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Oct. 23, 2020, 4:30-5:45 p.m.

ABI: Municipal Bankruptcy/Chapter 9

Hon. Frank J. Bailey; U.S. Bankruptcy Court (D. Mass.)

Hon. Barbara J. Houser; U.S. Bankruptcy Court (N.D. Tex.)

Kevyn D. Orr; Jones Day

Hon. Steven W. Rhodes (ret.); JAMS

Yvette R. Austin Smith; The Brattle Group

Adrienne K. Walker; Levin, Cohn, Ferris, Glovsky and Popeo, P.C.

Educational Materials

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Restructuring, Insolvency & Distressed Debt Virtual Summit

SEPTEMBER 16 - OCTOBER 27, 2020

Brief History of Municipal Bankruptcies

Since 2001, there have been 33 municipal bankruptcies (excluding special districts and Puerto Rico)

City of Detroit (July 2013) remains the largest municipal bankruptcy

Most recent municipal bankruptcies:

- Perla, Arkansas (May 2019)
- Fairfield, Alabama (May 2020)

Many state and local governments had just started to (or not yet) recovered from the financial distress caused by the Great Recession

¹Brookings Institute

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Municipal Budgets are Under Stress

Municipal revenue and expenses have been (and will continue to be) impacted by COVID. Most impacted to-date:

- Sales and individual income tax revenues
- Public safety, education and social services expenditures

Full-scale of COVID impact is still developing

- Lagged reporting: Most recent fiscal year ended June 2020
- Lagged impact: property taxes, less capital investment to support future revenue

Most municipalities are subject to a balanced budget requirement

CARES Act provided approx. half as much funding to state and local governments as American Recovery and Reinvestment Act (2009)¹

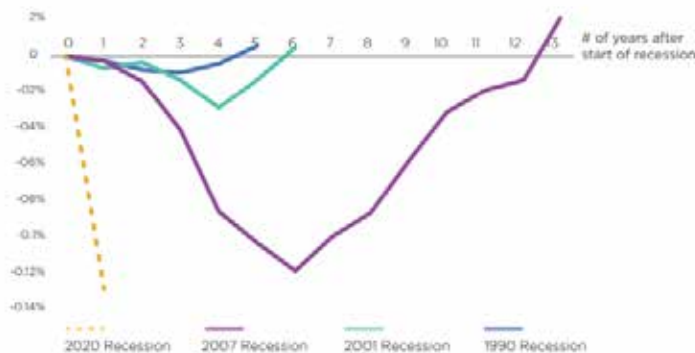
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Y-O-Y Change in General Revenue Funds Comparison to Prior Recessions



- COVID has caused a much steeper decline in local general revenue relative to recent recessions

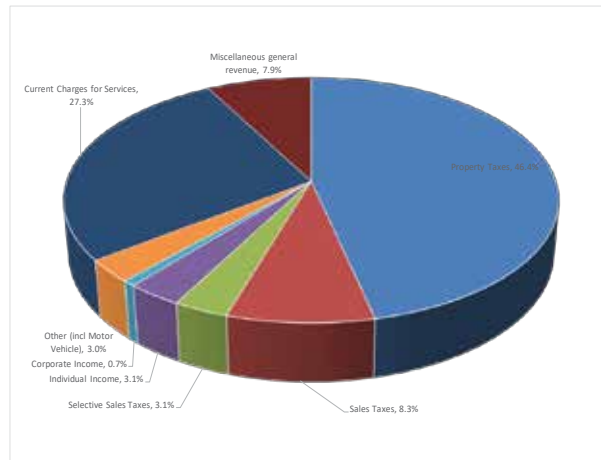
Source: National League of Cities: City Fiscal Conditions 2020

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Pre-COVID Local Gov't Sources of General Revenue



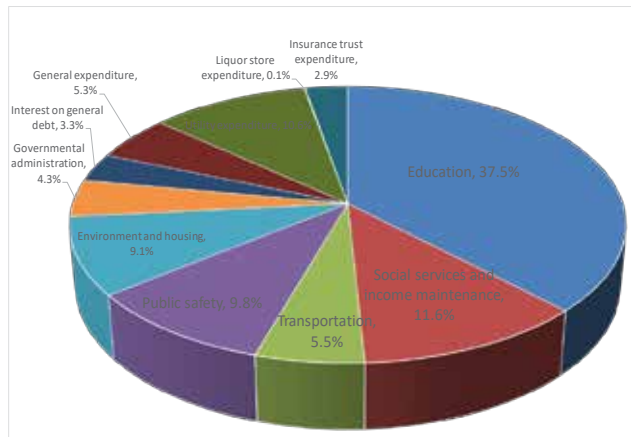
Source: U.S Census Bureau, 2018

- Sales, income and property taxes likely to be most impacted by COVID
 - 61% of general revenue
- Demand for certain services has also declined (e.g., parks, parking facilities, etc.)
- Intergovernmental transfers (excluded from graph) are also vulnerable.
 - 31% of total local revenue from state transfers

