eNews

May 23, 2014

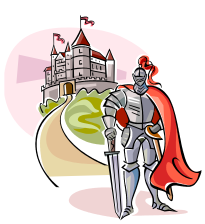
Where is the Trust? The House Appropriations Committee Wednesday approved, 28-21, the HUD-Transportation funding bill for FY2015 [http://appropriations.house.gov/uploadedfiles/hrpt-113-hr-fy2015-thud.pdf] that would keep cut house and community development programs from current levels, but increase funding over the level requested by the Administration. The bill proposes to keep federal highway funding at current levels. In total, the bill reflects an allocation of $52 billion in discretionary spending – an increase of $1.2 billion above the fiscal year 2014 enacted level and a decrease of $7.8 billion below the President's budget request. Within the legislation, funds are targeted toward transportation, infrastructure, and housing programs of national need and significance that have the biggest impact on Americans and communities across the country. As reported, the bill would provide $41 billion for highway projects next year, $7 billion less than the President's request. The committee rejected an attempt by Democrats on the panel to restore funding for the Transportation Investment Generating Economic Recovery (TIGER) grant program to the $600 million in the fiscal 2014 budget from the $100 million in the committee's bill—far below the White House request for $1.16 billion. Amtrak would receive $850 million in capital grants next year under the committee's bill, $200 million less than in 2014 and some $400 million less than requested by the Federal Railway Administration. The committee's bill would reduce the New Starts grant program for rail and transit projects to $1.7 billion from $1.9 billion in 2014. The president's 2015 budget seeks $2.5 billion for the capital improvements grant program.

Gasp! The Governmental Accounting Standards Board is preparing to release a draft statement on other OPEB or post-employment benefits that will, according to its chairman, "mirror" GAB's new pension standards—with the Board expecting to approve the draft guidance later this month and release it by the end of June. According to the Board, just as its new pension standards require state and local governments that offer defined-benefit pension plans to report a net pension liability in their financial statements, the OPEB draft guidance would mandate state and local governments to recognize a net OPEB liability. The new standards for governments are expected to be effective for fiscal years beginning after June 15th. The draft reporting requirements may increase the size and annual expenses of governments' OPEB reporting responsibilities, and, according to the Board, state and local governments' OPEB liabilities could exceed their net pension liabilities, because municipalities generally do not set aside money to finance their OPEB promises. To the extent there is good news, it is that Jean-Pierre Aubry, an assistant director at the Center for Retirement Research at Boston College, who was on the panel at which I spoke Monday in Minneapolis, said the center looks at state-administered OPEB plans and has found that total reported OPEB liabilities are often significantly lower than state and local governments' pension liabilities, which could be because retirees are often shifted to Medicare after a few years and OPEB benefits can be more easily changed than pension benefits. Mr. Aubry noted that some of the findings of the center's initiative relating to local governments and pension plans have found that local governments participate in state plans, and that many plan sponsors have made reforms. Nevertheless, he warned many local governments will face challenges from the new GASB pension standards. Under the standard, employers that participate in cost-sharing state plans will have to report their portion of the plans' unfunded liability on their financial statements. In addition, many localities participate in state plans, so they will see increased reported unfunded liabilities because of the new requirement.

The Senate yesterday voted 91-7 to pass and send to the White House a $12.3 billion water infrastructure authorization bill, the Water Resources Reform and Development Act, following the House's 412-4 vote Tuesday. The bill authorizes funding for 34 specific ports, inland waterway, and flood control projects expected to cost a total of $5.9 billion of federal spending through 2019 and another $6.9 billion through 2024. Spending on some projects is expected to extend for several years beyond 2024. The bill establishes a five-year, $350 million low-cost credit program for water projects modeled on the popular Transportation Infrastructure Finance and Innovation Act for road and transit projects. Under the provisions, the bill's credit enhancement programs, which will be jointly overseen by the EPA and the Army Corps of Engineers, can fund up to 51% of a project's cost, but *not* in conjunction with tax-exempt bonds. The Corps of Engineers is directed to develop a pilot program of up to 15 public-private partnerships for projects including inland navigation, flood damage reduction, and coastal harbor and channel improvements, with the soon-to-be new law stipulating that the private partner may have full management control for financing, design, and construction aspects of the project.

State & Local Finance

State Debt. In a new report this week, the rating agency Moody's was decidedly unmoody in reporting that its **st**ate debt survey shows new debt issuance falls to lowest level in 20 years, reporting that the rate of growth in the outstanding debt issued by the states last year slowed for a fourth consecutive year and was also the slowest growth in debt for the last 20 years. The report, "2014 State Debt Medians: Appetite for Borrowing Remains Weak," also notes that Moody's forecasts state debt levels to continue to show only modest growth in 2014. Author Kimberly Lyons, a VP, wrote: "The continued slowdown in the growth of net tax-supported debt primarily reflects a new conservative attitude toward debt among the states…Growing spending pressures coupled with inconsistent revenue growth and uncertainty over future revenue trends have forced states to take a cautious approach when considering the addition of new debt service costs to their budgets." Nevertheless, Ms. Lyons noted that debt service costs increased by 8% in 2013, up from the 3% increase in 2012, reflecting a return to normal debt service levels after years of what she termed "artificially low debt service." Moody's also found very low levels in variable rate demand debt and privately placed bank loans among states. Variable rate demand debt comprises just $21.6 billion of outstanding state debt (4% of total) and private bank loans just $3.5 billion (0.01%). Moody's said its review of the private agreements finds similar credit terms to those contained in bank-supported financings for state borrowers in the public market. Moody's 2014 state debt medians are based on the rating agency's analysis of calendar year 2013 debt issuance and fiscal year 2013 debt service.



