more than a decade later were not two "consecutive years" within the meaning of the anti-spiking provision of the public employee pension statute.

ZONING & PLANNING - MONTANA

Montanans Against Irresponsible Densification, LLC v. State

Supreme Court of Montana - September 3, 2024 - P.3d - 2024 WL 4023334 - 2024 MT 200

Limited liability company (LLC) formed of interested homeowners brought action seeking declaratory and permanent injunctive relief prohibiting the State and its municipalities from implementing laws requiring cities to permit duplexes in single-family zones and permitting accessory dwelling units.

The District Court granted LLC's motion for a preliminary injunction, and the State appealed.

The Supreme Court held that:

- LLC had standing to seek a preliminary injunction;
- LLC failed to establish that implementation of statutes would lead to irreparable harm; and
- Balance of equities did not tip in favor of grant of preliminary injunction.

PUBLIC RECORDS - OHIO

State ex rel. Wells v. Lakota Local Schools Board of Education

Supreme Court of Ohio - September 3, 2024 - N.E.3d - 2024 WL 4017827 - 2024-Ohio-3316

Requester filed action against school board and its treasurer for writ of mandamus to compel school district to produce records responsive to her requests under the Public Records Act.

The Supreme Court held that:

- Requester was entitled to writ of mandamus to compel school board to produce demand letter, which threatened school board with litigation;
- Requester's mandamus claim to compel school board to produce unredacted or lesser-redacted legal invoices was moot;
- Requester was entitled to $1,000 in statutory damages due to school board's failure to produce demand letter;
- Requester was entitled to statutory damages of $1,000 for school board's delay in producing legal invoices;
- Requester was entitled to attorney's fees based on school board's failure to produce demand letter; and
- School district did not act in bad faith in its delay in disclosing legal invoices with proper redactions, and, thus, requester was not entitled to attorney's fees for school board's delay in producing invoices.

PUBLIC UTILITIES - OHIO

In re Application of Moraine Wind, L.L.C.

Supreme Court of Ohio - August 27, 2024 - N.E.3d - 2024 WL 3940615 - 2024-Ohio-3224

Renewable energy organization appealed order of Public Utilities Commission of Ohio (PUCO) approving applications of six out-of-state operators of wind farms for certification in Ohio.

PUCO moved to dismiss appeal.

The Supreme Court held that PUCO did not rule on organization's application for rehearing within 30 days, denying application as matter of law, and, thus, dismissal of appeal was not appropriate.

Public Utilities Commission of Ohio (PUCO) did not rule on renewable energy organization's application for rehearing within 30 days, denying application as matter of law, and, thus, dismissal of appeal from PUCO's order granting certification to six wind farm operators was not appropriate, although PUCO argued that its order granting rehearing for limited purpose of extending time to review application made it so application was still pending when organization appealed certification order; order extending PUCO's time to review application did not vacate prior certification order or reach any determination as to whether reconsideration of that order was warranted, and effect of order was to put off consideration of application under future date, such that order did not actually grant rehearing.

EMINENT DOMAIN - TEXAS

Alamo Heights Independent School District v. Jones

Court of Appeals of Texas, El Paso.August 28, 2024--- S.W.3d ----2024 WL 3970738

Three former residents of apartment complex, who were displaced when the complex was purchased by school district, sued the district and several of its officials, seeking relocation expenses, relocation assistance, and injunctive relief under eminent domain statutes, and bringing ultra vires claim alleging that defendants failed to provide such assistance.

After denying defendants' first motion for summary judgment on the merits, from which defendants did not appeal, the District Court denied defendants' motion for summary judgment, which made same arguments as first motion but also raised a jurisdictional plea based on governmental immunity. Defendants filed interlocutory appeal, and residents moved to dismiss appeal.

The Court of Appeals held that:

- Interlocutory appeal of second summary judgment motion was timely;
- Residents could not maintain an ultra vires suit against school district, as such suits could only be brought against the district officials acting in their official capacity;
- Relocation assistance provision of eminent domain statute did not apply to property acquired in ways other than eminent domain;
- Residents were not entitled to moving expenses under statute; and
- Residents could not maintain ultra vires action against school district officials.

NASBO Summaries of Fiscal Year 2025 Enacted Budgets.

View the NASBO summaries.

Fitch: US State Budgets Downshift Into a Slower New Normal

Fitch Ratings-New York-09 September 2024: U.S. states are taking a slow and steady approach to their fiscal 2025 budgets, according to Fitch Ratings in its latest annual report.

State budgets are in fiscally sound positions with extraordinary post-pandemic revenue performance buying them time to strengthen their financial operations. This prudent approach is proving useful, says Senior Director Karen Krop.

“States have returned to more typical budgeting practices for fiscal 2025, with modest revenue growth expectations and a need to address some expenditure pressure,” said Krop. “The end result is still robust dedicated operating reserves, with some states dipping into accumulated balances for one-time spending and others tapping rainy day funds to help balance their budgets.”

The wave of significant tax policy changes seems to have peaked. Fewer states are incorporating tax cuts into their budgets, with some notable exceptions. Few states are raising revenues, although California did so on a temporary basis to address its revenue gap. New Jersey and Illinois similarly raised revenues.

Slower revenue growth means states are moderating spending expectations after relatively high budget growth during and after the pandemic. They continue to fund high-priority initiatives, including addressing homelessness and housing affordability. Several states, including Massachusetts, New York, Utah, Vermont, and Oregon, are investing in programs. “States are also allocating resources for natural disaster response, such as wildfire recovery in California and Hawaii, flood damage response in Vermont, and adding funds for emergency preparedness in Florida,” said Krop.

‘2025 U.S. State Budgets Back to Normal’ is available at www.fitchratings.com.

S&P U.S. Public Finance: Methodology For Rating U.S. Governments

This criteria article presents S&P Global Ratings’ new methodology for rating U.S. governments.

Download.

[Free Registration Required.]

S&P Institutional Framework Assessments For U.S. Local Government Portfolios.

In this article, S&P Global Ratings provides the institutional framework (IF) assessments it derives from the application of the criteria “Methodology For Rating U.S. Governments,” published Sept. 9, 2024. This commentary is intended to be read in conjunction with those criteria.

Key Publication Information

- This article is related to “Methodology For Rating U.S. Governments,” Sept. 9, 2024.
- We will update this publication periodically to summarize our latest institutional framework assessments for U.S. local government portfolios.

Institutional Framework Assessments

The IF is the set of formal rules and laws–as well as practices, customs, and precedents–that shape the environment in which U.S. governments operate. Our assessment is mostly qualitative and considers the historical track record as well as changes that are likely to shape the framework. As stated in the U.S. governments criteria, factors in our assessment are:

- Predictability;
- Revenue and expenditure balance and system support; and
- Transparency and accountability.

State constitutions and state laws broadly dictate the terms under which U.S. governments operate. Therefore, we assess the institutional framework by state and type of government. When the legal or practical environment for a specific local government differs from the norm in its state, we assess that specific government accordingly. Special districts generally receive the same IF assessment as municipalities in that state.

The table shows our assessments for 136 institutional frameworks in the U.S.

Continue reading.

[Free Registration Required.]

S&P U.S. Public Finance RFC: Methodology For Rating U.S. Governments

On Jan. 11, 2024, S&P Global Ratings published a request for comment (RFC) on its proposed revisions to the approach it uses to rate U.S. governments. Following feedback from the market, we finalized and published our criteria, titled "Methodology For Rating U.S. Governments," on Sept. 9, 2024.

We'd like to thank investors, issuers, and other intermediaries who provided feedback. This RFC process summary provides an overview of the changes between the RFC and the final criteria as well as the rationale behind those changes.

External Written Comments Received From Market Participants That Led To Significant Analytical Changes To The Final Criteria

Comment: One commenter recommended that the methodology reflect whether state or local governments assess the need for capital investments and measure and report liabilities for current and future deferred maintenance and preservation needs. They suggested this could be assessed as part of the Management: Long-term planning subfactor or as an adjustment to the Management factor. The commenter also recommended we assess a government's pension stress testing and risk reporting as an adjustment within the Debt and liabilities, Management, or Institutional framework sections of the criteria.

Continue reading.

Posh Real Estate Deals Boom in High-Flying Junk Muni Market.

- **Risky muni returns are beating US corporate high-yield debt**
- **Atlanta and Miami projects sold high-yield muni debt this year**

High-end real estate developments are tapping the municipal-bond market, leading to a slew of so-called luxury dirt deals and fueling returns for investors willing to take on the risk.

This year, state and local debt buyers have helped finance a vacation-home golf enclave in Florida, a resort near Zion National Park and a $4.2 billion redevelopment in Atlanta's downtown. The deals — all high-yield and sold exclusively to sophisticated investors — represent a niche corner of a market that typically raises money to build schools, roads and bridges.

Some of these offerings have been oversubscribed and repriced tighter, helping to boost returns for junk-rated muni-bonds to a 7.2% gain this year, outpacing their investment-grade counterparts by more than 5 percentage points, according to data compiled by Bloomberg. The risky state and local debt is also beating US high-yield corporate debt.

Continue reading.

Bloomberg Markets

By Sri Taylor

September 11, 2024

California Community Choice Aggregator Issues Third Pre-Pay Green Bond.

Clean Power Alliance on Sept. 12 said it has issued its third municipal non-recourse Clean Energy Project Revenue Bond through the California Community Choice Financing Authority.

The $1.524 billion bond issuance is expected to reduce CPA's renewable energy costs by an estimated $93 million over the initial eight-year period of the bond, or an average of $11.6 million annually.

The savings from this prepay transaction are locked in until 2032, at which time the bond will be repriced.

Founded in 2017, Clean Power Alliance is the locally operated not-for-profit electricity provider for 33 cities across Los Angeles County and Ventura County, as well as the unincorporated areas of both counties.

The bond received an investment-grade A1 rating from Moody's and a 'Green Bonds' designation by Kestrel Verifiers.

CPA issued its first two Clean Energy Project Revenue bonds in February 2023 and April 2023, respectively. The three bond issuances are expected to generate total annual savings of approximately $25.3 million.

Energy prepayment bonds are long-term financial transactions available to public agencies like CPA to provide power procurement cost savings.

A Clean Energy Project Revenue Bond is a form of wholesale electricity prepayment that requires three key parties: a tax-exempt public electricity retailer (CPA in this transaction), a taxable energy supplier (J Aron & Company, LLC in this transaction), and a municipal bond issuer (CCCFA in this transaction)

The three parties then enter into long-term power supply agreements for zero-emission clean electricity sources such as solar, wind, geothermal, and hydropower. The municipal bond issuer issues tax-exempt bonds (underwritten by Goldman Sachs in this transaction) to fund a prepayment of energy that will be delivered over 30 years.

The energy supplier provides a discount to the tax-exempt public electricity retailer in exchange for the prepayment of power purchases funded by the bond proceeds.

CPA has assigned three solar-plus-storage power purchase agreements to this prepay transaction. The bond will be utilized to prepay the purchase of a combined capacity of 854.5 megawatts of renewable energy.

For the bond, CPA was advised by municipal financial advisor Municipal Capital Markets Group and by the law firm Chapman & Cutler.

publicpower.org

by Paul Ciampoli

September 12, 2024

[Bank Holdings of Muni Debt Fall to Nine-Year Low on Tax Changes.]

- **Institutions held $498.5 billion of muni securities as of June**
- **Banks pull back as taxable state and local issuance declines**

US banks' investment in state and local debt is at the lowest level in nearly nine years, as sales of taxable municipal securities have dropped and lending institutions continue to reap the benefits of a lower corporate tax rate.
Banks held a combined $498.5 billion of municipal debt, as of June 30, the least amount of exposure for the banks since September 2015, and down 21% from a record high of $631.3 billion held at the end of 2021, according to data from the Federal Reserve.

Banks have traditionally served as a reliable and sizable buyer of state and city debt, alongside individual investors, mutual funds and insurance companies. Though the firms pulled back from tax-exempt securities after former President Donald Trump cut the corporate tax rate to 21% from 35% in 2018, banks returned to the product in 2020 and 2021 to take advantage of a boost in issuance of taxable municipals.

That volume has died down since the Fed hiked rates in 2022. States and local governments have sold $23.3 billion of taxable bonds so far this year, about a third of the $74.4 billion sold during the same period in 2021, according to data compiled by Bloomberg.

"That's been a challenge for the banks, not enough taxable supply," said Matt Fabian, a partner at research firm Municipal Markets Analytics.

Banks generally like municipal debt for their longer maturities and lower risk compared to other investments. But with a 21% corporate tax rate, the banks don't need to rely as much on tax-exempt securities. Some are also scarred by losses endured in 2022, when the broader municipal market declined 8.5%, Fabian said.

"They took large losses on munis, so they fear them now," Fabian said about the banks.

A bank pullback could affect prices on municipal securities if the tax-exempt market needs to rely more on individual buyers who may shy away from lower yields, according to Fabian.

"We have more exposure to changes in retail behavior," Fabian said. "If the Fed cuts rates and interest rates fall and then retail becomes less interested in buying lower yielding bonds, it's going to be a drag on muni performance because you don't have corporations or others to help chase muni-bond prices higher."

Bloomberg Markets

By Michelle Kaske

September 13, 2024

Get Caught Up on the August Issue of GFOA's Government Finance Review.

The latest magazine features in-depth articles on GFOA’s Rethinking Financial Reporting initiative, Direct Pay, solutions for property tax foreclosures, tax tools for local economic development, tips for balancing budgets, AI updates, member spotlights, and much more.

Read the publication.

Empty Downtowns Are Still Depleting Local Coffers.

In much of the country, downtowns remain relatively empty. The implications for property values, mortgage debt and property tax collections have not yet fully played out, says a Columbia University economist.

A few weeks ago, a building on West 50th Street in Midtown Manhattan sold at a steep discount. The 23-story office building had sold for $332 million as recently as 2006, but at an auction in July, it fetched only $8.5 million.

This was not a fluke or even an isolated incident. With office workers staying away from their offices in droves, downtown office buildings have sold at fire-sale prices, with defaults on office loans reaching near-record levels.

To get a sense of how shaky the downtown office market remains, Governing spoke with Stijn Van Nieuwerburgh, a professor of finance and real estate at Columbia University who coined the term “urban doom loop” back in 2022.

Continue reading.

governing.com

by Alan Greenblatt

Sep. 13, 2024

Planning for a Daunting New Normal of Flood Risk.

Rainfall patterns are changing. What can local leaders do to curb the growing risks?

In Brief:

- Floods are the most common and expensive weather-related disaster.
- Changing rain patterns are increasing their frequency.
- A study by a Virginia sanitation district offers an example of infrastructure planning that takes climate into account.

The 10 warmest years since record-keeping began 150 years ago were all in the last decade.

Warmer air absorbs more moisture, and this moisture is now more and more likely to come down in buckets, increasing the frequency and scale of flood risks to communities.

Climate impacts are making an already-bad situation worse, says Mami Hara, CEO of the nonprofit US Water Alliance. “We were already in a deep hole from underinvestment and systemic inequities of infrastructure investment and services,” Hara says.

Continue reading.

governing.com

by Carl Smith

Sept. 12, 2024

Some Solutions for State and Local Tax Deductibility.

When the 2017 tax law expires next year, Congress will revisit the limits on SALT deductions on federal returns. With elections approaching, it’s time for governors and mayors to offer some viable new policy options — and ways to pay for them.

To help pay for middle-class tax cuts in 2017, Congress put a $10,000 limit on itemized deductions for state and local taxes, known as the “SALT” deduction. Although only some 10 percent of federal income tax returns included itemized deductions last year, fewer yet exceed the SALT ceiling — mostly a subset of taxpayers with six-figure incomes.

Yet when it was enacted, this move prompted more vocal complaints than almost any other tax law provision. Its impact is felt mostly by homeowners in jurisdictions where a combination of above-average state income taxes and hefty local property taxes puts them over the deduction limit.

Along with other provisions of the 2017 tax law, the SALT cap is set to expire next year, guaranteeing that it will become a political football. Even though this is a non-issue to 90 percent of the tax-paying population, it’s a heated topic along partisan lines, with anti-tax conservatives claiming that an uncapped SALT deduction rewards spendthrift state and local politicians while others argue that the cap penalizes too many middle-class households. Public officials in the most affected states and localities have a clear interest in finding a way to provide some extra tax relief to households that pay out more than the $10,000 deduction limit. The problem is how to pay for it.

Continue reading.

governing.com

by Girard Miller

Sept. 10, 2024

Orrick: Portland International Airport Opens Main Terminal After $2 Billion+

Renovation

Passengers at Portland international Airport are coming and going through a new terminal, part of a broader renovation that also includes enhancements to parking and rental-car areas.

Orrick has served as bond and/or disclosure counsel for the Port of Portland in five financings totaling $2.2 billion since 2019. Those financings provided funding for the renovation work, including a $589.9 million financing that closed around the same time as the new terminal opened August 14.

THE COMPANIES
The Port of Portland operates Portland International Airport and two other airports as well as four marine terminals and five business parks.

With hundreds of employees, the Port is an economic engine for transforming the region into a place where everyone is welcome, empowered, and connected to the opportunity to find a good job or grow their business.

THE IMPACT
Built and designed by more than 30,000 local craftspeople, the terminal offers more places to eat, drink and shop. It has “double the capacity but keeps the heart and character of the airport that consistently ranks among travelers’ favorites,” the Port said.

“Our focus throughout this entire project was: How do we reflect the pride and love we all have for the region in the new PDX?” said Curtis Robinhold, executive director for the Port of Portland. “It was a lot of local love for the Pacific Northwest that made it all happen.”

The terminal includes new airline check-in areas, a public space with stadium seating and a mezzanine restaurant, a streamlined security process and 11 local shops and restaurants.

Work from now until 2026 will add more shops and restaurants, more escalators and elevators to the arrivals level, shorter walks to and from airline gates and new airline VIP lounges, among other things.

THE TEAM
Greg Blonde and Christine Reynolds led the Orrick teams that have advised the Port of Portland on five financings since 2019. The teams also included John Stanley, Mayling Leong, Leslie Conrad Krusen IV, Alexandra Bartos-O’Neill and Angie Gardner.

September.09.2024

State of Illinois: Fitch New Issue Report

The State of Illinois’ ‘A–’ Long-Term IDR reflects solid operating performance that nonetheless remains weaker than that of most other states. Illinois has a long record of structural imbalance primarily related to pension underfunding, offset by continued progress toward more sustainable budgeting practices. The rating also reflects the state’s elevated long-term liability position and resulting spending pressure. Illinois’ deep and diverse economy is growing slowly, but still provides a strong fundamental context for its credit profile.

[Access Report](#)

Thu 12 Sep, 2024

[Idaho State Building Authority: Fitch New Issue Report](#)

The ‘AA+’ rating on the series 2024A bonds reflects strong growth prospects for state sales tax collections, the source of revenues pledged to the bonds, and the resilience of the bond structure. Available sales tax collections, net of distributions that come ahead of the School Modernization Facilities (SMF) Fund distribution, provide strong debt service coverage, even when taking into account maximum future issuance.

[Access Report](#)

Fri 13 Sep, 2024

[The Potential for Increased Municipal Debt Activity as Interest Rates Decline in CY 25-26.](#)

The prospect of declining interest rates presents a significant opportunity for municipal debt issuance and capital project activity among local governments.

For sophisticated investors, understanding the dynamics at play is crucial. Lower interest rates reduce the cost of borrowing, which can incentivize municipalities to issue new debt or refinance existing obligations. As the yield curve slowly normalizes, issuers can secure long-term financing at more favorable rates, thereby lowering the overall debt service costs. This environment often encourages local governments to accelerate capital projects that were previously shelved due to higher borrowing costs.

In this article, we will take a closer look at the interest rate forecast and how it may foster an attractive issuance timeframe for municipal governments.

[Continue reading.](#)

dividend.com

by Jayden Sangha

Sep 12, 2024

TAX - CALIFORNIA

[Sutter's Place, Inc. v. City of San Jose](#)

Court of Appeal, Sixth District, California - August 30, 2024 - Cal.Rptr.3d - 2024 WL 4002415

Cardroom operator brought action against city and Division of Gaming Control, alleging city's cardroom regulation fee was an unconstitutional tax imposed without the required voter approval and that its imposition violated due process.

Following bench trial, the Superior Court entered judgment for defendants, granted them $44,349.42 in costs, and denied their request for attorney fees. Operator appealed.

The Court of Appeal held that:

- Trial court applied incorrect legal standard in making decision that cardroom regulation fee was not an unconstitutional tax;
- Trial court's error was prejudicial to operator;
- Substantial evidence supported trial court's finding that equally allocating cardroom regulation fee between two cardrooms bore fair or reasonable relationships to their respective burdens on, or benefits received from city's regulatory activity;
- Trial court did not abuse its discretion by limiting scope of expert's testimony;
- There was no cumulative prejudice warranting a new trial; and
- City was not required to refund entire cardroom regulation fee based on inclusion of certain unpermitted costs.

Greenberg Traurig Represents Bond Investors in Electric Vehicle Charging Infrastructure Grant Anticipation Notes Issuance.

ORLANDO, Fla. – Sept. 9, 2024 – Global law firm Greenberg Traurig, P.A. represented bond investors in the issuance of Electric Vehicle Charging Infrastructure Grant Anticipation Notes Series 2024 and Series 2024-B by the National Finance Authority, totaling $50,400,000. The proceeds from these bonds have been loaned to Francis Energy Charging, LLC to finance the construction of an electric vehicle charging station network. This project will be reimbursed by funds from the federal National Electric Vehicle Infrastructure program.

The Greenberg Traurig team was led by Public Finance & Infrastructure Shareholder Carl McCarthy with assistance from Associate Violeta Gonzales.

About Greenberg Traurig's Public Finance & Infrastructure Practice: Greenberg Traurig, LLP has a national public finance practice that consistently ranks among the top bond, disclosure, and underwriter's counsel firms according to The Bond Buyer's nationwide and statewide rankings. Greenberg Traurig LLP's Public Finance & Infrastructure Practice has been serving the needs of state and local issuers, underwriters, credit providers, bondholders, and conduit borrowers throughout the United States for more than forty years in virtually every area of public finance. The firm currently has 35 attorneys in the Public Finance & Infrastructure Practice in its Arizona, Colorado, Florida, Georgia, Illinois, Massachusetts, New York, Pennsylvania, Texas, and Washington, D.C. offices.''

About Greenberg Traurig: Greenberg Traurig, LLP has more than 2750 attorneys in 47 locations in the United States, Europe and the Middle East, Latin America, and Asia. The firm is a 2022 BTI "Highly Recommended Law Firm" for superior client service and is consistently among the top firms on the Am Law Global 100 and NLJ 500. Greenberg Traurig is Mansfield Rule 6.0 Certified Plus by The Diversity Lab. The firm is recognized for powering its U.S. offices with 100% renewable energy as certified by the Center for Resource Solutions Green-e® Energy program and is a member of the U.S. EPA's Green Power Partnership Program. The firm is known for its philanthropic giving, innovation, diversity, and pro bono. Web: www.gtlaw.com.

Phillips Academy Andover Prepares $54 Million Muni Bond Sale.

- **Andover plans to use proceeds to refinance existing debt**
- **School's endowment was valued at $1.4 billion in June**

Phillips Academy Andover, a top prep school that counts two former US presidents among its alumni, is tapping the municipal bond market to pay off existing debt.

Andover is slated to issue $53.7 million of bonds through the Massachusetts Development Finance Agency on Thursday, preliminary documents show. Proceeds of the offering will be used for refinancing and terminating an interest-rate swap, as well as paying for issuance costs, according to the prospectus.

The alma mater of both Presidents George H. W. Bush and George W. Bush, Andover joins a smattering of private schools that have come to the state and local debt market of late. Earlier this summer, St. Ignatius College Preparatory sold muni bonds in California to revamp its campus, while Massachusetts' the Wheeler School raised debt in April.

Continue reading.

Bloomberg Markets

By Erin Hudson

September 9, 2024

The Case for Long-Term Munis: Positioning for Rate Cuts

With potential rate cuts on the horizon, long-term municipal bonds are emerging as an attractive option due to their higher yields, tax benefits, and potential for price appreciation.

The Case for Long-Term Munis: Positioning for Rate Cuts

The Federal Funds rate has held steady at 5.33% for over a year, but the Federal Reserve (Fed) is now signaling that this period may be coming to an end. With potential rate cuts on the horizon in September, long-term municipal bonds are becoming more attractive. This blog will explore why now could be the ideal time to consider reallocating into long-term munis.

Continue reading.

VanEck

by Drew Anderson
Product Analyst

September 13, 2024

Ballard Spahr: Proposed Joint Standards for Financial Regulatory Data Under FDTA by SEC and Agencies

Summary

The Financial Data Transparency Act (FDTA), passed as part of the National Defense Authorization Act for fiscal year 2023, aims to enhance the interoperability of financial regulatory data across nine federal agencies, including the U.S. Securities and Exchange Commission (SEC). By December 2024, these agencies are required to develop and implement a set of shared data standards for certain "Collections of Information" reported by financial entities and data collected on behalf of the Financial Stability Oversight Council (FSOC).

The SEC and other agencies recently proposed joint standards, which include common identifiers, principles-based standards for data transmission and structuring, and alignment with the Paperwork Reduction Act of 1995 (PRA). These standards will impact various aspects of the financial and municipal securities markets.

Continue reading.

Ballard Spahr LLP

by David Atlas & Kimberly Magrini

September 11, 2024

Don't Let an Election Year Keep You From Munis.

A forthcoming presidential election might create some angst among prospective investors in municipal bonds. However, history typically shows that election years don't produce major volatility swings.

Because presidential candidates can bring differing policy agendas to the table, the implications on municipal bonds could cause a degree of worry. However, historically speaking, they don't make much of an impact.

"Historically, presidential elections have generally had limited bearing on muni market returns," noted AllianceBernstein, confirming that powerful economic events had more of an impact on munis than elections.

If recent history is an indicator, a presidential election year should actually be a good time to invest in munis.

"Republicans and Democrats each won three elections since 2000, and muni bond returns were positive for each election calendar year and the year after in four of the six periods," AllianceBernstein added.

If that helps to quell any anxiety, one fund investors will want to consider for muni exposure is the Vanguard Tax-Exempt Bond ETF (VTEB). The ETF cracked the list of top muni bond funds to consider in U.S. News.

“These are debt instruments issued by states, cities, counties and other governmental entities to raise funds to pay for public projects such as roads, bridges and schools,” noted Nathan Will, principal and head of municipal credit research at Vanguard.

If investors are concerned about credit quality, they shouldn’t be, as most munis are situated between its safe haven Treasury and investment-grade corporate bond peers.

“Municipal bonds are generally a high-quality asset class with a very low historical default rate,” Will added. “What sets them apart is the combination of strong credit fundamentals and the opportunity to earn tax-exempt income.”

Diversification and Liquidity

VTEB tracks the Standard & Poor’s National AMT-Free Municipal Bond Index, which measures the performance of the investment-grade segment of the U.S. municipal bond market. Overall, this index includes municipal bonds from issuers, primarily state or local governments or agencies whose interests are exempt from U.S. federal income taxes and the federal alternative minimum tax.

Overall, muni funds can offer distinct advantages to fixed income investors. Aside from their tax exempt income distributions are their diversification and liquidity.

“There are several advantages to using a fund structure for investing in municipal bonds,” said Stuart Gillin, assistant vice president and investment advisor at Baker Boyer Bank. “Municipal bond funds provide diversification that can be difficult for investors to achieve on their own and are more liquid than individual bonds.”

etftrends.com

by Ben Hernandez

September 11, 2024

NY’s JFK Airport Developer Preps $1.5 Billion Muni Bond Sale.

- **Borrower targets tax-exempt muni sale for Oct. 8 at earliest**
- **The airport is in the midst of a large renovation project**

The developer behind a major renovation of John F. Kennedy International Airport is preparing a $1.5 billion municipal bond sale next month.

JFK Millennium Partners is considering tapping the market with a tax-exempt issue to refinance outstanding obligations issued in 2022, according to a regulatory filing posted this week to the Municipal Securities Rulemaking Board’s EMMA website. That debt includes bank loans and an initial series of bonds issued with the Royal Bank of Canada.

The group behind the public-private partnership is in the process of developing the airport’s new Terminal 6, which is expected to be 1.2 million square feet and cost $4.2 billion. The first gates at the terminal are expected to open in 2026 with the project finishing two years later.

Construction began on the terminal in February 2023. The new terminal, which is set to have food offerings like Italian-sandwich shop Alidoro and Momofuku founder David Chang’s Fuku, is part of a larger $19 billion overhaul of the airport in Queens. The new terminal will also include features like touchless check-in technology and a taxi plaza.

The municipal bonds would be sold though the New York Transportation Development Corporation and could be priced as early as Oct. 8. The sale would be underwritten by a group led by Goldman Sachs and Siebert Williams Shank, according to the filing.

Bloomberg Markets

By Lily Meier and Shruti Singh

September 12, 2024

[It's a Great Time to Invest in Munis: Franklin Templeton's Johnston]

"You don't want to be late to this party," Jennifer Johnston, director of research at Franklin Templeton's Municipal Department, says while explaining why it's a great time to invest in the municipal bond market on "Bloomberg The Close."

Watch video.

Bloomberg Markets: The Close – Muni Moment

September 12th, 2024, 1:57 PM PDT

Philadelphia College Files Bankruptcy After Shock Closure.

- **University of the Arts bond trustee sought accelerated payment**
- **School abruptly closed its doors in June, shocking students**

The University of the Arts, a private college in Philadelphia that abruptly closed its doors in June, filed bankruptcy Friday, two weeks after it faced a demand by its bondholders for immediate repayment of more than $50 million in debt.

The school listed assets and liabilities of $50 million to $100 million, in a petition for Chapter 7 liquidation filed in the US Bankruptcy Court in Delaware. The school's board of trustees held a special meeting on Sept. 5 to approve the filing. It was subsequently approved by 17 of 18 board members.

The closing of the school came as a shock to students, parents and staff who were only given a week's notice. The action spurred protests at its campus as well as multiple legal actions.