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Pre-COVID Local Gov't Direct Expenditures



Source: U.S Census Bureau, 2018

- Public safety, social services, education most likely to be impacted by COVID
 - 59% of direct expenditures

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Example: Detroit (2019-2020 Budget)

REVENUE SOURCE	EXAMPLES	\$ in Millions
Taxes, Assessment and Interest	Income Taxes Property Taxes Wagering Taxes Gas & Weight Taxes	843.9M
Sales and Charges for Services	Solid Waste Fees Municipal Service Fees Transportation Fares Other Reimbursements	658.2M
Grants, Shared Taxes and Revenues	Revenue Sharing Grant Reimbursements	297.5M
Contributions and Transfers	General Fund Contributions Use of Fund Balance	259.0M
Total Revenues: \$2.3B		

The city **expects to lose** \$194 million in revenue the next year, which starts July 1, and \$154 million this year, so the administration pivoted and proposed cuts — basically a complete overhaul — from the original \$1.1 billion general fund budget Mayor Mike Duggan proposed in early March. That came before cases of the coronavirus were first reported in Michigan.

Source: Crain's

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Example: Sacramento COVID Revenue Impacts

Financial Outlook General (G) and Measure U (MU) Funds (\$ in 000s)	FY2019/20 Amended	FY2020/21 Projection
Revenues (includes \$13.4m Capitol Park Hotel loan repayment)	644,944	668,638
Expenditures (includes contribution to EUR)	651,941	641,567
Revenues less Expenditures	(6,997)	27,071
Available G/MU Fund Balance (FY2019/20 Midyear estimate)	42,484	
Available Resources	35,487	27,071
Estimated Revenue Losses due to COVID-19 Pandemic		
General Fund Sales Tax	(12,619)	(23,316)
Measure U Sales Tax	(14,467)	(25,110)
General Fund Parking Revenue	(4,243)	(6,483)
General Fund Transient Occupancy Tax	(1,466)	(3,390)
General Fund Business Operations Tax (BOT)		(1,500)
Subtotal Impacts	(32,795)	(59,799)
Budget Projection with Response to the Pandemic	2,692	(32,728)

Note: Expenditures include increases that were considered but are not included in the Budget.

- Projected revenue impact larger in FY2020/21
- FY2020/21 impact estimated at 9% of total revenue
- "As the impacts of revenue losses and the timeframe for economic recovery becomes clearer it will be necessary to refine our estimates."

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Additional Considerations for Individual Municipalities

Relative dependence on revenue sources varies *significantly* across municipalities

Heavier dependence on sales tax revenue has been identified as a risk factor for current financial distress

- The most sales tax-reliant counties are located in AK, GA, MO, NY and OK¹
- States without sales tax: DE, MT, NH and OR¹

Impact on certain revenue and expense categories exacerbated by demographics (generally) and recent population shifts (e.g., urban to suburban/rural)

Even in the absence of financial insolvency, concern is rising for “critical services” insolvency

¹National League of Counties

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Faculty

Hon. Frank J. Bailey was appointed as a U.S. Bankruptcy Judge for the District of Massachusetts in Boston on Jan. 30, 2009, and served as Chief Judge from December 2010 until December 2015. He also serves on the First Circuit Bankruptcy Appellate Panel. Previously, Judge Bailey clerked for Hon. Herbert P. Wilkins of the Massachusetts Supreme Judicial Court from 1980-81 and was an associate at the Boston office of Sullivan & Worcester LLP until 1987, where he practiced in its litigation and bankruptcy departments. He spent the next 22 years as a partner at Sherin and Lodgen LLP, where he chaired its litigation department and was a member of its management committee. His practice focused on complex business litigation and creditors' rights, and he often represented clients in medical device, pharmaceutical and high-technology businesses. Judge Bailey served as the consul for the Republic of Bulgaria in Boston before his appointment to the bench, and he has participated in many international judicial programs. In 2013, he taught at the Astrakhan State University School of Law in south central Russia, and he has also taught courses in Sofia, Bulgaria and Tashkent, Uzbekistan. In addition, he taught legal writing and research at Boston University School of Law from 1981-93 and currently teaches business reorganizations at Suffolk University Law School in Boston. Judge Bailey was appointed by the First Circuit to oversee the financial restructuring of the City of Central Falls, R.I. He has served on the Board of Governors of the National Conference of Bankruptcy Judges and was its Education Committee Chair in 2017. Beginning in October 2019, he will serve as NCBJ's president-elect. In addition, he is past chair of the National Conference of Federal Trial Judges of the American Bar Association and currently serves as the Judicial Member at Large on the ABA Board of Governors. Judge Bailey received his B.S.F.S. from Georgetown University's School of Foreign Service and his J.D. from Suffolk University School of Law.