State Camelot Index. My friend and state policy guru par excellence, Marcia Howard, this week in her annual report on the Camelot Index writes: "Most measures of state performance focus heavily on economic criteria. As a result, broader consideration of a state's 'quality of life' can get lost. Life is more than a job; it involves being part of a community, securing health care, paying for college, and having stable and predictable tax costs. The Camelot Index shows that only a few states excel in every single area, but most states have at least one or two areas where they do a commendable job." I continue to strongly recommend you subscribe through Federal Funds

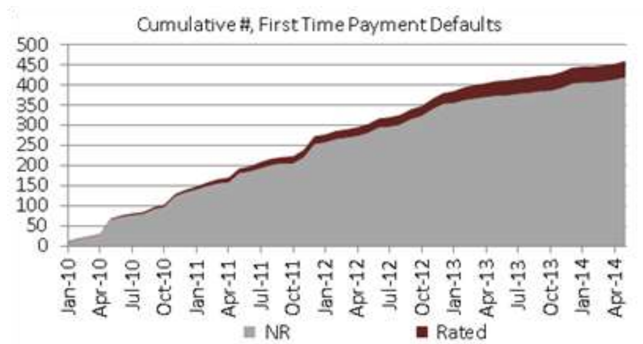
Information for States to receive State Policy Reports: this issue is especially invaluable in providing state leaders with how the 50 states rank, bringing together measures of economic vitality, health, education, crime, society and government. In the current Index, many states rank consistently across measures, while others do quite well on some measures but not others.

Rethinking State-Local Relations. As we reporting earlier this a.m., the Michigan House overwhelmingly passed and sent to the Senate the 11- bill support and state oversight package from the House's special Committee on Detroit's Recovery and Michigan's Future. The sense of momentum, moreover, was bolstered this week with the announcement by U.S. Judge Gerald Rosen, appointed by Judge Steven Rhodes to act as chief mediator in Detroit's Chapter 9 case, that the Michigan Building and Construction Trades Council has pledged $3 million to $5 million to the city's retire health care benefits. The move comes in the wake of House Speaker Jase Bolger's demand that Detroit's unions pledge money to the grand bargain.The House action yesterday adds significant, bipartisan momentum to reshaping state-local relations in Michigan with Gov. Snyder heralding the action: "It's important for them to look at all the margins these passed…I would encourage the Senate to move promptly. It would be helpful to get it done quicker because people are voting…This settlement will allow us to more quickly resolve the bankruptcy issues, and create a solid, sustainable fiscal foundation to support Detroit's continuing turnaround…Detroit is an important part of Michigan's identity…Let the city's resurgence show the world that Michiganders are standing together and growing stronger as we accelerate our continuing comeback." The announcements came in the wake of this week's hearing, at which former New York Lt. Gov. Richard Ravitch, who is serving as an unpaid advisor to U.S. Bankruptcy Judge Steven Rhodes and who played a key role in New York City's recovery from its fiscal crisis in the 1970s, testified, warning that accounting practices are one of the most important criteria for Detroit as it exits state and court oversight: "Detroit is the most egregious example of a city in severe financial difficulty that I've seen." Telling the committee that the eyes of the nation are watching this case, he added that "the most important piece of this legislation is that the city be required to budget according to generally accepted accounting practices. There can be no more borrowing to cover deficits."

The package that sailed through the House yesterday also earned the blessing of Detroit Mayor Mike Duggan, who had successfully pressed for amendments to clarify the criteria the Motor City would need to meet in order to gain independence from a proposed oversight committee. In addition, Mayor Duggan successfully urged that Detroit City Council be permitted to appoint one additional member to the proposed oversight board—a change from the pending proposal under which the state would name six of the seven appointees, and the Mayor of Detroit would pick the seventh member. The likely final state legislation will include a series of conditions to be met for the city to escape state oversight mandating three consecutive years of "deficit-free budgets," while adhering to generally accepted accounting principles; certification by the state treasurer and city's chief financial officer that Detroit can borrow money; adherence to a court-approved bankruptcy plan of adjustment and reorganization plan, and earning an A-minus bond rating from at least one national credit rating agency. Nevertheless, Fabulous Matt Fabian, managing director of Municipal Market Advisors, opines it will likely take Detroit a decade or longer to heal its junk-status bond rating following kits chapter 9 that threatens to nearly wipe out some bondholders: "In the scale of Detroit's problems, they should be willing to wait a decade or longer to have the affirmation," Fabian said in an interview…This is a long-term process that's not going to be cured quickly."

State Governance Failure? Perhaps Congress is contagious, rather than Detroit, and its inability to govern or operate has infected its neighboring state of Virginia, where, this week, the Virginia House Appropriations Committee heard a presentation on what happens if a budget agreement is not reached by the end of next month: There would be a potential shutdown: no money to pay state employees, no way to fund bonds for public school repairs or any cash left to pay those contractors who provide services the commonwealth outsourced to private firms. In other words, Virginia would imitate the federal government's blinding failure last October and just shut down. The key issue appears to be an inability to reach consensus how to address the issue of Medicaid expansion, with the Governor and Democrats committed to expanding Medicaid to as many as 400,000 uninsured Virginians though the Affordable Care Act, while leading Republicans have stood united in their opposition to all things Obamacare. Adding to the disarray, Virginia House Appropriations Committee members this week learned that the latest revenue collections from the state forecast an approximately $300 million budget shortfall—a shortfall in part due to last year's federal shutdown and sequester. As some legislators warned, even if the Medicaid issue is settled, it is likely to take longer for the two chambers to agree on the final spending bill, or, as one legislator nicely framed the problem: "Before we were talking about nickels and dimes…Now we're talking about $100 bills." But the Congressional mimicry could have more serious repercussions: state legislators received a briefing on whether Governor Terry McAuliffe has the authority to keep the government open if no budget bill is passed. The answer to that question, state attorneys explained, is that the government could remain open, but employees would basically be working on an "IOU" basis until a budget were finalized, with attorneys noting the governor has no authority to spend money without a budget adopted by the General Assembly.

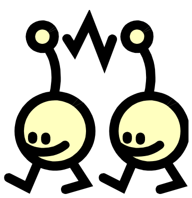
Reshaping the Nation's Cities. The ever so insightful Matt Posner of Municipal Market Advisors monitors defaults and impairments of state and local debt—and puts them in context. This week, he writes there were a larger number of default filings for the two weeks ending May 2, but the rolling trend in first time defaulters remains intact. He adds that, consistent with seasonal expectations, notices of municipal defaults and impairments spiked in those last two weeks, as certain problem issuers faced Mayday payments. In addition, he reports a jump in new credits being filed for their first impairment notices, resulting in 12 additions to the Advisor's database, and that there were two more first time defaulters, bringing the year to date total to 11, affecting some $320 million in outstanding state and local bonds. That, he wrote, means the number of first-time defaulters remains strongly skewed toward non-rated issuers (please see MMA's chart above), so that, differentiating rated versus non-rated issuers, one can readily observe the generally strong state of state & municipal credit.



