



MEMORANDUM

To: Interested Parties
From: Tim Gage and Matt Newman
Date: May 13, 2016
Re: Impact of "Cortopassi" Initiative

Executive Summary

This memo presents an analysis of the potential impact of a proposed constitutional amendment titled "Revenue Bonds. Statewide Voter Approval. Initiative Constitutional Amendment" (Attorney General File Number 15-003). The proposed measure will appear on the November 2016 general election ballot. The proposed measure aims to require statewide voter approval for projects financed with revenue bonds in excess of \$2 billion, although projects under that dollar threshold could potentially be affected by the measure.

Currently, voter approval is required for general obligation bonds, which are financed by taxpayers using state or local government general funds. Many infrastructure projects, however, are financed with revenue bonds where a specific revenue stream (e.g., bridge tolls) is used to pay for a large infrastructure project such as a toll bridge. Unlike general obligation bonds where the taxpayers back the bonds, revenue bonds are repaid solely with the revenue stream from the related project. As a result, the bondholders – not tax payers -- assume the risk in the event that the revenue stream is not adequate to repay the debt.

While large statewide infrastructure projects funded by revenue bonds appear to be the intended target of this measure the measure also explicitly includes projects funded by Joint Powers Authorities or similar bodies "created by the state" or in which "the state is a member." In addition, many terms are undefined creating significant uncertainty and a potentially much larger reach, including to certain local infrastructure projects and smaller pieces of much larger projects. Based on a review of the initiative, the measure would likely have the following effects:

- Increased litigation, delays and costs on a wide range of infrastructure projects as a result of project opponents' use of ambiguities in the law to attempt to force proposed projects to a statewide vote

- Increased financing costs for projects that proceed with private financing in place of tax exempt public financing
- Increased state interest expenses to the extent refinancing of existing debt is delayed or prevented as a result of the measure
- The ability of voters in one region to vote on the future of a project in a separate region of the state, even if they are not directly impacted by the project
- Reduced ability to respond quickly to emergencies
- Reduction in infrastructure development (and corresponding jobs and economic benefits)

What is a Project?

The measure does not specifically define the term “project.” In fact, at a legislative hearing reviewing the measure, the attorney for the measure’s proponent claimed they intentionally left the term “project” undefined in order to allow the courts to ultimately determine its’ meaning.¹ Therefore, there is considerable uncertainty with respect to the measure’s ultimate scope and reach and it is likely that project opponents will seek to exploit this measure’s provisions by bringing litigation or by forcing a statewide vote to delay or stop projects that they oppose.

This uncertainty notwithstanding, the following is a list of some of the types of projects that would likely be subject to a statewide vote:

- Water storage, distribution and flood control infrastructure improvements such as raising and building new dams (e.g., Sites Reservoir), Delta levee fortification, and the California Water Fix
- Transportation infrastructure such as seismic retrofitting and repairs for bridges and highways including toll bridges such as the San Francisco-Oakland Bay Bridge, construction of new toll roads and bridges, and high speed rail
- University of California and California State University facilities, such as the recently announced \$2 billion “University of the 21st Century” expansion of U.C. Davis as well as other facilities including hospitals and health centers, research and educational facilities, and dormitories and living facilities²

Ultimately, the measure could apply to a wide range of entities, including State of California departments and agencies such as the Department of Water Resources or the University of California, state financing authorities such as the California Health Facilities Financing Authority

¹ Assembly Standing Committee on Appropriations & Senate Standing Committee on Governance and Finance Hearing of 03-02-2016.

² See Lambert, Diana, “UC Davis chancellor lays out growth vision under ‘21st century’ plan,” Sacramento Bee, September 22, 2015. Available at <http://www.sacbee.com/news/local/education/article36196776.html>

which finances hospitals and health care facilities, and certain local joint powers authorities such as the Bay Area Toll Authority, which manages toll bridges in the San Francisco Bay Area.³

Conclusion

While the measure leaves voters with the impression they would be empowered to determine when the state takes on new debt, in fact statewide taxpayers generally do not guarantee financing for statewide projects funded by revenue bonds.⁴ And, the lack of clarity in the measure's language means that it could apply to a large number of entities, projects, and financing tools, including certain local infrastructure projects. Ultimately, the measure, if enacted, would likely result in increased costs, delayed project completion, and reduced economic growth.

