# Conduit Financing: A Primer and Look Around the Corner

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## Introduction

There are two kinds of municipal bonds: general obligations bonds (GOs) and revenue bonds. GOs are easy to understand because they are the kind of bonds referred to in state constitutions and statutes emanating from the post-Civil War 19th century—still today's black letter law on authority for states[1] and their local governments[2] to incur debt. If you read these old laws, they unequivocally restrain states and local governments from incurring debt without voter approval or exceeding debt limits based on percentages of real property values or types of governmental revenue.

Revenue bonds, in contrast, come in several varieties. But they all share one point in common: unlike GOs, their repayment of debt service is not an obligation derived from, or an encumbrance on, the taxing power or the taxable property of the state or any local government. All revenue bonds must be repaid from a source other than taxes. As Robert Amdursky put it so well nearly 20 years ago, the risk of repayment of GOs is on the taxpayer; the risk of repayment of revenue bonds is on the investor.[3] The legal requirement that revenue bonds be repaid from a "source other than taxes" makes them akin to corporate or business obligations: if the revenues do not materialize, the bonds will not be paid. To some extent, the explosive growth over the past 35 years in federal securities regulation of municipal bonds, including initial disclosure and continuing disclosure requirements, is a function of the growth of revenue bonds relative to GOs. There's not much to worry about with GOs unless the tide washes out most of the taxable real property or the place becomes a ghost town.

In truth, however, GOs have limited application in modern public finance. Their constitutional and statutory restraint on borrowing is addressed to government finance within political boundaries of states and local governments frozen in time for 200 years. Those boundaries do not reflect concentrations in commercial and demographic activity where public works need to be built. Not surprisingly, GOs have turned out to be an inefficient mechanism to finance public works on the Wagnerian scale required for bridges, tunnels, airports and the like. With permissive court decisions which have upheld the constitutionality and validity of public corporations which transverse municipal and state boundaries, conduit forms and entities resembling business corporations more than governmental units have proliferated to the point where most of the public finance activity which is conducted in the United States today is subject to little or no voter or taxpayer input. Such remoteness from public scrutiny and mere *pro forma* public approval procedures[4] to authorize revenue bonds is a blessing upon investment bankers and their patrons—quasi-government officials—in issuing billions of dollars of municipal securities secured by nothing more than an indirect pledge of the taxing power—clearly an unintended consequence of 19th century lawmakers.

## The Special Fund Doctrine

The birth of revenue bonds was innocent enough and well intended in the public interest. In the late 19th century, in a U.S. Supreme Court case, taxpayers who objected to a city issuing constitutionally sanctioned general obligation bonds for a water project paid only out of water rents were sent home by the court with the comfort of knowing that the taxpayers would never be obligated to cough up the debt service if the water rents proved insufficient.[5] Hence, the Special Fund Doctrine was established. The Doctrine provides the foundational exception to the restraint on GOs in that non-GOs may be validly issued if paid from a revenue other than taxes—water rents, sewer rents, electrical utility rates, highway tolls, and the like—which is derived from a public enterprise that provides a public service from a discrete source of revenue. Sometimes, these public enterprises are viewed as governments acting in a propriety function rather than a governmental function.[6] In New York, municipal non-GO financing of a public enterprise is recognized through an elaborate "debt exclusion order" process upon application to the State Comptroller.[7] In this process, ironically the debt never loses its characteristic as a GO secured by a pledge of the taxing power. Rather, the constitutional debt limit may be pierced without limit to the extent the "net revenues" from a public enterprise cover the debt service on public enterprise bonds. This process has led to the misconception that New York municipalities may issue "double barreled" bonds secured by both the taxing power and enterprise revenues. In fact, except for water debt which is excluded under the State constitution without resort to an order from the State Comptroller, and sewer debt which is subject to a one-time debt exclusion order and never looked at again as to the "net revenue" coverage, any other excluded public enterprise debt has the dangerous possibility of backing up into a municipality's debt, contracting margin should "net revenues" cover less than 100% of debt service in any year bonds are outstanding.