Hon. Barbara J. Houser is the Chief U.S. Bankruptcy Judge for the Northern District of Texas in Dallas and ABI's President. She previously was with Locke, Purnell, Boren, Laney & Neely in Dallas and became a shareholder there in 1985. In 1988, she joined Sheinfeld, Maley & Kay, P.C. as the shareholder-in-charge of the Dallas office and remained there until she was sworn in as a U.S. Bankruptcy Judge in 2000. While at Sheinfeld, Judge Houser led the firm's representation of clients in a variety of significant national chapter 11 cases. She lectures and publishes frequently, is a past chairman of the Dallas Bar Association's Committee on Bankruptcy and Corporate Reorganization, is a member of the Dallas, Texas and American Bar Associations, and is a Fellow of the Texas and American Bar Foundations. Judge Houser served as a contributing author to *Collier on Bankruptcy* for many years and taught creditors' rights as a visiting professor at the SMU Dedman School of Law. She was elected a Fellow of the American College of Bankruptcy in 1994, and in 1996, she was elected a conferee of the National Bankruptcy Conference. In 1998, the *National Law Journal* named Judge Houser as one of the 50 most influential women lawyers in America. After becoming a bankruptcy judge, she joined the National Conference of Bankruptcy Judges and served as its president from 2009-10. She received the Distinguished Alumni Award for Judicial Service from the SMU Dedman School of Law in February, 2011, the William L. Norton Jr., Judicial Excellence Award in October 2014, and the Distinguished Service Award from the Alliance of Bankruptcy Inns of the American Inns of Court in October 2016. Judge Houser currently serves as a member of the executive board of the SMU Dedman School of Law, and in March 2017, Chief Justice John Roberts appointed her to serve as a member of the board of directors of the Federal Judicial Center, the education and research arm of the Third Branch. In June 2017, she was appointed to serve as the leader of a five-

federal-judge mediation team in the Title III proceedings under PROMESA for the Commonwealth of Puerto Rico and four related governmental instrumentalities. Judge Houser received her undergraduate degree with high distinction from the University of Nebraska and her J.D. from Southern Methodist University Law School, where she was editor of its law review.

Kevyn D. Orr is a partner with Jones Day in Washington, D.C., and has practiced law in the areas of business restructuring, financial institution regulation and commercial litigation for three decades. He has handled all aspects of complex and precedent-setting matters and has provided strategic advice regarding crisis-management situations. Prior to rejoining Jones Day in 2015, Mr. Orr served as emergency manager of the City of Detroit and was charged with restructuring the city's finances and operations. During his tenure, he oversaw the largest and most complicated municipal bankruptcy proceeding in the nation's history. As a result of that proceeding, the city successfully restructured \$18 billion in debt, reduced overall debt by \$7 billion, developed and implemented a multiyear \$1.7 billion revitalization plan for city services and operations, streamlined key city operations, helped improve public safety, put the city's art in a perpetual public trust, and avoided drastic cuts to pension and related retiree benefits. At Jones Day, Mr. Orr's experience includes advising Chrysler with regard to all aspects of its bankruptcy, National Century Financial Enterprises in its bankruptcy and asserting that company's claims in the health care provider bankruptcies of PhyAmerica Corp. and DCHC/Greater Southeast Hospital, and Laidlaw Corp. in its defense of a \$1 billion claim by the purchaser of its environmental cleanup division. His previous restructuring experience included his service as the chief government legal officer of a failed financial institution and a special master to oversee the operations of a real estate development firm. Mr. Orr is a member of American Bar Association and ABI. He received both his B.A. in political science in 1979 and his J.D. in 1983 from the University of Michigan.