Continue reading.

Bloomberg Markets

By Martin Z Braun

September 13, 2024

SIFMA T+1 After Action Report.

On May 28th, the United States securities market moved to an accelerated settlement cycle of one day after trade date (T+1) for equities, corporate bonds, municipal bonds, unit investment trusts, and financial instruments comprised of these security types. After more than three years of rigorous and coordinated activities to plan for — and ultimately implement — a shortened settlement cycle, the industry is recognizing reduced settlement risk across the U.S. capital markets. Firms are now able to make better use of their capital while promoting financial stability. Ultimately, T+1 has provided the appropriate balance between increasing efficiencies and successfully mitigating risk for the industry.

View the Report.

- MSRB Analysis of Primary vs. Recently Issued and Competitive vs. Negotiated Municipal Securities Markets.
- Faster US Settlement Hit Harder Than Expected, Citi Survey Says.
- GFOA MiniMuni Sessions Announced.
- Texas Officials Sued Over Anti-ESG Law Targeting Wall Street.
- Alabama Hospital Defaults on Municipal Debt as Expenses Soar.
- Why Miami Struggled to Sell its First Forever Bonds.
- *Bonta v. Superior Court of Sacramento County* – Court of Appeal holds that ballot label that described proposition as allowing approval of local infrastructure and housing bonds for low- and middle-income Californians with 55% vote complied with statutory requirements of a concise and accurate description in terms that were not misleading, despite argument that label should have stated that existing law required a 2/3 vote to approve such bonds.
- And Finally, Tis But A Scratch is brought to us this week by *City of Atlanta v. Perkins*, in which the jury awarded $2,361,700 in damages and $944,680 in attorney fees. $944,680. Laissez les bons temps rouler, mes amis. Imagine the elation. Imaging the deflation as the trial judge JNOVed that fee award because pedestrian, “did not plead such fees in his complaint or amended complaint.” How do you miss this? How do you not through take 90 seconds to drop in some boilerplate requesting attorney fees? From a million to nada. How? But we’re quite sure that everyone had a good chuckle back at the firm. No?

PUBLIC UTILITIES - CALIFORNIA

Pacific Gas and Electric Company v. Federal Energy Regulatory Commission

United States Court of Appeals, District of Columbia Circuit - August 23, 2024 - F.4th - 2024 WL 3908398

Investor-owned utility that provided electricity to most consumers in city petitioned for review of orders of the Federal Energy Regulatory Commission (FERC) with respect to utility’s obligations under a tariff to transmit, or wheel, over its network electricity produced by a public utility with some customers in city, orders that FERC had issued on remand from a prior decision of the Court of

Appeals, vacating FERC's prior orders with respect to the same issues.

The Court of Appeals held that:

- Investor-owned utility had Article III standing;
- FERC order with respect to investor-owned utility's transmission or wheeling obligations was contrary to law; and
- Term "ultimate consumer" in statute generally barring FERC orders requiring a utility to transmit or wheel energy except to a public entity that was providing electric service to "such ultimate consumer" as of date in grandfather clause refers to a discrete end user as of that date, not to a class or category of end users.

Investor-owned utility that provided electricity to most consumers in city experienced actual and ongoing injuries caused by orders of the Federal Energy Regulatory Commission (FERC) with respect to utility's obligations under a tariff to transmit, or wheel, over its network electricity produced by a public utility with some customers in city, and those injuries would be redressed if the appellate court set the orders aside, and investor-owned utility thus had Article III standing to petition for review of the orders, even though they related to a tariff that had been replaced by a later tariff, where FERC had required investor-owned utility to serve certain delivery points based on the earlier tariff, and the later tariff had not fully taken effect.

Order of the Federal Energy Regulatory Commission (FERC) with respect to obligations of investor-owned utility, which provided electricity to most consumers in city, under a tariff to transmit, or wheel, over its network electricity produced by a public utility with some customers in city was contrary to law, where FERC had erroneously given a broad, class-based interpretation to phrase "ultimate consumer" in grandfather clause in statute generally barring FERC orders requiring a utility to transmit or wheel energy except to a public entity that was providing electric service to "such ultimate consumer" as of a certain date, but phrase referred to a discrete end user, not a class or category of end users.

In statute barring Federal Energy Regulatory Commission (FERC) orders requiring the transmission or wheeling of electric energy "directly to an ultimate consumer" or to an entity that would sell that energy to an "ultimate consumer" unless, under statute's grandfather clause, the entity is a public entity that was providing electric service "to such ultimate consumer" as of a certain date, the term "ultimate consumer" refers to a discrete end user as of that date, not to a class or category of end users.

REFERENDA - CALIFORNIA

Bonta v. Superior Court of Sacramento County

Court of Appeal, Third District, California - August 13, 2024 - 104 Cal.App.5th 147 - 324 Cal.Rptr.3d 400

Objectors brought petition for writ of mandate that challenged ballot label for proposition that proposed an amendment to the California Constitution that would allow passage of local bonds for public infrastructure and affordable housing by 55% voter approval rather than the existing 2/3 margin.

The Superior Court, Sacramento County, granted relief in mandate and entered order and judgment that directed the Attorney General to revise the ballot label. Attorney General petitioned for writ of mandate.

The Court of Appeal held that the ballot label, which described proposition as allowing approval of the particular type of bonds with a 55% vote, complied with statutory requirements of a concise and accurate description in terms that were not misleading, despite argument that label should have stated that existing law required a 2/3 vote to approve such bonds.

Ballot label that described proposition as allowing approval of local infrastructure and housing bonds for low- and middle-income Californians with 55% vote complied with statutory requirements of a concise and accurate description in terms that were not misleading, despite argument that label should have stated that existing law required a 2/3 vote to approve such bonds; while the ballot label was undoubtedly prominent in the voter information materials, the fact the title and summary contained information about the existing approval threshold substantially diminished the force of the argument that there was a danger voters would be misled.

LIABILITY - GEORGIA

City of Atlanta v. Perkins

Court of Appeals of Georgia - August 21, 2024 - S.E.2d - 2024 WL 3885489

Pedestrian brought action against city, alleging he was injured when he stepped on city water meter lid that flipped into water meter box and caused him to fall.

Following jury trial, the State Court awarded pedestrian $2,361,700 in damages for negligence and nuisance and $944,680 in attorney fees, then granted city’s motion for judgment notwithstanding verdict with respect to attorney fees and overturned attorney fee award but denied remainder of city’s motion for judgment notwithstanding verdict.

City and pedestrian appealed.

The Court of Appeals held that:

- Spoliation sanctions were warranted;
- Trial court acted within its discretion in imposing harsh spoliation sanctions;
- Evidence regarding alleged issues with other water meters and lids was admissible; and
- Pedestrian was precluded from raising new claim for attorney fees in pretrial order.

EMINENT DOMAIN - GEORGIA

Satcher v. Columbia County

Supreme Court of Georgia - August 13, 2024 - S.E.2d - 2024 WL 3802370

After property owners provided notice of claims to county but county declined to repair property, owners brought action against county, asserting claims for inverse condemnation, trespass, nuisance, and negligence, based on damage to property arising from allegedly defective stormwater drainage system, and seeking damages and a permanent injunction, among other things.

Before final bench trial, owners’ property sustained alleged additional injury related to stormwater. Following bench trial, the Superior Court found in favor of owners, awarding money damages, for damages incurred both before notice was sent to county and after complaint was filed, and granting owners a permanent injunction that enjoined county from maintaining a defective stormwater drainage system that caused damage to owners' property. County appealed. The Court of Appeals, among other things, vacated the damages award as to harms occurring after notice was sent to county but affirmed the grant of the injunction. The parties filed cross-petitions for writ of certiorari, which were granted.

The Supreme Court held that:

- Injunction exceeded the scope of the sovereign immunity waiver provided by the Just Compensation Provision, and
- Vacatur of order granting owners' petition for certiorari and denial of the petition were warranted.

Injunction entered in property owners' action against county, which enjoined county from maintaining a defective stormwater drainage system that caused damage to owners' property, exceeded the scope of the sovereign immunity waiver provided by the Just Compensation Provision; injunction was permanent, and, on its face, injunction's duration was not limited to what was necessary to stop the alleged taking or damaging until such time as county made prepayment of just and adequate compensation or exercised the power of eminent domain.

Court of Appeals' opinion vacating damages award as to harms occurring after property owners' notice-of-claims letter to county did not articulate a general rule of law of the sort that posed a question of gravity warranting Supreme Court's review, thus supporting vacatur of order granting owners' petition for certiorari as to that ruling and denial of the petition, in owners' action against county alleging damage to property arising from allegedly defective stormwater drainage system; Court of Appeals merely held that, on the particular facts of the case, owners could not obtain damages incurred after the presentation of notice.

EMINENT DOMAIN - IDAHO

Zeyen v. Bonneville Joint District, # 93

United States Court of Appeals, Ninth Circuit - August 23, 2024 - F.4th - 2024 WL 3909574

Students' parents brought § 1983 action against school districts, alleging that payment of fees associated with educational and extracurricular opportunities within public school districts constituted a taking of property without due process in violation of the Takings Clause of the Fifth Amendment.

Parties filed cross motions for summary judgment. First district judge denied school districts' motion and then denied school districts' motion for reconsideration. After case was reassigned to a second judge, the United States District Court for the District of Idaho granted school districts' second summary judgment motion. Parents appealed.

The Court of Appeals held that:

- Second judge's procedural error in revisiting first judge's order without conducting manifest justice analysis was harmless;
- Interest in free public education did not give rise to a vested private property interest subject to the Takings Clause;
- Fees did not amount to an exaction in violation of the Takings Clause; and
- Fees were not taken for a public use as required for a Takings Clause violation.

Second district judge's procedural error in revisiting first district judge's prior interlocutory order denying summary judgment to school districts in students' parents' action alleging that payment of fees for educational and extracurricular opportunities within public school district constituted a taking of property under the Fifth Amendment without making necessary conclusion that enforcement of previous decision would work a manifest injustice was harmless, since second judge's decision on the merits of summary judgment motion under the Takings Clause was correct.

Neither students nor their parents could possess, use, dispose of, or sell their interest in free public education as provided by the Idaho Constitution's "free common schools" provision, and thus, interest in free public education did not give rise to a vested private property interest subject to the Takings Clause as would support students' parents' claim alleging that payment of fees for educational and extracurricular opportunities within public school district constituted a taking of property without due process in violation of the Fifth Amendment; public education was a variable product, not a consistent, standalone thing, tangible or intangible, over which student had exclusive dominion, as required minimum standards for public education could be, and had been, altered, modified, or abolished.

Fees charged by school districts for educational and extracurricular opportunities were charged on the happening of a contingency, election to enroll students in certain optional courses with associated fees, and as such, they lacked the direct governmental appropriation of a specific, vested monetary interest necessary to give rise to a per se monetary takings claim.

Fees charged by school districts for educational and extracurricular opportunities did not amount to an exaction in violation of the Takings Clause; fees were equitably paid by students who wished to exercise an option to participate in those activities and classes and not imposed generally on all students whether they participated in such activities or not.

Students parents could not allege that property, money paid for educational and extracurricular opportunities within school districts, was taken for public use, thus precluding claim under the Takings Clause; fees did not benefit the public because they wee directly tied to conferral of specific benefits extended to students in exchange for the fees.

PUBLIC UTILITIES - IDAHO

Wandruszka v. City of Moscow

Supreme Court of Idaho, Moscow, April 2024 Term - August 19, 2024 - P.3d - 2024 WL 3863546

Landlords brought declaratory judgment action against city challenging validity of city's revised utility billing process for city water service reflecting city's new policy of no longer contracting directly with tenants and requiring landlords to assume liability for tenants' unpaid water bills.

The Second Judicial District Court granted summary judgment in part and denied it in part to each party. Landlords and city both appealed.

The Supreme Court held that:

- Landlords had requisite injury-in-fact to have standing;
- City could use written agreements to guarantee utility payments from tenants;
- Utility billing agreements were not secured under duress;
- Utility billing agreements were contracts of adhesion;

- Utility billing agreements had vague and indefinite lien provisions rendering agreements unenforceable; and
- Neither party was entitled to attorney fees on appeal.

EMINENT DOMAIN - NORTH CAROLINA

Department of Transportation v. Bloomsbury Estates, LLC

Supreme Court of North Carolina - August 23, 2024 - S.E.2d - 2024 WL 3909395

Department of Transportation (DOT) initiated a taking action against condominium association and developer, and parties entered consent judgment that established $3,950,000 was just compensation for the taking but did no establish how the just compensation would be divided between developer and association.

During pendency of the taking action, developer and association each filed a separate collateral complaint against each other regarding the rights to the property. Developer then filed motion for an issues hearing in the DOT taking action.

The Superior Court consolidated all three actions and entered summary judgment for developer, concluding that it was entitled to $3,350,000 and remainder of compensation should be assigned to association, and then entered final judgment. Association appealed. The Court of Appeals affirmed in part, reversed in part, and remanded. Developer filed petition for discretionary review, and it was granted.

The Supreme Court held that:

- Trial court properly distributed just compensation from the taking based on adoption of ruling in developer's separate action under res judicata principles, and
- Trial court did not abuse its discretion in distributing just compensation in manner that compensated developer for loss of development rights and allocated residual to association.

Interlocutory order in developer's action against condominium association, allowing equitable reformation of fifth amendment to condominium declaration so as to extend developer's right to complete second phase of condominium project after Department of Transportation's (DOT) temporary taking had terminated, had preclusive effect in DOT's taking hearing held to determine just compensation allocated to developer and condominium association, and thus, trial court properly distributed just compensation from the taking prior to resolution of parties' issues in developer's and association's collateral actions; issue of validity of condominium declaration's fifth amendment was only issue that affected parties' rights and it was fully litigated in developer's action since association enjoyed full and fair opportunity to litigate issue.

Trial court did not abuse its discretion in distributing, on summary judgment, just compensation from Department of Transportation's (DOT) taking of property from a condominium construction project for a railroad right of way in a manner that compensated developer for loss of its development right and allocated residual to condominium association, despite association's contention that material issues of fact existed as to whether association owned property and development rights, where appraisers agreed, based on validity of amendment to condominium declaration that extended developer's right to complete second phase of condominium project after DOT's temporary taking had terminated, developer was entitled to compensation for loss of development rights.

EMINENT DOMAIN - PENNSYLVANIA

[Wolfe v. Reading Blue Mountain]

Supreme Court of Pennsylvania - August 20, 2024 - A.3d - 2024 WL 3868639

After railroad filed declaration of taking to condemn portion of private landowners property in order to place new rail siding to connect to its main rail line, owners filed complaint and emergency motion for preliminary injunction.

The Court of Common Pleas granted preliminary injunction pending hearing, and following hearing, sustained owners' objections, and then denied reconsideration. Railroad appealed.

The Commonwealth Court. Owners' petition for allowance of appeal was granted.

The Supreme Court held that railroad's proposed taking of owners' property was for private, rather than public purpose.

Public would not be primary and paramount beneficiary of railroad's proposed taking of private landowners' property in order to rebuild rail siding that Public Utility Commission (PUC) had previously suspended, in order to connect to main railroad line, thus barring railroad's taking of land, under Fifth Amendment and Pennsylvania Constitution; rail siding across owners property would not be used to transport either goods or passengers, only beneficiary of taking would be asphalt company, for which railroad sought reinstallation of rail siding to connect company to railroad's network, to facilitate company's ability to transport materials by rail, company used trucks and private haulers to transport materials it sought to import via rail, and railroad did not have to traverse owners' land to accomplish its goal of connecting company to rail network.

EMINENT DOMAIN - SOUTH DAKOTA

[Betty Jean Strom Trust v. SCS Carbon Transport, LLC]

Supreme Court of South Dakota - August 21, 2024 - N.W.3d - 2024 WL 3895866 - 2024 S.D. 48

Landowners who refused to allow pipeline company, which was developing an underground pipeline network to transport carbon dioxide, pre-condemnation survey access brought separate actions against company for declaratory and injunctive relief that would prevent the surveys.

Company brought one action in which it sought declaratory and injunctive relief permitting survey access.

The Circuit Court, Third Judicial Circuit and the Circuit Court, Fifth Judicial Circuit granted summary judgment to company on all issues in all the cases. Landowners appealed, and the appeals were consolidated on landowners' motion.

The Supreme Court held that:

- Recent amendments to the statute under which company wanted to conduct the pre-condemnation surveys did not render the appeals moot;
- Genuine issue of material fact as to whether pipeline would transport carbon dioxide for customers who would either retain ownership or sell it to other parties precluded finding on summary

judgment that pipeline would serve the public as required for company to be a common carrier;
- Genuine issue of material fact as to whether the carbon dioxide that would be transported through pipeline would be put to any productive use precluded finding on summary judgment that the carbon dioxide was a commodity, as required for company to be a common carrier;
- Landowners demonstrated their entitlement to a continuance to conduct further discovery;
- Examinations and surveys done under applicable former version of statute under which company wanted to conduct the pre-condemnation surveys were not "takings" under the Fifth Amendment's Taking Clause or the South Dakota Constitution's corresponding provision;
- The pre-condemnation surveys would be unconstitutional "takings" under the Fifth Amendment insofar as the surveys involved invasive geotech and deep-dig surveys; and
- Applicable former version of statute under which company wanted to conduct the pre-condemnation surveys did not violate procedural due process.

BANKRUPTCY - TEXAS

Porretto v. City of Galveston Park Board of Trustees

United States Court of Appeals, Fifth Circuit - August 21, 2024 - F.4th - 2024 WL 3886181

After Chapter 7 trustee abandoned privately owned beachfront property along Texas coastline back to debtor, debtor filed adversary complaint against city, city's park board, the Texas General Land Office (GLO), and GLO's Commissioner, alleging, inter alia, that defendants' postpetition actions on and near her beach constituted takings without just compensation in violation of the Fifth Amendment.

Following sua sponte transfer of case from bankruptcy court, defendants filed renewed motions to dismiss, and debtor requested opportunity to amend complaint. The United States District Court for the Southern District of Texas granted defendants' motion to dismiss and denied debtor leave to amend and subsequently denied debtor's motion for recusal, as well as her motion for new trial. Debtor appealed.

The Court of Appeals, held that:

- Debtor lacked standing to sue GLO and its Commissioner;
- As a matter of apparent first impression for the Court, the District Court lacked exclusive in rem jurisdiction over the beach property after it was abandoned back to debtor;
- The District Court lacked "related to" jurisdiction over debtor's claims;
- Debtor unambiguously pleaded constitutional claims and, thus, her failure to invoke § 1983 in her complaint should not have prevented the District Court from exercising federal question jurisdiction over her claims against city defendants;
- The District Court did not abuse its discretion by refusing to grant debtor's "bare bones" request to amend her operative third amended adversary complaint;
- The District Court did not abuse its discretion in denying recusal based on the $72,000 mechanic's lien that city council member's company had on judge's home; and
- Contributions of more than $9,000 that defendants' counsel donated to judge's judicial campaigns when he served on the state bench did not warrant recusal.

TAX - NEBRASKA

[Continental Resources v. Fair]

Supreme Court of Nebraska - August 23, 2024 - N.W.3d - 317 Neb. 391 - 2024 WL 3908797

Tax-certificate holder, which obtained tax deed from county treasurer, brought quiet-title action against property owner. Property owner filed counterclaim and also filed third-party complaint against county and county treasurer in her official capacity, alleging that tax certificate sale process violated property owner's constitutional rights.

Attorney General exercised right to be heard on constitutional claims.

The District Court granted purchaser's motion for summary judgment. Property owner appealed, and the Supreme Court moved case to its own docket. The Supreme Court affirmed.

Property owner petitioned for writ of certiorari to United States Supreme Court. The Supreme Court granted petition, vacated judgment, and remanded to Supreme Court of Nebraska.

On remand, the Supreme Court held that:

- County's issuance of tax deed to purchaser of tax-sale certificate to collect delinquent real property taxes did not constitute taking for private use;
- Property owner had protected interest in property to extent value of property exceeded his tax debt, thereby potentially entitling him to just compensation under Takings Clauses;
- Holder was potentially liable to pay just compensation to property owner; and
- Factual issues precluded summary judgment for holder on owner's claim seeking compensation due to taking.

County's issuance of tax deed to purchaser of tax-sale certificate to collect delinquent real property taxes did not constitute taking for private use violative of either Federal or Nebraska Constitutions, as Nebraska's tax sale certificate process served undoubtedly public purpose of tax collection.

Property owner had protected interest in property to extent that value of the property exceeded his tax debt, thereby potentially entitling him to just compensation under Takings Clauses of Federal and Nebraska Constitutions upon issuance of tax deed to property and certificate holder's pursuit of strict foreclosure option that resulted in owner's loss of equitable title.

Tax certificate holder, rather than county, was potentially liable to pay just compensation to property owner, under Taking Clauses of Federal and Nebraska Constitution, to extent that value of the property exceeded owner's tax debt; holder pursued strict foreclosure option that resulted in owner's loss of equitable title.

Tax certificate holder was potentially liable to pay just compensation to property owner, under Taking Clauses of Federal and Nebraska Constitution, to extent that value of the property exceeded owner's tax debt, despite contention that county took owner's interest in property, and holder merely purchased it via the sale of tax certificate; holder did not purchase a property the county had already taken, as county did not have authority to take property when it sold certificate but, instead, merely had lien on property in amount of tax debt, such that it lacked power to take "absolute title" to property, and as result of state statutes pertaining to tax deeds, holder obtained right to obtain such a deed and, with it, owner's equitable interest in property.

Tax certificate holder was potentially liable to pay just compensation to property owner, under

Taking Clauses of Federal and Nebraska Constitution, to extent that value of the property exceeded owner's tax debt, despite contention that county was also potentially liable for because its issuance of tax deed was also essential to loss of protected property interest; county never obtained title to property, and county treasurer was obligated by statute to issue deed to holder.

Genuine issues of material fact as to amount of compensation property owner was owed by tax certificate holder due to issuance of tax deed on property, as well as the amount of equity that existed in property in excess of tax debt, precluded summary judgment for holder on owner's claim seeking compensation due to taking in violation of Federal and Nebraska Constitutions.

SIFMA US Municipal Bonds Statistics.

SIFMA Research tracks issuance, trading, and outstanding data for the U.S. municipal bond market. Issuance data is broken out by bond type, bid type, capital type, tax type, coupon type and callable status and includes average maturity. Trading volume data shows total and average daily volume and has customer bought/customer sold/dealer trade breakouts. Outstanding data includes holders' statistics. Data is downloadable by monthly, quarterly and annual statistics including trend analysis.

YTD statistics include:

- Issuance (as of August) $335.5 billion, +34.0% Y/Y
- Trading (as of August) $13.0 billion ADV, +4.1% Y/Y
- Outstanding (as of 1Q24) $4.1 trillion, +1.0% Y/Y

Download xls

September 3, 2024

How City Governments Can Navigate the Fiscal Cliff.

In my experience working with city governments, I've seen firsthand cities like Los Angeles, Chicago, Sacramento, and St. Louis struggle with resource constraints and grapple with the significant challenges cities face in balancing budgets, maintaining public services and managing infrastructure needs. Today's situation has become increasingly dire for many municipalities that once relied on robust federal funding and a strong market. Recent economic shifts have intensified these issues.

What is a fiscal cliff?

A fiscal cliff, a term that underscores the urgency and potential abruptness of the financial crisis, occurs when local governments experience a sudden and severe economic downturn due to declining revenues and increasing expenditures. This can be triggered by various factors, including reduced tax revenues during economic slumps, decreased state and federal aid, and rising costs for public services, infrastructure, pensions and health care. It means that immediate action is needed to prevent severe repercussions.

The fiscal crisis facing cities is a result of a perfect storm: the reduction of federal grant dollars, reduced tax revenues, increased demands, especially in urban areas, and rising inflation. These factors mean that governments must do more with less. It's why all city leaders, not just those in finance, must be well-versed in the different types of budgetary concerns and how to navigate them.

Continue reading.

americancityandcounty.com

Written by Abhi Nemani

28th August 2024

Orrick: The Largest Energy-as-a-Service Health Care Transaction in U.S. History: Adventist Health and Bernhard Enter Into 30-Year Lease and Concession

Adventist Health, a faith-based nonprofit health system across the West Coast and Hawaii, has entered into a 30-year energy-as-a-service concession and lease with Bernhard.

Orrick advised Adventist and served as bond counsel. The project involves a $457 million tax-exempt project financing and investment in energy-related infrastructure systemwide.

Bernhard will support Adventist as a long-term developer to optimally and most efficiently operate and maintain the new and existing energy assets, including renewable energy assets and central utility plants.

The guaranteed utility cost savings as a result of the improvements are structured to offset the design, construction, financing and operations and maintenance costs for the project. This tax-exempt financing structure was novel in that it used a special purpose not-for-profit entity formed by the broader Adventist organization to support this transaction. It also included multiple bond issuers to finance improvements in three different states.

Continue reading.

September.03.2024

California Munis in Trouble.

California's high-yield municipal bonds, intended to fund housing for essential workers like police officers and teachers, are under financial stress. The state issued between $8 billion and $10 billion in speculative municipal bonds to convert existing apartments into affordable housing for middle-income families, but these projects are now struggling due to rising interest rates and declining occupancy.

Local agencies often borrowed beyond the purchase price, assuming high occupancy would cover expenses, but that assumption has proven risky as the economic landscape shifts. The bonds, many of which were sold when interest rates were historically low, now face significant challenges as financial conditions tighten.

Experts are increasingly doubtful about the sustainability of this workforce-housing model, which has not yet been tested across different economic cycles.

Nasdaq

Written by dkorth@finsum.com

August 28, 2024

[Metropolitan Water District of Southern California: Fitch New Issue Report]()

The ‘AA+’ ratings reflect MWD’s very low leverage, measured as net adjusted debt to adjusted funds available for debt service (FADS), within the context of the district’s very strong revenue defensibility and operating risk profiles, both assessed at ‘aa’. Between fiscal 2018 (FYE June 30) and 2022, leverage, measured as net adjusted debt to adjusted FADS, ranged between 5.4x and 6.5x. However, lower demand due to drought conservation measures weakened FADS and overall performance in fiscal 2023 and drove leverage up to 8.2x. Based on estimated actual performance in fiscal 2024, leverage could increase further, potentially approaching 12.0x, largely the result of sustained lower demand as purchasers utilized more of their respective local supplies rather than purchasing from MWD. Positively, action taken by MWD’s board of directors (the board) in adopting its current biennial 2025 and 2026 budget increased both water rates and property tax rates. The increases are expected to drive improved margins and performance beginning in fiscal 2025, which should bring performance and leverage back in line with the current rating. Fitch’s Analytical Stress Test (FAST) also points to declining leverage thereafter, supportive of the current rating and Outlook.

[Access Report]()

Thu 05 Sep, 2024 – 9:22 AM ET

[Texas Officials Sued Over Anti-ESG Law Targeting Wall Street.]()

- **American Sustainable Business Council sues state officials**
- **Lawsuit argues the Texas legislation is unconstitutional**

The American Sustainable Business Council sued Texas officials in an effort to block a law that restricts state investments with certain financial firms because of their energy policies.

The lawsuit filed Thursday in federal court in Austin, argues the 2021 state law is unconstitutional and it seeks to “coerce and punish” businesses seeking to reduce reliance on fossil fuels.

The group — a nonprofit that represents thousands of businesses and advocates for environmentally-friendly policies — sued Texas Comptroller Glenn Hegar and the state’s Attorney General Ken Paxton, who have been vocal supporters of the measure. In the lawsuit, it argued that the law overstepped and went against the First Amendment.

Continue reading.

Bloomberg Markets

By Amanda Albright and Madlin Mekelburg

August 29, 2024

San Antonio (TX): Fitch New Issue Report

The 'AA' bond ratings along with the 'aa' Standalone Credit Profile (SCP) reflect SAWS' combined water and sewer system's (the system) very strong revenue defensibility assessment of 'aa', supported by its fundamental role as the sole water and sewer service provider to a broad service area with very favorable demographic trends. Its very strong operating risk assessment of 'aa' incorporates ample and diversified water supplies, a very low operating cost burden and strong levels of capital investment. The system's leverage, measured as net adjusted debt to adjusted funds available for debt service (FADS), measured 6.0x in fiscal 2023 (FYE Dec. 31), up slightly from the prior year's level of 5.9x. The increase was the result of a residential rate decrease, which was mostly revenue neutral (less than 2% decline from year prior) because of offsetting rate increases to other customer classes, in conjunction with an increased debt burden. The revision of the Outlook to Stable from Positive reflects an updated view on the system's leverage, which is now expected to modestly exceed 7.0x in upcoming years. After the residential rate decrease in fiscal 2023, rates were further held flat in fiscal 2024 compared to previous expectations that incremental adjustments would be implemented beyond fiscal 2023.

Access Report

Thu 05 Sep, 2024 – 2:30 PM ET

Texas Water Development Board: Fitch New Issue Report

The 'AAA' rating reflects the ability of the SWIRFT program's (the program) financial structure, and funding mechanisms, to absorb hypothetical pool defaults in excess of Fitch's 'AAA' stress scenario without causing an interruption in bond payment. Aggregate pool credit risk is measured using Fitch's Portfolio Stress Model (PSM), and the strength of the program's financial structure is measured using Fitch's Cash Flow Model (CFM). The PSM's liability stress hurdle is measured against the CFM's breakeven default tolerance rate to produce a model-implied rating. A positive net difference (the default tolerance less the hurdle) in the calculation suggests a passing model output at a given rating stress. Additionally, given the nonstandard investments of the program, Fitch also applied stress to its approximately $1.8 billion in outstanding investments to create a Fitch-modelled investment stress scenario, as per Fitch's criteria.

Access Report

Thu 05 Sep, 2024 – 3:32 PM ET

TAX - MINNESOTA

Vasko v. County of McLeod

Supreme Court of Minnesota - August 21, 2024 - N.W.3d - 2024 WL 3882574

Taxpayer brought action against county, challenging its decision to revoke homestead classification for property for tax year at issue, as well as property's assessed value.