## The Advent of the Conduit

Revenue bonds of states and local governments legally sustained on the authority of the Special Fund Doctrine might well have been the final word on an exception to constitutional debt restraints were it not for the automobile. At a time when street car lines, railroads and canals were regulated and financed as common carriers (and financed with corporate debt rather than municipal securities), much like airlines today, streets and highways were still largely a matter of local concern. But the growing acceptance of the automobile in the early 20th century as the accepted mode of private surface transportation meant that construction, financing and operation of highways, railway overpasses, bridges and tunnels needed to be uniform over several municipal boundaries. Hence, the advent of state highway authorities and, the greatest of them all, the Port Authority of New York and New Jersey ("PANYNJ").[8] These macro state and interstate agencies were among the first "conduits," being entities of the state for a specific public purpose which overlay multiple municipal boundaries and whose debt was paid not from taxes but from operating revenues. This conduit structure fit squarely within the Special Fund Doctrine to form the legal basis for authority revenue bonds.

At the micro level, conduits take the form of special districts within a municipality to finance a public work that serves a community within a municipality, but not the entire municipality. Sometimes special districts have separate revenue bond authority, and sometimes only taxing or assessing authority to generate a revenue for the targeted public work.[9] Again, the legal basis for these micro conduit districts is that their debt is paid from a revenue derived from the public enterprise, not from general real property taxes. By the 1930s, most states accepted conduit financing of public works through revenue bonds secured only by enterprise revenues. The public only paid for the service if they used it; bondholders were paid only if enough of the public used the service and paid for it.

## Beyond the Special Fund Doctrine

A generally held view of conduit financing in the commercial world is that it involves the use of a special purpose vehicle by banks and financial institutions to hold off-balance sheet loans which collateralize a corporation's commercial paper; you know, something like Enron.[10] Equating debt of PANYNJ or a state highway authority, for example, with Enron *financing* subsidiaries seems implausible, but there is an uncomfortable connection.

Once conduits became accepted as the vehicle for large-scale financings of revenue bonds for the rapidly expanding automobile and public utility infrastructure in the 1950s, courts were faced with the extent to which conduit financing could be expanded beyond clear public purposes, otherwise permitted using GOs, under the Special Fund Doctrine. The issues the courts faced when these issues arose focused on (i) what constitutes a revenue, (ii) what constitutes a public purpose, and (iii) how is the lending or giving of credit prohibition to be applied.

**Revenue:** Until recently, courts were hesitant to define a "revenue" beyond a stream of payments for a public service, i.e., utilities (water, sewer electricity), toll roads, parking fees. For example, in *Winkler. v. State School Building Authority*, the West Virginia Supreme Court reviewed a bond issue for the construction of public schools to be issued by a conduit entitled the "State School Building Authority."[11] The authority had no revenues generally accepted under Special Fund Doctrine analysis (i.e., the kids didn't pay tuition). Rather, the authority's bonds were payable from appropriations by the state legislature. While the case invalidated the proposed bond issue by equating annual appropriations as the practical equivalent of a full faith and credit, which had not been voted in violation of the state constitution, it more importantly held that the unlimited legislative appropriations were not "revenues." The court in *Winkler* laid out the requirements of the Special Fund Doctrine: (i) a special source of revenues must be identified from a public enterprise (i.e., water rents, highway tolls) and legally pledged to the repayment of the revenue bonds, and (ii) the amount of the revenues must limit the amount of the bonds which may be issued (i.e., what municipal bond attorneys call a "coverage test").[12] Unlimited appropriations fail the test.

But the guidance in *Winkler* was not recognized by courts in other states, particularly states like New York and New Jersey with large urban populations in need of large capital infusions for public works and public welfare. In *Bulman v. McCrane*, the New Jersey Supreme Court reversed the trial court decision in analyzing whether lease payments were a "revenue."[13] Here, the state arranged for a developer to construct a facility to be leased to the state—without public bidding or a vote on incurring debt as the New Jersey constitution would require if the state issued debt directly. Although such arrangements were viewed by the trial court as naked evasions of the state constitution, the New Jersey Supreme Court found that if the rent were economic rent, where the investor simply recouped his cost and depreciation, rather than a financing lease where rent paid the debt service on the developer's borrowed funds, even if the developer borrowed on the strength of the state's credit or lease commitment, there was no violation of state restraints on incurring debt. So rent paid on economic leases became a form of revenue, although through a back-door approach, without analyzing the tests of the Special Fund Doctrine.