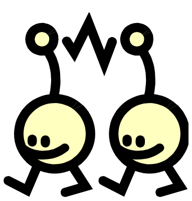
Uh Oh. Last week, scientists warned that a massive chunk of the West Antarctica Ice Sheet will eventually drift into the sea and melt, raising sea levels at least 10 feet higher than previous predictions. The warning came even as scientists at Climate Central predicted that rising sea levels could put the homes of nearly 5 million Americans underwater by the end of this century. Mayor Dawn Zimmer of Hoboken, N.J., a member of President Obama's Task Force on Climate Preparedness and Resilience, who had first-hand experience with the devastation caused by Hurricane Sandy — and the four floods that have hit her city since — described to NPR's *Morning Edition*s actions here city had taken, including purchasing land and building new parks to help absorb rainwater; retaining as much rainwater as possible and updating the city's drainage and pumping systems. She noted: "We've had ... four major flood events [since Hurricane Sandy]. So that means people's cars are totaled, people's homes are still getting flooded. We're seeing it on a regular basis, these heavy downpours. So, to a certain extent, the climate change assessment that just came out reaffirms what we absolutely have to do." Mayor Zimmer described her hopes that her city can implement this integrated strategy that is going to allow it to live with water, noting: "We can do this. We can adapt. And we must adapt. We see it in Hoboken and Weehawken and Jersey City. This is the no. 1

priority for me, as the mayor of Hoboken. This is the biggest challenge that our city is facing. We are living with this now and we need to figure out a way to live with water." In Hoboken, she reports, "We passed a flood-prevention ordinance that says, for future buildings, [they have] to be built with all of the utilities raised up — with the mechanicals for the elevators, for example, all raised up, so that those buildings in the future will be much more resilient." But she also added that as a member of President Obama's Climate Change Task Force, she is continuing to advocate...for changes in the National Flood Insurance Program, which would enable greater support for local leaders seeking to raise funds towards raising utilities: "Right now…we're paying into this system where we don't really get much out of it. So I think we really need to really try to look at those federal policies. The *Virginia Pilot*, in an editorial today, notes: "When rain started falling Friday morning, it seemed like a typical spring shower rather than a monsoon. Within an hour, plenty of folks headed to work found themselves in want of an ark. That's Norfolk, where sinking land and rising seas combine to put the city at risk of flooding from heavy rain, high tides, storm surge, lunar pull, unfavorable horoscopes and cross-eyed looks."

As we observe the changing economy—what with the sharing economy, the impact of the internet on work hours and locations, we can anticipate it will lead to profound changes in transportation and housing. Because the internet is permitting more people to work from anywhere, anytime, the old model of cities and suburbs is becoming increasingly obsolete.



Shared Services, Consolidation of Local Governments, Distress & Dissolution. Changing demographics and the growing trend gap increasingly denote an inability for local governments to provide the essential public services desired by their citizens at levels acceptable to taxpayers—or to take advantage of the efficiencies of shared essential services. But sharing, as we have observed all week, whether it be water and sewer services, or public financing for museums, between local governments is—to put it simply—a bear. Just as we wrote in our report on the Windy City that: "[T]he exceptional number of local governments in Illinois cannot but mean that greater efficiencies could be wrung from the system." So too the Michigan legislature and Detroit metro area governments are struggling to determine how it might be politically possible in an arena where there are stark disparities in local fiscal capacity and capability in many of the state's municipalities.



Challenges of the Emerging Sharing Economy. The New York Attorney General Eric Schneiderman and Airbnb have reached an agreement that appears to both address the state's apprehensions regarding potential tax and occupancy violations, while protecting the privacy of hosts, after acting New York Supreme Court Justice Gerald Connolly had determined that evidence in the case suggests that airbnb hosts "regularly using their apartments to provide lodging to guests who may not be complying with state and local tax registration and or collection requirements." Airbnb claims the majority of its hosts are "regular people, renting out their own home to travelers" for extra income. But, it will comply with a New York State probe of its activities aimed at determining whether they violate occupancy or tax codes. Airbnb will now inform its hosts about occupancy laws and the New York City occupancy tax of 14.75 percent.