³ Projects would be covered to the extent they exceed the measure's \$2 billion threshold or are deemed by courts to be part of a \$2 billion project.

⁴ The state periodically issues lease revenue bonds, the debt service for which is paid from appropriations supporting the operations of the department for which the facility is being financed. However, documents accompanying such bond sales specifically state that neither the full faith and credit of the state nor the state's general fund is pledged for payment of debt service on the bonds.

What the Measure Would Do

Under current law voters must approve general obligation bonds (i.e., those backed by the full faith and credit of the state or a local government). Many infrastructure projects, however, are financed with revenue bonds where a specific revenue stream (e.g., bridge tolls) is used to pay for a large infrastructure project such as a toll bridge. Unlike general obligation bonds where the taxpayers back the bonds, revenue bonds are repaid solely with the revenue stream from the related project. In other words, revenue bonds are repaid by the users of the facility or infrastructure project, not the taxpayers generally. With a revenue bond, the bondholders – not tax payers -- assume the risk in the event that the revenue stream is not adequate to repay the debt.

Under the terms of the proposed measure, projects financed with revenue bonds over \$2 billion would be subject to voter approval (in spite of the fact that the voters would not be responsible for repayment of the debt). The measure specifies that projects “financed, owned, operated, or managed” by the State of California are covered. In addition, joint powers authorities (JPAs) or similar bodies “created by the state or in which the state is a member” would also be covered.⁵ Cities, counties, school districts, special districts, and community college districts would be exempt (except to the extent they issued debt through a covered JPA).

Impact Could Be Very Broad

While the plain language of the measure would suggest that its reach is limited, applying only to a relatively small number of very large state infrastructure projects, the scope of the measure is potentially very broad.

Covered Entities

The measure states that use of revenue bonds for projects “financed, owned, operated, or managed by the state” would require voter approval. This definition would obviously include state departments, such as the Department of Water Resources (and by extension the State Water Project), but would also likely include the University of California and the California State University systems, including the hospitals and academic health centers as well as the more traditional university research and educational facilities. The measure would also cover state financing authorities to the extent that these entities finance projects that exceed the measure’s \$2 billion threshold. Such entities include the California Statewide Communities Development Authority and the California Health Facilities Financing Authority, which finance hospitals and health care facilities, among other projects. Other such financing authorities include the California Housing Finance Agency (affordable housing), the California State Public Works Board (prisons, jails, correctional facilities, courthouses), the California Infrastructure &

⁵ This provision would appear to include JPAs specifically created by the state such as the Bay Area Toll Authority, but could also potentially cover all JPAs, since JPAs are created by virtue of state law and therefore could be considered to be “created by the state.”

Economic Development Bank (seismic retrofitting for bridges and highways; pollution control facilities; theatres, arts facilities, and museums; and health care facilities), the California Educational Facilities Authority (college and university facilities), the California Municipal Finance Authority (health care facilities, solid waste recovery facilities, power generation/transmission projects, college and university facilities), and the California Pollution Control Financing Authority (pollution control and solid waste recovery facilities).⁶

In addition, the measure states that a joint powers agency or a “similar body created by the state or in which the state is a member” would be covered. This would likely include such entities as the Bay Area Toll Authority, the state-created entity which manages the seven Bay Area toll bridges, including the recently re-constructed San Francisco Bay Bridge. The measure could also apply to the Orange County Transportation Corridor Agencies (JPAs created to finance and manage toll roads in Orange County). Other large JPAs “created by the state or in which the state is a member” would also be covered by the measure’s provisions, such as the Transbay Joint Powers Authority (a JPA created to build a new transit center in downtown San Francisco with Caltrans serving as a member of the JPA’s Board of Directors).