New Jersey again broke the barrier on limiting the definition of revenues in *Lonegan v. State* by upholding bonds of an "Educational Facilities Corporation" (EFC) paid solely from general legislative appropriations.[14] One would think, as plaintiffs in the case argued, that the

clause in the New Jersey state constitution which forbids state debt to be issued "in any manner" without a vote of the people would prevent conduits like EFC from issuing debt for a state purpose. However, the court made clear that EFC, as an "independent authority," is not bound by the state constitution on debt authorization matters. Further, the court was not impressed by the argument that because it was highly likely that the legislature would make annual appropriations every year to pay debt service on EFC bonds, it was *de facto* pledging the state's full faith and credit, which under the state constitution requires a vote, finding that a mere legislative expression of intent to make future payments on EFC bonds was not a promise of the full faith and credit pledge, and thus, not state debt. After *Lonegan*, bonds for a public purpose issued by a conduit entity could find a safe harbor from constitutional restraint on debt simply by inserting a clause in the financing documents that payment of debt service is subject to annual legislative appropriation. And so, legislative appropriations—without limit as to amount and without a coverage test to limit the amount of debt issued—became the new revenue in "revenue bonds" of conduit issuers, even if the source of the appropriation were the same tax dollars securing the full faith and credit pledge on GOs. The Special Fund Doctrine was effectively dead.

One more New Jersey case illustrates the high point in judicial permissiveness in finding a revenue to breathe legality into non-GO conduit debt. In *Lance v. McGreevy,*[15] investment bankers attempted to treat the securitization of future revenue streams from special taxes, represented as proceeds from a securitization bond issue, as a budget "revenue" for state law purposes. It seems that in drafting the budget for the state's 2005 fiscal year, a $1.5 million deficit (expenses in excess of revenues) could not be accounted for. In those heady days of subprime loans financed with collateralized mortgage obligations[16] (not that long ago), the solution to a government deficit was to borrow the money. In *Lance*, the amount of the borrowing was the present value of the estimated stream of future taxes. This was too much even for the New Jersey justices. Bond proceeds, no matter how tortured the analysis, could never be a "revenue." But the dissenters on the bench had no trouble in finding any source of funds as a revenue for budget purposes, since the definition of the term "revenue" they found "shrouded in ambiguity."

An extrapolation of *Lance*, had the dissent prevailed in treating bond proceeds as a "revenue," is not hard to imagine. Far from public enterprise revenues paid for debt service on financing facilities which provide a direct public benefit (the water you drink, the roads you drive on), state courts under the *Lance* dissent would have been authorized to effectively monetize every public asset into a "revenue." All any state would have had to do is establish a conduit authority and borrow the present value of its future budget revenues to generate current revenue with the proceeds of a conduit bond issue. That this practice, if legally permitted, would have exacerbated the fiscal woes of state and local governments in the grip of the current Great Recession is obvious.

**Public Purpose**: Although the scope of "revenues" available for conduit debt may appear to have been overstretched by judicial decisions, historically state authorities as conduit issues have limited their projects to those which the state or its local government could finance (educational facilities, utilities, roads and highways). These facilities are generally owned or controlled by the government directly and available for use by the public. In federal income tax parlance, which prescribes the availability of the federal tax subsidy of exemption from income taxation of interest on municipal bonds, they are "essential governmental function bonds."[17] On the analysis of public purpose, however, state law and federal tax law analysis diverge, the states being more expansive on defining public purpose and the feds being more restrictive. In state law, conduits at the micro level have played a key role expanding a new public purpose—economic development - which may be financed, if not always on a tax-exempt basis.[18]