The Tax Court entered judgment after bench trial for county. Taxpayer filed petition for writ of certiorari, which was issued by Supreme Court.

The Supreme Court held that:

- Tax court properly placed on taxpayer the ultimate burden of proving that county's revocation of homestead classification was unlawful, and that the assessed value of the property was incorrect;
- Tax court's finding of fact that taxpayer and her son did not occupy and use property as primary residence during tax year was not clearly erroneous; and
- Tax court's findings of fact as to market value of property were not clearly erroneous.

Tax court properly placed on taxpayer the ultimate burden of proving that county's revocation of a homestead classification was unlawful, and that the assessed value of the property was incorrect; although taxpayer overcame prima facie validity of county's non-homestead classification, and court then considered evidence presented by both parties as if presumption did not exist, taxpayer continued to bear burden of proof by preponderance of evidence.

Sufficient evidence supported Tax Court's finding of fact, when determining county properly revoked homestead classification for taxpayer's property for tax year at issue, that taxpayer and her son did not occupy and use property as primary residence during tax year; county produced water bills that showed no measurable water use at property during six-year period that included tax year at issue, letters sent by taxpayer's attorneys to county and city were entitled to no weight because they originated from her attorneys and simply reiterated her litigation position, and pieces of mail, mostly addressed to property, did not establish occupancy or use of property because taxpayer admitted the property did not have mailbox, and that mail with property's address was actually routed to her post office box.

Taxpayer did not overcome the presumption that county's assessed market value of property was accurate; even assuming tax-assessed value of properties submitted by taxpayer when challenging assessed value of her property could be used as proxy for their market value, taxpayer did not show properties were comparable to her property at issue, and she never explained how only property for which she provided a sale price was in any way comparable to property at issue.

Expanding User Fees for Transportation: Roads and Beyond

Key Findings

- Thanks to elevated deficits and interest rates, fiscal restraint is back in Washington.
- While substantially reversing America's fiscal situation requires structural reforms to entitlements and taxes broadly, reforming transportation funding would also help.
- The user-pays principle is a sound way to fund major infrastructure projects.

- Unfortunately, the US has moved away from the user-pays model, primarily due to the gas tax declining in real terms, but also due to excise taxes becoming weaker approximations of true user fees.
- By 2034, the gas tax and other car-related excise taxes are projected to raise less than half of the Highway Trust Fund's outlays.
- The ideal solution would be to replace existing excise taxes with true user fees, but raising existing excise taxes would be a better solution than continuing a growing reliance on general revenue.
- Fully paying for federal highway spending with user fees could reduce the federal deficit by over $200 billion over the course of the next decade.

Introduction

The United States faces several fiscal challenges. In 2025, the individual tax cuts passed in the Tax Cuts and Jobs Act are scheduled to expire.[1] Meanwhile, long-run deficits are projected to remain at an elevated level in coming years and decades, even with the tax cuts expiring. The long-term increases in the debt come from growing entitlement obligations to programs such as Social Security and Medicare.[2] To bring deficits under control, policymakers will have to consider substantial reforms to growing entitlement programs, and, likely, broad-based tax increases, ideally focused on consumption.[3]

To actually address long-term deficits, lawmakers will have to make difficult trade-offs. But in addition to structural changes to entitlement spending and major tax reforms, some deficit-reducing reforms can bring efficiency gains as well. One particularly salient example is transportation.

[Continue reading.]

Tax Foundation

By: Alex Muresianu, Adam Hoffer, Jacob Macumber-Rosin, Alex Durante

August 7, 2024

[Arizona Water Infrastructure Finance Authority: Fitch New Issue Report]

The 'AAA' rating reflects the ability of the Water Authority Infrastructure Authority of Arizona's (WIFA or the authority) Master Trust Indenture (MTI) program's (the program) financial structure to absorb hypothetical pool defaults in excess of Fitch's 'AAA' stress scenario without causing an interruption in bond payments. Aggregate pool credit risk is measured using Fitch's Portfolio Stress Model (PSM), and the strength of the program's financial structure is measured using Fitch's Cash Flow Model. The loans pledged are made by the authority pursuant to state legislation from the authority's Clean Water Revolving Fund and the Drinking Water Revolving Fund (together, the SRF pledged pool). The SRF pledge pool produces a 'AAA' liability stress hurdle of 40.0% in the PSM. On an annual basis, Fitch's cash flow modeling demonstrates the program can continue to pay bond debt service with a default tolerance rate of 100% through the anticipated October 2027 maturity of the series 2024 bonds without an interruption in debt service. As the default tolerance exceeds the 'AAA' stress hurdle, this implies a passing result under Fitch's criteria.

[Access Report]

Thu 05 Sep, 2024 – 9:27 AM ET

Alabama Hospital Defaults on Municipal Debt as Expenses Soar.

- **Jackson Hospital & Clinic faced demands for repayment**
- **Montgomery, Alabama non-profit hospital has 344 beds**

A 344-bed hospital in Alabama's capital, Montgomery, defaulted on $60 million of municipal bonds, failing to meet a bondholder trustee's demand for immediate repayment of the debt.

The non-profit Jackson Hospital & Clinic, squeezed by high labor costs and inflation, didn't make an interest payment that was due to be paid on Sept. 3, according to a filing. Last month, UMB NA, the bond trustee, demanded full payment of all principal and interest, saying the hospital had breached the terms of bond documents by failing to make rent and lease payments for five months.

Pat Mathews, Jackson's interim chief financial officer, didn't respond to a request for comment. Jackson bonds with a 4% coupon, maturing in 2036 last traded at about 53 cents on the dollar on Aug. 27.

Continue reading.

Bloomberg Markets

By Martin Z Braun

September 4, 2024

NFL's 'Bills Mafia' Tapped to Finance New Stadium With Muni Debt.

- **Erie County, New York, is selling $110 million of bonds**
- **The new Bills stadium is expected to open for the 2026 season**

Buffalo Bills' most committed fans, known as Bills Mafia, are known for lending a hand to the team, having cleared snow from the NFL franchise's stadium for a playoff game earlier this year. Now, these enthusiasts are being offered the chance to finance the team's new $1.7 billion stadium.

The Erie County Comptroller's Office plans to open a retail order period on Sept. 23 for individual investors and Buffalo Bills fans to buy a piece of a $110 million municipal bond sale, a day before the debt will be available to institutional investors.

The bonds will help fund the county's pledged contribution of $250 million toward the construction of a new stadium for the Bills. The county will split its obligation between cash and proceeds raised from the upcoming bond sale.

Continue reading.

Bloomberg Markets

By Maxwell Adler

August 29, 2024

WSJ: The King of Risky Hometown Bonds Is Back

Former Nuveen executive John Miller begins a second act at First Eagle

It seemed as though John Miller's luck was running out.

Buying the riskiest bonds in the $4 trillion market for state and local debt had made Miller a power player in a corner of Wall Street often derided as staid and boring. But the 2022 bond rout drained billions from his flagship high-yield fund at Nuveen. Last year, on Miller's 56th birthday, the trillion-dollar asset-management company abruptly announced plans for his departure.

Now, Miller is on the rebound. He joined forces with a boutique firm, recruited a handful of analysts and traders and, earlier this year, started a fund from scratch. Money is pouring in: about $3 billion this year through August, according to Morningstar Direct.

Continue reading.

The Wall Street Journal

By Heather Gillers

Sept. 7, 2024

Muni Debt Sales Set to Surge to Four-Year High Ahead of Election.

- **Visible supply totals $21 billion for the next 30 days**
- **Muni-Treasury ratio has cheapened on influx of new sales**

States and local governments are poised to sell debt at the fastest clip in four years as borrowers aim to get ahead potential volatility from the US presidential election in November.

Municipal bond issuers like cities and school districts have already teed up $21 billion of debt sales over the next 30 days, the highest visible supply since October 2020, according to data compiled by Bloomberg. That index represents a fraction of what actually comes to market, given that deals are often announced with less than one-month's notice.

"This is all in response to the election this year," said Kyle Javes, head of municipal fixed income at Piper Sandler Cos. He said that borrowers remember the market disruption that followed prior presidential elections and are eager to avoid any major swings. "We have been advising all of our clients to make sure that they get their transactions in ahead of the election if they have needs to borrow," he said.

Continue reading.

Bloomberg Markets

By Erin Hudson and Sri Taylor

September 5, 2024

[Municipal-Bond Market Boom in Mega-Deals Shows No Sign of Stopping.]

- **This year has seen the most muni deals of $1 billion or more**
- **Los Angeles school district, Illinois plan large bond sales**

It's already a record-setting year for muni-bond sales, and the relentless pace of mega-deals — those over $1 billion — is displaying little signs of slowing.

State and local governments rushing to raise cash ahead of the presidential election in November have driven sales to $325 billion so far this year, an all-time high for the period, according to data compiled by Bloomberg going back to 2013. Some $65 billion of those offerings are mega-deals, the most in at least a decade.

And more jumbo debt sales are planned for September. The pipeline of scheduled deals rose to about $20 billion as of Wednesday, the highest in more than two years, according to a Bloomberg index of scheduled sales over the next 30 days. That figure typically represents a fraction of what comes to market as many deals are announced with less than a month's notice.

Continue reading.

Bloomberg Markets

By Amanda Albright

September 4, 2024

[Muni-Bond Market Faces September Slump as Supply Outpaces Demand.]

- **CreditSights sees $22.8 billion muni bond redemptions in month**
- **Fed rate cut could alter September muni losing streak**

September is already shaping up to be a tough month for investors in the municipal debt market, with a supply-demand mismatch threatening to squeeze performance.

The total amount of redemptions to be paid out by local governments this month totals $22.8 billion, less than half of what was paid out in August and roughly 21% less than 2024's monthly average, according to data from CreditSights Inc. That drop is set to reduce the baked-in demand that has supported the market for much of the summer.

At the same time, roughly $19.3 billion of new issuance is expected over the next 30 days — the most since June — according to data compiled by Bloomberg.

Continue reading.

Bloomberg Markets

By Nic Querolo

September 3, 2024

Federal Agencies Begin to Implement the Financial Data Transparency Act: Covington

Off To A Slow Start, But Don't Take Your Eyes Off This Space

As directed by Congress in the Financial Data Transparency Act (FDTA or the Act), nine federal financial regulators[1] have proposed standards for making the data they collect "machine-readable," that is, specially coded so a computer can process it without human intervention.[2] The agencies are further directed to "seek to promote inter-operability" of the data – that is, make it capable of being collated and analyzed across agencies. Once fully implemented, the data standards will affect publicly traded companies, regulated financial institutions and other entities that file reports with or otherwise submit information to the federal financial regulators and, in some cases, self-regulatory organizations. Depending on the standards ultimately chosen, the resulting reporting burden will increase, potentially substantially, for some entities. And, if the SEC's machine-readable data project is any guide, there will likely be lingering data quality issues.

The Act specifies a timeline for a series of rulemakings over the next two and a half years; affected entities may want to start paying attention now.

The Financial Data Transparency Act

Congress passed the FDTA as part of a much larger defense funding bill in December 2022.[3] The FDTA amends the Financial Stability Act of 2010 (Title I of the Dodd-Frank Act) to improve data collection and use for the Financial Stability Oversight Council by requiring the agencies to jointly adopt data standards. It also amends the organic statutes of the respective agencies, directing them to implement the joint data standards for their own "collections of information."

Although some agencies, like the SEC, have already begun to require some data they collect to be machine-readable, the Act directs the SEC to vastly expand the universe of such data, including information submitted to the Financial Industry Regulatory Authority and the Municipal Securities Rulemaking Board.

Finally, to the extent an agency has identified "open data assets" – data it collects and makes available to the public – the Act directs each agency to make that information freely downloadable, rendered in human-readable format, and accessible in a form that enables two or more software programs to use the data.

What's in the Current Joint Rulemaking?

The current rulemaking has two components. First, the agencies propose "common identifiers" for commonly used critical data – legal entities, financial instruments, dates, locations, and currency. These are the digital building blocks for identifying relationships in the financial regulatory eco-system, and, hopefully, risks. Second, the agencies propose four principles to guide the adoption of any data standard. Those principles are:

- Data should be fully searchable and machine-readable;
- The standard should clearly define the data element and its relationship to other data elements;
- Data should be consistently identified in accordance with its regulatory requirement; and
- The data standard should be non-proprietary or available under an open license.

The joint rulemaking will not create any new reporting requirements. (Indeed, the Act specifies that it does not create any obligation to collect more information than was collected before the Act passed.) However, any entity subject to these requirements will want to pay attention to how the rulemaking develops, as new data standards will likely change how such entities collect and report data to their regulators.

Once the proposal is published in the Federal Register, a 60-day comment period will commence. Congress directed the agencies to complete this stage of the rulemaking by December 2024.

What Happens After This Rulemaking?

Once the nine agencies settle on joint data standards, each agency is directed to “incorporate, and ensure compatibility with (to the extent feasible)” the joint data standards for the information it collects under its regulatory regime. The Act gives agencies some flexibility to tailor their own rules to scale them for smaller entities and minimize disruptive changes.

These agency-specific rules must take effect within two years of the joint agency standards being finalized. This two-year period will require entities that submit information to financial regulators to monitor the rulemakings, participate as appropriate, and begin the process of evaluating and modifying their reporting systems as necessary.

If you have any questions concerning the material discussed in this client alert, please contact members of our Financial Services and Securities and Capital Markets Groups.

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[1] The nine agencies are: Commodity Futures Trading Commission, Office of the Comptroller of the Currency, Consumer Financial Protection Bureau, Federal Deposit Insurance Corporation, Federal Housing Finance Agency, Board of Governors of the Federal Reserve System, National Credit Union Administration, Securities and Exchange Commission, and Department of the Treasury.

[2] Financial Data Transparency Act Joint Data Standards, 89 Fed. Reg. 67890 (Aug. 22, 2024). 2024-18415.pdf (govinfo.gov)

[3] Pub. L. No. 117-263, 136 Stat. 3421 (2022).

Covington & Burling LLP – Bruce Bennett

August 26, 2024

Current Market Conditions Bode Well For Munis, Nuveen Says.

Continuing market uncertainty bodes well for municipal bonds now and in the near future, according to Dan Close, the head of municipals for Nuveen, a global asset management firm.

With their tax-free status on the federal level and in some states, municipal bonds remain in demand by investors and benefit from current market conditions, Close said. The debt products can be issued by municipalities, counties, states or special purpose districts.

“A lot of the favorable position of munis is driven by the federal tax code,” Close said. “And if the highest bracket for income tax reverts to 39.6% from 37%, the tax break for munis will be even more valuable." Unless Congress acts to keep the rate at 37%, it will return to the higher level at the end of 2025,

In addition, the current yield on some munis of just under 5% is the highest it has been in recent history, Close said.

"Looking at all industry sectors, municipal bonds for essential services, like water and sewer projects, are particularly in demand and should continue to perform well to the benefit of investors' portfolios," he added.

Healthcare, software and insurance brokers, as well as public and private infrastructure, also are well positioned to withstand economic downturns, which should lead investors to secure attractive returns, Close said. A long-anticipated recession is still a possibility, according to economists.

"High-quality municipal bonds with entities that have good credit ratings are a good income source for any portfolio and are especially beneficial for residents of high-tax states such as New York and California," he said.

Financial Advisor

by Karen DeMasters

August 30, 2024

Quick Shot: Municipal Ratios are Close to the Highest Level of 2024.

Municipal bonds are issued by state and local municipalities, and as such, can provide investors with federal tax-free income. The bonds are backed by taxes, revenues linked to the projects they are funding or as a general obligation of the municipality itself.

Because of their tax-advantaged characteristics, municipal bonds often have yields lower than U.S. Treasury bonds, which are backed by the U.S. government. As such, municipal bonds are often evaluated as a percent of the yield you get on a comparable U.S. Treasury. This is often used by investors as a valuation metric for the asset class: The higher the figure, the "more discounted" municipal bonds are relative to Treasuries.

Recently, municipal ratios have risen to their highest levels of 2024, indicating potential value for U.S. taxpayers. Yields as percent of 10-year Treasuries reached 70% from their tights of 57% in March. Municipal yields get more attractive as supply is increased (more supply = higher yields to entice investors to fund sales). So far this year, municipalities have issued $315 billion, which marks the highest sales at this point of the year in a decade.

Continue reading.

J.P. Morgan

Alan Wynne
Global Investment Strategist

Published Aug 29, 2024

[4 Reasons to Snap Up Muni Bonds Amid Flashing Recession Signals, According to Charles Schwab.]

- **Two recession indicators are currently flashing, which has some investors on edge.**
- **Charles Schwab offers four reasons why anxious investors should consider buying municipal bonds.**
- **These assets offer high credit ratings, and typically perform well at the start of a recession.**

While economists remain split on whether the US is rolling toward a recession, at least two notable gauges are flashing clear-cut warnings that a downturn is imminent. For those uncomfortable with this, municipal bonds could offer some relief, Charles Schwab suggested.

The Sahm Rule says the US is in a recession when the three-month moving average in the unemployment average rate moves 0.5% from a 12-month low. This occurred in July.

Continue reading.

businessinsider.com

by Filip De Mott

Aug 27, 2024

Raymond James Climbs Muni Manager Rankings After Hiring Spree.

- **It hired about a dozen people from Citigroup's closed unit**
- **Company replaced Citi as bookrunner on Alabama county deal**

Raymond James Financial Inc. is scaling the rankings of municipal-bond underwriters after large banks withdrew from the business.

The St. Petersburg, Florida-based company has jumped to seventh place so far this year, its highest position in at least a decade. That's while it was on a hiring spree, adding nearly 60 people to its public-finance division over three years.

Following the exit of Citigroup Inc. and UBS Group AG from the muni market, Raymond James, Janney Montgomery Scott and other shops have scooped up talent to gain market share. Much of the hiring came when sales contracted after a period of aggressive interest rate hikes, a bet that the market would eventually rebound.

Continue reading.

Bloomberg Markets

By Amanda Albright

August 28, 2024

[Florida Boomtown Borrows Millions to Help Fix Bursting Jail.]

- **Pasco County had seen a large population gain in 2023**
- **Bond sale priced on Thursday in a negotiated transaction**

A county close to Tampa, Florida, is one of the fastest growing in the US and the influx of new residents is causing a problem — its local jail is bursting.

Pasco County — located on Florida's Gulf Coast — borrowed $65 million from municipal bond investors this week to help finance capital projects including an expansion of its local correctional facility to add about 500 new beds, according to bond documents. A portion of proceeds will also be used to fund improvements to local parks including athletic fields and a recreation complex.

The new Pasco County Corrections Center broke ground last year and construction is expected to be completed in the spring of 2026. The project comes after surging population growth in the area. The county saw a 27% increase in residents over the past decade, with growth accelerating the last several years after slew of office relocations and sports facilities made it a regional center for jobs.

Continue reading.

Bloomberg Markets

By Erin Hudson

September 6, 2024

GFOA MiniMuni Sessions Announced.

GFOA's 6th Annual MiniMuni Conference, October 9–11, will provide an opportunity for finance professionals who work in debt management to hear from leading experts, seasoned practitioners, and regulators on a host of issues that impact municipal issuers. During this virtual event, we'll host eight sessions, offering up to nine CPE credits. Session topics include municipal securities, leveraging partnerships, market dynamics, FDTA, and more.

View Sessions and Register

MSRB Analysis of Primary vs. Recently Issued and Competitive vs. Negotiated Municipal Securities Markets.

View the MSRB Publication.

Aug, 2024

[Faster US Settlement Hit Harder Than Expected, Citi Survey Says.]

NEW YORK (Reuters) -A shift to shorter settlement for U.S. securities transactions earlier this year had a greater-than-anticipated impact on market participants across the board, with Europe reporting the greatest hit, a Citigroup survey showed.

The United States sped up its settlement cycle in May, requiring that equities, corporate and municipal bonds and other securities transactions settle one business day after the trade, instead of two, or T+1.

The transition "was more impactful than expected" for 44% of buy- and sell-side firms, the Securities Services Evolution survey said.

Europe saw the most impact because of the challenges of managing settlement and funding issues in the middle of the night, it added. Overseas investors use currency trades to fund their U.S. securities transactions.

The poll of nearly 500 institutions, conducted in June, gives an insight into how the industry managed the transition globally, and highlights how T+1 was felt across the trade cycle.

"Every area appears to have been more impacted than originally anticipated, from funding to headcounts, securities lending and fail rates," the survey said.

Securities lending, the loan of stocks or other securities to investors, saw the greatest impact across organizations, rising to 50% from 33%. Funding or margin requirements, headcounts and funding costs were also affected.

"Funding has also been at the center of this impact — albeit with an imbalance across the sell-side and buy-sides," the survey stated.

Some 56% of sell-side firms said their securities lending and recalls activities were "significantly impacted" by the move. That had been one of the major concerns voiced by market participants ahead of T+1 being implemented.

Additionally, 52% of banks and brokers saw their headcounts and staffing levels affected, indicating that a preference for hiring instead of using automation has left the sell-side "exposed to large volumes of manual processing and exception handling triggered by their clients," the survey stated.

Citi said more time is needed before the "true, deeper" impact of the accelerated settlement cycle is understood.

The Depository Trust and Clearing Corporation, the Securities Industry and Financial Markets Association and the Investment Company Institute led the move to T+1. DTCC and Sifma did not immediately respond to a request for comment.

An ICI spokesperson said that daily margin requirements decreased by nearly $4 billion in the immediate aftermath of T+1, which over a year "adds up to almost a trillion dollars that managers can put to use elsewhere, which represents a huge win for investors."

Reuters

By Laura Matthews

Sep 4, 2024

(Reporting by Laura Matthews in New York; Editing by Alison Williams and Mark Porter)

Why Miami Struggled to Sell its First Forever Bonds.

Larry Spring has overseen the sale of hundreds of millions of dollars of government bonds during his career. But his roughest day was mid-June when the city of Miami first sold its Forever Bond to investors.

“It was a tough day,” Miami’s Chief Financial Officer reflected several weeks later. “I’ve been affiliated with the city for 20 years and it was actually my worst day in the market ever.”

The city was borrowing its first Miami Forever Bond. That is the name of a borrowing plan approved by voters in 2017. The plan calls for borrowing $400 million to spend on five areas: floodwater protection, roads, parks, public safety and affordable housing.

The city started spending the money a year after the vote. But it didn’t actually borrow the money until this summer when the city went looking for investors to lend it its first $179 million dollars. That was in June.

Continue reading.

WLRN Public Media | By Tom Hudson

Published September 4, 2024 at 6:00 AM EDT

- **Ed. Note: We’ll be off next week. You’re welcome.**
- Hawkins: The Regulatory Impact of Jarkesy, Loper Bright, and Corner Post
- Profiting From Financings for Charter Schools: SEC Sues Unregistered, Fee-Splitting Municipal Advisor – Norris McLaughlin
- Proposed Rule Change Consisting of Amendments to MSRB Rule G-14 and to Amend FINRA Rule 6730: SIFMA Comment Letter
- Institutional Investors Pay Half Price of Retail Buyers in Muni Trades.
- Texas Drought Forces Small Town to Default on Water System Debt.
- Buffalo’s Home County to Issue ‘Bills Bonds’ for NFL Stadium.
- *River Creek Development Corporation and City of Hutto, Texas v. Preston Hollow Capital, LLC* – Court of Appeals upholds validity of conduit bonds issued by city and local government corporation formed to assist with the financing of a newly-created public improvement district, finding that the parties had lawfully entered into an interlocal agreement, including its provisions requiring the city to make payments from its levied assessments to the local government corporation to secure its issuance of indebtedness to finance the improvements.
- And Finally, When We Remember We Are All Mad, The Mysteries Disappear And Life Stands Explained – Mark Twain is brought to us this week by *Ryan v. State*, in which Ray Ryan was remanded to solitary confinement (only those of us who’ve had the pleasure are allowed to refer to is as “The Hole”). Upon his return to the general population (of the prison, not the State of Nebraska) he discovered that the property left behind in his cell had been stolen. He then sued the

Nebraska Department of Corrections to recover the value of said property. In the amount of $496.05. Four Hundred. Ninety Six. And Five Cents. Your Editor's life (such as it is) has come to a screeching halt. The (imaginary) girlfriend has left. The cat has died. All because he can think of nothing else but the galactically gob-smacking mystery of how Mr. Ryan arrived at the five cents. Fortunately, we still have 5 to 10 to get to the bottom of this. Or less, with good behavior.

LABOR & EMPLOYMENT - CALIFORNIA

Stone v. Alameda Health System

Supreme Court of California - August 15, 2024 - P.3d - 2024 WL 3819163

Employees, who formerly worked at hospital, brought putative class action against employer, which was county health system established by county board of supervisors, for alleged violations of wage orders and statutes governing meal and rest breaks and full and timely payment of wages, for penalties under Labor Code Private Attorneys General Act of 2004 (PAGA), and for other claims. Employer demurred.

The Superior Court sustained demurrer without leave to amend, finding provisions of Labor Code and wage orders at issue did not apply to employer as public agency. The First District Court of Appeal reversed in part. Petition for review was granted.

The Supreme Court held that:

- Public employers were not "employers" within meaning of meal-and-rest-break provisions of Labor Code and wage order covering hospital workers;
- As a matter of first impression, Labor Code's definition of "person" excluded non-enumerated entities, including public entities;
- County health system was public entity excluded from Labor Code's definition of "person";
- County health system was "municipal corporation" excluded from certain wage-payment provisions of Labor Code; and
- PAGA exempts public employers from penalties for violations of Labor Code provisions carrying their own penalties; disapproving *Sargent v. Bd. of Trustees of Cal. State Univ.*, 61 Cal.App.5th 658, 276 Cal.Rptr.3d 1.

Government employers were not "employers" within meaning of Labor Code provisions imposing meal-and-rest-break obligations on employers and wage order provisions entitling hospital workers to meal and rest breaks; wage order required "employer" to be "person" as defined by Labor Code, Labor Code in turn limited definition of "person" to "any person, association, organization, partnership, business trust, limited liability company, or corporation," thereby excluding entities not expressly mentioned, legislature specified that other provisions of Labor Code applied to public employers, wage order, which covered hospital workers, expressly excluded public employees from its scope absent contrary language in a provision, and legislature chose not to displace wage order's exclusion.

Text of statute enabling specific county's board of supervisors to create county health system to provide medical care to indigent residents demonstrated that legislature considered health system to be quasi-governmental "public entity," for purpose of determining whether health system was exempt from meal-and-rest-break obligations imposed on employers under Labor Code and under wage order covering hospital workers; enabling statute described health system as "public agency" and made its affairs intertwined with and dependent upon county, health system as public hospital authority was "public entity" as defined in Health and Safety Code, and enabling statute set forth health system's rights, liabilities, and exemptions under laws applying specifically to public entities.

In statute enabling specific county's board of supervisors to create county health system, subdivision stating that health system "shall be a government entity separate and apart from the county, and shall not be considered to be an agency, division, or department of the county" did not indicate legislature meant to subject health system to meal-and-rest-break requirements of Labor Code and of wage order covering hospital workers notwithstanding such requirements' general exemption of public entities; subdivision expressly classified health system as "government entity," public-entity exemption did not extend only to divisions of a state or local government body, and enabling statute gave health system some of the same powers, obligations, and protections as a division of government.

Definitions of "political subdivision" in False Claims Act, which included any "legally authorized local governmental entity with jurisdictional boundaries," and California Voter Participation Rights Act, which referred to "geographic area of representation created for the provision of government services," did not impose requirement of "geographic jurisdiction" for county health system or any other public employer to qualify as "political subdivision" under Labor Code's definition; Labor Code did not refer to need for "geographic jurisdiction," and similarly broad definitions of term "political subdivision" appeared in other codes without any requirement of geographic jurisdiction.

Whether a public entity is exempted from meal and rest break obligations imposed on employers by the Labor Code and the wage order covering hospital employees does not depend on whether applying those obligations to the public entity in question would cause infringement of sovereign powers; besides the absence of a statutory basis, such an outcome would frustrate the legislature's clear intent to exclude public entities from the Labor Code requirements at issue.

The term "municipal corporation" in the Labor Code section stating that certain wage-related provisions "do not apply to the payment of wages of employees directly employed by any county, incorporated city, or town or other municipal corporation" refers to something other than a county, incorporated city, or town; the only reasonable interpretation of this section is that the legislature knew from the decided cases that "incorporated city or town" referred to a municipal corporation in the strict sense, and intended that "or other municipal corporation" should refer to municipal corporations in the commonly accepted sense, that is, public corporations or quasi-municipal corporations, and this construction is consistent with legislative history and administrative interpretations.

County health system, which legislature authorized county board of supervisors to create to provide medical care to indigent residents, was "municipal corporation" within meaning of Labor Code section stating that certain wage-payment provisions, including those governing semimonthly payments and creating penalty and cause of action for failure to make payments, "do not apply to the payment of wages of employees directly employed by any county, incorporated city, or town or other municipal corporation."

The Labor Code Private Attorneys General Act (PAGA) exempts public employers from penalties for violations of Labor Code provisions which establish their own penalties recoverable by the Labor and Workforce Development Agency; PAGA specifies that the Labor Code's definition of person, which excludes public entities, applies throughout PAGA, including to the provisions referring to employers subject to suit as "persons," legislative history demonstrates that PAGA's use of this definition of "person" was intentional, and requiring public entities to pay PAGA penalties would contravene the public policy behind the statute shielding public entities from punitive sanctions; disapproving *Sargent v. Bd. of Trustees of Cal. State Univ.*, 61 Cal.App.5th 658, 276 Cal.Rptr.3d 1.

LIABILITY - NEBRASKA

[Ryan v. State]

Supreme Court of Nebraska - August 9, 2024 - N.W.3d - 317 Neb. 337 - 2024 WL 3732939

Inmate brought negligence action against State pursuant to the State Tort Claims Act (STCA), alleging that Department of Correctional Services (DCS) failed to fulfill its duty under state regulations to investigate his allegation that other inmates stole his property.