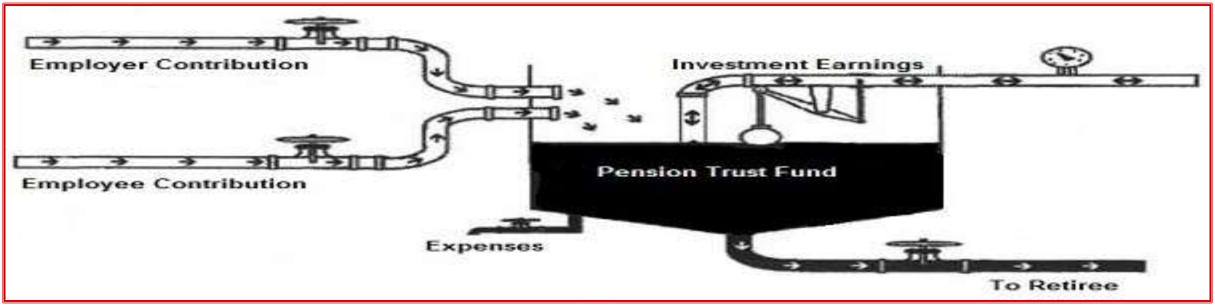


Figure 1 Illustration by David P. Hayes

Pensionary Tidings

The State & Local Uncola. The Garden State's budget and finance officer this week reported New Jersey confronts a deficit of almost $2.7 billion over the next 13 months, after Governor Christie announced pension cuts to balance two budgets: first, he plans to cut the state's contribution to its pension system to make up for lower-than-anticipated revenue—a credit negative, according to Fitch Ratings, which this week reported the state would reduce the pension contribution by $884 million from the amount the Governor had previously promised in response to the reported $1.07 billion revenue shortfall in fiscal 2014, and by $1.57 billion in the next fiscal year—actions which the Governor justified as taken in order to maintain a constitutionally required balanced budget. The actions appear to reverse the agreement reached with the legislature three years ago, when the Governor and legislators reached an agreement to ramp up contributions to the state's pension system over the course of seven years—with the full commitment to fully cover annual actuarial required contributions. However, the Governor has the authority to make the change to current fiscal year funding by executive order; he would require the legislature's approval for next year. Fitch senior directors Marcy Block and Karen Krop wrote in a statement: "However, the proposal to cut the pension payment for fiscal 2015 by $1.57 billion as the primary means to close the identified $1.75 billion budget gap for next year is particularly troubling, warning the cut will make the state's long-term liability challenge even larger, adding that the fact that the state is doing this in the midst of an economic recovery is of particular credit concern. Gov. Christie, in making his announcement, noted: "I have made the decision that we are not going to blindside our students," in explaining his decision to cut pension contributions. "We are not going to blindside our seniors, our higher education institutions or those who rely on the safety net the state provides to balance our budget with only six weeks left in the fiscal year." Maybe just their future. On Wednesday, New Jersey Treasurer Andrew Sidamon-Eristoff testified before the New Jersey Assembly Budget Committee that the Christie administration perceived its pension funding as consisting of two parts - one to support the normal costs of future pensions of current employees and the other to support the inherited underfunded actuarial liability. He testified the Garden State this year and next would just make contributions for the former part, and that the state planned to resume funding the latter part in fiscal year 2016—affirming the state's responsibility for its pension's underfunded actuarial liability, and reiterating the Governor's view that the state must change its pension and other postemployment benefits to reduce the amount for which the state was responsible, and denying the state was walking away from its long-term obligations. In the last two months all three ratings agencies have downgraded New Jersey's general obligation rating to A-plus or the equivalent. With six weeks left in the fiscal year, the state is $1.07 billion short, according to David Rosen of the Legislative Services office; beginning on July 1, the Garden State's new fiscal year, New Jersey will have a $1.59 billion shortfall. Moody's has lowered New Jersey's credit one step, the sixth rating cut since Gov. Christie took office in 2010. The Governor, a potential 2016 candidate for president, said in February that public-employee unions must agree to changes in retirement and health plans because his 2011 overhaul did not go far enough to contain costs.

That measure required the state to make one-seventh of its pension contribution in fiscal 2012 and then raise the payment each year until reaching the full annual amount in 2018. But Garden State Assembly Speaker Vincent Prieto, a Democrat from Secaucus, said that the Governor's policies further endanger New Jersey's finances: "The governor's plan is the result of five years of budgeting decisions that left New Jersey no room to handle any revenue shortfall, let alone a crisis…Those decisions were unfortunate and irresponsible, and if wasn't for the fiscal responsibility of Democrats, things would be even worse."

Public Trust & Ethics

From the *Richmond Times Dispatch* last week:

Successful government relies on trust. The breakdown of comity at all levels reflects the citizenry's lack of confidence in institutions and individuals. Washington's woes are well documented. Local jurisdictions suffer self-inflicted damage as well.

Tuesday's story, "Official nearly exited with extra $400,000: Richmond prosecutor will review sick leave deal," does not flatter the city.

Quotes of the Week

"Detroit is, for better or worse, an inseparable part of this state: It simply cannot be liquidated like a private business and sold away. The citizens will remain. The infrastructure will remain. And we must address it." ~ Michigan House Speaker Pro Tem John Walsh (R-Livonia), who is chairing a special committee in the legislature to oversee the package of bills that will determine the City of Detroit's future.

TIME TO STEP UP

Daily Press Editorial (Paywall for certain articles)

Running for public office takes courage, confidence and the committed support of family and friends. The endeavor is not easy — walking through neighborhoods and knocking on doors takes plenty of time and effort — nor is it cheap, since campaign signs do not grow on trees. So as we head down the stretch toward Election Day, we extend our gratitude to those who volunteered for the experience and seek a place in local government. And we encourage other civic-minded citizens to lend their time and talent to the calling of public service, since our communities will surely benefit as a result.

"Property values are back up faster than expected, but the pressure is still there…It's hard to be a city in Michigan because state policy is very negative toward cities in general." ~ Eric Scorsone, an economist at Michigan State University in East Lansing who specializes in municipal finance.

"The decision here is most likely all or nothing: One side is going to win and the other side is going to lose — and that's going to be very happy on one side and very tough on the other side." ~ U.S. Bankruptcy Judge Steven Rhodes.

"Municipal Bankruptcy, to a large degree, is like 'Let's Make A Deal.' " ~ The incomparable Jim Spiotto.

"State and local finances are very important to the stability of our economy. I think that the complete elimination of the state and local deduction would be something that would be a real challenge for many jurisdictions." ~ U.S. Treasury Secretary Jacob Lew, testifying before Congress on the proposed tax reform plan recently released by Ways and Means Chairman Dave Camp (R-Mi.).

Little Legalities

FOIA. In an Illinois case where the issue on appeal was whether the office of the State's Attorney of Kendall County is exempt from the disclosure requirements of the Freedom of Information Act (FOIA) (5 ILCS 140/1 *et seq*. (West 2010)) on the grounds that the State's Attorney's office is part of the judicial branch of Illinois government and therefore beyond the reach of the FOIA. The Illinois Supreme Court overturned the lower court and found that the state attorney's office is, in fact, part of the state's executive branch. Here, Larry Nelson, on behalf of media companies, submitted a request to Kendall County under the Freedom of Information Act (FOIA), 5 ILCS 140/1, to copy all emails sent and received by two assistant states' attorneys in January 2010, via county email. The county advised him to submit his request to the state's attorney's office. Nelson demanded that the county comply within 5 days of the original request. The county asserted a need for consultation that precluded meeting the deadline. Nelson requested review by the Public Access Counselor, Office of the Attorney General, under 5 ILCS 140/9.5. That office declined to act because the state's attorney's office had responded; although some information was denied as exempt, the state's attorney had received approval for that decision and Nelson had not asked for review. Nelson filed suit and filed another FOIA request, excluding emails that were limited to discussions: with law enforcement personnel concerning pending cases; with defense counsel in pending cases; or with county board members or elected county officials. The circuit court dismissed, holding that the judicial branch is beyond the reach of the FOIA. The appellate court affirmed. The Illinois Supreme Court reversed. Case law consistently recognizes that the state's attorney's office is part of the executive branch, which is subject to FOIA. *Nelson v. County of Kendall*, Illinois Supreme Court, #116303, May 22, 2014.