One must start with the Panic of 1837 to appreciate economic development financing. During the expansion of the American interior following the War of 1812 and the development of the steam engine, railroad and canal building was at a frenzy. The financing vehicle of choice was the state or municipality which would issue debt to investors in Europe or New York City to finance these enterprises—owned not by the state or local government but by a privately held stock corporation. When the boom ended in the late 1830s, investors were often left with defaulted debt and worthless mortgages. Many states raised taxes and paid the debt; many repudiated the debt. This "financial fiasco" soon led to states adopting the restrictions on authorizing and issuing state and local government debt discussed herein. For all practical purposes, it was inconceivable, after the 1840s, that state debt could be issued to finance a private sector project on the notion that, like a railroad or canal, the project would increase employment, eliminate blight, and generally advance the economic well-being of the taxpayers in the state or local government.[19] One hundred years later, the sanctity of the prohibition of lending or giving credit to a private person or corporation began to erode and economic development financing was born.

In the midst of the Great Depression, southern states began issuing state debt to finance economic development purposes. The public purpose, which could be financed, was the creation of new jobs in companies that moved to or expanded within the jurisdiction, induced to move or expand by local tax incentives and less expensive tax-exempt financing available by financing through the state or a local government. While economic development financ-

ing was resisted in many states for violating constitutional prohibitions on lending or giving credit,[20] by the end of the 20th century, most states had judicial permission to issue industrial development bonds for economic development purposes. However, to avoid the obvious conflict with the state constitutional prohibitions against lending credit or giving to private persons or corporations, state legislatures established separate authorities to serve as conduits for economic development financing.[21]

New York's economic development financing conduits are found at both the state[22] and local government[23] levels. In most states, it is typical for the state to control economic development activity through a single state agency.[24] New York is one of a few states which permits the legislature to enact special laws to create industrial development agencies (IDAs) for the public purpose of economic development with the power to authorize and issue revenue bonds in every municipality—every county, city, town and village. According to a 2006 report of the State Comptroller on IDAs,[25] there are 115 active IDAs engaging in revenue bond issues, straight lease transactions,[26] and Payment in Lieu of Taxes (PILOTs) agreements.[27] Whether the proliferation of IDAs in New York has created measurable job growth and firmed up tax bases is subject to doubt. While some have criticized IDAs for various abuses,[28] the sad reality is that New York is a very high-cost and high-tax state. It is difficult to offer sufficient incentives to induce a business to move to New York from another state—indeed one of the Comptroller's observations is that IDAs "pirate" companies from one part of the state to another[29]—a little like moving the deck chairs on the Titanic.

**Lending or Giving of Credit:** In New York, the battle against conduit financing was fought in the 1970s and 1990s on the issue of whether bonds of this or that state agency or authority violate the lending or giving of credit provisions of the State Constitution—and the conduits won. The lending of credit issue is rarely found in reviewing the financings of IDAs because, with a few exceptions, the exclusive source of debt repayment is the private person or corporation who incurred the debt.[30]

In the case of state authorities, the source of funding is always public funds, usually a cocktail mixed with operating revenues (utility fees, operating rail revenues), special excise taxes, income taxes, sales taxes and legislative appropriations. Under any exception to the Special Fund Doctrine, it would be difficult to determine if it applied to any portion of the bonds issued. This sophisticated confusion in structuring state conduit debt has been embraced by the Court of Appeals as an excuse to not touch the question of legality of any conduit bond issue which comes before it.[31] So unlimited conduit borrowing in New York is alive and well, notwithstanding review boards, authority reform legislation[32] and proposed legislation calling for an "authorities budget office"[33] to tighten up loopholes in prior reform legislation.