The District Court dismissed for lack of subject matter jurisdiction. Inmate appealed.

The Supreme Court held that inmate disciplinary procedure statutes and regulations did not give rise to a tort duty of State to investigate alleged theft of inmate's property.

Inmate disciplinary procedure statutes and regulations did not give rise to a tort duty of State to investigate alleged theft of inmate's property by other inmates, and therefore inmate did not have an actionable negligence claim against State under the State Tort Claims Act (STCA); statutes and regulations were enacted to prescribe disciplinary procedures for inmates who allegedly engaged in such misconduct.

PUBLIC EMPLOYMENT - OHIO

[Harmon v. City of Cincinnati]

Supreme Court of Ohio - August 6, 2024 - N.E.3d - 2024 WL 3657975 - 2024-Ohio-2889

City employees, who were members of city employees union, appealed determination of city's civil service commission that employees were not entitled to hearing on their appeal to commission of city's decision to place them on leave under emergency leave program due to COVID-19 pandemic.

The Court of Common Pleas reversed. City and commission appealed. The First District Court of Appeals held that Court of Common Pleas had jurisdiction to consider employees' appeal. The Supreme Court accepted city and commission's appeal.

The Supreme Court held that:

- Specific layoff provisions of collective bargaining agreement (CBA) between city and city employees union prevailed over management rights clause of CBA to determine whether employees could appeal decision of civil service commission to court of common pleas;
- CBA allowed employees to enforce their individual employee rights concerning conditions of employment not specified in CBA through normal civil service, regulatory, or judicial processes, for purposes of whether employees could appeal decision of civil service commission to court of common pleas;
- Policy reasons did not preclude employees from appealing decision of civil service commission to court of common pleas; and
- Commission's decision that leave was not a layoff was from a "quasi-judicial proceeding," such that employees were permitted to appeal decision to court of common pleas.

CONDUIT BONDS - TEXAS

[River Creek Development Corporation and City of Hutto, Texas v. Preston Hollow Capital, LLC]

Court of Appeals of Texas, Austin - August 22, 2024 - Not Reported in S.W. Rptr. - 2024 WL 3892448

River Creek Development Corporation (River Creek) and the City of Hutto, Texas (the City), appealed from the trial court's final judgment rendered in favor of Preston Hollow Capital, LLC; 79 HCD Development, LLC; Public Finance Authority; and U.S. Bank National Association. The judgment granted the parties' respective summary-judgment motions and awarded each of them attorney's fees and costs.

In June 2018, the City passed a resolution authorizing creation of a Public Improvement District (the PID) to undertake and finance public improvements for the benefit of property within the PID. The PID's 2018 Service and Assessment Plan identified the initial improvements at a cost of $17.4 million.

In September 2018, the City passed a resolution authorizing the creation of River Creek, a local government corporation, to "assist with the financing" of the PID development pursuant to Tex. Transp. Code § 431.101.

In December 2018, the City, River Creek, and other parties executed a series of agreements to secure the development and financing of the PID. Among the parties in some of those agreements is appellee Public Finance Authority (PFA), a Wisconsin-based governmental entity. Rather than issue the bonds themselves, the City and River Creek chose to structure the transaction using PFA as a conduit issuer of the bonds to avoid potential liability and reduce financial risk.

Following a series of internal governmental disruptions, River Creek and the City brought this action for declaratory relief.

They sought the following declarations:

1. An "installment sales contract" described by the interlocal agreement provides "insufficient legal authority for all stated installment payments due under such a contract to be authorized costs of improvements under the PID Act";
2. The bonds were not issued in strict compliance with the PID Act and applicable state law;
3. Transportation Code Section 431.006 limits the applicability of the general authority of Chapter 22, Business Organizations Code, because of the express statutory requirement in Section 431.071 that "notes" be submitted to the attorney general or the express statutory statement in Section 431.108 that the operations of a local government corporation are governmental; and
4. Government Code Section requires all promissory notes issued by a Chapter 431 corporation or a local government corporation be submitted to the attorney general for examination.

Preston Hollow answered and filed a counterclaim seeking a declaratory judgment that:

1. The loan agreement and promissory note are valid and enforceable,
2. The bonds did not need to be submitted to the AG for review and approval, and
3. The City and River Creek lawfully entered the interlocal agreement.

The Court of Appeals held that:

1. The loan agreement was valid and enforceable;
2. The promissory note is valid and enforceable;

3. The bonds issued by PFA did not need to be submitted to the AG for approval; and
4. The City and River Creek lawfully entered into the interlocal agreement, including its provisions requiring the City to make payments from its levied assessments to River Creek to secure River Creek's issuance of indebtedness to finance the improvements.

"We conclude that the legislature's silence on the consequences of failure to obtain AG approval, its failure to expressly condition the validity and enforceability of a Section 431.070 bond or note on AG approval, and its express requirement that a corporation merely "submit" the subject instrument "for examination" (as opposed to, e.g., "obtain AG approval") are dispositive and support the trial court's challenged first and second declarations."

"The 'indebtedness' that River Creek issued to PFA via the promissory note and loan agreement—including any 'costs of issuance,' such as transaction-financing costs or bond-issuance fees, that River Creek undertook as part of that indebtedness—falls under Section 372.026(f), and River Creek is entitled to recoupment of such costs through the interlocal agreement."

"We hold that Section 372.026 expressly authorizes the interlocal agreement to require the City to make payments from its assessments to River Creek to secure its costs of issuing debt to PFA and thus that the interlocal agreement is not void as appellants contend."

State of California: Fitch New Issue Report

The state of California's 'AA' Issuer Default Rating (IDR) incorporates the state's large and diverse economy, which supports strong, albeit cyclical, revenue growth prospects, a solid ability to manage expenses through the economic cycle and a moderately low level of long-term liabilities. Strong fiscal management, institutionalized across administrations and demonstrated through the buildup of the budgetary stabilization account (BSA) and elimination of past budgetary borrowing, allows the state to better withstand economic and revenue cyclicality.

Access Report

Tue 20 Aug, 2024 – 12:11 PM ET

California Munis for Police, Teacher Housing Show Cracks.

- **Local agencies sold as much as $10 billion of the bonds**
- **Deals were highly levered and rely on high occupancy**

High-yield municipal bonds issued to finance housing for police officers, teachers and nurses in California are showing signs of strain.

Mira Vista Hills Apartments, a 280-unit rental complex in the Bay Area city of Antioch, disclosed in a Friday filing that it didn't meet a debt-service coverage ratio required by investors. At least four other complexes, known as "workforce housing," have drawn on reserves since the start of 2023 to help pay their debt, according to securities filings.

About $8 billion to $10 billion of munis — all in a speculative category without a credit rating — have been issued in California to convert market-rate apartments into affordable housing for middle-income households, according to research firm Municipal Market Analytics. Seven of the nation's 10 priciest housing markets are in the state, according to the National Association of Realtors.

Continue reading.

Bloomberg Markets

By Martin Z Braun

August 20, 2024

Texas Drought Forces Small Town to Default on Water System Debt.

- **Clyde, Texas, missed its Aug. 1 municipal bond payment**
- **The action caused S&P to drop debt rating from A- to D**

A persistent drought in Texas is hurting the finances of a small town, making it unable to pay bondholders in a rare instance of climate-related default.

The city of Clyde, located roughly halfway between Dallas and Midland, informed investors it couldn't make a debt payment due in August, according to a securities filing. Instead, its bond insurers — Assured Guaranty and Build America Mutual — were asked to cover the payment, illustrating the financial strain facing the city.

"Such draw is unscheduled and reflects financial difficulties of the issuer, including without limitation financial difficulties resulting from increased costs related to operations and maintenance of the issuer's waterworks and sewer system," the filing dated Aug. 15 read. The bonds were sold to support the city's water and wastewater system.

That caused S&P Global Ratings to drop the grade on the bonds to D from A-, a whopping 15-notch downgrade, according to a report from the company late Friday. It also cost the city its A- credit rating, as S&P downgraded Clyde's general-obligation debt to B, which is below investment-grade.

Analysts led by Misty Newland wrote that "a lack of willingness to pay an unconditional debt obligation results in a rating cap."

Clyde is a commuter community near Abilene, and is home to about 4,000 residents. Roughly one-third of Callahan County, where it's located, is facing a moderate drought. The city has been implementing a drought-contingency plan for several years, which includes double-digit water reductions. Following the restrictions, the town's water sales decreased — which hit revenues.

On Aug. 1, the day the bond payment was due — Clyde issued a "water emergency" notice, outlining "severe water shortage" conditions with the intention of reducing usage by 30%.

Local government bond defaults are incredibly rare, with those caused by climate-related events all but unprecedented. While bondholders will be made whole because the debt is insured, Clyde's financial challenges are a stark reminder that the $4 trillion municipal bond market isn't without risk and extreme weather can pose a threat.

Texas is the epicenter of such weather events in the US, and has faced multiple disasters this year. Hurricane Beryl knocked out power in Houston for days in July. A May derecho punched windows out of skyscrapers in the city and a storm that month dropped hailstones the size of DVDs near Lubbock. The largest wildfire in state history burned more than 1 million acres in the panhandle in February and March.

Currently, more than 30% of Texas is experiencing drought conditions, according to the US Drought Monitor. The most extreme issues are in western part of the state, but almost all of North Texas is facing dryness. Governor Greg Abbott has issued a drought disaster proclamation for the state.

To help reduce water usage, officials in Clyde have prohibited the use of water for cleaning sidewalks and driveways. Only new lawns at residents' homes can be watered, not existing ones.

The drought has affected life in other ways. Some residents were unhappy that a splash pad — which is a playground of sprinklers used by children — wasn't working, according to local news station KTXS.com.

"Would you rather have your splash pad running so your kid can spend two hours a day in the water there, or do you wanna be able to bathe your kid with water at your house?," the mayor told KTXS.com.

Michael Stanton, head of strategy and communications at Build America Mutual, said in an emailed statement that the company's insurance protected investors. "Although this is a small exposure, our team is in contact with city officials and their professional advisors and will continue to represent bondholders' interests in those discussions," the statement read.

Robert Tucker, senior managing director of investor relations and communications at Assured Guaranty, said in a statement that bondholders would be protected. "The type of situation Clyde, Texas, encountered – unexpected conditions leading to the non-payment of debt service – is exactly what our bond insurance is designed for," he said.

Bloomberg Green

By Amanda Albright

August 19, 2024

— With assistance from Jeremy Diamond, Will Wade, and Songyan Yu

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[Houston Schools Propose Largest Debt and Property Tax Increase in Texas History.]

Voters would have to approve a $4.4 billion bond package in November, to be financed by property tax increases over 33 years. Including interest, the package would cost $11 billion.

The Houston Independent School District board voted last week to pass a $4.4 billion bond proposal. This total excludes the interest on the principal. When included, it brings the total debt obligation to nearly $11 billion.

To pay for it, the board will authorize levying new, additional property taxes over 33 years, if voters approve the proposal in November. Taxpayers would be saddled with additional debt and taxes through 2058, according to the bond certificate filed by the district.

This is the largest debt and property tax increase proposal in state history.

Continue reading.

governing.com

Aug. 14, 2024 • Bethany Blankley, The Center Square

Peace River Manasota Regional Water Supply Authority (FL): Fitch New Issue Report

The 'AA' rating on the revenue bonds and 'AA' Issuer Default Rating (IDR) reflect Peace River Manasota Regional Water Supply Authority's 'Very Strong' financial profile in the context of its 'Very Strong' revenue defensibility and operating risk profile, as well as the very strong credit quality of the authority's two largest wholesale customers — Sarasota County, FL (utility system rated 'AA+') and Charlotte County, FL. The authority's revenue defensibility is supported by strong contract provisions with the ability to reallocate costs, limiting bondholder exposure to individual members. The purchasers' obligation to make payments to the authority is unconditional and payable as an operating and maintenance expense of their respective utilities based on proportional water use. The authority's operating risk assessment reflects a very low operating cost burden and moderate life cycle investment needs. The revision of the outlook to Negative from Stable reflects the authority's projected increases in leverage, measured as net adjusted debt to adjusted funds available for debt service (FADS), as it works through a capital-intensive period driven by surface water expansion projects to meet growing demand. Leverage registered 6.1x in fiscal 2023 and is expected to grow substantially to 17.8x in fiscal 2025 in Fitch's rating case scenario.

Access Report

Thu 22 Aug, 2024 – 2:30 PM ET

McKinsey: Will Mortgages and Markets Stay Afloat in Florida?

Flood risk is rising in Florida due to climate change. How exposed is residential real estate—both directly and indirectly—and what can be done to manage the risks?

Located in a tropical cyclone zone with low elevation and an expansive coastline, Florida faces numerous climate hazards, including exposure to storm surge and tidal flooding that are worsened by sea level rise, and heat stress due to rising temperatures and changes in humidity. Other unique features include the state's porous limestone foundation which can exacerbate flooding as water seeps into properties from the ground below and also causes saltwater intrusion into water aquifers, and makes adaptation challenging.

Much of Florida's physical and human capital is located along its vulnerable coast. Two-thirds of the state's population lives near the coastline, exposing many of them to tidal flooding, and almost 10 percent is less than 1.5 meters within sea level. At the same time, Florida's economy depends heavily on real estate. In 2018, real estate accounted for 22 percent of state GDP. Real estate also represents an important part of household wealth for the 65 percent of Floridians who are home owners: primary residences represent 42 percent of median home owner wealth in the United States.

In this case study, we focus on residential property in Florida exposed to flooding from storm surges and to tidal flooding and assess the likely impact both in terms of direct and knock-on effects, for example through housing price adjustments (See sidebar: An overview of the case study analysis).

Continue reading.

McKinsey Global Institute

April 27, 2020

Sixth Circuit Considering Whether Placing a Water Lien on a Property Could Violate the Fair Housing Act.

In 1968, the Federal Fair Housing Act (FHA) was enacted to protect individuals from discrimination based on certain protected characteristics when they are renting or buying a home, getting a mortgage, seeking housing assistance, or engaging in other housing-related activities. However, a recent class action lawsuit—which is currently on appeal before the federal Sixth Circuit—seeks to stretch one provision of the FHA further than any other case before it, with significant consequences to municipalities.

Under 42 U.S.C. § 3604(a), which codified Section 804 of the FHA, it is unlawful to "make [housing] unavailable" to individuals based on those protected characteristics. Actions such as redlining, discriminatory pricing, racial steering, and discriminatory appraisals have all been held to violate § 3604(a).

But in 2019, a group of individuals filed a class action against the City of Cleveland, Ohio, under § 3604(a). See *Picket et al. v. City of Cleveland*, Case No. 19-cv-2911 (N.D. Ohio). Their claim? That Cleveland makes housing unavailable when it certifies a tax lien against a property when the owner or tenant has let their water bill become seriously delinquent. (State law allows cities to certify liens in that circumstance, and the plaintiffs do not challenge that authorization.)

Continue reading.

Frost Brown Todd LLP – Philip K. Hartmann, Jesse J. Shamp and Anthony R. Severyn

August 22 2024

NJ Lines Up $2.4 Billion Muni Bond Sale for Transportation Fixes.

- **A state trust fund will invest billions to modernize transit**

- **The bonds were assigned an ‘A’ rating by Fitch Ratings**

New Jersey is poised to sell $2.4 billion of bonds for its transportation infrastructure, according to a report from Fitch Ratings.

The New Jersey Transportation Trust Fund Authority is expected to issue $1.3 billion of transportation system bonds and roughly $1.1 billion of transportation program bonds through a negotiated sale in October, the Fitch report said.

The fund is charged with modernizing statewide transportation infrastructure like highways and bridges as well as providing additional capital funding for NJ Transit — New Jersey’s public transit agency. The state is expected to extend as much as $8.8 billion in bonding authorization to the authority over the next five years, or approximately $1.76 billion annually, according to a March press release.

Continue reading.

Bloomberg Markets

By Sri Taylor

August 20, 2024

Casino Reinvestment Development Authority, New Jersey: Fitch New Issue Report

Future growth is likely to resemble pre-pandemic trends, with longer-term growth prospects limited, supporting a ‘bbb’ assessment. Factors potentially affecting long-term growth include the effects of competing regional gaming options, online gambling and sports betting. The sharp rebound in pledged revenue following pandemic-related shutdowns in 2020 has rebuilt the structure’s cushion against volatility relative to recent years. Additional leverage in the current sale modestly reduces the structure’s cushion against future revenue volatility, but resilience remains consistent with an ‘a’ assessment. The Casino Reinvestment Development Authority is an instrumentality of the State of New Jersey, which is the collection agent for luxury taxes. The brief deposit of these revenues in the state’s general fund caps the rating at New Jersey’s Issuer Default Rating (IDR) of ‘A+’/Stable; this is not currently a rating factor for the bonds given that the bond rating is four notches below the state’s IDR. Pledged revenues are separate from the financial operations of the city of Atlantic City.

Access Report

Tue 20 Aug, 2024 – 12:41 PM ET

Penn State Will Likely Take On Up to $700M in Debt for Beaver Stadium Upgrades. How Will It Pay It Back?

STATE COLLEGE — Penn State is prepared to take on up to $700 million in debt to renovate Beaver Stadium, a price tag drawing scrutiny at a time when the university is implementing steep budget cuts and offering buyouts to some employees.

The school has emphasized that the athletics department, which has a self-sustaining budget, will pay back the debt and interest incurred through the renovation process. Students' tuition and taxpayer dollars will not fund the project, the university has said.

However, Penn State University is likely to take on the necessary debt rather than the athletics department. One expert told Spotlight PA this setup is typical for universities and allows an organization like Penn State to secure better financing costs.

Penn State generally uses its standing as a public university with tens of thousands of tuition-paying students to secure bonds and provide financial backing for debt, according to a review of bond documents. For example, last year Penn State sold $204 million in bonds under the university's authority. That sale was used in part to finance "replacements to and renovations of Beaver Stadium," though the university said at the time the bonds would be repaid by athletics.

Penn State declined to make an official available for an interview for this story. A university spokesperson wrote in an email that the university's support for the project "is a signal of the commitment to bettering our student-athletes' experience and as a land-grant university, elevating Beaver Stadium's significance in driving local and state economies."

Christopher Collins, vice president and senior municipal credit analyst at Moody's Ratings, told Spotlight PA that although universities could have specific departments take out debt — perhaps as a way to increase accountability — issuing bonds through the entire university lowers financing costs. A university generally has a better credit rating, and a wider source of possible repayment, than a specific department, said Collins, who has analyzed Penn State's credit rating.

Some university trustees questioned what would happen if Penn State defaults on the debt. Penn State's athletic department reported $126,000 in profit off of a $202 million total budget in fiscal year 2023.

By Wyatt Massey Spotlight PA State College Aug 22, 2024

Buffalo's Home County to Issue 'Bills Bonds' for NFL Stadium.

When it comes to the construction of the Buffalo Bills' $1.7 billion new stadium, local officials are taking the concept of "public financing" to a new level.

On Sept. 24, Erie County in western New York will offer fans the opportunity to buy "Bills bonds" toward the development of the new facility being built next door to Highmark Stadium. The county is issuing $125 million in bonds to pay half of its portion toward construction.

The county is offering the bonds to individuals for a single day before it offers them to outside investors.

"This is a once-in-a-generation opportunity," county comptroller Kevin Hardwick said in a radio interview on Monday, "and there might be some average Bills fans out there who normally do not invest in municipal bonds, who might be interested in saying to themselves or telling their grandchildren that I had a hand in helping construct that stadium."

The minimum investment for the bond is $5,000. The website for the bond offering indicated that "the Series 2024B Bonds are general obligations of the County and are not an obligation of the Buffalo Bills."

Sportico has reached out to the Erie County's comptroller office as well as the Bills, but has not heard back.

Construction of the new Highmark Stadium is being funded largely by taxpayers in one of the most controversial stadium financing deals in recent memory. In March 2022, New York Gov. Kathy Hochul, herself a Buffalo native, announced a deal between the Bills, the state and county to develop the 62,000-seat, open-air stadium in Orchard Park next door to the team's current home.

Of the $1.4 billion in financing, the state will contribute $600 million while Erie County will put in $250 million. The NFL will loan $200 million to the Bills, and the team itself will add $350 million. The $850 million in state and county contributions are the largest public subsidy ever committed to the development of an NFL stadium. The team will have a 30-year lease for the new field, which will officially be owned by the state.

Healthcare insurer Highmark Blue Cross Blue Shield of Western New York is carrying on its naming rights deal from the current building, which originally opened as Rich Stadium in 1973, to the new stadium. The current Highmark Stadium was also known as Ralph Wilson Stadium after the late founding owner, and New Era Field until the insurer took the rights in 2021.

In April, the Pegula family retained Allen & Company to facilitate the sale of a non-controlling minority stake in the Bills, with a reported "working figure" of 25% to be offered. The Bills are worth $5.03 billion, according to Sportico's latest NFL franchise valuations, published last week. Buffalo ranks 23rd among all 32 teams, jumping three spots compared to one year ago, as the price tag rose by 23%.

sportico.com

By Jason Clinkscales

August 26, 2024 3:54pm

New York City, New York: Fitch New Issue Report

New York City's 'AA' Long-Term IDR and GO bond ratings reflect New York City's exceptionally strong budget monitoring and controls, supporting Fitch Ratings' 'aa' financial resilience assessment given the city's 'high' revenue control, 'mid-range' expenditure control and Fitch's expectation that the city will maintain reserves at or above 7.5% of spending. For the purposes of this calculation, Fitch includes unrestricted general fund reserves (the sum of committed, assigned and unassigned), the available balance in the retirees' health benefits trust (RHBT) and the fiscal year-end budget stabilization and discretionary transfers of surplus for prepayment of certain of the following year's operating expenditures. The available balance as of fiscal year-end 2023 was $12.8 billion, equal to 11.8% of expenditures and transfers out.

Access Report

Mon 19 Aug, 2024

[The City of New York Announces Successful Sale of $1.8 Billion of General Obligation Bonds.]

The City of New York (the "City") announced the successful sale of $1.8 billion of General Obligation bonds, comprised of $1.5 billion of tax-exempt fixed rate bonds and $300 million of taxable fixed rate bonds. Proceeds from the sale will be used to fund capital projects.

The City received over $327 million of orders during the retail order period and $4.9 billion of priority orders during the institutional order period, which in total represents approximately 3.5x the tax-exempt bonds offered for sale.

Due to investor demand for the tax-exempt bonds, yields were reduced relative to the start of the institutional order period by 2 basis points in 2028, 2029, and 2042; by 3 basis points in 2027 and 2052; by 4 basis points in 2041, 2047, and 2048; by 5 basis points in 2030, 2043, and 2044; by 6 basis points in 2050; and by 8 basis points in 2031.

Final yields ranged from 2.62% in 2026 to 4.19% in 2052.

The tax-exempt bonds were underwritten through a syndicate led by book-running lead manager Loop Capital Markets, with BofA Securities, J.P. Morgan, Jefferies, Ramirez & Co., Inc., RBC Capital Markets, Siebert Williams Shank, and Wells Fargo Securities serving as co-senior managers.

The City also sold $300 million of taxable fixed rate bonds via competitive bid. The bid attracted 8 bidders, with J.P. Morgan winning at a true interest cost of 4.617%.

August 22, 2024

[NYC Drama School Faces 14.5% Interest Rate on Muni-Bond Breach.]

- **American Musical and Dramatic Academy borrowed money in 2023**
- **School faces penalty for covenant default related to cash pile**

A drama and arts school with campuses in New York City and Los Angeles is facing an interest rate as high as 14.5% as a penalty for breaching an agreement with its municipal bondholders.

The American Musical and Dramatic Academy didn't maintain a cash pile that would last three months, breaking an agreement with holders led by Preston Hollow Community Capital. The school had 67 days of cash on hand as of June 30, while it was supposed to maintain 90 days, a regulatory filing shows. Such a breach is known as a covenant default.

Now, the academy will have to pay jacked-up interest rates between 12.25% and 14.5% on two series of debt, according to letters sent to the school this month by Preston Hollow. The correspondence was included in a securities filing posted Thursday. The two series of bonds priced with already-high coupons of 7.25% and 9.5%, according to data compiled by Bloomberg.

Such a move by bondholders is rare in the municipal market. It's more common for investors to enter into forbearance agreements with struggling borrowers — meaning holders pledge not to take actions such as demanding immediate repayment on debt even if they have that right. For colleges, these agreements provide a runway to fix their finances while often requiring them to disclose more regular information or hire a consultant to offer suggestions.

The right to charge higher interest rates if a borrower defaults is a common protection that corporate and real estate lenders write into their credit documents. In practice, the ability to charge default interest often becomes a key element of negotiations between the parties on how to resolve the borrower's financial challenges.

Such penalties risk worsening distressed borrowers' financial situation, said Eric Kazatsky, senior US municipals strategist for Bloomberg Intelligence.

A spokesperson for Preston Hollow declined to comment. John Galgano, AMDA's chief operating officer, didn't reply to phone calls or email messages seeking comment. David Silverman, the school's chief financial officer, didn't respond to an emailed request for comment.

Campus Real Estate

The American Musical and Dramatic Academy opened in 1964 and is a prominent performing arts institute with about 3,000 students stretched across two campuses, on Manhattan's Upper West Side and in Hollywood. Its alumni includes Modern Family star Jesse Tyler Ferguson and pop star Jason Derulo.

This isn't the college's first brush with distress. The financings last year were meant to provide relief to the academy after it went into covenant default on prior obligations.

In 2023, the school sold $91.6 million of bonds in two separate deals. The borrowing, which refinanced old debt and also included funds for campus projects, was originated by Preston Hollow and the firm purchased $51.65 million of the securities, according to a November statement from the company. The deal "gives AMDA the flexibility to build out exciting new initiatives as they continue to pursue their important mission," Ron Van Den Handel, a former managing director at Preston Hollow, said in the statement at the time.

Like other small US colleges, the school has struggled in recent years. Its performing-arts focus has also brought unique challenges, especially after Broadway performances closed during the pandemic. Total enrollment has been falling, dropping from 4,098 in 2018-19 to a projected 3,219 in 2023-24, according to the 2023 bond documents.

The letters from Preston Hollow say the school also needs to begin "real estate monetization procedures" as a result of the covenant breach. The 2023 bond documents noted that if the borrower couldn't satisfy certain financial covenants, it could be required to sell real estate.

The academy has several buildings in New York City and its main facility is located at 211 West 61st Street, close to Lincoln Center. It has an Art-Deco tower in Los Angeles blocks from the Hollywood Walk of Fame, along with other campus buildings.

Bloomberg Markets

By Amanda Albright

August 23, 2024

— With assistance from Erin Hudson

Fitch Places 18 U.S. Life Plan Communities Under Criteria Observation.

Fitch Ratings – New York – 22 Aug 2024: Fitch Ratings has placed 18 U.S. Life Plan Communities (LPCs) Under Criteria Observation (UCO), following the publication of Fitch's revised 'U.S. Public Finance Not-For-Profit Life Plan Community Rating Criteria' on Aug. 19, 2024.

The ratings placed on UCO will require additional information and analysis to fully assess the effect of the criteria on the ratings. While these ratings may be affected by the criteria changes, not all of the ratings designated as UCO will necessarily change. Placement on the UCO list does not indicate a change in the issuer's underlying credit profile, nor does it affect existing Rating Outlooks or Rating Watch statuses. Fitch will review all the ratings designated as UCO as soon as practicable, but no later than six months following the date of the criteria release.

Continue reading.

Fitch Feedback Report: U.S. Public Finance Not-for-Profit Life Plan Community Rating Criteria

View the Report.

Mon 19 Aug, 2024

S&P Sustainability Insights Research: No Quick Fix For The U.S. Affordable Housing Shortage

Due to high mortgage interest rates and persistently high real estate prices, a median priced home is now unaffordable for a median income American household. Conditions are most acute for households in highly populated areas and earning less than the U.S. median income, over 63% of which now spend greater than 30% of household income on housing. Demand for assistance from U.S. affordable housing issuers has risen, leading to a 32% year-to-date increase in debt issuance over 2023 highs. At some point, not-for-profit housing issuers, particularly multifamily lenders, may struggle to preserve credit quality by deploying reserves to meet affordable housing needs.

Download

How Two States Have Spent Their Share of the $1B in Cybersecurity Grants.

With little precedent for such a big federal investment in cybersecurity, states have largely had to write their own playbooks on how to distribute the funds to local governments.

More than two years ago, the federal government began handing out millions of dollars to states to shore up their cybersecurity amid a growing threat of ransomware attacks and data breaches.

The much-needed investment will ultimately pay out an unprecedented $1 billion over four years. The State and Local Cybersecurity Grant Program under the 2021 infrastructure law is a first-of-its-kind investment, which has meant states have largely had to create their own playbooks.

At an event hosted this week by Route Fifty, those different approaches were highlighted as two states on opposite coasts detailed how they've gone about shoring up their cyber defenses under the historic grant program.

Continue reading.

Route Fifty

by Chris Teale

August 20, 2024

Climate Change is messing with City Sewers — And the Solutions are Even Messier

As heavy rains overwhelm aging pipes, Boston and New York City are choosing very different paths forward.

At the end of July 2023, 3.07 inches of rain fell on Boston in a single day. The city's sewer systems were overwhelmed, resulting in a discharge of sewage into Boston Harbor that prompted a public health warning. The summer of 2023 would turn out to be Boston's second-rainiest on record.

About two months later, 8.65 inches of rain fell on New York City — higher than any September day since Hurricane Donna in 1960. The city's low-lying areas were deluged, and half of its subway lines were suspended as water inundated underground stations.

East Coast cities are increasingly susceptible to flooding due to climate change. But changing weather patterns are only half of the problem — the other is inadequate infrastructure. In particular, these recent flood events were made worse by Boston and New York's combined sewer systems, which carry both stormwater and sewage in the same pipes. When such a system reaches capacity during heavy rainfall or storm surge events, it backs up, sending a mixture of stormwater and raw sewage into waterways (and sometimes also into streets and homes).

Continue reading.