Attorney's fees authorized where state fails to follow controlling precedent. A California Superior Court has awarded attorney's fees in the amount of $2.6 million in a case where the Board of Equalization failed to follow directly applicable appeals court precedent. The court agreed with the taxpayer that the board's position was "not substantially justified," given that the court's own ruling described the factual similarities between the case and controlling precedent as follows: "[One] could almost substitute the names of the plaintiff and the monetary amounts, and the facts would be essentially the same." The Board argued that it was nevertheless justified in defending the same position in this case, because lack of budget and the inability to present expert testimony prevented it from having a sufficient opportunity to defend itself in the prior case. While this was unfortunate, said the court, its ruling in this case, granting the taxpayer summary judgment, made clear that "the additional expert witness testimony did not even create a triable issue of fact." There was nothing to try, the court wrote, since the transactions in question were not taxable as a matter of law, based on binding precedent. The Board also argued it was entitled to defend its position in this case, because it should not be required to accept that the court of appeal opinion as the "last word." While it was certainly conceivable, the court noted, that a different appellate division might decide the case differently; the question here was whether the taxpayer should have to subsidize an effort by the board to accomplish that goal—a question to which the court responded "no." The court further observed that the board was not a typical private litigant, noting that litigation is oftentimes a war of attrition, where the side with the greater resources prevails not on the merits, but rather on the lack of ability to finance litigation to the end, adding that there may often be cases where the taxpayer does not have the financial resources to pursue taxes that may wrongfully have been imposed. The court also rejected the board's contention that a single holding contrary to the board's position would not prevent that position from being deemed "substantially justified." That might be true where the contrary holding is not binding, said the court, but here, it clearly was. The court did, however, agree with the board that the "fee clock" should not start running until the appellate court's decision was final and remittitur was issued. But the court also found a "special factor" applied, allowing a higher rate of fees to be awarded since the taxpayer's attorneys, "in addition to being extremely capable, were uniquely qualified to handle the case." *Lucent Technologies Inc. v. State Board of Equalization*, California Superior Court, County of Los Angeles, BC402036; BC474710, 4/21/2014.

Is a Film credit application an enforceable contract? The Michigan appeals court has ruled that an applicant for the state's film credit did not have a contract with the state. In order to receive the tax credit, a taxpayer must make an investment in a project, enter into an agreement with the state film office, receive a certificate from that office, apply to the treasury department for the credit and not be delinquent in any tax. Here, the applicant had asked the film office for an agreement and had submitted some information requested, including information about an investment made in the state, but had been denied for lack of appropriate documentation. The court therefore found that the applicant could not sue for breach of contract. Not only was there no binding written agreement, the court also noted that there is a "strong presumption that statutes do not create contractual rights." Specifically, said the court, for there to be an enforceable agreement, "the statutory language must provide for the execution of a written contract on behalf of the state." *West Michigan Film, LLC v. Michigan Film Office*, Court of Appeals of Michigan, 313243, 4/22/2014.

Withholding & Tax evasion. The Minnesota court of appeals has ruled that the owner of a store was properly convicted of 35 counts of tax evasion for failing to file any withholding or tax returns with the state. The evidence at trial showed that the defendant's accountant had to struggle to get the defendant to give her information she needed to file returns. She testified that the defendant never asked her about the status of his returns or showed concern about missing deadlines. But on cross examination, she also testified that the defendant had asked her to file his personal and business taxes, and that he never asked her not to file them. She also agreed that the defendant had eventually given her every record requested. Though she testified that she and appellant "never talked about preparing sales tax," she admitted that he did ask her to "take care of everything that had to do with his business and personal taxes." Other evidence at trial (including testimony of the defendant's girlfriend) showed that the defendant knew that taxes were not being paid. The defendant argued that circumstantial evidence was insufficient to prove willfulness, the only element in dispute at trial. Under state law, when a person knows of a tax obligation, knows that he or she has failed to satisfy the obligation when required, but has no purpose to evade or defeat a tax in the future, the person is guilty of a gross misdemeanor. However, a felony violation occurs when a person knows of a tax obligation, has failed to satisfy the obligation when required, and the failure is accompanied by a purpose to attempt evasion of the tax obligation both presently and in the future. Here, the evidence showed that while the defendant saw to it that amounts for federal withholdings, FICA, Medicare, and state withholdings were withdrawn from his employees' paychecks for each pay period, those amounts were never paid over as required. He also collected sales tax from customers and deposited those funds in his own bank account. He then withdrew funds from that account for personal use. Under these circumstances, the court concluded that the only reasonable inference was that the defendant knowingly and intentionally failed to satisfy his tax obligations. The court also rejected the defendant's claim that there should have been only one count of evasion given that the behavior here involved a single incident carried out over an extended period of time. The court disagreed, noting there were three different types of violations proved for each year: failure to file a return for or pay 1) income, 2) payroll withholding, and 3) sales tax. Each violation for each year was a separate behavioral incident because each involved a different type of tax with a different filing date and with a different payment deadline. Nor was the court persuaded that the sentence imposed by the district court failed to properly

consider the fact that the defendant fully paid the taxes owed, especially given that the payment was accomplished by the state's attachment of the defendant's bank accounts, and given that most of the unpaid tax was deducted from employees' wages or collected from retail customers as sales tax. *State of Minnesota v. Beattie*, Court of Appeals of Minnesota, A13-1099, 4/28/2014.

Amounts paid as a "result of playing a slot machine." The Pennsylvania Supremes have reversed the lower courts and held that a casino may subtract cash and non-cash awards paid to patrons as promotions based on their slot-machine activity in determining taxable gross terminal revenue (GTR). During the period at issue, GTR was defined as the total of the "wagers received by a slot machine" minus specified reductions for amounts paid out to patrons "as a result of playing a slot machine." The courts below had concluded that deductible awards had to be the result of "winning." The court rejected this interpretation; the court also found it could not rely on the use of the term "slot machine" to limit awards to those tied to the algorithm used in the machine to determine payouts. Nor was the court convinced that just because payouts made directly from the machine were automatically reported, that it was the legislature's intent to limit the awards to those amounts, especially since casinos are obligated to keep other financial and accounting records and can use those records to substantiate reporting. Still, the court was not convinced that the awards here, given out to patrons of the slot machines generally, were clearly the result of "playing a slot machine." The court therefore turned to rules of statutory construction applicable to tax statutes and concluded that the provision for subtraction of awards and payouts should be treated as exclusions from tax, and thus interpreted strictly in favor of the casino. The court also considered the fact that casinos are allowed a "comp exclusion" for personal property distributed to a patron as some evidence that the legislature intended gaming facilities to be allowed to exclude such promotional amounts from the tax base without requiring those amounts to be directly tied to the play of a specific slot machine at a specific time. Nevertheless, the court also concluded that the awards in this case must result, at least indirectly, from playing slot machines, and determined that factual issues necessary to determine whether this was the case had not been fully addressed below. *Greenwood Gaming and Entertainment, Inc. v. Commonwealth of Pennsylvania*, Supreme Court of Pennsylvania, 50 MAP 2012, 4/28/2014.