Extreme judicial permissiveness in failing to uphold the debt constraints in the State constitution is reflected in the *Wein* cases from the 1970s and the *Schulz* cases from the 1990s. The story begins in the City of Elmira in the mid-1950s. Imagine those shiny new Packard Clippers, Studebaker Commanders and Nash Ambassadors lined up in front of newly installed parking meters courtesy of the City of Elmira Parking Authority—a duly enacted public corporation of the state. It seems that the coins in the parking meters were City of Elmira revenues, but the Parking Authority had issued the debt (Enron lawyers must have been familiar with *Comeresky v. City of Elmira*[34]). Since the Parking Authority was short of money to pay debt service on its bonds, the City gave it the parking meter profits. Plaintiffs charged that the gift violated Article VII, § 8 of the State Constitution prohibiting gifts and loans. The court found no constitutional violation because while a loan is prohibited, and a gift to a private person is prohibited, a gift to another public corporation is not. Said the court: "We should not strain ourselves to find illegality in such programs. The problems of a modern city can never be solved unless arrangements like these…are upheld, unless they are patently illegal."[35]

From the Elmira Parking Authority, it was onto the Stabilization Reserve Corporation (SRC) which issued bonds to finance operations of New York City following its 1975 financial crisis. In *Wein v. City of New York,*[36] the court, citing *Comeresky*, said this was only a gift of bond proceeds from one public corporation to another. And even though the City was obligated to pay SRC debt, it was not invalid City debt because the SRC legislation said so. Then the court reviewed revenue anticipation notes issued by the Municipal Assistance Corporation for the City of New York to reimburse New York City for expenses to balance the City's budget. In *Wein v. State,*[37] (*hereinafter Wein II*), the court, citing *Comeresky*, found no prohibition in financing a gift by one public corporation to another. However, it is Judge Jason's thoughtful sole dissent in *Wein II* which scholars of the State Constitution should read today. Judge Jason pointed out that the permissive gift between public corporations was intended by the drafters to be limited to available funds of the state, not money borrowed on the state's credit.[38] Had Judge Jason's rule been applied, the state's heavy debt burden today may not have been created with judicial permission over the past 35 years.

Finally, bonds issued by the NYS Thruway Authority were challenged in *Schulz v. State*[39] (*hereinafter Schulz III*) as a violation of Article VII, § 11 of the State Constitution which requires a public referendum on debt issued by the state. In an action brought by voters who gained standing to sue by a bare thread, plaintiffs alleged that a 1993 statute which authorized the Thruway Authority to issue debt secured by various state funds containing general tax moneys created *de facto* state debt which had not been approved by the voters. They argued that (i) the Thru-

way Authority debt was indistinguishable from the debt of the state because of revenue sources available to pay debt service, (ii) appropriations pledged annually for debt service for a valid state purpose (the Thruway, MTA facilities, etc.) were tantamount to a full faith and credit pledge requiring voter approval, and (iii) the state would never fail to appropriate each year because to do so would cause a default on Thruway Authority bonds, roil the municipal securities market and make it difficult for the state or its conduit authorities to ever borrow again. Article VII, § 5 of the State Constitution providing that debt of the state's authorities is not debt of the state, not unlike the independent agency holding in *Lonegan* 10 years later in New Jersey, fortified dismissal of the lawsuit. But at bottom, the court, in an opinion written by Chief Judge Kaye, relied on the premise that public corporations may give money to each other under the State Constitution whether or not borrowed, citing *Wein II* and *Comeresky*. Judge Jason having long retired, there was no dissent in *Schulz III*.

## The Way Things Are Today

Looking back over the *Wein* and *Schulz* cases and their progeny,[40] it is hard to not take away the strong impression that the Court of Appeals has effectively repealed Article VII and Article VIII of the State Constitution.[41] Although there are semantic differences between a loan and a gift for public finance structuring purposes, the truth is, as observed in the cases discussing appropriation-backed debt, when issued for a public purpose, the disconnect from the state and its conduit entities, whether through an independent authority or the technicality of a inter-public corporation gift, is a meaningless illusion. No state or local government would allow its subsidiary conduit entity to default on its debt, not only because the credit markets, observing no distinction in the credit between the state or local government and their controlled conduits, would not stand for it, but also neither would the voters for very long.