Route Fifty

By Angelica Ang,
Grist

August 22, 2024

Institutional Investors Pay Half Price of Retail Buyers in Muni Trades.

- **Smaller trades, a proxy for retail, paid average spread of $10**
- **Retail buyers rely heavily on the secondary market: report**

Retail investors, who hold the largest share of municipal bonds, pay roughly twice the spread that major institutional investors pay when trading recently issued debt.

The Municipal Securities Rulemaking Board measured the spread between prices on deals in the primary market and recent trades in the secondary market. Results showed trades of $100,000 or less, a proxy for retail buyers, paid an average spread of about $10, while trades of $1 million or more paid a spread of $4.42, according to a report published Monday. Institutional investors include major Wall Street firms, insurance companies, regional banks and foreign buyers, among others.

Retail buyers adding bonds to their portfolios rely heavily on the secondary market, where a flurry of trading occurs in the weeks following a new issue before trades tend to drop off. The price an investor secures can dictate the yield they receive for decades.

The report found only 8% of par purchased through large trades occurred in the secondary market, while the share for smaller transactions was closer to half. Researchers used data over a five-year period spanning 2019 to 2023, and measured spreads on purchases that took place in the first seven days of secondary trading.

Spreads varied year to year and were considerably different between competitive and negotiated deals. For competitive deals, the average spread was $4.16, and the spread on negotiated deals was $11.30.

“We don’t think this means issuers should flock to the competitive market,” said John Bagley, chief market structure officer at the MSRB and one of the authors of the report. In general, competitive deals tend to come from larger, more well-known issuers.

Investors placing larger orders are able to command more attractive prices, narrowing the profit underwriters make bringing bonds to market. In competitive deals, the average spread on large deals was only 27 cents, and in 2022 and 2023 when rates were rising, the spread was negative.

“If you bought a competitive deal and you didn’t sell it right away, and rates went against you, you likely had to cheapen up the deal to get it sold,” Bagley said.

Bloomberg Markets

By Nic Querolo

August 26, 2024

— With assistance from Amanda Albright

[Credit Work Takes Front Seat: Bloomberg Masters of the Muniverse]

As we inch closer to a Fed rate decision and a Presidential election, focusing on municipal credit will take on a heavier emphasis. Hosts Eric Kazatsky and Karen Altamirano are joined by Jennifer Johnston, Director of Research for Franklin Templeton Fixed Income. Bringing over three decades of experience, Jennifer is responsible for leading the group’s credit research efforts across all municipal bond sectors. She gives us her perspective on how technology enhances the credit research role and some areas of concern during the back portion of this year and beyond.

[Listen to the Podcast.]

Aug 20, 2024

[Hawkins: The Regulatory Impact of Jarkesy, Loper Bright, and Corner Post]

Introduction

This Hawkins Update reviews three recent Supreme Court decisions – *Jarkesy, Loper Bright, and Corner Post.*[1] Although these decisions are likely to substantially affect the rulemaking and enforcement activities of federal administrative agencies generally (including the Department of the Treasury and the Internal Revenue Service), we discuss the cases more specifically with respect to certain potential impacts on the Securities and Exchange Commission (the "SEC").

No Civil Penalties in Administrative Proceedings

In Jarkesy, the Supreme Court considered the manner in which the SEC brings enforcement actions and, more specifically, whether the Seventh Amendment entitles a defendant to a jury trial when the SEC seeks civil penalties for securities fraud.

In 2011, the SEC commenced an enforcement action against Jarkesy and his investment advisory firm, Patriot28, LLC ("Patriot28"). The SEC alleged that Jarkesy and Patriot28 misled investors in connection with the launch and management of two investment funds by: (i) misrepresenting the funds' investment strategies; (ii) hiding the identity of the funds' auditor and prime broker; and (iii) inflating the funds' claimed value to generate larger management fees. In initiating the enforcement action, the SEC alleged that these actions violated the antifraud provisions of the Securities Act, the Securities Exchange Act, and the Investment Advisers Act. The SEC sought remedies that included civil penalties. The SEC adjudicated the matter in-house, found that Jarkesy and his firm had committed securities violations, and levied a civil penalty of $300,000. Jarkesy and Patriot28 appealed.

[Continue reading.]

by Brian Garzione & Kenneth Roberts

08.22.2024

Hawkins Delafield & Wood LLP

[Investing in Aging: Senior Living Bonds as a High-Risk, High-Reward Strategy]

When investors think about municipal bonds, safety and stability often come to mind. Afterall, a city or state government has the ability to tax their citizens to help pay for the bonds. As a result, munis often form the cornerstone of many conservative fixed-income investor's portfolios. But not all munis are safe and steady, some are a tad on the risky side. But for investors looking to pick up extra yields, these bonds could be a real opportunity.

Today, that opportunity lies within munis tied to senior living and nursing homes.

The senior living sector has long been one of the riskiest in the high-yield muni space — skewing default rates higher for all muni bonds. Those issues have only gotten worse since the pandemic. But with an aging population and increased elderly care needed, the sector could provide an interesting blend of risk and reward for some income seekers.

[Continue reading.]

dividend.com

by Aaron Levitt

Aug 26, 2024

[Active Muni ETFs Are Rapidly Gaining Traction.]

In terms of population, the universe of actively managed municipal bond exchange traded funds is growing at a prodigious pace. That makes sense because there are multiple reasons why the combination of municipal bonds and active management can reward investors.

The ALPS Intermediate Municipal Bond ETF (MNBD) is one of the established names in the active muni ETF patch. MNBD, which turned two years old in May, attempts to beat the Bloomberg Municipal Bond 1-15 Year Blend Index. Admittedly, year-to-date isn't the best measuring stick of muni bond ETF performance. That's because this is a long-term asset class. Still, that doesn't diminish the point that MNBD is beating the widely followed ICE AMT-Free US National Municipal Index by a 2-to-1 margin this year.

Advisors know some perks can be accrued when munis meet active management. These include superior flexibility when it comes to managing credit and interest rate risk as well as the ability of active managers to more readily identify valuation opportunities than can muni indexes. Some other points in favor of MNBD should be considered.

MNBD Hidden Advantages

While municipal bonds are a massive corner of the broader fixed income market, some issues with this form of debt make indexing challenging.

"Municipal bonds are a highly illiquid and fragmented market. This makes indexing difficult and creates more opportunities for active managers than more liquid markets. This favorable arena is reflected in assets; 87% of all muni fund assets are in funds where managers choose the bonds rather than mimic and index," notes Morningstar's Gabe Alpert.

That's not to say passive muni ETFs are "bad" products. Instead, municipal bonds' liquidity, or lack thereof, highlights potential advantages with actively managed funds such as MNBD.

Another reason active management makes sense with municipal debt is because these bonds take various forms. This includes general obligation, revenue, and enhancement program bonds, among others. Each subsection of the muni space brings with it opportunities and risks. That can be viewed as further confirmation of the potency of active management. It could also bode well for the long-term adoption of ETFs such as MNBD.

"As demand for ETFs grew, firms launched muni-bond ETFs. Due to the difficulty of launching active ETFs until a regulatory change in 2019, before then, there were only 19 of these funds. Between 2019 and 2024, an average of 7.5 active muni ETFs were listed each year. This is compared with an average of 3.5 index muni ETFs. Flows have followed, with 60% of 2024 flows to muni ETFs going to active funds despite making up only 15% of assets," concludes Alpert.

etftrends.com

by Todd Shriber

August 26, 2024

Profiting From Financings for Charter Schools: SEC Sues Unregistered, Fee-Splitting Municipal Advisor - Norris McLaughlin

The public education system in the United States has experienced a series of fits and starts since the time of the American Revolution. Although many of the Founders (think Adams, Jefferson, and Madison, for example) were staunch advocates for education, believing that a democratic government requires citizens who are not only literate, but who can understand and assess matters confronting a government "by the People," and support intelligent efforts to resolve problems. That said, there was no national consistency in the availability of schooling, with some communities and/or churches (particularly in New England) offering education to America's young people, funded mainly by the families of those attending classes. The U.S. Constitution lacks any provision mandating education, so the question of government sponsorship for schools remains to this day primarily a state law issue. By the 1830s, American states began to address public education, including requiring some minimum years of school attendance paid for by taxes imposed on residents.

Public education was seen as particularly important in aiding the assimilation of successive waves of immigrants from the 1850s and again at the turn of the century, education being especially important for improving the language skills of newcomers. Building on those experiences and the legal acceptance of public unionism for teachers, America's public schools were seen by many as hampered by conventional thinking, especially in a world confronting the risks of thermo-nuclear war and competition with the Soviet Union. The creation of Advanced Placement courses was a response to those perceived threats. Another was the beginning of a movement, once again in New England and led this time by Ray Budde, to create local schools by contract, or charter, among a group of teachers and a municipality. The expectation was that the resulting schools would be more experimental and progressive. This notion of an "innovative institution" harkened back to educational developments in Ireland in the 1700s, sponsored by the Catholic Church, but not just religious schools.

In America the so-called "Charter School Movement" grew slowly until the late 1980s, when the idea was embraced by Albert Shanker, President of the American Federation of Teachers, who saw an opportunity both to expand the scope and style of schools and to create more jobs for teachers. The first charter school law was passed in the typically progressive State of Minnesota in 1991, followed by New Jersey and Delaware in 1995 and Pennsylvania in 1997. According to one national report, as of 2015 there were over 6700 charter schools in America, enrolling almost 3 million students. Charter schools are publicly funded, but operate independently from local school districts. Funding for their operations depends upon the particulars of state law where the school is located; frequently such schools must first obtain some form of licensure from the state (or a state or local education body), and then function pursuant to a contract with that entity. This arrangement allows charter schools to raise funds by issuing municipal securities, much like a public school, although some of the risks of repayment and the scope of disclosure required vary materially from those in regular public school financings.

As depicted in the 2024 case of the *Securities and Exchange Commission v. Choice Advisors, LLC and Matthias O'Meara*, U.S. District Court for the Southern District of California, Case No.3:21 CV-1669-JO-MSB ("*Choice Advisors*"):

> [Two charter schools] retained Defendants to assist them in the process of issuing municipal bonds so that they could raise money to build new school facilities. … As first-time issuers of municipal bonds, these schools sought Defendants' help in structuring a deal with a bank underwriter to raise the funds at the lowest cost possible… To facilitate the municipal bond offering the borrower selects a bank underwriter to market and sell the bonds to investors. … The borrower negotiates the terms of the municipal bond offering with the underwriter, which typically involves the school paying a "fee," "spread", or "discount" – usually a percentage of the total value of the bond issued – to its bank underwriter in exchange for the bank purchasing the school's bond and "lending" the school money. … After purchasing the bonds from the school, bank underwriters resell these bonds to third-party investors for a profit. … This financing structure essentially enables the school to "borrow" the money needed for building projects or operations by issuing bonds that the schools ultimately repay with interest.

As explained at length in my Sept. 22, 2020 Blog "SEC Focus on Municipal Securities," the regulation of disclosure in the area of municipal securities is (to use my word) "peculiar." Congress, in an attempt to better deal with some of those "peculiarities," in 1975 amended the Securities Exchange Act of 1934 to create a new body, the Municipal Securities Rulemaking Board ("MSRB"), to strengthen the regulation of the structure of the municipal securities market and of the participants in that market. The MSRB is subject to SEC oversight. Then in 2010, in the Dodd-Frank Wall Street Reform and Consumer Protection Act, Congress expanded the scope of the MSRB to require registration of municipal securities advisors. As the Court said in *Choice Advisors*:

> The municipal advisor's role in …complex financial transactions [like the ones described in *Choice Advisors*] is to act as the school's "skilled representative in the bond offering transaction" and help it negotiate favorable financial terms in the school's best interest.

I wrote about the role of municipal securities advisors in my Sept. 29, 2020 Blog "What if the Advice is Suspect?" In *Choice Advisors*, the Court was presented with a classic case of abuses of that role. In that case, the investigation of these abuses was conducted by a special part of the SEC's Division of Enforcement, the Public Finance Abuse Unit. As I explained in my June 27, 2022 Blog "Serving the Public," the Public Finance Abuse Unit was created in 2010 to provide a more systematic and unified approach to dealing with the increasing incidence of significant neglect of professional obligations and downright fraud in the municipal securities market.

The “bank underwriter” involved in *Choice Advisors* was BB&T, originally named Branch Bank & Trust, founded in 1872 by Alpheus Branch. Over the years, it grew from its North Carolina roots to become, by 2018, a major regional bank with operations all across the country. Two key employees in BB&T’s investment banking subsidiary were Matthias O’Meara of Denver, Colorado, and Paula Permenter of Houston, Texas. In 2019, BB&T merged with SunTrust Bank of Florida to form Truist, the 9th largest American bank, with assets of $514 billion. According to the *Choice Advisors* Court, “O’Meara worked as an underwriter at investment bank BB&T” … “[b]efore becoming a municipal advisor for schools and school districts.” Because O’Meara was fundamentally a salesman for the underwriting services of BB&T, he “became acquainted with various schools” including future Choice Advisors clients Bella Mente of Vista, California, and Liberty Tree of Colorado Springs, Colorado. Sometime in January or February 2018, “O’Meara and another BB&T employee, Paula Permenter, decided to leave their jobs at BB&T to start” Choice Advisors. On May 1, 2018, O’Meara resigned from BB&T, giving two weeks’ notice. Permenter followed suit.

During the two-week notice period, O’Meara negotiated a deal with BB&T concerning Bella Mente and Liberty Tree, as well as three other California schools identified by O’Meara (so long as the schools selected BB&T as their respective underwriter). The deal was to split the 2% underwriter fee with BB&T: BB&T to get ¾ of the fee, and O’Meara’s firm to be formed, Choice Advisors, LLC, to get ¼ of the fee. For example, the $20 fee on a $1 million bond would be divided $15 to BB&T, and $5 to Choice. Choice Advisors, LLC, registered with the SEC as an investment advisor on Aug. 27, 2018,and registered with the MSRB as a municipal securities advisor on Oct. 16, 2018. On May 8, 2018, O’Meara sent Bella Mente an engagement letter to serve as its municipal securities advisor. However, the letter failed to disclose to the school that i) he was still employed by BB&T; and ii) the fee splitting agreement, including the fact that it might pose a conflict of interest for Choice. Similarly, on May 14, 2018, O’Meara’s second to last day with BB&T, he sent a parallel engagement letter to Liberty Tree. Both letters stated that:

> [There existed] no known actual or potential material conflicts that might impair [Choice’s] ability to render unbiased or competent advice or fulfill its fiduciary duty… And there are “no Other Engagements or Relationships Impairing [Choice’s] Ability to Provide Advice.

In addition, the Defendants **completed** the two bond offerings “on the schools’ behalf” and received payment for their services **before** they were registered. Choice was paid $157,000 by Bella Mente (on July 11, 2018) and $53, 437.50 by Liberty Tree (on Sept. 21, 2018). Given these facts, the SEC sued Choice on the following grounds:

1. Performing municipal advisory service without being registered;
2. Agreeing to split fees with BB&T;
3. “Deceptively operating in a dual capacity” as both a BB&T underwriter and a municipal securities advisor; and
4. Failing to disclose material conflicts of interest.

It should be emphasized that the two principals of Choice were experienced participants in financial transactions, including the municipal securities market. O’Meara earned a B.A. in finance from the University of Notre Dame and holds a Series 50 municipal advisor license. Permenter, with her B.A.A. from the University of Houston and M.B.A. from the University of St. Thomas, worked for over 20 years in finance, holding a Series 7,66, 79 and 53 before starting Choice, where she, like O’Meara, holds a Series 50 license. Yet they acted as though either asleep or engaged in fraudulent concealment. It is no wonder that the SEC charged them and Choice with breaching their fiduciary duties to the schools and entering illegal arrangements without even being appropriately registered. Most particularly, the SEC charged the Defendants with violating MSRB Rule G-42, and to the extent they dealt unfairly with their clients and engaged in deceptive practices, violating Rule G-17.

The Court, in an April 22, 2024 decision in *Choice Advisors*, granted Summary Judgment to the SEC for failing to timely register with the SEC and with the MSRB, which in turn was the basis for granting Summary Judgment for committing acts in violation of MSRB Rules. Defendants argued that fee splitting was not prohibited because the terms were agreed to before payment, so the 25% payable to Choice was paid directly and not "split" after receipt by BB&T. The Court, however, granted Summary Judgment against the Defendants on this count, as well as for breach of fiduciary duty, including failure to disclose potential conflicts of interest and the lack of required registration. The Court did not grant Summary Judgment concerning the alleged concealment of the dual employment and fee splitting only because Defendants claimed the schools knew of the Choice arrangements, but reserved for further proceedings on this issue. Finally, Summary Judgment was granted against the Defendants for engaging in "Deceptive, Dishonest, or Unfair Practices" in violation of MSRB Rule G-17.

The Court set Aug. 7, 2024, for the SEC to submit its proposal for the Court order imposing sanctions on Defendants, whose objections were due Aug. 16. Were the two Charter Schools injured by Choice? One cannot be certain, but the appearances suggest that Choice and its principals were in this only for personal profit, and not with any concern about the educational exigencies that make Charter Schools an attractive alternative for parents concerned about the quality of education for their children.

by: Peter D. Hutcheon of Norris McLaughlin P.A. – Business Law Blog

Monday, August 26, 2024

[Proposed Rule Change Consisting of Amendments to MSRB Rule G-14 and to Amend FINRA Rule 6730: SIFMA Comment Letter]

Summary

SIFMA and SIFMA AMG provided comments to the U.S. Securities and Exchange Commission (SEC) and reiterated comments made in their previous letters, the Commission, FINRA, and the MSRB should reconsider if a one-minute trade reporting requirement is appropriate for fixed-income markets in the first place. If a decision is made to proceed with this proposal, then FINRA and the MSRB should allow for an appropriate implementation period (e.g., two years) and:

- Include a broad exception for manual trades;
- Examine impacts to liquidity, depth, concentration, and transparency prior to decreasing reporting times to shorter intervals to ensure markets are not harmed;
- Provide relief for certain electronic trades where system processing limitations prevent ne-minute reporting, including post-trade allocations; and
- Implement the proposed de minimis exception.

[Read the SIFMA Comment Letter.]

- S&P: What The Loper Decision May Mean For U.S. Public Finance
- GASB Chair: SEC's Financial Data Transparency Rule Aligns with Expectations, but Raises Industry Concerns
- Shelved Muni Sales Return to Market After Volatility Eases.
- Citi, UBS Leave Behind $50 Billion Muni Opportunity for Rivals.
- America Has a Hot Steel Problem. **[Risk Factor material]**
- Exploring New IIJA Bond Categories: CDFA Webcast
- Novogradac 2024 Housing Tax Credit and Bonds Conference.
- BofA Snubbed by Louisiana's GOP Treasurer in ESG Culture Wars.
- And Finally, Double Secret Probation is brought to us this week by *Johnson v. City of Bozeman*, in which we are informed that, "Plaintiffs had been under the impression that new Greek housing was not permitted." I mean, I'm no fan of the Greeks either (frankly, who is?), but I at least have the discretion to keep that more or less to myself. Swarthy little people with their tzatzikis and souvlakis and bouzoukis who've contributed nothing to the world, other than a few commemorative trinkets like philosophy, democracy, theater, and the Olympic games. Hirsute ingrates. Wait. We're confused. Apparently Greek college students live together in houses with very sticky carpet? Maybe if we let them build new housing they could just burn the old stuff to the ground. Like the Trojans did.

LABOR - ARIZONA

Gilmore v. Gallego

Supreme Court of Arizona - July 31, 2024 - P.3d - 2024 WL 3590669

City employees who belonged to collective bargaining unit but were not members of union brought action against city, alleging that provisions in memorandum of understanding (MOU) between city and union governing release time for union purposes violated plaintiff employees' rights to free speech and free association, their right to work, and the Gift Clause of state constitution.

Union intervened as defendant. The Superior Court entered summary judgment for city and union and granted them attorneys' fees against employees. Employees appealed. The Court of Appeals affirmed in part and vacated in part. Employees petitioned for review, which was granted.

The Supreme Court held that:

- Under MOU, it was city, not the non-member employees, who paid for the release time, and therefore the release time did not violate employees' free-speech or free-association rights or their right to work, but
- MOU's release-time provisions were not supported by adequate consideration and thus violated Gift Clause.

Under memorandum of understanding (MOU) between city and union governing release time of city employees for union purposes, it was city who paid for the release time, rather than employees who worked in bargaining unit but did not belong to union, and therefore the release time did not violate the non-member employees' free-speech or free-association rights or their right to work, even though MOU contained provision stating that the cost to city for the release positions "has been charged as part of the total compensation" detailed in MOU; "total compensation" referred to city's total expenditure under MOU, not sum entitlement of employees, and no evidence suggested that, absent release time, the non-member employees' pay or benefits would necessarily be commensurately increased.

Portions of memorandum of understanding (MOU) between city and union providing for release time of city employees for union purposes were not supported by adequate consideration and thus violated Gift Clause of state constitution, in case involving MOU which provided for, inter alia, four full-time, paid release positions for union members "to engage in lawful union activities" and a bank of 3,183 additional paid release time hours per year for union members "to engage in lawful union activities"; annual cost of release time was estimated at $499,000, and benefits to city consisted of few tangible obligations along with the general promotion of cooperative labor relations.

PUBLIC RECORDS - MARYLAND

The Abell Foundation v. Baltimore Development Corporation

Appellate Court of Maryland - August 2, 2024 - A.3d - 2024 WL 3633431

Requestor of records relating to payment-in-lieu-of-taxes agreement (PILOT agreement) between city and developer brought action against city entities, including mayor's office and city council, alleging city violated Maryland Public Information Act (MPIA) by withholding responsive documents, failing to explain redactions, and failing to justify its application of exemptions and privileges.

City moved to dismiss or for summary judgment. Developer intervened and joined city's motion. The Circuit Court granted summary judgment in favor of city. Requestor appealed.

The Appellate Court held that:

- As a matter of first impression, showing of risk of competitive harm is not necessary for MPIA exemption for confidential commercial and financial information;
- Financial statements, estoppel certificate, and analyses constituted confidential commercial and financial information under MPIA;
- To the extent showing of risk of competitive harm was necessary, disclosure of financial statements, certificate, and analyses satisfied such requirement;
- City properly withheld model analysis under deliberative-process privilege;
- Trial court appropriately examined memoranda written by city's lawyers in camera;
- Memoranda were protected by attorney-client privilege; and
- Requestor failed to establish that city actually possessed other documents.

STANDING - MINNESOTA

Minnesota Voters Alliance v. Hunt

Supreme Court of Minnesota - August 7, 2024 - N.W.3d - 2024 WL 3681675

Taxpayers and their association filed petition for writ of quo warranto or declaratory judgment, alleging that Re-Enfranchisement Act provision allowing individuals convicted of a felony to vote when not incarcerated for such offense violated provision of Minnesota Constitution prohibiting persons convicted of a felony from voting "unless restored to civil rights" and that Act's authorization of use of public funds to educate voters about voting-right restoration was therefore unlawful.

Voters with felony convictions intervened as of right. District court denied petition for lack of standing. Taxpayers and association appealed, and accelerated review was granted.

The Supreme Court held that:

- Taxpayer standing is recognized only when the central dispute involves alleged unlawful disbursements of public funds, overruling *Oehler v. City of St. Paul*, 174 Minn. 410, 219 N.W. 760, and *McKee v. Likins*, 261 N.W.2d 566, and
- Use of public funds to educate public about voting-right restoration was incidental to Re-Enfranchisement Act, precluding taxpayer standing.

Taxpayer standing does not exist when a taxpayer simply seeks to generally restrain illegal actions on the part of public officials; rather, taxpayer standing is recognized only when the central dispute involves alleged unlawful disbursements of public funds; overruling Oehler v. City of St. Paul, 174 Minn. 410, 219 N.W. 760, and McKee v. Likins, 261 N.W.2d 566.

Expenditures of public funds, pursuant to Re-Enfranchisement Act, to educate voters about Act's restoration of right to vote to non-incarcerated individuals convicted of a felony were incidental to Act's substantive restoration of voting right, and thus, taxpayers lacked taxpayer standing to bring petition for writ of quo warranto or declaratory judgment challenging Act based on contentions that voting-right restoration violated section of Minnesota Constitution prohibiting persons convicted of a felony from voting "unless restored to civil rights" and that Act's authorization of expenditures of public funds to educate voters about voting-right restoration was unlawful; voting rights could be restored without Legislature appropriating any money to educate voters about such change.

ZONING & PLANNING - MONTANA

Johnson v. City of Bozeman

Supreme Court of Montana - August 6, 2024 - P.3d - 2024 WL 3665299 - 2024 MT 168

City residents brought action to challenge zoning provision within city's amended unified development code which reclassified fraternity and sorority housing as "group living" which was permitted in neighborhood.

The District Court of the Eighteenth Judicial District granted residents' partial motion for summary judgment and declared the reclassification void ab initio. City appealed.

The Supreme Court held that:

- Amendment was not void ab initio due to insufficient notice to city residents, but rather the statute of limitations did not begin to run until the residents received notice of the revision, and
- 30-day statute of limitations for actions to set aside an agency decision, rather that default five-year statute of limitations, applied.

City's amended unified development code, which reclassified fraternity and sorority housing as "group living" that was permitted in neighborhood, was not void ab initio due to insufficient notice to city residents, but rather the 30-day statute of limitations on residents' right to challenge the revised ordinance did not begin to run until the residents received notice of the revision, or reasonably should have known of the revision.

Thirty-day statute of limitations for actions to set aside an agency decision, rather that default five-year statute of limitations, applied to residents' challenge to zoning provision within city's amended unified development code which reclassified fraternity and sorority housing as "group living" permitted in neighborhood.

HIGHER ED - MONTANA

Cordero v. Montana State University

Supreme Court of Montana - August 6, 2024 - P.3d - 2024 WL 3665298 - 2024 MT 167

Student brought action against state university, alleging breach of express contract, breach of implied contract, a due process violation, unjust enrichment, a taking, and inverse condemnation based on measures which university took to limit services during COVID-19 pandemic.

The District Court granted university's motion to dismiss for failure to state a claim, and student appealed.

The Supreme Court held that:

- As a matter of first impression, application for admission to state university created an express contract;
- University did not breach contract crated by admission application by limiting some services during COVID-19 pandemic;
- Fee descriptions in undergraduate catalog amounted to specific, written promises to provide those services, and thus created a contract;
- University did not breach its contractual duty to student regarding fees which student had paid for certain services which were limited during COVID-19 pandemic;
- Student lacked any claim for breach of implied contract due to express contract; and
- Student lacked any claim for unjust enrichment due to express contract.

TELECOM - OHIO

Towerco 2013, LLC v. Berlin Township Board of Trustees

United States Court of Appeals, Sixth Circuit - August 6, 2024 - F.4th - 2024 WL 3665539

During pendency of state court action brought by township Board of Trustees and township, which had been removed to federal court by company that was hired by wireless provider to construct cellular tower on school district property, and thereafter remanded back to state court, seeking a declaratory judgment that company was required to adhere to township's zoning regulations, and after negotiations towards a mutually agreeable resolution pursuant to joint stay agreement proved unsuccessful, company brought action in federal court against township and township's Board of Trustees, alleging claims including violations of the Telecommunications Act (TCA).

The United States District Court for the Southern District of Ohio granted plaintiff's motion for preliminary injunction to enjoin defendants from preventing completion and deployment of cell tower, and denied defendants' motion to stay injunction. Parties cross-appealed, and the Court of Appeals granted defendants' motion for stay pending outcome of appeal.

The Court of Appeals held that:

- As a matter of first impression, township's determination to file a state court lawsuit regarding purported immunity status from zoning regulations under Ohio law was not a "final action," precluding TCA relief;
- Plaintiff failed to bring claims within 30 days of purported final action, as would support denial of preliminary injunction;
- There was no evidence that the parties intended to toll any statute of limitations when entering into joint stay agreement;
- Federal Communications Commission's (FCC) ruling that clarified the application of specific time limits contained in TCA did not support application of equitable principles to read an implicit intention to toll 30-day deadline into parties' joint stay agreement;
- Possibility that company could lose provider's trust absent issuance of preliminary injunction was too speculative and theoretical to constitute irreparable harm; and
- Economic loss was not irreparable harm that could support issuance of preliminary injunction.

STANDING - PUERTO RICO

[In re Financial Oversight and Management Board for Puerto Rico]

United States Court of Appeals, First Circuit - July 25, 2024 - F.4th - 2024 WL 3533427

Following determination by court, under Title III of the Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA), that "Law 29," Puerto Rico legislation purporting to eliminate burden on Puerto Rico's municipalities of complying with the Commonwealth's reformed public pension funding scheme, violated PROMESA and thus was "a nullity" and "of no effect," not-fo--profit membership organization comprised of municipalities' mayors brought adversary proceeding against the Financial Oversight and Management Board for Puerto Rico and others, asserting that Board lacked authority to recover the funds retained by municipalities under the auspices of Law 29 during the year before it was declared void.

Defendants moved to dismiss.

The United States District Court for the District of Puerto Rico granted motions. Organization appealed.

The Court of Appeals held that:

- Allegation that municipalities had been deprived of significant revenue to which they were entitled satisfied the "injury in fact" requirement for Article III standing
- The *Hunt* "indicia of membership" test, 97 S.Ct. 2434, was applicable to determine whether organization, which was made up of mayors, had organizational standing to sue on behalf of non-member municipalities;
- The injured municipalities had sufficient "indicia of membership" in organization for it to satisfy the requirements of organizational standing;
- Organization lacked standing to sue the executive branch defendants;
- Law 29 was invalidated from its inception, not merely going forward; and
- The Title III court had authority to nullify Law 29.

SPECIAL ASSESSMENTS - WASHINGTON

SHG Garage SPE v. City of Seattle

Court of Appeals of Washington, Division 1 - August 5, 2024 - P.3d - 2024 WL 3647666

Property owners sought review of local improvement district (LID) special assessments levied against them for improvements to waterfront area.

The Superior Court nullified assessments. City appealed.