In addition to applying to JPAs, the measure would also cover debt issued by a “similar body.” The measure does not include a definition of a “similar body” but it could potentially cover such entities as the San Diego Regional Airport Authority, an entity created by the state with many similarities to a JPA. And, since all joint powers authorities are created by virtue of state law, an argument could be made (and may well be made by opponents of a specific project) that any JPA is “created by the state.” To the extent all JPAs are included, the scope of the measure expands significantly, and could affect infrastructure financing by such entities as the Southern California Public Power Authority, which provides electricity to a total population of 4.8 million in Southern California, or the Alameda Corridor Transportation Authority, which finances infrastructure improvements connected with the ports of Los Angeles and Long Beach. Other large issuers of debt include the California Statewide Communities Development Authority, the Sacramento County Sanitation Districts Financing Authority, and the San Diego Public Facilities Financing Authority, among others. Furthermore, many special districts (specifically excluded by the terms of the measure) create and issue bond debt through a JPA.

⁶ Note that each of the entities listed here has issued in excess of \$2 billion in bonds during the period 1999 – 2014, although no individual project has exceeded the measure’s \$2 billion threshold. These entities would, however, need to comply with the measure’s provisions to the extent that an individual project exceeded this threshold in the future, including if a smaller piece of a larger project caused the total project size to exceed \$2 billion.

What Constitutes a Project?

The largest source of uncertainty with respect to the impact of the measure stems from the potential definitions of the term “project.” Absent a specific definition, this term will ultimately be defined by the courts.⁷

And while the measure does not define the term “project” it does state that larger projects may not be broken up into “allegedly separate” smaller projects of less than \$2 billion in order to avoid the measure’s voter approval requirements. Specifically, the measure provides three tests to determine whether a larger project has been broken up into smaller projects to avoid the measure’s voter approval requirements. Individual smaller projects are deemed to be a single larger project if the smaller, “allegedly separate” projects are geographically proximate, physically joined or connected, or “cannot accomplish [their] stated purpose without the completion of another allegedly separate project.”

In practice, this test to determine whether a smaller, “allegedly separate” project is part of a larger project could be interpreted quite broadly, causing a very large number of much smaller individual projects to be subject to the measure’s voter approval requirements. In fact the initiative expressly requires that its provisions be “liberally construed in order to effectuate its purposes.” For example, if an individual university hospital building or dormitory were to be deemed part of a larger medical complex or university campus, even these relatively small projects could require voter approval or be forced to rely on alternative (more expensive) financing mechanisms. Ultimately, the definition of “project” under the terms of the measure would be subject to interpretation by the courts. One possible analogue for purposes of suggesting how courts might interpret this term comes from the definition of “project” under the California Environmental Quality Act (CEQA). Under CEQA, an entire university campus or campus long-range development plan can be considered a “project.” To the extent that a similar definition is applied under the terms of the proposed measure, financing for individual university buildings or facilities could be subject to voter approval if these facilities are deemed to be part of larger campuses or long-range capital facilities plans.

Similarly, because the individual parts of California’s water system are “physically joined or connected,” it is possible that individual improvements to this system, such as construction of new storage facilities or Delta levy improvements would be considered as a single project, even if the individual components cost less than the measure’s \$2 billion threshold. Improvements to or construction of entirely new toll roads or bridges, if connected by the state highway system, also could be considered to be a single project, potentially subjecting these transportation improvements to the measure’s voter approval requirements.

⁷ Apparently, the decision not to specifically define this term was intentional on the part of the measure’s proponent. According to statements made by the proponent’s attorney at a legislative hearing on March 2, 2016 “the definition of a project is not included directly in the measure. Some think that’ a weakness, I think it’s a strength. We did not want to include a straight-jacket definition. We wanted to leave it up to the courts to construe that term.”

Ultimately, if the measure were to become law, the courts would need to establish a definition of “project.” However, as history has demonstrated, even long-established environmental laws can become the basis for continued litigation. These potential pitfalls are highlighted by the example of a recent effort to electrify the CalTrain system in the San Francisco Bay Area. CalTrain completed an environmental impact report (EIR) covering the electrification project, which is designed to reduce noise, improve air quality, and reduce greenhouse gas emissions. Project opponents, however, have sued, claiming that the project EIR is too narrow, and should be expanded to include any impacts from the proposed state high speed rail project, which would share the same tracks.