Property Tax Decisions

Property tax exemption, same-sex couples, & state equal protection clause. The Alaska Supreme court has ruled that a property tax exemption granted for homes owned and occupied by opposite-sex married couples, but not same-sex domestic partners violates equal protection under the state constitution, applying the rational basis standard. (The court had previously ruled that same-sex spouses could not be denied certain employment benefits.) The court determined that an amendment to the state constitution limiting marriage to opposite sex couples did not override the application of the equal protection clause. The state essentially argued that under the marriage amendment, same-sex couples were not similarly situated. The court rejected this argument as irrelevant since the marriage amendment simply denied the status of marriage to same-sex couples, not all of the possible benefits of marriage, or the equal protection of state laws. The court concluded that because same-sex partners could not marry, the limitation of the tax exemption granted benefits to a class of persons who could achieve a particular status and denied them to another class of persons who could not. The state argued that the difference in treatment was based not on marital status, but on long-standing distinctions between types of property interests (tenancy in common versus tenancy by the entirety). The court rejected this argument noting that marital status was the only distinction drawn under the exemption and even if the distinction turned on a type of property ownership, that ownership was available only to married couples, making this a distinction without a difference. There court also concluded there was no basis for distinguishing same-sex couples solely on the basis that they were not married—given that they were not allowed to marry. The couples were in long-term committed relationships involving shared ownership and combined finances. Therefore, for purposes of analyzing the effects of the exemption program, the court held that committed same-sex domestic partners who would enter into marriages recognized in Alaska if they could were similarly situated to those opposite-sex couples who, by marrying, have essentially entered into domestic partnerships formally recognized in Alaska. The court then applied a three-part sliding-scale test under the state constitution's equal protection clause, which it also noted provided more protection than the federal equal protection clause. The court found that minimum scrutiny applied and that the governmental interests at stake—cost control, administrative efficiency, and encouraging opposite-sex couples to marry—were legitimate. It concluded, however, that the classification at issue bore no relationship to those interests. Cost was never sufficient to justify a violation of equal protection, the court noted, and administrative efficiency could be achieved easily enough. Nor did the state provide any explanation for how denying benefits to couples who cannot marry would promote marriage in couples who can. *Alaska v. Schmidt*, Supreme Court of Alaska, S-14521, 4/25/2014.

Grants

CFDA	Opportunity Title	Federal Agency	Opportunity Number	Eligibility	Due Date	Match?
10.458	Crop Insurance Education in Targeted States	Department of Agriculture-Risk Management Education	USDA-RMA-RME-2014-TS	Unrestricted	6/30/2014	
10.460	Risk Management Education Partnership Program	Risk Management Education	USDA-RMA-RME-2014-PP	Unrestricted	6/30/2014	
10.912	PA 2014 Conservation Innovation Grant	Pennsylvania State Office	USDANRCSPA1401	State and local governments	6/24/2014	X
12.300	Cooperative Agreement for Research and Program Assistance at DoD Installations Supported by the Kansas City District	Department of Defense-Army Corps of Engineers	NWK-14-0001	IHEs	6/13/2014	
12.300	MEXICAN SPOTTED OWL SURVEYS	NAVAL FACILITIES ENGINEERING COMMAND	N62473-14-2-0007	Unrestricted	6/14/2014	
12.300	Transport injured, ill, and orphaned wildlife from San Diego Bay to rehabilitation center	NAVAL FACILITIES ENGINEERING COMMAND	N62473-14-2-0009	Unrestricted	6/12/2014	
N/A	Management of Undesirable Plants on US Army Corps of Engineers Project Lands at the Bonneville Project	Dept. of the Army -- Corps of Engineers	NWP-14-0011	County governments	5/23/2014	
12.300	CRNBAA14-002	NSWC - CRANE	CRNBAA14-002	Unrestricted	6/16/2014	
12.300	CRNBAA14-003 - HBCU & MI ONLY	NSWC - CRANE	CRNBAA14-003	IHEs	6/16/2014	
14.900+	Lead-Based Paint Hazard Control (LBPHC) Grant Program and Lead Hazard Reduction Demonstration (LHRD) Grant Program	Department of Housing and Urban Development	FR-5800-N-04	State and local governments	6/27/2014	X
15.224	Pompey's Pillar National Monument 3D Interpretation Project in Montana	Department of the Interior-Bureau of Land Management	L14AS00110	Unrestricted	6/11/2014	
15.224	Nez Perce National	Bureau of Land	L14AS00108	IHEs	6/11/2014	