The Court of Appeals held that:

- Expert appraiser's testimony was insufficient to overcome presumption that assessment was valid;
- City's method of assessment was not founded on fundamentally wrong basis;
- City's special benefit study complied with applicable professional appraisal standards governing mass appraisals;
- City did not act arbitrarily and capriciously by treating improvements as one continuous improvement;
- Hearing examiner did not misapply presumption of correctness by disregarding testimony from owners' expert witness; and
- City was not arbitrary and capricious for failing to independently review owners' appeal.

Testimony from expert appraiser did not demonstrate that properties in local improvement district (LID) did not benefit from improvements and was thus insufficient to overcome presumption that city's special assessment levied against property owners was valid; owners alleged that expert's testimony provided sufficient information to calculate an alternative special benefit amount and at same time, they contended that LID study and potential benefit estimates were too speculative to allow for a reliable counter-appraisal.

City's method of special assessment for local improvements to waterfront was not founded on a fundamentally wrong basis, as would provide grounds to correct or annul assessment, due to failure by its special benefit study to analyze how viaduct removal impacted property values by the waterfront; while study valued the before improvement scenario by assuming a viaduct had been removed, it provided enough information for owners to evaluate how properties were valued in before improvement scenario, such as relevant market information on rents and vacancy and market conditions, as well as how properties were valued in the after improvement scenario.

City's special benefit study's failure to account for property value changes due to COVID-19 pandemic was not basis on which to conclude special assessments for local improvements to waterfront area were founded on a fundamentally wrong basis, as required for court to correct or annul special assessments, where property appraisals were done before the onset of the pandemic.

Special assessment for local improvements to waterfront was not founded on a fundamentally wrong basis, as would provide grounds to correct or annul assessment, due to failure to comply with professional appraisal standards governing direct property appraisals, because property appraisal at issue was a mass appraisal, which was governed by separate standards.

City's special benefit study complied with applicable professional appraisal standards governing mass appraisals for determining special benefits and thus, valuations did not provide grounds to conclude special assessments for local improvements to waterfront area were founded on a fundamentally wrong basis, as required for court to correct or annul special assessments, absent evidence showing that the valuations were inaccurate; study considered recent sales of comparable commercial and residential properties, explained how it calculated cost/benefit ratio by dividing total assessment cap by total estimated special benefit assessable to the properties, and detailed how special benefits were calculated, with spreadsheets for each owners' properties that showed detailed before and after valuations.

Property owners who challenged city's special assessments for local improvements to waterfront area failed to show assessments were grounded on fundamentally wrong basis due to city benefit study's lack of property-specific analysis, as required for court to correct or annul assessments, absent evidence showing that percentage increases were inaccurate; study adequately documented and explained its before and after-improvement property valuations, and since a mass appraisal rather than direct appraisal was conducted, city was not required to produce property-specific analysis sought by owners.

Property owners who challenged city's special assessments for local improvements to waterfront area failed to show assessments were arbitrary and capricious based on timing of property appraisal, as required for court to correct or annul assessments; owners contended that appraisal was completed too far in advance of improvements, but they provided no authority requiring that valuations be made immediately before special benefits attach, and they did not offer any evidence or argument suggesting that time between the appraisal and completion of improvements rendered valuations inaccurate.

City did not act arbitrarily and capriciously by instructing that its special benefit study treat separate local improvement district (LID) improvements as one continuous improvement when they were not, as required for court to correct or annul special assessments that were levied upon owners for improvements to waterfront area, where city complied with applicable statutes governing continuous and contiguous improvements.

Property owners who challenged city's special assessments for local improvements to waterfront area failed to show that city hearing examiner to whom owners presented their case misapplied presumption of correctness when examiner disregarded testimony from owners' expert witnesses, as required for court to correct or annul assessments, where record reflected that the examiner considered all the evidence and determined that city's evidence was more persuasive than owners' evidence.

City's process for special assessments in local improvement district (LID) was not arbitrary and capricious, as required for court to correct or annul special assessments, due to city's failure to independently review property owners' appeal of special assessment levied against them for improvements to waterfront area, where city appropriately chose to delegate review of appeal to a committee, as authorized by law.

Corporate and Municipal CUSIP Request Volumes Fall for Second Consecutive Month in July.

NORWALK, Conn., Aug. 14, 2024 (GLOBE NEWSWIRE) — CUSIP Global Services (CGS) today announced the release of its CUSIP Issuance Trends Report for July 2024. The report, which tracks the issuance of new security identifiers as an early indicator of debt and capital markets activity over the next quarter, found a slowdown in request volume for new corporate and municipal identifiers for a second consecutive month.

North American corporate requests totaled 6,391 in July, which is down 2.6% on a monthly basis. On a year-over-year basis, North American corporate requests closed the month up 7.9%. The monthly volume decline was driven by a 15.6% decrease in request volume for U.S. corporate debt and a 21.1% decrease in volume for Canadian corporate securities. Request volumes for short-term certificates of deposit (-10.1%) and longer-term certificates of deposit (-10.2%) also slowed in July.

The aggregate total of identifier requests for new municipal securities – including municipal bonds, long-term and short-term notes, and commercial paper – fell 18.1% versus June totals. On a year-over-year basis, overall municipal volumes are up 7.6%. Texas led state-level municipal request volume with a total of 180 new CUSIP requests in July, followed by New York (161) and California (67).

Continue reading.

CUSIP Global Services

Wed, Aug 14, 2024

Citi, UBS Leave Behind $50 Billion Muni Opportunity for Rivals.

- **Huntington leads Chicago sale as senior manager for first time**
- **San Antonio Water System picks Truist to underwrite, remarket**

From San Antonio to Chicago, US municipalities are inviting in new rosters of banks to manage borrowings after two big players' exits opened up a roughly $50 billion opportunity for firms that are still in the business.

Market heavyweight Citigroup Inc. and UBS Group AG began pulling away from munis over the last year, marking the biggest retreat in the sector since the financial crisis. While shrinking profit margins in the muni industry contributed to their decisions, other bulge-bracket firms and up-an--coming regional underwriters remain committed.

These muni players are eager to fill any gaps, and there's a big incentive: The shift is happening just as US state and local borrowers flood the market with record amounts of debt.

Continue reading.

Bloomberg Markets

By Shruti Singh

August 15, 2024

Shelved Muni Sales Return to Market After Volatility Eases.

- **Chicago originally planned to sell $643 million in debt Aug. 7**
- **Tennessee hospital system that delayed bond deal also priced**

Two municipal bond sales that were previously delayed during a particularly volatile stretch in fixed income markets were offered to investors Wednesday.

Chicago returned to the $4 trillion state and local government debt market one week later than planned, as did Erlanger Health, a hospital system based in Chattanooga, Tennessee. The sales come after two key economic data releases showed inflation easing — increasing confidence among investors that the Federal Reserve will cut interest rates in September.

The Windy City had originally planned to issue $643 million in tax-exempt bonds on Aug. 7 but moved the deal to day-to-day status to await a more stable market. Erlanger Health had delayed a roughly $316 million deal on Aug. 8, citing "recent market volatility and yield expectations falling short" of their targets.

Continue reading.

Bloomberg Markets

By Shruti Singh

August 14, 2024

Record Hiatus of Muni Bankruptcies Cheers Market — for Now

- **US pandemic aid, even inflation, propped up municipal coffers**
- **Strong credit cycle likely challenged by waning federal money**

Municipal bankruptcies are becoming a distant memory for tax-exempt bond investors thanks to the strength of US state and city balance sheets. Some strategists warn the sunsetting of federal aid may ratchet up credit fears.

Wednesday will mark a record 449 days since Hazel Hawkins Memorial Hospital filed for Chapter 9 protection on May 23, 2023, surpassing the previous longest stretch from June 2021 through September 2022, Bank of America Corp. analysts advised in a note last week. And it's been seven years since a bankruptcy-like filing for Puerto Rico rocked the market, as similar events by Jefferson County, Alabama, Detroit and Orange County, California, had in past decades.

Investors continue to flock to the muni market, helped by solid returns and improved issuer creditworthiness. State and local governments for the past few years have been buoyed by hundreds of billions in federal dollars allocated to provide financial stability during the pandemic era.

Continue reading.

Bloomberg Markets

By Erin Hudson

August 13, 2024

BofA Snubbed by Louisiana's GOP Treasurer in ESG Culture Wars.

- **Treasurer snubs bank's bid to serve as state fiscal agent**
- **Announcement marks latest skirmish in anti-ESG fight**

Fresh off a win in Louisiana, Bank of America Corp. was dealt a blow by a Republican official in the state.

On Monday, Louisiana State Treasurer John Fleming said he wouldn't recommend Bank of America's application to become a state depository and fiscal agent for the state — his counsel will be considered by an ad hoc panel. There are nearly 100 banks that have been approved to work as state depositories and fiscal agents, according to the state.

"It is my opinion and that of many Americans that financial institutions should not weigh in on matters involving a political viewpoint, either conservative or liberal," Fleming said in a statement, citing concerns that the company is denying banking services to certain clients like religious organizations and gunmakers.

Continue reading.

Bloomberg Politics

By Amanda Albright

August 13, 2024

Rare Zoo Bond Joins Muni Bond Sales Surge to Fund Expansion.

- **The $40 million sale marks biggest ever for Riverbanks Zoo**
- **Zoo expects to return to the muni market again in a few years**

In a summer that's shaping up to be one of the busiest ever for municipal bond sales, investors have snapped up deals financing everything from airport projects and public transit systems to school districts. This week, they lent $40 million to spruce up one of largest zoos on the East Coast.

The Riverbanks Zoo and Garden located in Columbia, South Carolina, raised the cash to finance a gondola, hillside primate forest and observation deck plus other enhancements. The facility, which spans 170 acres and houses thousands of animals, receives more than 1 million visitors each year.

Zoo bonds are a rarity in the municipal bond market, which has seen issuance surge this year and typically finances more traditional infrastructure like roads and schools. Riverbanks, for example, comes to market roughly once a decade to finance upgrades of its facilities, said the zoo's Chief Executive Officer and President Tommy Stringfellow. It can take years to construct and populate new exhibits, he said.

Continue reading.

Bloomberg Markets

By Erin Hudson

August 16, 2024

Fitch: U.S. NFP Hospitals May Be Nearing Return to 'Neutral'

Fitch Ratings-Austin/New York-15 August 2024: Despite ongoing challenges, recent positive developments could help U.S. Not For Profit hospitals achieve a 'Neutral' sector outlook sooner, according to Fitch Ratings analysts in a sector webinar yesterday.

According to sector head Kevin Holloran and senior director Mark Pascaris, hospital operations have stabilized, while the chasm between revenue growth and expense growth has leveled out. Fitch's 2023 statistics reveal 7.6% expense growth for hospitals versus 7% revenue growth, a more favorable comparison following the 9.5% expense growth against 5.8% revenue growth of 2022. However, credit 'trifurcation' remains an issue and will remain so well into 2025, according to Holloran, at which point the environment should start to normalize, with a credit 'bifurcation' emerging soon after.

According to Pascaris, the vast majority of NFP hospitals (65%-75%) will be somewhere in the middle, steadily working to improve operating margins. Additionally, struggles will intensify and may accelerate for 5%-10% of health systems, while an equal number on the opposite end of the spectrum will thrive in stronger markets.

Countering the recent moderate upswing are ongoing struggles for hospitals. Median days cash on hand continues to decline, dropping to 211.3 in 2023 from 216.2 in 2022, and down from a high of 260.3 in 2021. The imbalance between revenues and expenses remains a structural issue for the sector. Although the labor situation is improving, it still falls short of pre-pandemic levels. However, Holloran noted that the labor environment is stabilizing overall.

Improving labor productivity remains a high priority for NFP hospitals, with the advent of AI offering intriguing possibilities over time. Hospitals may need to redesign standard processes and partially incorporate AI advancements, although the significant cost of AI will be a limiting factor for many health systems.

Fitch's webinar follows the release of the agency's latest NFP hospital medians report, available at www.fitchratings.com.

Fitch: US Not for Profit Hospitals and Health Systems on a Slow Mend

Fitch Ratings-Austin/New York-15 August 2024: Fitch Ratings' medians for U.S. not-for-profit (NFP) hospitals and health systems indicate the sector is slowly beginning to recover following seismic post-pandemic revenue declines. Fitch addresses this trend in its latest Fitch Analytical Comparative Tool (FACT) for the sector.

"Liquidity has held steady for NFP hospitals over the last several months while median operating incomes are beginning to stabilize," said Fitch Senior Director Kevin Holloran. "However, the sector is grappling with stubborn inflation and formidable labor challenges. We are unlikely to achieve any degree of predictive normalcy for at least another year."

The FACT contains financial data for 218 hospitals and health systems that can be benchmarked against peers, medians and self-defined peer groups along with historical statistics and metrics going back to 2011. This report follows Fitch's latest medians for U.S. NFP hospitals published earlier this week.

The FACT includes a dashboard feature to graphically plot annual issuer metrics and median performance, a peer analysis tool that allows users to review and compare metrics of two issuers, and a charting tool that generates a comparison of issuer metrics against rating category medians.

'Not-for-Profit Hospitals and Healthcare Systems FACT' is available at 'www.fitchratings.com'.

Fitch: US NFP Children's Hospital Medians Hold Steady Even as Profits Fall Again

Fitch Ratings-Austin-14 August 2024: Medians for U.S. not-for-profit children's hospitals are still solid, although 2023 marked the lowest profitability level for the sector in a decade, according to Fitch Ratings in its latest annual medians report.

The operating environment for children's hospitals continues to be challenging as a result of increased staffing costs and year-to-year volume fluctuations from respiratory virus cases. Despite this, the standalone children's hospitals' median rating remains strong at 'AA-'. Even with a positive median operating margin, profitability is at the lowest level in 10 years with no easy to implement solutions available to generate a "v-shaped" recovery.

"Elevated labor expenses are an unavoidable reality for NFP children's hospitals," said Director Richard Park. "They must continue to seek creative solutions for this issue, as rate increases will not make up the gap on their own."

In the long term, children's hospitals will also face the effects of declining birth rates. Meanwhile, traditional adult acute care hospitals are looking to improve profitability by becoming full-service providers across all ages and care continuums. This includes the pursuit of growth in high acuity and margin service lines that are mainly provided at children's hospitals. Hospitals are also considering whether to incorporate AI into the daily operations of health care, with many likely to start adopting the technology to reduce administrative burden.

"Healthcare still remains a service industry centered around person-to-person interactions. Finding a way to augment a human's capabilities while improving the patient experience will be key to the industry's adoption of technology going forward," said Park.

Fitch's '2024 Median Ratios for Not-for-Profit Children's Hospitals' is available at 'www.fitchratings.com'.

Fitch 2024 Median Ratios for Not-for-Profit Children's Hospitals.

Fitch Ratings' 2024 children's hospital medians (using 2023 full-year audited data) show the industry working through a challenging period as the past two years have produced declining profitability, with 2023 exhibiting the lowest profitability level in 10 years. This is in contrast to the adult not-for-profit hospitals and healthcare systems sector, which is beginning to show signs of recovery after 2022 full-year audited results showed what was likely the worst year the sector has ever experienced as a whole. Despite the declines, median operating margins for 'AA' category children's and adult hospitals were both positive at 2.7% and 1.5%, respectively, in fiscal 2023. Fitch believes many highly rated organizations have relied upon robust balance sheets to navigate challenges and avoid layoffs/excessive cost-cutting measures to maintain patient safety/satisfaction and employee wellbeing.

Access Report

Wed 14 Aug, 2024

S&P: What The Loper Decision May Mean For U.S. Public Finance

The recent United States Supreme Court decision in *Loper Bright Enterprises v. Raimondo and Relentless Inc. v. Dept. of Commerce* (the Loper decision) overturned a 40-year precedent commonly referred to as the Chevron Doctrine. While the magnitude of the ruling will take years to unfold, S&P Global Ratings believe the Loper decision will likely influence the regulatory and policy landscape for U.S. public finance issuers and has several potential credit implications.

Decision Shifts Interpretation Of Ambiguous Statutes To Courts From Federal Agencies

The now overturned 1984 Chevron Doctrine directed courts to defer to federal agency interpretation to address statutory ambiguity, effectively providing them with significant influence over regulation and policy. The Chevron Doctrine has underpinned thousands of regulations under the umbrella of numerous federal agencies. Overturning Chevron limits the deference to federal agencies and shifts responsibility to the judicial system. Prior cases that relied on Chevron are subject to stare decisis (the principle that courts should mostly adhere to their past cases) and are not automatically overruled; however, this doesn’t preclude relitigating past cases or using the Loper decision to overturn or challenge regulations and statutes, which we believe may occur.

Continue reading. [Free Registration Required]

14 Aug, 2024

NaCo AI County Compass: A Comprehensive Toolkit for Local Governance and Implementation of Artificial Intelligence

The Artificial Intelligence (AI) Exploratory Committee was formed in May 2023 and tasked with analyzing the landscape of generative AI as it applies to counties.

Use the links below to download the AI Exploratory Committee’s full report or jump to key sections of the report. In the navigation above, find an impact summary for your county role, as well as report highlights customized for you.

Continue reading.

National Association of Counties

[New Tools Help Governments Tap Clean Energy Windfall.]

The Inflation Reduction Act includes tax credits that reimburse governments for clean energy investments. New online resources make the program more understandable and accessible.

In Brief:

- The Inflation Reduction Act includes tax credits for tax-exempt entities that can repay costs for clean energy projects.
- The program, which has not attracted the same level of attention as credits for private investment, is open to an unlimited number of applicants.
- The process for obtaining these credits is unlike that of any previous program, and online resources have recently been published to make it easier to navigate.

In the two years since the Inflation Reduction Act (IRA) was signed into law, IRA tax credits for private-sector clean energy projects have been widely celebrated and estimates of the investment they have sparked range from $125 billion to $265 billion. Credits that repay energy investments by public agencies and other tax-exempt organizations have received much less attention, but a new online tool aims to redress the imbalance.

Continue reading.

governing.com

by Carl Smith

Aug. 16, 2024

America Has a Hot Steel Problem.

Railways, roads, power lines, batteries—the heat of climate change is making them all falter.

A basic fact of thermodynamics is coming to haunt every foot of train track in the United States. Heat makes steel expand, moving its molecules farther apart, and as hot days become hotter and more frequent, rail lines are at risk of warping and buckling more often.

Any fix must deal with this fundamental truth of physics. Railroads can slow their trains down, which avoids adding more heat. Or they can leave gaps in a rail (or cut them as an emergency measure), which relieves pressure that causes track to bulge but means a potentially bumpier and slower ride. Painting tracks white would help deflect heat, but the paint would need to be reapplied frequently. Adapting to this reality will be expensive, and might ultimately just look as it does now: slow the trains, cut the track, issue a delay.

Our infrastructure is simply becoming too hot to function, or at least function well. High heat can also cause bridges to fail, for the same reason as with train tracks. Roads can buckle, thanks to the thermodynamics of concrete and asphalt. In Alaska, where permafrost is thawing into a substrate more akin to a waterbed, roads can resemble an undulating line of ribbon candy. Heat has two effects on power transmission, and “both of them are bad,” Bilal Ayyub, a civil-engineering professor at the University of Maryland, told me. One, heat reduces how much electricity power lines can deliver. Two, heat increases demand—everyone turns on their air conditioners in unison—further straining an already heat-strained grid, sometimes to its breaking point. (And those air conditioners need more power to run, because they're also less efficient in high temperatures.) Phone and car batteries drain more easily when heat speeds up their internal chemical reactions.

According to the U.S. Census Bureau, this country currently builds more than $2 trillion worth of new construction a year. Each piece of it might have a life span of 50 to 100 years, Ayyub said. What we build now will face circumstances the world of modern infrastructure has never seen. To keep up, engineers need to start designing for it now.

One obvious way forward would be to incorporate climate projections into building codes. Each time an engineer designs a piece of infrastructure, it must meet certain local codes meant to guard against the daily pressures of gravity and the vagaries of regional weather—ranges determined, until now, by looking at historical records. These codes are based on standards written by organizations including the American Society of Civil Engineers (ASCE) through a painstaking consensus process; incorporating the risks of rising heat counts as cutting-edge in this slow-moving world.

Right now, ASCE is in the midst of a six-year push to have building codes take future climate change into account, using research from the National Oceanic and Atmospheric Administration. (Ayyub, who helped incorporate flood risk into New Orleans's post-Katrina reconstruction plan, is part of that process.) But these codes are only recommendations; state and local governments decide whether to adopt them. And that choice can come down to political stances on climate change, in Ayyub's experience.

But building codes represent the bare-minimum level of safety and stability that a designer must adhere to. Another way to keep up with unprecedented changes is to build beyond that, in a way that embraces uncertainty and factors in failure, according to Mikhail Chester, the director of the Metis Center for Infrastructure and Sustainable Engineering at Arizona State University. Rather than assuming that systems built to withstand historical conditions are fail-safe, engineers and planners should focus on making them safe to fail, finding opportunities to minimize human harm. Power failures may be inevitable during a heat wave, but creating ancillary systems—such as community cooling centers and shade structures—can save lives in that situation.

Chester told me he has no doubt that engineers could design infrastructure to stand up to rising temperatures. To him, "the question is, at what cost?" Trying to "harden, strengthen, and armor" every piece of existing infrastructure to withstand climate hazards, including excessive heat, is economically impractical—and likely impossible. "You can't reengineer all of U.S. infrastructure as quickly as the climate is changing," Chester said.

The key, instead, will be to do triage. Some places need more attention than others: Chester pointed out that a newer city like Phoenix, where he lives, is actually more closely designed to withstand current conditions than a place like New York City, where many designs are based on older extremes. And some systems demand precedence: Water infrastructure and transportation systems are critical to life, for instance, but power systems supply them both. So designing resilient power systems ought to come first. But "the solution for it is costly," Ayyub said. It involves building more energy-storage capacity, updating a nation's worth of transmission lines (not to mention major permitting reform), and probably having a metering system in place to modulate how much power each user can access. "But it does require the users to agree to that," he added, and it may be a hard sell.

For now, the upward trajectory of heat is outpacing all construction ambitions, and forcing decisions about how best to balance affordability and risk. Energy is the biggest infrastructure challenge that both Ayyub and Chester foresee, but when it comes to things like train lines and other forms of built infrastructure, they're both hopeful that humanity will design ways to work around the heat. Humans are good at building things when they need to. But it's far easier for humans to fix their own machines than to fix large-scale biological systems; those are critical systems Ayyub is worried about more. Mass biodiversity loss concerns him first—that's unrecoverable once it's gone—along with food security and agriculture. Engineering can get us only so far.

The Atlantic

By Zoë Schlanger

August 14, 2024

[Biden Administration Announces More Than $2 Billion in Grants to Boost US Power Grid.]

The grid is overburdened, under-resourced — and vital to the energy transition. New federal funding aims to increase capacity and get more clean energy built.

The U.S. power grid is overburdened and under-resourced — and the Biden administration just announced a major investment aimed at helping solve those problems.

The Department of Energy has offered $2.2 billion to eight projects across 18 states that could expand and strengthen the grid. The projects range from deploying grid-enhancing technologies that boost the capacity of existing power lines to building brand-new high-voltage transmission cables that will enable wind farms in the Great Plains and off the coast of New England to plug into the grid.

Tuesday's announcement represents another significant federal investment in the U.S. transmission grid, which isn't growing fast enough to allow clean energy to come online at the pace needed to combat climate change. Energy experts warn that without a doubling or tripling of existing grid capacity, the country will fail to hit the Biden administration's goal of halving carbon emissions by 2030.

Continue reading.

Route Fifty

By Jeff St. John,
Canary Media

August 14, 2024

[Airports to Get $566M More for Improvements.]

To date, nearly half of the nation's 3,000 airports have received federal funding to upgrade aging infrastructure and expand facilities amid record-breaking air travel.

Nearly 300 grants were awarded to airports across the country Tuesday to revamp runways, terminals, security checkpoints, parking garages and other airport infrastructure, according to the Biden administration.

The Federal Aviation Administration handed out more than $566 million to facilities in 47 states as part of a grant program to modernize airports that was included under the 2021 infrastructure law. This is the ninth funding announcement by the FAA this year. In total, $2.89 billion will be allocated in 2024—the third year in a five-year, $15 billion grant program.

Most notably, about half the nation's 3,000 airports have received funding to date through the Airport Infrastructure Grants program, according to the administration. Some of those projects have even been completed, including a taxiway at San Diego International Airport in California.

Continue reading.

Route Fifty

By Elizabeth Daigneau,
Executive Editor, Route Fifty

August 13, 2024

Congress Could Ease Rules for Small Cities Seeking Transportation Money, Experts Say.

Discretionary grants give the president's administration—and members of Congress—an opportunity to shape transportation policy. But applying for and administering them can be a challenge for local governments.

One of the many changes that the 2021 federal infrastructure law made to transportation policy was giving local governments more opportunities to apply directly for federal grants, rather than depending on their state government.

But Congress is likely to scrutinize—and possibly change—those discretionary grant programs when they craft the next surface transportation bill, two transportation experts told a gathering at the National Conference of State Legislatures annual conference last week, in part to make the application process more user-friendly.

"We opened up grant opportunities more to local governments and to metropolitan planning organizations that have not always had the ability to directly apply for federal transportation dollars," said Jordan Baugh, the senior policy advisor for the Democratic members of the U.S. Senate Committee on Environment and Public Works. "That's created opportunities, but also a lot of challenges, particularly for smaller cities that don't have a large transportation or public works department."

Continue reading.

Route Fifty

By Daniel C. Vock,

Senior Reporter, Route Fifty

August 12, 2024

Illinois Senior-Living Default Spurs Bondholders to Hire Adviser.

- **FTI hired as adviser for holders of $150 million of munis**
- **Lutheran Life Communities owns three facilities in Illinois**

Investors holding about $150 million of municipal bonds issued to refinance debt of an Illinois senior-living operator hired a financial adviser after the non-profit defaulted on a separate series of obligations.

Majority holders of the non-rated debt sold in 2019 on behalf of Lutheran Life Communities hired FTI Consulting, Inc. to advise on a potential long-term forbearance or debt restructuring, according to a securities filing Wednesday. Lutheran Life operates three continuing care communities in Illinois and one in Indiana.

The hiring came after the non-profit failed to make an Aug. 1 payment on about $25 million of floating-rate debt that was also sold in 2019. A May filing shows that First Midwest Bank, which merged with Old National Bancorp. in 2022, held that portion as of March 31. Kathy Schoettlin, a spokesperson for Old National, didn’t respond to a request for comment.

Continue reading.

Bloomberg Markets

By Martin Z Braun

August 14, 2024

California Schedules $2.5 Billion Tax-Exempt Bond Offering.

California is planning to sell $2.5 billion of tax-exempt general obligation bonds later this month, the state’s second largest offering this year.

Proceeds from the sale will be used to finance voter-approved projects, pay down outstanding commercial paper and refund outstanding general obligation bonds, according to ratings documents provided by Fitch Ratings, which scores the debt AA.

The bonds will price in a negotiated sale on Aug. 27. Bank of America Corp. and Barclays PLC. are joint senior managers.

New sales of tax-exempt bonds in California have been gobbled up by buyers looking to shield income from the state’s high taxes and to lock in yields before anticipated rate cuts by the Federal Reserve later this year. California, home to more billionaires than any other state and hundreds of thousands of millionaires, levies a rate of at least 13.3% on its highest earners.

The desire for tax-advantaged investments means California bond deals can sell at yields lower than AAA-rated benchmark muni securities. The Trustees of the California State University sold $671 million of tax-exempt bonds on Aug 5 with yields as much as 26 basis points below that benchmark, according to data compiled by Bloomberg.

California State Treasurer Fiona Ma is planning at least another six municipal bond offerings in 2024, including two in September intended to beef up services for veterans, according to a press release published by the treasurer's office.

Bloomberg Markets

By Maxwell Adler

August 16, 2024

S&P Second Party Opinion: Caritas Affordable Housing Calif. Mobile Home Park Senior Revenue Bonds Series 2024

S&P Global Ratings assesses Caritas Affordable Housing Inc.'s Calif. Mobile Home Park Senior Revenue Bonds Series 2024 as aligned with Social Bond Principles, ICMA, 2023. CAH is a 501(c)(3) public benefit corporation based in Irvine, Calif. Along with its sister organization, Caritas Corp., it provides and maintains affordable housing to residents in California.

Download

Nossaman: Water Alternative Delivery in CA

Through recent updates to California's Public Contract Code, public agencies are being equipped with new tools to deliver major infrastructure projects through use of the progressive design-build (PDB) model. As more public agencies gain access to the legislative tools available to use PDB, we expect to see an increasing number of water projects undertaken and completed successfully under the PDB or other early contractor delivery methods.

In Nossaman's California Water Views – 2024 Outlook, I examine the differences between PDB and fixed-price design-build (DB) projects as well as the benefits of and best practices for utilizing a PDB delivery model.

By Elizabeth Cousins on 08.02.2024

Rockefeller Joins Muni ETF Boom With Three High-Yield Funds.

- **Muni funds investing in lower-rated bonds have been in demand**
- **ETFs will be managed by trio who were previously at Invesco**

Rockefeller Asset Management is the latest money manager to capitalize on the muni ETF boom.

The New York-based division of Rockefeller Capital Management is launching its first actively managed fixed income exchange-traded funds. The products, which will be managed by a trio of portfolio managers who joined earlier this year from Invesco Ltd., will focus on lower-rated bonds.

There are now more than 100 muni ETFs with a combined $131 billion as asset managers vie to capture money that's been flowing into the low-cost and easy-to-trade products. Goldman Sachs Asset Management and PGIM have both launched new funds this year.

Continue reading.

Bloomberg Markets

By Amanda Albright

August 14, 2024

Novogradac 2024 Housing Tax Credit and Bonds Conference.

September 26, 2024 to September 27, 2024 | Four Seasons New Orleans

Click here to learn more and to register.

New York Sells $144.6 Million of Municipal Bonds on Behalf of Pace University.