This trend toward appropriation-backed conduit debt does not stop at the state level. Although IDAs are largely immune from criticism that their financing activities are camouflaged local government debt, conduits in the form of not-for-profit corporations,[42] referred to generically as "local development corporations," often, in fact, provide camouflage. And there is more. In *Summers v. City of Rochester,*[43] the Appellate Department held that a limited liability company (LLC) may issue debt for an ostensible public purpose which can be assumed willy-nilly by the local government which formed it. Here is another opportunity for conduit financing to bloom because among the purposes of an LLC under § 202 of the NYS Limited liability Corporation Law is the power to do all things in furtherance of a governmental policy. Ladies and gentlemen, the bar is open.

## A Look Around the Corner—Constitutional Reform

Much of the discussion about authority reform in the past few years has focused on the political corruption in appointing board members (nothing new), the lack of state fiscal oversight of their practices (board and staff trips to Bermuda to attend a conference—nothing new), lack of independence of board members (why wouldn't you appoint a major fundraiser who wants to participate in "public service"?), and lack of training for best practices in corporate governance (fundraisers need training for *what* exactly that they don't think they already know?). The effort and resources being invested to legislate morality and good judgment in running state and local government conduit entities is enormous.[44] In the area of a conduit's financing activities, the legislature occasionally imposes debt limits in bond authorization statutes, then routinely repeals them when the next issue of bonds will exceed the limit. Nothing has stopped New York's numerous conduits from issuing debt, save the expiration of provisions like "civic facility" bonds[45] or the lack of capital markets support.

However, little legislative reform attention has been given to conduit debt incurring powers. Much as we like to blame the legislature for this condition, it is not their fault. As explained above, any blame for the expansive powers for conduits to issue debt in the face of constitutional restraints should be laid on the steps of the Court of Appeals. The solution to harnessing the debt-incurring power of conduits does not reside in Albany, but rather with the people of the state, maudlin though it may appear. It resides in a substantial overhaul of the State Constitution.

Over 25 years ago, this author explained that a major roadblock in the State Constitution impacting local government finance is the inability to authorize and issue revenue bonds, a power granted local governments in most states within the traditional boundaries of the Special Fund Doctrine.[46] Likewise, the state has no power to issue revenue bonds. A constitutional amendment to authorize revenue bonds for the state and local governments, as an exception to the constitutional restraints on GOs, would eliminate the need for extensive conduit financing because the state and local governments could issue revenue bonds directly as non-GO debt.[47] While staff would be needed for the financial administration of revenue bonds, a function perhaps preserved for the conduits, further resort to conduits to bypass and usurp constitutional restraints on government borrowing would be unnecessary.

As this author pointed out to a conference of city and county managers a few months ago,[48] the very mention of the State Constitution generates abhorrence and anxiety. Most involved in government, policy and politics don't want to discuss it, and certainly not change it, out of fear that any change, especially a major top-to-bottom over-

haul, would disenfranchise important constituencies of certain benefits. But as discussed herein, the State Constitution plays a vital role in public finance.

State constitutions, besides being widely ignored and their more onerous provisions the subject of legislative evasion, are not well understood.[49] State constitutions do not generally grant rights to people; they restrict actions of the state exercised under the "reserved powers" emanating from the Tenth Amendment of the U.S. Constitution from hurting the people who live there—from excessive state spending, taxation and borrowing. However, the State Constitution of 1938, now in force, far from restricting state government action, expanded state powers in new Article XVI establishing state power to levy taxes, in new Article XVII providing a system of social welfare—jails, mental health facilities, public hospitals, public welfare, and more—and new Article XVIII instituting public housing and nursing homes, housing authorities, and more. Surprisingly, the 1938 Constitution's mandates for public welfare, medical care and housing assistance invoked no effort to reform the 19th century restrictions on state and local debt retained in whole in the 1938 Constitution from its 1826 and 1894 antecedents.

New York's debt is somewhere in excess of $50 billion. The lion's share of it—conduit debt—is subject to no limit or approval by any constituency other than the legislature and a public authorities review board selected by the governor and the legislature. Nowhere is there a discussion in the 1938 constitutional convention proceedings of granting counties and municipalities power to issue revenue bonds or to create local revenue bond authorities (like New Jersey utility districts)—in fact, the local authority to issue water revenue bonds established in the 1894 Constitution was repealed. Nowhere is there an analysis in the proceedings of the convention of whether it continued to make sense to measure debt and tax limits solely on real property tax values—what about general revenues, household income, GDP, or other modern indicia of an entity's carrying capacity for debt?