	Historic Trail Project	Management				
15.231	Sheboygan River Area of Concern Habitat Restoration	Bureau of Land Management	L14AS00097	State and local governments	6/16/2014	X
15.231+	FA BLM New Mexico State-Wide Internship Program	Bureau of Land Management	L14AS00077	Unrestricted	6/13/2014	X
15.231	Restoring and Maintaining the ecosystem on the Uncompahgre Plateau.	Bureau of Land Management	L14AS00113	Unrestricted	6/6/2014	
15.231	BLM CA CESU Population and Habitat Science Applications for Climate Change Adaptation	Bureau of Land Management	L14AS00101	IHEs	6/16/2014	
15.231	Prairie Stream Research	Bureau of Land Management	L14AS00109	Unrestricted	6/11/2014	
15.231	CPCESU GSENM Study of Black Bears of Paunsaugunt Plateau, Utah Project	Bureau of Land Management	L14AS00111	Unrestricted	6/13/2014	
15.237	CESU BLM AZ Strip Cooperative Monitoring Project	Bureau of Land Management	L14AS00112	IHEs	6/25/2014	
15.238	Nevada Challenge Cost Share Program FY2014	Bureau of Land Management	L14AS00114	Unrestricted	7/15/2014	X
15.511	Automation and Management of Cultural Resources Information	Bureau of Reclamation	R14SS00007	State and local governments, IHEs	5/28/2014	
15.511	Archeological Fieldwork and Research for Unanticipated Discoveries	Bureau of Reclamation	R14AS00046	Unrestricted	5/27/2014	
15.658	Surf Scoter Restoration Project for Cosco Busan Oil Spill	Fish and Wildlife Service	F14AS00185	Unrestricted	5/21/2014	
15.669	R3 Eastern Tallgrass Prairie and Big Rivers Landscape Conservation Cooperative	Fish and Wildlife Service	F14AS00181	State and local governments, IHEs	6/13/2014	
15.670	Desert Landscape Conservation Cooperative CMQ #3	Fish and Wildlife Service	F14AS00183	Unrestricted	6/13/2014	
15.670	Desert Landscape Conservation Cooperative CMQ #6	Fish and Wildlife Service	F14AS00180	Unrestricted	6/13/2014	
15.670	Desert Landscape Conservation Cooperative CMQ #1	Fish and Wildlife Service	F14AS00182	Unrestricted	6/13/2014	
15.904	Historic Preservation Fund Grants for Properties Associated with Groups Underrepresented in the National Register of Historic Places	National Park Service	P14AS00105	State governments	6/30/2014	X
15.945	Scientific Investigation of Wildlife Disease Outbreaks	National Park Service	P14AS00104	IHEs	5/30/2014	
15.945	Natural Resource	National Park	P14AS00103	IHEs	5/25/2014	

	Condition Assessment of Parks in NCR Network	Service				
15.945	Database Development for Cumberland Piedmont Network Vital Signs Monitoring	National Park Service	P14AS00099	IHEs		
16.123	OJJDP FY 2014 Investigator-Initiated Research on Risk Assessment	Department of Justice-Office of Juvenile Justice Delinquency Prevention	OJJDP-2014-3891	State and local governments, IHEs	6/30/2014	
16.734	2015 Criminal History Record Assessment and Research Program (CHRARP)	Bureau of Justice Statistics	BJS-2014-3933	State and local governments, IHEs	6/30/2014	
16.585	OJJDP FY 2014 Initiative To Develop and Test Guidelines for Juvenile Drug Courts	Office of Juvenile Justice Delinquency Prevention	OJJDP-2014-3927	IHEs	6/30/2014	
17.283	Workforce Innovation Fund Grants	Department of Labor-Employment and Training Administration	SGA-DFA-PY-13-06	State and local governments	6/18/2014	
17.502	Susan Harwood Training Grant Program, FY 2014 (Capacity Building)	Occupational Safety and Health Administration	SHTG-FY-14-02	IHEs	6/26/2014	
17.502	Susan Harwood Training Grant, FY 2014, (Targeted Topics)	Occupational Safety and Health Administration	SHTG-FY-14-01	IHEs	6/30/2014	
19.040	Public Advocacy to Counter Violence Against Women	Department of State-U.S. Mission to India	NDRFP14-04	IHEs	6/13/2014	
19.432	FY 2015 Survey of International Educational Exchange Activity	Bureau Of Educational and Cultural Affairs	ECA-ECAAS-15-002	IHEs	6/19/2014	X
19.901	Licensing Assistance - Iraq	Bureau of International Security and Nonproliferation	ISN-ISNECC-14-007	IHEs	5/30/2014	
20.200	Off Hours Freight Delivery	Department of Transportation-Federal Highway Administration	DTFH6114RA00010	State and local governments	6/12/2014	X
43.001	ROSES 2014: Atmospheric Composition: Laboratory Research	NASA-Headquarters	NNH14ZDA001N-ACLS	IHEs	8/14/2014	
47.041	Manufacturing Machines and Equipment	National Science Foundation	PD-14-1468	Unrestricted	9/15/2014	
47.041+	Centers of Research Excellence in Science and Technology	National Science Foundation	14-565	IHEs with undergraduate enrollments of 50% or more minority groups	8/13/2014	
47.070	Computer and Information Science and Engineering (CISE) Research Initiation Initiative	National Science Foundation	14-562	IHEs	9/24/2014	
47.074	Collections in Support of	National Science	14-564	IHEs	8/11/2014	

	Biological Research	Foundation				
66.509	Air, Climate, and Energy (ACE) Centers: Science Supporting Solutions	Environmental Protection Agency	EPA-G2014-STAR-J1	State and local governments, IHEs	9/4/2014	
66.424+	Office of Solid Waste and Emergency Response (OSWER) Program Tribal Support Cooperative Agreements	Environmental Protection Agency	EPA-OSWER-IPCO-14-03	IHEs	6/23/2014	
81.087	Marine and Hydrokinetic Device Field Measurements	Department of Energy-Golden Field Office	DE-FOA-0001118	Unrestricted		
84.116	Fund for the Improvement of Postsecondary Education (FIPSE)--First in the World Program (FITW)--Development	Department of Education	ED-GRANTS-051614-001	IHEs	6/30/2014	
84.282	Office of Innovation and Improvement (OII): State Charter School Facilities Incentive Grants Program	Department of Education	ED-GRANTS-051414-001	States that have authorized charter schools	6/30/2014	
93.048	Transforming State LTSS Access Programs and Functions into A No Wrong Door System for All Populations and All Payers	Department of Health and Human Services-Administration for Community Living	HHS-2014-ACL-CDAP-NW-0080	State governments	7/15/2014	
93.110	Perinatal and Infant Oral Health Quality Improvement National Learning Network	Health Resources & Services Administration	HRSA-14-090	Any public entity	6/30/2014	
93.117	Center for Integrative Medicine in Primary Care Program	Health Resources & Services Administration	HRSA-14-123	State and local governments, certain IHEs	6/13/2014	
93.137	FY14 Partnerships to Increase Coverage in Communities Initiative	Office of the Assistant Secretary for Health	MP-CPI-14-003	State and local governments, IHEs	6/16/2014	
93.224	Service Area Competition - Additional Area (SAC-AA); Cincinnati, Ohio	Health Resources & Services Administration	HRSA-14-146	State and local governments, IHEs	6/18/2014	
93.242	Confirmatory Efficacy Clinical Trials of Non-Pharmacological Interventions for Mental Disorders (R01)	National Institutes of Health	RFA-MH-15-340	State and local governments, IHEs	2/18/2015	
93.262	Assessment of Elastomeric Respirators in Healthcare Environments (R21)	Centers for Disease Control and Prevention	RFA-OH-14-009	State and local governments, IHEs	6/30/2014	
93.279	Long-Term Retention in Care for U.S. Substance Using Populations (R21)	National Institutes of Health	PA-14-223	State and local governments, IHEs	5/7/2017	
93.279	Long-Term Retention in Care for U.S. Substance Using Populations (R01)	National Institutes of Health	PA-14-224	State and local governments, IHEs	5/7/2017	
93.279	Long-Term Retention in Care for U.S. Substance Using Populations (R34)	National Institutes of Health	PA-14-222	State and local governments, IHEs	5/7/2017	