The Dormitory Authority of the State of New York sold $144.6 million of tax exempt revenue bonds on behalf of Pace University to refund existing debt.

The sale includes $84.6 million of Series 2024B municipal bonds with maturities ranging from 2025 through 2042, according to an official statement posted Tuesday on MuniOS. Bonds due in 2034 have an interest rate of 5%, yield 3.54% and priced at 111.864.

The $60 million of Series 2024C bonds are variable rate securities. The interest rate payable to investors who hold the debt will be set on a weekly basis. The bonds can be redeemed starting in 2037 and reach final maturity in 2044. Pace has the option to convert the bonds to bear interest at a daily, commercial paper, term or fixed rates, among others.

The first floating rate determination date is scheduled for Sept. 5.

Proceeds will be used to refund bonds sold on Pace's behalf in 2013 and 2014 by the authority and the Westchester County Local Development Corp.

Pace had operating revenue of $434.8 million in fiscal year 2023, according to the school's website.

Founded in 1906 as a school for accounting, Pace had total enrollment of 14,092 undergraduate and graduate students for the 2023-24 academic year, and operates three campuses in New York City and Westchester County. The school had about $306.7 million of debt outstanding as of July 30.

The bonds are rated BBB- by S&P Global Ratings and Baa3 by Moody's Investors Service.

BofA Securities was the underwriter.

Provided by Dow Jones

Aug 14, 2024 11:04am

By Patrick Sheridan

Write to Patrick Sheridan at patrick.sheridan@wsj.com

(END) Dow Jones Newswires

August 14, 2024 14:04 ET (18:04 GMT)

Novogradac 2024 Historic Tax Credit Conference.

October 10, 2024 to October 11, 2024 | InterContinental Kansas City at the Plaza

Click here to learn more and to register.

GASB Chair: SEC's Financial Data Transparency Rule Aligns with Expectations, but Raises Industry Concerns

Governmental Accounting Standards Board (GASB) Chair Joel Black told trustees on August 13, 2024, that the SEC's proposed rule on financial data transparency was largely in line with expectations, but has sparked concerns in the municipal securities industry over the fate of financial securities identifiers.

The SEC's proposal, issued last week, aims to improve transparency and accountability in government financial data, but has already drawn attention for its impact on the industry. Black said the proposal was as largely expected, but noted that the industry is likely to push back on the use of bond identifiers.

The surprise in the rule is the elimination of QSIPs (Qualified Statistical Information Providers) in reporting to the Municipal Securities Rulemaking Board (MSRB), Black said. "That I think is going to have a lot of the municipal securities world in somewhat of a reactive phase."

The proposed SEC rule is part of the Federal Data Transparency Act (FDTA), which seeks to standardize government financial reporting. While the GASB has been monitoring the rule-making process, Black said the industry is still digesting the implications of the proposal.

"They stayed pretty broad and so I think the impact on us and what ultimately may come to the municipal securities environment from the SEC specifically when they do their more specific rule making say two years from now hasn't been impinged upon," said Black. "So I think that we haven't been impacted yet," he said. "That more future rule-making will probably be much more impactful."

Black's remarks were response to a question from FAF Trustee Beth Pierce, who inquired about the SEC's proposal and its potential impact on the GASB's work. She noted that the FDTA was frequently raised in the past by the GASB, which has been working on a taxonomy to make financial information filed with financial regulators standardized for digital use.

The FDTA was passed in 2022 to make it easier for agencies to share and analyze data, and for the public to access and understand government financial information. To achieve this, the law requires federal agencies to adopt standardized data formats and identifiers for reporting financial information.

The implementation of the FDTA is being carried out through a phased approach, with different agencies and stakeholders playing a role in its implementation. The SEC is one of the key agencies involved in implementing the FDTA, and its proposed rule on financial data transparency is part of this effort.

Specifically, the SEC's proposal aims to make it easier for agencies to share and analyze data, and businesses will need to align their reporting practices with the new standards. (See SEC Issues Joint Proposal Under Financial Data Transparency Act in the August 6, 2024, edition of Accounting & Compliance Alert.)

Thomson Reuters

Denise Lugo Editor, Accounting and Compliance Alert

August 14, 2024

Vanguard is Joining the Active Muni ETF Fray.

The Jack Bogle-founded fund giant is bolstering its fixed-income shelf with actively managed municipal bond strategies.

Vanguard is joining the growing circle of asset managers venturing into an appealing corner of the fixed-income ETF space.

On Friday, the mutual fund behemoth announced plans to expand its lineup of actively managed fixed income products by introducing two new municipal bond ETFs later this year.

The firm said it intends to launch the Vanguard Core Tax-Exempt Bond ETF and the Vanguard Short Duration Tax-Exempt Bond ETF, which will be both managed by its fixed income group.

Continue reading.

investmentnews.com

by Leo Almazora

August 16, 2024

Exploring New IIJA Bond Categories: CDFA Webcast

Tuesday, September 17, 2024 | 2:00 PM – 3:00 PM

The Infrastructure Investment and Jobs Act (IIJA) created two new qualified uses for private activity bonds – carbon capture and broadband – yet few projects have successfully made use of these new categories since the IIJA's enactment in 2021. During this installment of the CDFA // BNY Development Finance Webcast Series, panelists will provide an overview of these two new categories and illustrate how they might be better utilized in communities across the country.

Click here to learn more and to register.

2024 California Economic Summit.

Registration for the 2024 California Economic Summit is now open! This year's Summit will be held in Sacramento, CA on October 8-10.

Taking place at SAFE Credit Union Convention Center, the Summit takes a step back to consider the major forces shifting the global economy and how California can and must find new and innovative ways to ensure a more sustainable, resilient, and inclusive future.

We'll provide big-picture context on global trends, then discuss innovative solutions across manufacturing, housing, infrastructure, and energy—all with the core focus on how our diverse and vibrant regions can work together to build a better future for all Californians.

The Summit's opening night reception will be hosted by the Latino Community Foundation and CEO Julián Castro; additional confirmed speakers so far include Dr. Kimberly Budil, Director, Lawrence Livermore National Laboratory; Niilo Edwards, CEO, First Nations Major Projects Coalition; Don Howard, President & CEO, James Irvine Foundation; and Francisco Leon, CEO, California Resources Corporation.

Regional tours and specific breakout session details coming soon—subscribe to our newsletter for up-to-date information on the program, additional speakers, and more!

Early bird registration is available until August 31. Register now to join us October 8-10 in Sacramento!

CIM-Backed Revamp of Atlanta Downtown to Tap Muni Market

- **Muni bond sales to help fund Atlanta megadevelopment**
- **Developer CIM Group backed Miami Worldcenter earlier this year**

A CIM Group affiliate is tapping the municipal-bond market to help finance a $4.2 billion megadevelopment intended to transform a downtown section of Atlanta from parking lots into apartments and shops.

JPMorgan Chase & Co. — which plans to provide a $175 million loan for part of the project — is serving as underwriter on two municipal debt deals totaling $556 million associated with the development. Both issues are being sold through the Atlanta Development Authority.

Real estate developer CIM Group is shepherding the project that will add more than 2,600 apartments and more than 2,900 hotel rooms, as well as space for retailers and a data center. The area is currently known as the Gulch, and it's a defunct rail yard where Atlanta residents gather to tailgate in parking lots before NFL games.

Continue reading.

Bloomberg Markets

By Sri Taylor and Amanda Albright

August 15, 2024

- What Cyberattacks Do To Municipal Issuers' Borrowing Costs: Brookings
- Cyberattacks Still Ravage Schools, Defying White House Efforts Launched Last Year.
- Competitive Underwriters Face Mounting Pressure, Competition.
- GFOA On-Demand Accounting Courses.
- Orrick: FINRA Fines Firm for Bond Markups and Failure to Comply with Fair Pricing Regulations
- And Finally, You Say It Like It's A Bad Thing is brought to us this week by *Jacobs v. City of Columbia Heights*, in which a city council member – Kay Jacobs – found herself facing a recall after she, "used a fake name and made derogatory comments about the heritage and family background of a person running for city council during a telephone call with that person." This rocket surgeon called the candidate from her own mobile, which displayed the name "Jacobs Kay" on the candidate's phone. After careful sleuthing, it was suggested that – just possibly – "Jacobs Kay" was in fact Kay Jacobs. We know, tenuous at best. Kay's improvised alibi was that, "the call was likely made by her husband's niece, a woman she described as having 'low-level mental health issues.'" How's that for getting tossed under the monorail? I'm not sure that Kay understands that, for many of us, "*low-level* mental health issues" is not a criticism, but rather an aspiration

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ZONING & PLANNING - ALABAMA

City of Helena v. Pelham Board of Education

Supreme Court of Alabama - August 2, 2024 - So.3d - 2024 WL 3629519

City filed a complaint against board of education of neighboring city, seeking declaratory and injunctive relief based on its proposition that the board's construction of athletic fields on land that board owned but that was located within plaintiff's city corporate limits violated plaintiff city's zoning ordinance.

Board filed a counterclaim seeking monetary damages and declaratory and injunctive relief based on its claim that it was not subject to plaintiff city's zoning ordinance.

The Circuit Court granted the board a preliminary injunction. Plaintiff city appealed. The Supreme Court reversed and remanded. On remand, the Circuit Court entered judgment that plaintiff city lacked the authority to enforce its zoning ordinance against the athletic-field-construction project. Plaintiff city appealed.

The Supreme Court held that:

- The judgment was appealable as an interlocutory order on a request for injunctive relief;
- Statute stating general powers of a city board of education did not preclude the board from pursuing the athletic-field-construction project; and
- City was not permitted to enforce its zoning ordinance as to the project.

Trial court's judgment that city lacked authority to enforce its zoning ordinance against neighboring city's board of education as to board's construction of athletic fields on land that board owned and that was within city's corporate limits was appealable as an interlocutory order on a request for injunctive relief, even though court ostensibly was granting declaratory relief; both sides in the dispute had sought injunctive relief, trial court refused city's request for an injunction, and the order appeared, at least in part, to be injunctive in nature since it required city not to enforce its zoning ordinance with respect to the particular property and it expressly explained why board had sustained an irreparable injury and also lacked an adequate remedy at law.

Statute stating general powers of a city board of education did not preclude city board from constructing athletic fields on land that board owned but that was within a neighboring city's corporate limits; statute granted board all powers necessary or proper for administration and management of high school, which was located within corporate limits of board's city, those powers included purchase of property and development of property for management of high school, and statute did not set territorial limits on board's powers.

City was not permitted to enforce its zoning ordinance against property that was within city's corporate limits but that neighboring city's board of education owned and wished to develop into athletic fields; city boards of education, in their governance of public education, were agencies of the State, and board's construction of athletic fields on the property constituted the State operating in city's territory.

PUBLIC UTILITIES - CALIFORNIA

California Community Choice Association v. Public Utilities Commission

Court of Appeal, First District, Division 4, California - July 15, 2024 - 323 Cal.Rptr.3d 322

Organization that represented interests of community choice electricity aggregation programs filed petition for judicial review that sought reversal of Public Utilities Commission's (PUC) resolution setting effective dates for programs' expansions and its decision denying rehearing of the resolution.

The Court of Appeal held that:

- Organization had associational standing;
- PUC's resolution and decision were subject to limited scope of review;
- PUC had jurisdiction to set effective date to expand programs; and
- PUC did not abuse its discretion in setting effective date for programs' expansion based on concerns regarding future cost shifting.

Organization that represented interests of community choice electricity aggregation programs had standing under associational standing doctrine to file on programs' behalf a writ petition for judicial review of Public Utilities Commission’s (PUC) resolution setting effective dates for programs’ expansions and decision denying rehearing of the resolution, where there was no reason to question whether programs would otherwise have standing on their own, organization was seeking to protect interests that were germane to its purpose, and programs’ participation was required.

Public Utilities Commission’s (PUC) resolution setting delayed effective dates for community choice electricity aggregation programs’ expansions and its decision denying rehearing of the resolution were quasi-legislative, rather than quasi-adjudicative, and thus, it was subject to limited scope of review under statute applicable to any proceeding other than the enumerated proceedings that were subject to full review standard; PUC determined, as a matter of policy or discretion, that expansions for the two programs should be delayed in order to ensure that expansion did not result in specific type of cost shifting, and decision did not specifically involve a complaint or enforcement proceeding or ratemaking or licensing decision of specific application that was addressed to particular parties.

Public Utilities Act section pertaining to aggregation of customer electric loads with community choice aggregators provided the Public Utilities Commission (PUC) jurisdiction to delay expansion dates of community choice aggregation programs upon conclusion that such expansion would result in impermissible cost shifting; statute prohibited a community choice aggregation program from furnishing electricity to customers until PUC had determined cost recovery that must be paid by customers of that program and that PUC must designate earliest possible effective date for implementation of a community choice aggregation program, taking into consideration impact on any annual procurement plan of the electrical corporation that has been approved by PUC.

Public Utilities Commission (PUC) did not act arbitrarily, capriciously, or entirely without evidentiary support in setting an effective date for expansion of two community choice electricity aggregation programs that was one year after date proposed by programs in their implementation plans, based on concerns that expansion would result in future cost shifting; given programs’ history of resource deficiencies, which purportedly resulted in cost-shifting to non-customers, and programs’ failure to present any evidence demonstrating that they had adequately addressed resource adequacy going forward, it was not unreasonable to conclude that programs’ failure to procure adequate resources would result in greater cost shifting in they were permitted to expand to serve more customers.

LIABILITY - CALIFORNIA

West Contra Costa Unified School District v. Superior Court of Contra Costa County

Court of Appeal, First District, Division 5, California - July 31, 2024 - Cal.Rptr.3d - 2024 WL 3593932

High-school student who was allegedly the victim of sexual assaults by a school district employee brought action against school district, alleging negligence, negligence per se, negligent hiring, retention, and supervision of an unfit employee, negligent supervision of a minor, and negligent failure to warn, train, or educate.

The Superior Court overruled school district’s demurrer to the extent it was based on constitutional prohibition of gifts of public funds. School district petitioned for writ of mandate, and contended that law resurrecting extinguished childhood sexual assault claims against public entities violated school district’s right to due process under both the federal and California Constitutions.

The Court of Appeal held that:

- Retroactive waiver of Government Claims Act’s (GCA) claim presentation requirement was not a gift of public funds;
- Law served valid public purpose; and
- School district lacked standing to assert claim that law violated right to due process.

Retroactive waiver of Government Claims Act’s (GCA) claim presentation requirement for consent to suit by law providing a three-year window within which plaintiffs were permitted to bring childhood sexual assault claims that were otherwise barred by a lapsed claim presentation deadline did not create new substantive liability for the underlying alleged wrongful conduct, and thus law was not a “gift of public funds,” within meaning of constitutional prohibition against gift of public funds; school district’s substantive liability existed independently of GCA’s claim presentation requirement when the alleged wrongful conduct occurred, and timely presentation of a claim was a condition to waiver of government immunity, but it was not necessary to render underlying conduct tortious.

Law providing a three-year window within which plaintiffs were permitted to bring childhood sexual assault claims that were otherwise barred by statutes of limitations or lapsed government tort claim presentation deadlines served valid public purpose of providing relief to victims of childhood sexual assault who failed to file timely claims by providing an opportunity for them to obtain compensation from public entities that employed abusers, so that public purpose exception to constitutional prohibition against gift of public funds applied, regardless of any deterrence as to future sexual assaults; class of persons benefited by law was sufficiently defined, even if victims were required to prove their eligibility for compensation in individual lawsuits.

School district forfeited argument that it had standing to assert constitutional rights of current students negatively impacted by potential liability under law that provided a three-year window within which plaintiffs were permitted to bring childhood sexual assault claims against public entities that would otherwise have been barred because of statutes of limitations or Government Claims Act’s (GCA) claim presentation requirements, by making argument for the first time at oral argument.

EMINENT DOMAIN - FEDERAL

Russellville Legends, LLC v. United States

United States Court of Federal Claims - July 24, 2024 - Fed.Cl. - 2024 WL 3516861

Property owner filed Fifth Amendment takings claim against government based on Army Corps of Engineers’ denial of owner’s application for permit to add fill and construct housing on property over which Corps had previously purchased flowage easement and then later executed consent agreement with previous owner, permitting him to add up to 7,000 cubic yards of fill to property in easement area.

Government moved to dismiss for failure to state claim.

The Court of Federal Claims held that:

- Owner lacked property interest in executing proposed housing project;
- Corps did not release flowage easement when executing consent agreement;
- Owner had no rights under consent agreement; and
- Owner failed to state claim for regulatory taking.

Property owner lacked cognizable property interest in freely constructing housing on its property, as would be required for owner to state takings claim seeking just compensation based on Army Corps of Engineers' denial of owner's application for permit to add fill and construct housing on property over which Corps had purchased flowage easement from previous owner, since Corps asserted pre-existing limitation on owner's title in that flowage easement over property was in effect when owner purchased property and gave government perpetual right to overflow, flood, and submerge land within easement, prohibited structures for human habitation in easement, and required Corps' approval for construction of any other structures and/or appurtenances, due to flooding risks.

Under Arkansas law, Army Corps of Engineers did not release its rights to flowage easement over current owner's property by executing consent agreement, stating that government "gives consent" to predecessor owner for placement of fill material onto easement, and thus, current owner lacked cognizable property interest in constructing housing on property that owner alleged passed to it upon purchasing property from predecessor, as would be required for owner to state takings claim based on Corps' denial of owner's application for permit to add fill and construct housing on property, since agreement did not contain words of transfer, as term "gives" only referred to consent, not to easement rights, and parties did not intend for government to release its rights under easement.

Under Arkansas law, owner of property had no rights under consent agreement, stating that government "gives consent" to predecessor owner for placement of fill material onto Army Corps of Engineers' flowage easement over property, and thus, current owner lacked cognizable property interest in constructing housing on property that owner alleged passed to it upon purchasing property from predecessor, as would be required for owner to state takings claim based on Corps' denial of owner's application for permit to add fill and construct housing on property, since agreement did not run with land because Corps granted consent to predecessor owner personally.

Penn Central factor considering economic impact of the alleged regulatory taking weighed against finding regulatory taking based on Army Corps of Engineers' denial of property owner's application for permit to add fill and construct housing on property over which Corps held flowage easement and had executed consent agreement with previous owner, permitting him to add up to 7,000 cubic yards of fill to property in easement area, since owner alleged that denial of permit caused property to decrease 55% in value, but that was on low end of spectrum of loss in value for which just compensation was required, and damage to owner's intended business of constructing housing on property was not compensable under Takings Clause.

OPEN MEETINGS - MICHIGAN

[Pinebrook Warren, LLC v. City of Warren]

Supreme Court of Michigan - July 31, 2024 - N.W.3d - 2024 WL 3610190

Unsuccessful applicants for medical marijuana dispensary licenses brought action against city, alleging violations of Open Meetings Act (OMA) during the applicant selection process by city's medical marijuana review committee.

License recipients intervened.

The Circuit Court granted applicants' motion for partial summary disposition, denied city's cross-motion for summary disposition, and denied recipients' motion for reconsideration. All parties appealed. The Court of Appeals affirmed in part, reversed in part, and remanded. Applicants sought leave to appeal, which was granted.

The Supreme Court held that medical marijuana review committee was a “public body” subject to OMA requirements.

City’s medical marijuana review committee satisfied the definition of “public body” under the Open Meetings Act (OMA), and thus committee was required to comply with OMA when considering applications for medical marijuana dispensary licenses, even though city’s marijuana ordinance stated that committee had only the power to make recommendations, where ordinance empowered committee to exercise the governmental function of scoring applications, committee’s scoring of applications went to the essence of who would be selected for a license, and city council voted to approve applications that were the most highly ranked by committee without any independent consideration of the merits of applications.

Language in city’s marijuana ordinance stating that license applications and plans for medical marijuana dispensaries were to be transmitted to city’s medical marijuana review committee for approval did not mean, on its face, that the committee could approve applications for dispensary licenses; in context, the language meant that the committee was the body to whom applications were first submitted, and ordinance made clear that only city council could approve dispensary licenses.

City council delegated its job as a public body to city’s medical marijuana review committee with respect to applications for medical marijuana dispensary licenses, and thus committee was subject to the requirements of the Open Meetings Act (OMA), where city’s marijuana ordinance empowered committee to score license applications, committee scored applications, and city council voted to approve applications that were the most highly ranked by committee without any independent consideration of the merits of applications.

ELECTIONS - MINNESOTA

Jacobs v. City of Columbia Heights

Supreme Court of Minnesota - July 24, 2024 - N.W.3d - 2024 WL 3514670

Elected member of city council filed a petition seeking to invalidate the recall petition filed against her and to cancel the special recall election scheduled by the city.

The District Court denied council member’s petition. The Supreme Court granted council member’s petition for accelerated review.

The Supreme Court held that recall petition’s allegation that council member made racially insensitive comments to candidate and subsequently lied about the incident failed to allege malfeasance or nonfeasance, the constitutional prerequisites to recall an elected municipal official, and consequently failed to lawfully trigger a special recall election.

POLITICAL SUBDIVISIONS - MONTANA

Town of Kevin v. North Central Montana Regional Water Authority

Supreme Court of Montana - July 30, 2024 - P.3d - 2024 WL 3579464 - 2024 MT 159

Town brought action against regional water authority, seeking a declaratory judgment under the

Uniform Declaratory Judgment Act (UDJA) that the town was not, and never had been, a member of regional water authority, among other declaratory relief, and also seeking attorney fees.

Following a bench trial, the District Court entered judgment for town, and, following a hearing, granted town's motion for attorney fees. Regional water authority appealed attorney fee award.

The Supreme Court held that:

- UDJA provides a legal basis for attorney fees between two governmental subdivisions when appropriate, and
- Equities and tangible parameters supported award of attorney fees to town.

The Uniform Declaratory Judgment Act (UDJA) provides a legal basis for attorney fees between two governmental subdivisions when appropriate.

Equities and tangible parameters supported award of attorney fees to town under the Uniform Declaratory Judgment Act (UDJA) in its action against regional water authority seeking a declaration that it was not a member of the authority, even if water authority did not act in bad faith; town, which had approximately 175 residents, paid over $55,000 in legal fees, while water authority could spread out its costs over a much larger base and had access to grant funding from the state for much of the litigation, water authority possessed what the town needed and it was necessary to seek a declaration to get the relief and change the status quo, and town offered to settle the case numerous times and the water authority never seriously entertained the possibility of settlement but forced it to trial because it did not want to set a precedent for other members to withdraw.

MUNICIPAL CORPORATIONS - TEXAS

Rhone v. City of Texas City, Texas

United States Court of Appeals, Fifth Circuit - August 6, 2024 - F.4th - 2024 WL 3664535

Owner of three apartment buildings in city brought appeal, in state district court, from order of nuisance abatement issued by a Municipal Court of Record, asserting claims under § 1983 for inverse condemnation, denial of procedural due process, and unconstitutional seizure, and seeking declaratory judgment.

After removal by city, the United States District Court for the Southern District of Texas granted summary judgment to city on due process claim, and later granted summary judgment to city on remaining claims. Owner appealed and filed motion to restrain and enjoin damage to or demotion of buildings. The Court of Appeals denied the motion without prejudice, and buildings were demolished by city during pendency of appeal. The Court of Appeals ordered limited remand. On remand, the District Court conducted evidentiary hearing on city attorney's role in finalizing the Municipal Court's order of abatement and the effect of his role on the validity of that order.

The Court of Appeals held that city attorney's typed signature under phrase "approved as to form, substance, and entry" was formulaic way of explaining city attorney's acceptance of order.

Language in Texas municipal court's nuisance abatement order with city attorney's typed signature under phrase "approved as to form, substance, and entry" was formulaic way of explaining city attorney's acceptance of order, and the city attorney's and municipal judge's actions were therefore appropriate in apartment building owner's suit challenging abatement order; municipal judge did not need city attorney's approval before entering the order.

PUBLIC EMPLOYMENT - VIRGINIA

Williams v. Rappahannock County Board of Supervisors

Court of Appeals of Virginia, Arlington - August 6, 2024 - S.E.2d - 2024 WL 3657071

Removed officers and directors of volunteer fire company filed complaint against county board of supervisors, board members, and company for declaratory judgment, injunctive relief, and judicial review of election of directors, alleging board's removal of plaintiffs violated company's certificate of incorporation, bylaws, and the Code of Virginia.

The Circuit Court granted defendants' pleas in bar. Plaintiffs appealed.

The Court of Appeals held that statute mandating that fire chief and other officers be appointed in counties in which fire company was established did not authorize board to remove company's officers and directors.

Assuming that statute mandating that a fire chief and other officers be appointed in counties in which a fire company was established applied to volunteer fire company incorporated as a nonstock corporation, the statute did not authorize county's board of supervisors to remove company's officers and directors, supporting removed officers and directors' claims against county board of supervisors, company, and others for declaratory judgment, injunctive relief, and judicial review challenging board's resolution removing plaintiffs and appointing new officer and directors; statute only used the word "appointed" rather than "appointed and removed."

NEGLIGENCE - VIRGINIA

Marlowe v. Southwest Virginia Regional Jail Authority

Court of Appeals of Virginia, Christiansburg - July 30, 2024 - S.E.2d - 2024 WL 3571803

Pre-trial detainee who was injured during transport to regional jail after being processed brought action against regional jail employee who drove transport van, alleging gross negligence.

The Wise Circuit Court sustained employee's demurrer, but denied employee's plea in bar asserting that prisoner's claims were barred by the statute of limitations. Parties cross-appealed.

The Court of Appeals held that:

- Deadline for claim was tolled pursuant to COVID-19 judicial emergency orders;
- Status as pre-trial detainee was immaterial; and
- Detainee was confined in a local correction facility when claim accrued.

Deadline for pre-trial detainee's two-year claim for personal injury was tolled pursuant to COVID-19 judicial emergency orders that applied to all case-related deadlines for 126-day period.

Status as pre-trial detainee was immaterial to determination of applicability of one-year statute of limitations period that applied to claims concerning conditions of confinement, in detainee's action alleging gross negligence in connection with conditions of confinement regarding manner in which detainee was restrained and transported from processing facility to regional jail.

Pre-trial detainee was confined in a local correction facility when detainee's claim against regional jail employee who drove transport van accrued, alleging gross negligence in connection with conditions of confinement regarding manner in which detainee was restrained and transported from processing facility to regional jail in van owned by regional jail, and thus one-year statute of limitations for conditions of confinement claims applied to detainee's gross negligence claim.

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NASBO: Most States End Fiscal 2024 Near Revenue Forecast

Despite minimal growth in tax collections in fiscal 2024, most states ended the year near their revenue forecast based on newly released end-of-year revenue totals. Comparing actual collections to forecasts is a better indicator of state revenue performance than year-over-year growth figures which, in many states, have been considerably impacted by recently enacted tax cuts. Early indications are that the majority of states closed fiscal 2024 with revenues above original forecasts, with many also seeing revenues come in above revised forecasts. Most states that saw revenues come in lower than revised forecasts were below projections by less than one percent. Some states with revenues below forecast in fiscal 2024 noted spending was below forecast as well, resulting in an end-of-year budget surplus. While most states are reporting a fourth consecutive year of surpluses, their size in nearly all cases is smaller than the substantial surpluses experienced in fiscal 2021 and fiscal 2022. Similar to fiscal 2023, states are directing these smaller surpluses to a variety of purposes including further strengthening rainy day funds and other reserve funds, fulfilling previously identified spending priorities, and avoiding debt. For some states, this stronger-tha--expected growth will trigger phased-in tax cuts or may be directed toward tax reduction proposals.

Based on NASBO's Fall 2023 Fiscal Survey of States, enacted budgets for fiscal 2024 forecasted a 1.8 percent decline in general fund revenue compared to preliminary fiscal 2023 levels. This decline was from a high baseline after three consecutive years in which the vast majority of states recorded revenue surpluses and most states enacted tax reductions. Updated data from NASBO's Spring 2024 Fiscal Survey of States reported fiscal 2024 general fund revenues were on track to increase 0.6 percent compared to actual fiscal 2023 collections; on a median basis, general fund revenues were estimated to decline 1.1 percent in fiscal 2024.

Newly released end-of-year revenue data reveal most states ended fiscal 2024 above their revenue forecasts, while year-over-year growth was more mixed, with some states seeing slow growth in tax collections compared to fiscal 2023, and other states recording modest declines. The reasons for the slow growth or modest declines in tax collections varied but included the impact of previously enacted tax cuts, slower growth in consumption, lower inflation, and higher tax refunds. On a positive note, several states highlighted in their revenue reports increased investment income resulting from higher interest rates.

Continue reading.

What Cyberattacks Do To Municipal Issuers' Borrowing Costs: Brookings

State and local governments are frequent targets of cyberattacks. In "City Hall Has Been Hacked! The Financial Costs of Lax Cybersecurity," a paper presented at the 2024 Municipal Finance Conference at Brookings, four economists find that municipal borrowing costs rise after a publicly reported cyberattack.

Filippo Curti (Federal Reserve Bank of Richmond), Ivan Ivanov (Federal Reserve Bank of Chicago), Marco Macchiavelli (University of Massachusetts, Amherst), and Tom Zimmermann (University of Cologne) use data breach and ransomware data on over 1,000 cyberattacks against public entities between 2004 and 2018 from Advisen, a data provider for insurers. They matched government victims of cyberattacks with data from the Census of Governments and from the Mergent Municipal Securities Database and the Municipal Rulemaking Standards Board.

After a data breach, they find, the bond prices of the target issuer in the secondary market decline between 15 to 22 basis points and primary market yields rise by 10 to 13 basis points, which is 5% higher than average bond yields in their sample. Governments hit by data breaches are much more likely to negotiate prices of new bond offerings, but they find no evidence that data breaches affect the size of bond offerings.

Curti and co-authors show that cyberattacks lead to roughly $1.77 billion in mark-to-market losses to municipal bond investors on the $870 billion in outstanding bonds of issuers hit by data breaches between 2010 and 2019. This estimate, they say, is likely a lower bound, because many bonds of issuers affected by cyberattacks may be illiquid and not trade in the 60-day window studied.