Every organization, public or private, periodically refreshes its organic documents so that they are relevant to the shared existing conditions of its members, whether by-laws, a city code, or a corporate charter. Only works like the Bible, the Torah or the Koran we do not change because they are written by a higher authority and we strive to follow their absolute teachings. But men (and a few women) made and approved the State Constitution. They can change it[50] to bring government debt-incurring powers back to state and local governments whose elected officials are responsible to the voters.

## Endnotes

1. N.Y. Const., art. VII § 11 ("No debt shall be incurred unless approved by the voters at a general election.").
2. N.Y. Const., art. VIII § 2 ("No indebtedness shall be contracted by a county, city, town, village or school district unless the full faith and credit are pledged to the principal and interest thereof."). In *Flushing Nat'l Bank v. Mun. Assistance Corp.*, 40 N.Y. 2d 731 (1975), the court held that the faith and credit pledge is a prior lien on the revenues of the issuer. *See generally* Kenneth W. Bond, *Enhancing the Security Behind Municipal Obligations*, 6 Fordham Urb. L.J. (1977).
3. Robert S. Amdursky & Clayton P. Gillette, Municipal Debt Finance Law—Theory and Practice, §1.3 (1992 & Supp.).
4. *See, e.g.*, N.Y. Pub. Auth. Law § 50 (2009).
5. *City of Walla Walla v. Walla Walla Water Co.*, 172 U.S. 1 (1898).
6. *See generally Penn Square Gen. Corp. v. County of Lancaster*, 936 A.2d 158 (Pa. Cmwlth., 2007).
7. N.Y. Local Fin. Law, §§ 123.00, 124.10 (2009).
8. PANYNJ was established in 1921 through an interstate compact between New York and New Jersey and approved by Congress.
9. For example, Montana provides for special assessment districts which issue bonds to pay for public improvements where the property benefited by the improvements can be identified. The principal and interest payments are made from a special assessment on the identified properties. See Mont. Code Ann. §§ 7-12-2169, -4201 (2009).
10. Businessdictionary.com, Conduit Finance Definition, http://www.businessdictionary.com/definition/conduit-finance.html (*last visited* Sept. 10, 2009).
11. *Winkler v. State Sch. Bldg. Auth.*, 189 W.Va. 748 (1993).
12. For investment-grade revenue bonds, annual net revenues for debt service should be 2 to 3 times scheduled annual debt service.
13. *Bulman v. McCrane*, 64 N.J. 105 (1973).
14. *Lonegan v. State*, 176 N.J. 2 (2003).
15. *Lance v. McGreevey*, 180 N.J. 590 (2004).
16. …the losses from which we are paying for through our annual Form 1040 filings to sustain the multi-million dollar compensation and benefits of major bank executives…
17. *See generally* Internal Revenue Serv., Internal Revenue Bulletin 2006-36 (Sept. 5, 2006).
18. In the late 1970s and early 1980s, during historically high interest rate levels, tax-exempt revenue bonds for economic development purposes under state law proliferated. Congress' response was to classify revenue bonds benefiting private persons and corporations (non-exempt persons) as "private activity bonds" and generally deny them tax-exempt status.
19. *See generally Sharpless v. Mayor of Philadelphia*, 21 Pa. 147 (1853) (stating that it would be "palpably unconstitutional" to use tax dollars for a private purpose).
20. *See, e.g, Village of Moyie Springs v. Aurora Mfg. Co.*, 353 P.2d 767 (Idaho, 1968); *Mitchell v. N. C. Indus. Dev. Fin. Auth.*, 159 S.E.2d 745 (N.C., 1968).
21. *See generally* Richard Briffault & Laurie Reynolds, Cases and Materials on State and Local Government Law 540-47 (2004).
22. For example, the New York State Empire State Development Corporation.
23. N.Y. Gen. Mun. Law Title 18-A.
24. For example, the New Jersey Economic Development Authority, and the Connecticut Economic Development Agency.
25. *See* Office of the State Comptroller, Div. of Local Gov't Services & Econ. Dev., Industrial Development Agencies in New York State: Background, Issues and Recommendations (2006), *available at* http://www.osc.state.ny.us/localgov/pubs/research/idabackground.pdf.
26. These are non-financing transactions where the project is deed to the IDA for state and local tax incentives.