93.283	Multiple Approaches to Increase Awareness and Support among Young Women Diagnosed with Breast Cancer	Centers for Disease Control and Prevention	CDC-RFA-DP14-1408	State and local governments, IHEs	7/1/2014	
93.324	State Health Insurance Assistance Program National Technical Assistance Center	Administration for Community Living	HHS-2014-ACL-CDAP-ST-0086	Unrestricted	7/7/2014	
93.351	Limited Competition: National Primate Research Centers (P51)	National Institutes of Health	PAR-14-226	IHEs	1/25/2017	
93.351	NIH Science Education Partnership Award (SEPA) (R25)	National Institutes of Health	PAR-14-228	State and local governments, IHEs	6/22/2016	
93.569	Community Services Block Grant (CSBG) Training and Technical Assistance (T/TA) Program: Regional Performance and Innovation Consortium (RPIC)	Administration for Children and Families - OCS	HHS-2014-ACF-OCS-ET-0823	State and local governments	7/15/2014	
93.569	Community Services Block Grant (CSBG) Training and Technical Assistance (T/TA) Organizational Standards Center of Excellence (COE)	Administration for Children and Families - OCS	HHS-2014-ACF-OCS-ET-0821	State and local governments	7/15/2014	
93.569	Community Services Block Grant (CSBG) Legal Training and Technical Assistance (T/TA) Center	Administration for Children and Families - OCS	HHS-2014-ACF-OCS-ET-0820	State and local governments	7/15/2014	
93.576	Refugee Home-Based Child Care Microenterprise Development Project	Administration for Children and Families - ORR	HHS-2014-ACF-ORR-RG-0793	State and local governments, IHEs	7/14/2014	
93.647	Secondary Analyses of Strengthening Families Datasets	Administration for Children and Families - OPRE	HHS-2014-ACF-OPRE-PD-0802	State and local governments, IHEs	7/16/2014	X
93.847	Diabetes Impact Award-Closed Loop Technologies: Clinical, Physiological and Behavioral Approaches to Improve Type 1 Diabetes Outcomes (DP3)	National Institutes of Health	RFA-DK-14-014	State and local governments, IHEs	11/24/2014	
93.847	Diabetes Impact Award-Closed Loop Technologies: Development and Integration of Novel Components for an Automated Artificial Pancreas System (DP3)	National Institutes of Health	RFA-DK-14-015	State and local governments, IHEs	11/24/2014	
93.853	NIH StrokeNet Clinical Trials and Biomarker	National Institutes of Health	PAR-14-220	State and local governments,	3/5/2017	

	Studies for Stroke Treatment, Recovery, and Prevention (U01)			IHEs		
93.103+	Limited Competition for NIH-Industry Program: Discovering New Therapeutic Uses for Existing Molecules (UH3)	National Institutes of Health	PAR-14-211	State and local governments, IHEs	1/16/2015	
93.103+	Limited Competition for NIH-Industry Program: Discovering New Therapeutic Uses for Existing Molecules (UH2/UH3)	National Institutes of Health	PAR-14-212	State and local governments, IHEs	1/16/2015	
93.103+	Pre-application for the NIH-Industry Program: Discovering New Therapeutic Uses for Existing Molecules (X02)	National Institutes of Health	PAR-14-213	State and local governments, IHEs	7/15/2014	
93.103+	Limited Competition for NIH-Industry Program: Discovering Pediatric New Therapeutic Uses for Existing Molecules (UH2/UH3)	National Institutes of Health	PAR-14-210	State and local governments, IHEs	1/16/2015	
93.213+	Clinical Evaluation of Adjuncts to Opioid Therapies for the Treatment of Chronic Pain (R01)	National Institutes of Health	PAR-14-225	State and local governments, IHEs	9/7/2017	
93.242+	Sustained Release for Antiretroviral Treatment or Prevention (SRATP) of HIV Infection (UM1)	National Institutes of Health	RFA-AI-14-008	State and local governments, IHEs	11/18/2014	
93.320+	Child Development Research Fellowship Program	Administration for Children and Families - OPRE	HHS-2014-ACF-OPRE-PH-0602	IHEs	7/14/2014	
93.855+	Fc Receptor (FcR) and Antibody Effector Function in HIV Vaccine Discovery (R01)	National Institutes of Health	PA-14-218	State and local governments, IHEs	1/7/2017	
93.855+	NK Cells to Induce Immunological Memory to Prevent HIV Infection (R01)	National Institutes of Health	PA-14-217	State and local governments, IHEs	1/7/2017	
93.855+	B Cell Help Immunology Program for AIDS Vaccine Strategies (R01)	National Institutes of Health	PA-14-216	State and local governments, IHEs	1/7/2017	
93.855+	HIV Vaccine Vector-Host Interactions: Understanding the Biology and Immunology (R21)	National Institutes of Health	PA-14-214	State and local governments, IHEs	1/7/2017	
93.855+	HIV Vaccine Vector-Host Interactions: Understanding the Biology and Immunology (R01)	National Institutes of Health	PA-14-215	State and local governments, IHEs	1/7/2017	
98.001	Support to Ethnic Tibetans in China	U.S. Agency for International	USAID-RDMA-SOL-486-14-000026	Unrestricted	6/19/2014	

		Development-Bangkok				
N/A	The USAID Development Innovation Accelerator BAA	Agency for International Development	BAA-DIA-STIP-2014	State and local governments, IHEs		