The authors also examine the effect of state data breach notification laws, which require targets of cyberattacks to notify residents, and data security laws, which mandate measures to strengthen cybersecurity. The authors find that both types of laws temporarily increase government expenditures to comply with new rules, but do not change the likelihood of future data breaches.

Since the laws are proven to not be enough to prevent future cyberattacks, Ivanov proposed at the conference that alternatives should be considered. One option is to give "a safe harbor against data breach lawsuits if the government entity complies with industry-recognized cybersecurity programs." Such an approach would incentivize upfront investment in cybersecurity, safeguarding personal and important information of the public, and potentially reduce the long-term financial losses from cyberattacks.

The Brookings Institution

by Tristan Loa and David Wessel

August 7, 2024

[S&P U.S. Not-For-Profit Health Care Children’s Hospital Median Financial Ratios - 2023]

Rating And Outlook Overview

The number of rated children’s hospitals remains stable. Year over year, the number of children’s hospitals rated by S&P Global Ratings has remained steady at 22 providers. Rating activity remains limited, as mergers and acquisitions are rare, business positions remain healthy, and financial performance has historically been stable. Most of our rated children’s hospitals are considered stand-alone hospitals per our criteria, with the exception of Houston-based Texas Children’s Hospital and Children’s Hospital Colorado, which own multiple hospitals and are considered systems.

Ratings distribution is skewed toward the ‘AA’ category. Children’s hospital ratings remain skewed toward higher rating categories relative to the broader group of not-for-profit acute care providers, with 91% rated in the ‘AA’ or ‘A’ categories reflecting the cohort’s generally strong credit quality. The higher ratings are supported by the hospitals’ institutional strengths and positions in their respective markets, as often they are the only provider of tertiary and quaternary pediatric services. The hospitals’ generally healthy financial profiles, albeit with support from supplemental funds, and sound balance sheets also support our higher ratings and help offset higher Medicaid exposure.

Downgrades are concentrated in lower-rated organizations. We lowered the ratings on two children’s hospitals, both in the ‘BBB’ category, with one falling to speculative-grade. The organizations had experienced multiple years of operating losses, diminishing unrestricted reserves, and weaker debt-related metrics.

Outlooks remain predominantly stable. The outlooks for the vast majority of ratings in this group are stable, speaking to the generally higher ratings and overall credit strength of the segment. However, one issuer has a positive outlook and two have negative outlooks. Of the negative outlooks, one reflects the intense rating pressure on our only speculative-grade rated issuer; the other entity has a higher rating, but has a negative outlook that reflects weakening performance in an expanding system. Overall, children’s hospitals have been able to absorb industrywide expense pressures better than the sector at large; however, the spreads between children’s hospital and stand-alone medians did narrow in 2023.

Continue reading.

7 Aug, 2024 | 13:19

[S&P U.S. Not-For-Profit Acute Health Care Speculative-Grade Median Financial Ratios - 2023]

Rating And Outlook Overview

The number of rated entities remains stable, although downgrades have caused changes in distribution. The total number of speculative-grade ratings has remained stable year-over-year, but some shifts in distribution have occurred primarily due to downgrades, either within the category or from the investment-grade categories. For example, the number of 'BB' and 'BB-' ratings has increased at the expense of low investment-grade and 'BB+' ratings. S&P Global Ratings believes negative shifts within the speculative-grade category could continue, given the very thin liquidity and continued operating losses for many speculative-grade rated issuers. Shifts at the lower end of the rating scale may be amplified by the very limited sample size and make trend analysis less meaningful. Although we took positive rating actions on a few speculative-grade providers, they were primarily the result of mergers with higher-rated organizations.

Covenant violations continue but there were no payment defaults during the last year. Due to their weaker debt service coverage and thin liquidity, speculative-grade issuers remain at a higher risk of breaching their financial covenants than investment-grade entities. Debt service coverage, in particular, is the most common covenant violation, followed by days' cash on hand and debt to capitalization. Although these violations often constitute a technical event of default, none of them have resulted in acceleration of the debt, as management teams have been proactive in successfully negotiating waivers or forbearance agreements with bondholders. In many cases, these agreements were remedied before maturity. Similarly, there have been no payment defaults during the last year.

Favorable outlook changes reflect some mitigation efforts to offset operating pressures. Relative to 2023, when almost half of speculative-grade providers had a negative outlook due to persistent operating difficulties, most recent data indicates just a third of organizations carry a negative outlook as of June 2024. Although negative outlooks are still high for this subset, the favorable shift is encouraging. We believe this improvement reflects some alleviation in sector pressures of the past few years, particularly in relation to labor and lower agency staff usage. Stable outlooks now represent close to two-thirds of rated providers, and therefore, we do not expect any significant increase in upgrades.

Continue reading.

7 Aug, 2024 | 13:18

[S&P U.S. Not-For-Profit Health Care Small Stand-Alone Hospital Median Financial Ratios - 2023]

Rating And Outlook Overview

Small hospitals, defined as having $150 million or less of total operating revenue, are a subset of stand-alone hospitals. The limited number of small hospitals creates some difficulty in drawing conclusions from median trends, particularly as this cohort of providers has generally higher volatility than other larger and more diversified health care providers. There were 19 providers included in S&P Global Ratings' small hospital median calculations, down from 26 two years ago. The decrease is due to some providers increasing total operating revenue beyond $150 million, as well as some acquisition activity.

The ratings distribution for small hospitals continues to skew toward speculative-grade. Ongoing high labor costs and inflationary pressures continued to affect small hospitals and have contributed to downgrades, especially when combined with reductions in liquidity and financial flexibility. A greater percentage of small hospitals are rated in lower rating categories compared with stand-alone hospitals, with no small hospitals garnering a rating above the 'A' category. This is consistent with historical rating distribution trends, given the inherent risks associated with small hospitals, including less operating diversity and flexibility, small medical staff sizes, and limited service area and economic growth characteristics, all lending to increased volatility.

More small hospitals carry a negative outlook. Industry performance pressure and generally weakened financial results have led to more small hospitals carrying negative outlooks this year (37%) than in the previous year (23%). Small hospitals have historically held an elevated proportion of nonstable outlooks compared with stand-alone hospitals due to the aforementioned inherent risks, which can lead to more rapid financial deterioration than larger providers and typically longer recovery periods.

The small hospitals we rate are diverse. Although the number of providers is limited, there are a variety of hospital types in this cohort, including specialty hospitals, tax-supported hospital districts, and critical access hospitals. The cohort is also geographically broad, representing 14 states, with many located in rural locations. This diversity within such a small sample size also might contribute to some median volatility year-to-year.

[Continue reading.](#)

7 Aug, 2024 | 13:16

[S&P U.S. Not-For-Profit Health Care Stand-Alone Hospital Median Financial Ratios - 2023](#)

Rating And Outlook Overview

We rate fewer rated stand-alone hospitals due to mergers and migration to systems. The number of stand-alone hospitals rated by S&P Global Ratings dropped to 228 from 243 year over year, 94% of which are reflected in the 2023 medians. This continues the diminishing trend of rated stand-alone hospitals (15 in the past year) mostly due to mergers and acquisitions as well as a few stand-alone hospitals migrating to systems, which overall increased by 11 this year.

There are fewer hospitals rated in the ‘AA’ category and more in the ‘A’ and ‘BBB’ categories. The overall rating distribution of stand-alone hospitals remains relatively stable with some minor variations. In addition to a couple of stand-alone hospitals in the ‘AA’ category migrating to systems, there was also some movement down the rating scale as a couple of stand-alone providers have migrated out of the ‘AA’ category, and the percent of ‘A’ ratings has risen. The ‘BBB’ and speculative-grade categories are relatively stable.

Stand-alone hospitals remain concentrated in the ‘A’ and ‘BBB’ categories. About 70% of stand-alone hospital ratings are concentrated in the ‘A’ and ‘BBB’ rating categories, with an even split between ‘AA’ and speculative-grade for the remaining ratings. The distribution trends lower compared with system ratings, given stand-alone hospitals are more prone to disruption with narrower primary service areas and more limited revenue bases and therefore, generally need to have stronger ratios relative to systems to achieve the same rating. Although the bar is higher, this also provides stand-alone hospitals with greater financial flexibility to absorb some financial stresses.

Slightly favorable shift in outlook distribution between 2023 and mid-2024. Given the larger sample size of stand-alone hospitals than for systems, small changes to the outlook distribution will be less pronounced in the percentages than they are for systems. The percent of stable outlooks increased from June 2023 to June of this year, although the percentages remain below historical levels. The percentage of negative outlooks remains slightly higher, accounting for almost one-quarter of rated providers, although slightly improved this year. Despite almost one-third of our outlooks being positive or negative, most ratings on stand-alone hospitals have a stable outlook.

Continue reading.

7 Aug, 2024 | 13:14

S&P U.S. Not-For-Profit Health Care System Median Financial Ratios - 2023

Rating And Outlook Overview

The number of rated health care systems slightly increased. The number of systems rated by S&P Global Ratings rose to 173, of which 161 (or 93%) are included in the 2023 medians. This increase, despite ongoing system consolidation, is mostly due to new issuers seeking ratings, as well as stand-alone hospitals transitioning to systems per our criteria, given revenue growth and added acute care facilities.

System rating distribution has shifted from the 'AA' category, despite the inherent strength of systems. Higher-rated systems are characterized by robust enterprise profiles, greater scale and diversity than stand-alone hospitals, and seasoned management teams. However, they also remain subject to persistent broad sector headwinds that continue to affect operating performance. The number of systems rated in the 'AA' category fell to 39% of total rated systems, from 44% in 2022, with concurrent increases in the 'A' and 'BBB' categories. Speculative-grade rated systems remain rare, encompassing only four organizations, and are therefore excluded from tables 2, 3A, 3B, and 3C.

Rating distribution for systems generally skews toward higher rating categories than those for stand-alone hospitals. About 87% of systems are rated in the 'AA' and 'A' categories, compared with just 56% of stand-alone hospitals despite several of their financial medians being more favorable than those of systems. The median system rating is 'A+' compared with the stand-alone median of 'A-'.

Negative outlooks remain elevated. The systems rating distribution in higher categories is accompanied by generally lower rating volatility, where nonstable outlooks account for 23% of the outlook distribution, generally consistent with 2022, but more favorable than outlook distribution for stand-alone hospitals at 27%. That said, the percentage of negative outlooks for systems in 2023 and year-to-date through June 2024, although unchanged, is about double 2022 levels, highlighting operational headwinds the sector faced. Positive outlooks have remained largely consistent in the past three years at less than 5%.

Continue reading.

7 Aug, 2024 | 13:12

S&P U.S. Not-For-Profit Acute Health Care 2023 Medians: Remarkably Level With Prior Year, But Performance Remains Notably Below Historical Norms

Key Takeaways

- Operating performance remained weak, but virtually unchanged from fiscal 2022 medians. Margins and coverage ratios were consistent across fiscal 2023, with little movement up or down although with some underlying progress as indicated by adjusted operating margin improvement. That said, profitability measures remain well below the decade's historical baseline.
- Balance-sheet metrics were mostly stable, with continued pressure on days' cash on hand. Median absolute unrestricted reserves rose modestly, concurrent with a decline in median long-term debt and leverage. However, expense growth continued to pressure operating liquidity, with days' cash on hand now below 200 for the first time in a decade.
- The growth rate of total operating expenses moderated. Following a dramatic 17% rise in fiscal 2022, median total operating expenses in fiscal 2023 reflected a manageable 5% uptick, well below the rate of increase for revenues with staffing adjustments and stabilizing labor costs.
- Leverage remained sound ahead of heavy borrowing observed in 2024. Debt measures were stable or improved in fiscal 2023, with sustained strong funding levels for defined-benefit pension plans. We anticipate some worsening in this area over the coming year as providers increase borrowing activity.

Continue reading.

7 Aug, 2024 | 13:08

Brookings: Why Does Building and Maintaining Highways In the US Cost So Much?

Building infrastructure in the U.S. costs substantially more than in other countries. For example, on a per-mile basis, the U.S. spends three times as much as other upper- and middle-income countries on certain transportation infrastructure. In a paper presented at the 2024 Municipal Finance Conference at Brookings by Will Nober of Columbia University, Cailin Slattery of the University of California, Berkeley, and Zachary Liscow of Yale University surveyed infrastructure procurement practices and collected project-level data across the 50 states to help explain why U.S. costs are so high.

The authors identify two major factors. The first is the limited capacity of state departments of transportation (DOT). Survey respondents widely agreed that DOTs have become understaffed over time and that reliance on consultants drives up costs. A one standard deviation in increase in state capacity (measured by state DOT employment per capita) is correlated with 16% lower costs. One standard deviation in increased consultant use is associated with 20% ($70,000) higher costs per lane-mile of roadways on average.

The second factor is the limited competition in the market for government construction contracts. Most state DOTs report doing little bidder outreach, and there are fewer construction firms in most states than there were 10 years ago. A one standard deviation (12 percentage points) increase in outreach to bidders to increase the pool is correlated with 17.6% lower costs. This translates to a decrease of $65,000 per lane-mile and $1 million at the project level. Moreover, an additional bidder on a project was associated with 8.3% lower costs, approximately $460,000 for the average project.

The authors also found that state DOTs that provide more details at the time of the bid-letting have lower costs, while states with more change orders, which are often the result of poor planning, have higher costs.

To learn more about the role of state capacity in driving infrastructure costs, Liscow, Nober, and Slattery collect data on individual DOT engineers in California. They find that a substantial amount of the variation in the cost of a resurfacing project can be explained by which engineer is assigned to it. Specifically, replacing a construction engineer at the 95th percentile of the cost distribution with a median engineer would reduce costs by 5.3% on average: $24,000 per mile; $220,000 per average project.

The Brookings Institution

by Comfort Oshagbemi and David Wessel

August 5, 2024

The 5 Coastal States That Face the Most Devastating Flood Risk.

Florida, Louisiana and New Jersey lead the list of states with critical infrastructure in the path of rising seas, a new study says.

Flooding can disrupt communities not only by damaging homes and businesses, but also by knocking out facilities that provide essential services. When school buildings flood, students miss out on not only learning days but also access to subsidized meals. When hospitals get inundated, lifesaving treatments can get put on hold.

Storms like Hurricane Debby, which is set to saturate parts of Florida, Georgia and South Carolina with up to 30 inches of rainfall over this week, are becoming more frequent and severe in a warming world. But as sea levels rise, it doesn’t necessarily take a major storm to bring high water: Since 2000, chronic tidal flooding — also known as sunny day flooding — surged 400% and 1,100% in the US Southeast Atlantic and Gulf Coast regions, respectively.

According to a recent report from the Union of Concerned Scientists, there are about 900 “critical infrastructure” sites along the US coastlines at risk of high-tide flooding at least twice a year. That figure can jump up to 1,600 by midcentury, affecting some 3 million people, largely in disadvantaged communities.

Continue CityLab.

Bloomberg Markets

By Linda Poon

August 5, 2024

Cyberattacks Still Ravage Schools, Defying White House Efforts Launched

Last Year.

Thousands of school districts have tapped into resources committed by the private sector to shore up their cyberdefenses.

A year ago this week, First Lady Jill Biden entered the White House East Room, greeted by an audience of some 200 education technology stakeholders, to headline the launch of a Biden administration initiative to bolster school cybersecurity, following myriad incidents where hackers set their sights on school districts around the country. The digital intrusions have crippled schools' tech infrastructure and led to compromises of sensitive student data, forcing administrators to direct funds away from vital services toward costly and prolonged IT overhauls.

For the initiative, the White House brought in private sector executives who, behind closed doors, worked out discussions with the Biden administration's top cyber officials over the course of just a few weeks, agreeing to offer up free and subsidized cybersecurity resources for schools in need of added digital shielding.

Recent years have proven that cyber threats to schools could no longer be ignored. Schools are a key sub-sector housed under the umbrella of government facilities, one of 16 critical infrastructure sectors designated by U.S. cyber experts. In the 2022 to 2023 school year alone, officials made note of multiple cyberattacks that targeted American school districts, according to a senior administration official who spoke to reporters last year in the hours leading up to the White House event.

Continue reading.

Route Fifty

By David DiMolfetta,
Cybersecurity Reporter, Nextgov/FCW

August 7, 2024

US Colleges' Debt Strains Mount in One of Worst Years Since 2009.

- **15 schools have disclosed technical, payment defaults in 2024**
- **College impairment tally approaches 2023 total of 17: MMA**

The challenging economics of higher education in the US are squeezing the finances of colleges and universities, driving more of them to struggle to pay their debt.

Fifteen institutions have disclosed new technical or payment defaults this year, according to data from Municipal Market Analytics. That's already just shy of last year's total of 17, the largest number of impairments — as such events are called — since at least 2009, coming in at more than twice the previous record.

The strains highlight the widening gap between the sector's haves and have-nots, as stronger universities with large endowments and brand recognition thrive while more regional institutions contend with rising costs and a steep competition for students. Weaker schools recovering from the stress of the pandemic are also facing other pressures, such as student-aid-processing delays.

Continue reading.

Bloomberg Markets

By Nic Querolo

August 12, 2024

When Climate Funds Pay for Highway Expansion.

Several US states are tapping a federal carbon reduction program to fund highway projects, arguing that adding vehicle lanes can bring emissions down.

Every month, Dennis Grzenzski drives the stretch of Interstate 43 that runs north of Milwaukee to a board meeting for the Blue Heron Wildlife Sanctuary. Along the route, the urban landscape gives way to undeveloped farmland. Traffic is usually pretty light. But the view on his drive changed in February 2022, when construction crews began work to expand the roadway from four to six lanes.

“By no stretch of the imagination was that a place that really needed more lanes because of congestion,” said Grzenzski, an environmental attorney who has fought the state on highway expansions — though not this specific project — for close to 30 years.

The Wisconsin interstate expansion represents one example of concerns raised by transportation and environmental advocacy groups around how states are spending funds from a federal program designed to lower carbon emissions. In 2023, the Wisconsin Department of Transportation used $4.1 million of its annual $24 million allotment from the Infrastructure Investment and Jobs Act’s Carbon Reduction Program (CRP) to fund work in the I-43 project, including energy-efficient lighting and signal technology.

Continue reading.

Bloomberg Citylab

By Benton Graham
August 7, 2024

Stuck Bridges, Buckling Roads - Extreme Heat is Wreaking Havoc on America’s Aging Infrastructure.

COMMENTARY | The rate at which a bridge or road deteriorates depends not only on the materials and construction methods used but also on the climate during the structure’s life span.

Summer 2024’s record heat is creating problems for transportation infrastructure, from roads to rails.

New York’s Third Avenue Bridge, which swings open for ship traffic on the Harlem River, was stuck for hours after its metal expanded in the heat and it couldn’t close. Roads have buckled on hot days in several states, including Washington and Wisconsin. Amtrak warned passengers to prepare for heat-related problems hours before a daylong outage between New York and New Jersey; the risks to power lines and rails during high temperatures are a growing source of delays for the train system.

It doesn’t help that the worsening heat is hitting a U.S. infrastructure system that’s already in trouble.

The American Society of Civil Engineers gave U.S. infrastructure an overall grade of C- in its latest national Infrastructure Report Card, released in 2021. While there has been some improvement – about 7.5% of U.S. bridges were in poor condition, compared with over 12% a decade earlier – many bridges are aging, making them difficult to maintain. Forty percent of the road system was considered in poor or mediocre condition, and maintenance costs have substantially increased.

Continue reading.

Route Fifty

By Suyun Paul Ham,
Associate Professor of Civil Engineering, University of Texas at Arlington,
The Conversation

August 6, 2024

$2.2B in Resiliency Grants Awarded to Upgrade the US Electric Grid by DOE - Duane Morris

On August 6, 2024, the U.S. Department of Energy (DOE) announced the first 8 selections for the 2nd round of the Grid Resilience and Innovation Partnership (“GRIP”) funding specifically for the “Grid Innovation Program”, one of three GRIP funding mechanisms. T

Per the DOE, through the second round of GRIP funding, the Grid Innovation Program will support 8 projects across 18 states, totaling approximately $2.2 billion in federal investment. Selections for the remaining 2 funding mechanisms should be announced later this year.

California Energy Commission

The California Harnessing Advanced Reliable Grid Enhancing Technologies for Transmission (CHARGE 2T) project is a public-private partnership that is intended to drive large-scale expansion to transmission capacity and improvements to interconnection process to increase and accelerate equitable access to renewable energy across California. CHARGE 2T is supposed to reconductor more than 100 miles of transmission lines with advanced conductor technologies and deploy dynamic line ratings (DLR) to quickly and significantly increase the state’s system capacity to integrate more renewable energy onto the grid. CHARGE 2T also supports transmission interconnection reform through process improvements, an interconnection portal, workforce investment, and educational resource development.

Continue reading.

Duane Morris LLP – Brad A. Molotsky

August 6 2024

[Expanding User Fees for Transportation: Roads and Beyond.]

Key Findings

- Thanks to elevated deficits and interest rates, fiscal restraint is back in Washington.
- While substantially reversing America's fiscal situation requires structural reforms to entitlements and taxes broadly, reforming transportation funding would also help.
- The user-pays principle is a sound way to fund major infrastructure projects.
- Unfortunately, the US has moved away from the user-pays model, primarily due to the gas tax declining in real terms, but also due to excise taxes becoming weaker approximations of true user fees.
- By 2034, the gas tax and other car-related excise taxes are projected to raise less than half of the Highway Trust Fund's outlays.
- The ideal solution would be to replace existing excise taxes with true user fees, but raising existing excise taxes would be a better solution than continuing a growing reliance on general revenue.
- Fully paying for federal highway spending with user fees could reduce the federal deficit by over $200 billion over the course of the next decade.

Continue reading.

Tax Foundation

By: Alex Muresianu, Adam Hoffer, Jacob Macumber-Rosin, Alex Durante

August 7, 2024

WSJ: What Economic Dangers Is the Bond Market Pricing In?

Corporate debt was hit by the recent panic, but true concerns are mostly limited to a few corners of the market

Even more so than stocks, bonds are often seen as an economic bellwether. If so, they are heading in a pretty positive direction.

The difference, or spread, between Treasury yields and the rate at which companies borrow has widened. Option-adjusted spreads on the investment-grade paper issued by blue-chip corporations closed at 1.11 percentage points Tuesday—an aftershock of the big stock-market selloff the day before. Spreads on debt issued by risky "high yield" issuers hit 3.81 percentage points. Both were the highest since last November. U.S. municipal bonds have been affected as well.

However, trading has normalized since. The spread on high-yield bonds closed at 3.4 percentage points Thursday. This still implies a rise in the default probability to 5.7% from 5.1% at the end of May, despite the fact that, as of the latest June data published last week by Fitch, actual U.S. leveraged-loan and junk-bond default rates had inched down to 4.06%. But it is a small increase, and it may soon fully come back down.

Continue reading.

The Wall Street Journal

By Jon Sindreu

Updated Aug. 9, 2024 5:29 pm ET

Orrick: FINRA Fines Firm for Bond Markups and Failure to Comply with Fair Pricing Regulations

On July 26, a financial firm accepted a Letter of Acceptance, Waiver, and Consent (AWC) from FINRA for allegedly charging unfair prices in corporate and municipal bond transactions and for allegedly failing to establish a supervisory system to comply with fair pricing rules. According to the AWC, between April 2020 and June 2023, the firm was found to have charged unfair prices on 98 bond transactions, resulting in customers paying over $112,000 in excess costs in violation of FINRA Rules 2121 and 2010 and Municipal Securities Rulemaking Board (MSRB) Rules G-30 and G-17. For example, the AWC alleged that the firm sold 250 bonds with a 1.714 percent mark-up that used an incorrect prevailing market price, which resulted in a customer paying $695 more than if the firm had used the correct prevailing market price. These failures allegedly violated FINRA Rules 3110 and 2010 and MSRB Rule G-27.

Under the AWC, the firm agreed to pay a $125,000 fine, including $110,000 for violations of MSRB rules. The firm will also provide restitution to affected customers of $112,932.02 and must implement a supervisory system that complies with fair pricing regulations.

Orrick, Herrington & Sutcliffe LLP

August 6, 2024

Competitive Underwriters Face Mounting Pressure, Competition.

Underwriters are experiencing greater pressure in the competitive market as several firms bid on deals more frequently, and deals, on average, see more bids and narrower spreads.

“Competitive underwriting remains a tough business that’s getting tougher,” said Justin Marlowe, professor at the University of Chicago Harris School of Public Policy and director of the school’s Center for Municipal Finance. “You see some firms that have been around for a while who seem to have stepped up their participation in competitive sales, and then a few others either who weren’t involved or being actively bid but are now getting more involved in the business.”

Competitive issuance during the first half 2024 was $41.467 billion, up 18.7% from the same period of 2023, according to LSEG.

The top 10 competitive underwriters for the first half of the year saw some minor shuffling, with new entrants Truist and Raymond James bumping Citi and RBC Capital Markets. However, those just shy of the top 10 are getting more involved in bidding, according to LSEG Lipper.

Some major players in the negotiated space are absent from the top 10 competitive underwriters list, potentially due to this market being a higher-risk proposition, particularly when there's volatility, market participants said.

Some firms, though, top the rankings year after year in both the negotiated and competitive markets.

BofA is one of the largest firms, in terms of capital and healthy balance sheets, said Matthew McQueen, head of municipal banking and markets at BofA.

The firm remained the top competitive underwriter during the first half of the year. It underwrote $8.587 billion in 46 deals versus $6.524 billion in 62 in 1H 2023.

Similarly, J.P. Morgan is still a top contender in competitive underwriting, moving up to second in the rankings in 1H 2024 from third in 1H 2023. The firm underwrote $6.897 billion in 70 issues, up from $3.183 billion in 43 issues, according to LSEG.

Both firms pride themselves on being a market leader and serving their large client bases.

"We have the commitment and the capital on balance sheet to continue to support our issuer clients and to distribute that to our investor clients," McQueen said.

"We aim to be a top trading partner with all of our investor clients," added Sean Saroya, managing director and head of public finance trading at J.P. Morgan. "Being consistently active across the breadth of the competitive space is an important way to achieve that goal."

Given its stature, BofA is particularly drawn to large deals, while J.P. Morgan tries to bid on every transaction of sufficient size.

Meanwhile, others, like Baird, retain their status by bidding as a large syndicate, having several other firms with it on every deal, said Peter Anderson, a municipal bond underwriter and trader at Baird.

This works out for the firm as Baird remained in fifth during the first half of 2024, underwriting $2.9 billion in 226 deals versus $2.869 billion in 249 deals in the first half of 2023, according to LSEG.

"We take a group mentality toward everything and work as one in getting these deals," he said.

The amount of bidders on any competitive deal can vary.

Some deals, such as larger transactions with more risk, may attract a smaller group of bidders, while others will see a wider range, Saroya said.

In any market, especially ones with low "entry barriers," there will be ebbs and flows of market participants: sometimes heavier, sometimes lighter, Anderson added.

Currently, it's one of the "heavier" periods as firms attempt to chase the same deals, he said.

Data shows the average bids per competitive sale is up noticeably over the past few quarters, Marlowe said, rising to 8.5 bids in Q1 2024 from 6.1 bids in Q1 2022.

"With the interest rate environment we're in, with these rates here, with retail participation, that naturally brings in more dealers looking for product," said Doug Vissicchio, managing director and head of municipal trading at UBS.

A big part of the reason for the increased bid frequency is new and returning entrants to the competitive market, propelled, in part, by Citi's exit.

"It's a $4 trillion market, and there is a need out there, so the market will absorb it," McQueen said.

Many market participants worried about the impact of Citi's departure on the muni market, including concerns over liquidity, but the bank's exit created opportunities for firms like Truist to step in and gain a foothold, said Todd Bleakney, managing director and head of munis at Truist.

Truist was one of the new entrants into the top 10 competitive underwriters, ranking seventh. The firm underwrote $1.436 billion in 23 deals in 1H 2024 after not underwriting any deals in 1H 2023, according to LSEG.

The bank took its time building its muni team over the past several years. It started beefing up its muni presence with the hiring of Scott Frail, head of public finance origination and syndicate at Truist, in 2021, followed by Bleakney a year afterward.

Since then, the bank has added around 20 employees, including at least four from Citi in March.

Competitive underwriting is another "extension" of what Truist is doing and building, Bleakney said.

"We see this as an opportunity to take more [of a market] share, but we're trying to be methodical and thoughtful and profitable as well," he said.

Along with the new entrants, some longstanding firms stepped up their presence in the competitive market.

UBS, for instance, rose in the rankings to 12th in the first half of 2024, underwriting $834.5 million in 33 deals, up from 24th and underwrote $197.2 million in 10 deals in the same period of 2023.

When UBS exited the negotiated muni underwriting business, it "doubled down" on competitive underwriting, Vissicchio said.

"All of our customers depend on us for liquidity both on the bid side and on the offered side, and one of the best ways we can satisfy customer demand is staying in the [competitive] market," he said. "We now have the luxury of being able to tailor our bids to what we think is best for our clients."

This becomes more challenging as the average bid spread narrows. Bid spreads have steadily declined since the end of 2021, Marlowe said, noting that the average spreads across the past five quarters are the lowest in the past decade.

Multiple times throughout the week, UBS sees the top three or four cover bids all within a basis point of each other, said Vincent Pietanza, head of municipal competitive underwriting.

"A lot of times you need to bid through the market, not necessarily on the whole scale, but in spots," Anderson said.

Many firms will get similar big presale orders from funds and "then it's a race to who's going to be the most aggressive and try to buy the deal," leading to some frustration, he noted.

"It just goes to show you how tight the market bidding is right now and how hard it is to source products with a competitive space," Pietanza said.

But even as firms compete against each other in an increasingly competitive marketplace, market participants say competitive underwriting is an important part of their business.

"Buying competitive deals allows us to expand our capabilities in ETFs and on the creation side," Saroya said. "With increased inventory, we can more effectively engage in e-trading, portfolio trading, and swaps with clients. Sourcing risk for SMAs, funds and other investor clients is essential, making this integral to our business."

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