Hon. Steven W. Rhodes is a retired U.S. Bankruptcy Judge for the Eastern District of Michigan in Detroit, where he served for nearly 30 years until his retirement on Feb. 18, 2015. He served as chief judge from 2002-09, and from 1997-2004 and 2008-11, he also served on the Bankruptcy Appellate Panel of the Sixth Circuit, serving as its chief judge from 2002-04. He joined the Ann Arbor, Mich., office of JAMS, the Judicial Arbitration and Mediation Service, and has experience in the resolution of complex disputes in bankruptcy, business/commercial, class action/mass tort, employment and fraud/Ponzi schemes. Judge Rhodes served as an adjunct professor at the University of Michigan Law School and the University of Detroit Law School, and he is a Fellow of the American College of Bankruptcy. He is also co-author of *The Ponzi Book: A Legal Resource for Unraveling Ponzi Schemes* and oversaw the City of Detroit's municipal bankruptcy case. On March 1, 2016, Michigan Governor Rick Snyder appointed him to be the emergency manager for the Detroit Public Schools, serving until Dec. 31, 2016. Judge Rhodes has spoken at numerous conferences and seminars on bankruptcy law and practice. From 1994-96, he was an associate editor for the *American Bankruptcy Law Journal*, and from 2005-09, he was ABI's Vice President-Research. On April 3, 2009, ABI awarded him its 2009 Distinguished Service Award. From 2002-04, Judge Rhodes was the chair of the National Conference of Bankruptcy Judges Endowment for Education. *Crain's Detroit Business* honored him as one of its 2014 Newsmakers of the Year, and *Michigan Lawyers' Weekly* named him 2014 "Lawyer of the Year." In September 2015, the Commercial Law League of America awarded him the Lawrence P. King Award for Excellence in the Field of Bankruptcy. Goodwill Industries awarded him its Barbara R. Smith Lifetime Achievement Award, and Walsh College awarded him an Honorary Doctor of Laws. Judge Rhodes received his undergraduate degree in mechanical engineering from Purdue

University and his J.D. from the University of Michigan Law School, where he served as an editor of the *Michigan Law Review*.

Yvette R. Austin Smith is a principal in the New York office of The Brattle Group, Inc. and specializes in M&A and bankruptcy disputes, with subject-matter expertise in valuation and credit and solvency analysis. She provides testifying and consulting expert services in litigation matters related to mergers and acquisitions, dissenting shareholder actions, leveraged buyouts, recapitalization, debt-recharacterization and avoidance actions. Ms. Austin Smith has also served as an expert in international trade subsidy disputes. She has submitted expert oral and written testimony in multiple venues, including state courts in Delaware and New York, U.S. federal bankruptcy and district courts, international courts in Canada and Australia, and the World Trade Organization and other international arbitration forums. In addition to opining on valuation, she has also provided expert testimony on market practice and transaction structure in M&A disputes. In representative bankruptcy engagements, Ms. Austin Smith has been retained as a solvency or valuation expert in connection with the bankruptcies of Lehman Brothers (on behalf of JPMorgan Chase), Caesars Entertainment Operating Co. (on behalf of Apollo Global Management), Energy Future Holdings (on behalf of Wilmington Trust Co.), and U.S. Steel Canada (on behalf of U.S. Steel). She has written a number of publications and presented on valuation and credit analysis for organizations including the American Bar Association, ABI, the National Conference of Bankruptcy Judges, the Delaware State Bar Association, Thomson Reuters and Bloomberg Law. Ms. Austin Smith is a contributing author to the *Model Merger Agreement for the Acquisition of a Public Company*, published by the ABA's Mergers and Acquisitions Committee, and a contributing researcher to *The Standard & Poor's Guide to Fairness Opinions: A User's Guide for Fiduciaries*. She has also been a member of the teaching faculty of Harvard University Extension School, where she taught a graduate finance course, and is a past faculty member of the American Bar Association's National Institute of Negotiating Business Acquisitions. Prior to joining The Brattle Group, Ms. Austin Smith provided investment banking advisory services, including mergers and acquisitions, fairness opinions, solvency opinions and commercially reasonable debt opinions. Ms. Austin Smith received her A.B. in government and philosophy from Harvard College and her M.B.A. in finance from Columbia University.

Adrienne K. Walker is a member at Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C. in Boston and practices in its Bankruptcy & Restructuring Section. Her practice focuses on all aspects of bankruptcy and commercial matters in both federal and state courts. Ms. Walker has experience in workouts, receiverships and bankruptcy matters including representing corporate debtors, secured and unsecured creditors. She frequently represents indenture trustees and bondholders in municipal workouts, including the chapter 9 municipal bankruptcies of Jefferson County, City of Stockton, Calif., and City of Detroit. In addition to her business clients, Ms. Walker established a *pro bono* chapter 7 clinic at Mintz, where she oversees numerous consumer bankruptcy cases each year, including successfully discharging a client's student loans after a multi-day trial. She is a frequent speaker at continuing legal education programs and has published numerous articles concerning emerging issues in insolvency law. In addition, she is an adjunct professor of law at her alma mater, Suffolk University Law School, where she teaches an advanced course in business reorganization. Ms. Walker currently is a conference co-chair of ABI's Northeast Conference and a member of the International Women's Insolvency & Restructuring Confederation, as well as the Boston Bar Association, where she is a member of the Bankruptcy Law Section's steering committee, having previously served as co-chair

of its Bankruptcy Law Section. She received her undergraduate degree with honors in political science from Simmons University and her J.D. *magna cum laude* from Suffolk University Law School.