27. A contractual arrangement whereby the project borrower agrees to pay the taxing jurisdictions a fraction of the real property taxes which would otherwise be entirely abated.
28. *See generally* Citizens Budget Comm'n, Public Authorities in New York State (2006), *available at* http://www.cbcny.org/Authority_Reform_CBC.pdf.
29. *See supra* note 24.
30. Official statements for bond issues of IDA projects disclaim in bold caps that the IDA debt is not that of the state or its political subdivisions.
31. *Local Gov't Assistance Corp. v. Sales Tax Receivables Corp.*, 2 N.Y.3d 524 (2004). The court, after reviewing the constitutionality of an incredibly complex financing structure involving at least two state agencies and one not-for-profit corporation to refund the debt of one authority and provide a large payment to New York City, said "the wisdom of this legislation of not a matter for this court to address." *Id.* at 528.
32. *See* Public Authorities Accountability Act, ch. 766 L. 2005, 228th Sess. (N.Y. 2005) (codified as amended at N.Y. Pub. Auth. Law § 2 *et seq.* (2006)).
33. *See* A.2209-C, 232nd Sess. (N.Y. 2009); S.1537-C, 232nd Sess. (N.Y. 2009).
34. 308 N.Y. 248 (1955).
35. *Id.* at 254.
36. 36 N.Y.2d 610 (1975).
37. 39 N.Y.2d 136 (1976).
38. *Id.* at 158.
39. 84 N.Y.2d 231 (1994).
40. *See, e.g.*, *Schulz v. N.Y. State Legislature* (*hereinafter Schulz IV*), 676 N.Y.S.2d 237 (1998) (upholding the bonds of the Transitional Finance Authority to fund New York City capital projects which if financed by the City would exceed its constitutional debt limit, citing *Wein II* and *Schulz III*, and *LCAG v. STARC* citing *Wein II*, *Schulz III* and *Schulz IV*).
41. Recent cases in other states have moved away from judicial permissiveness. *See, e.g.*, *State ex rel. Pension Obligation Bond Comm. v. All Persons Interested in Matter*, 152 Cal.App.4th 1386 (2007) (invalidating proposed pension obligation bonds as not being voted for approval and attempting to do indirectly what is prohibited directly); *Strand v. Escambia County*, 32 Fla. L. Weekly S550a (2007) (invalidating proposed tax increment bonds as pledging the county's full faith and credit for GO-type projects without voter approval).
42. N.Y. Not-for-Profit Corp. Law § 1411 permits these corporations to engage in activities in furtherance of assisting a governmental purpose.
43. 875 N.Y.S.2d 658 (4th Dep't 2009).
44. *See generally* Public Authorities Accountability Act of 2005, *supra* note 32; A.2209-C/S.1537-C (2009), *supra* note 33.
45. N.Y. Gen. Mun. Law § 854(13) (2009).
46. *See* Kenneth W. Bond, *Toward Revenue Bonds for N.Y. Municipal Finance*, N.Y. L.J. (Sept. 29, 1983).
47. A constitutional convention held in Albany in 1967 proposed amendments authorizing revenue bonds and relaxing the prohibition on gifts and loans. The proposition was defeated by the voters in November, 1967 (Source: New York State Archives and Records Administration).
48. Kenneth W. Bond, Address at the Annual Training Conference of the New York County and City Managers Association (May 18, 2009).
49. *See generally* Richard Briffault, *Foreword: The Disfavored Constitution: State Fiscal Limits and State Constitutional Law*, 34 Rutgers L.J. 907 (2003).
50. N.Y. Const., art. XIX, § 2 requires that the proposition, "Shall there be a convention to revise the Constitution and amend the same?" be placed on general election ballot every 20 years.

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