This example highlights the ability of project opponents to use the courts to delay or derail a local project by linking it to a larger statewide project. Although it is not clear how courts might interpret the measure’s project definition, nothing in the measure would preclude use of this same tactic on behalf of project opponents. Indeed, if the measure were currently in effect, it is possible that opponents of the CalTrain electrification project (a local project costing less than the measure’s \$2 billion cap) would use this same project definition tactic to force a statewide vote, thereby delaying or potentially derailing the project.

Impact of the Measure’s Requirements

In response to this new requirement for voter approval, entities responsible for affected projects could respond in several different ways. Ultimately, the requirement for voter approval could delay or stop infrastructure projects and/or increase costs. The following are the likely consequences of these requirements:

- **Delays could drive up project costs.** Because statewide elections generally occur only every two years, projects would need to wait up to this long before financing could be pursued. Such delays have the potential to add to project costs and would at a minimum delay the receipt of benefits to the public (e.g., drivers could face additional delays of up to two years before repairs or reconstruction could begin on a new or rebuilt toll bridge).
- **Increased litigation risks.** As mentioned previously, the requirement for voter approval also has the potential to increase the uncertainty associated with a project, since even projects that appear to be exempt from the measure’s voter approval requirements could potentially be subject to litigation. Such litigation risk has the potential to further delay projects and increase project costs.
- **Increased use of alternative, more costly financing methods.** In order to avoid the delays and risks inherent in seeking a statewide vote, entities could seek out alternative financing mechanisms rather than pursue voter approval. The most likely alternative would be public-private-partnership (P3) financing, in which a private entity would finance the construction and lease the resulting project back to the user upon completion. This type of financing, which is often not tax exempt, generally results in

higher interest rates and therefore higher costs for the public entities which would be using and paying for the facilities.

- **Statewide voter approval required on local projects.** In many instances, projects covered by the measure would be used and financed only by a subset of the state’s voters. For example, if the San Diego Regional Airport Authority sought to rebuild one of its terminals (a \$2.2 billion project currently being planned) and to finance the project entirely with revenues from local passengers and airlines, the airport could nevertheless be required to seek statewide voter approval, including approval from Northern and Central California voters with little stake in the outcome.⁸ As a result, obtaining voter approval could be much more difficult relative to a project with perceived statewide benefits.

Finally, there is the possibility that at least some projects would not proceed. For example, some projects that could utilize private financing may end up being too expensive to “pencil out” once the higher costs of private financing are considered. As a result, the measure is likely to result in a reduction in investment in infrastructure projects relative to what would occur in the absence of the measure.

Impact of Infrastructure Investment

While estimates of the state’s infrastructure needs vary, the consensus is that the need for infrastructure investment in the coming years is very large. The state’s most recent five-year infrastructure plan identifies about \$57 billion in proposed spending.⁹ This figure excludes previously authorized spending as well as spending by local governments for things such as local streets and roads. An estimate by California Forward puts the need for infrastructure investment over the next ten years at \$853 billion, including needed investments in transportation, water, and school facilities.¹⁰

In the face of these needs, a reduction in infrastructure investment could have important consequences for the state. Infrastructure investments, such as investments in roadways and bridges, university campuses, health centers and hospitals, water storage and distribution facilities, and other projects produce important economic and public benefits. While the extent of these benefits is specific to the individual projects, infrastructure projects in general result in hiring of construction workers and firms, increased business for the firms that supply construction materials and services to these construction firms, and overall increases in economic activity from the “multiplier effect” as affected workers and firms spend their increased earnings throughout the state’s economy.

⁸ The San Diego Regional Airport Authority, an entity created by the state, would need to pursue voter approval to the extent it is deemed to be a “similar body” to a JPA pursuant to the terms of the measure.

⁹ State of California, California’s Five-Year Infrastructure Plan, 2015: <http://www.ebudget.ca.gov/2015-Infrastructure-Plan.pdf>

¹⁰ California Forward, Financing The Future, 2015: <https://cafwd.app.box.com/s/wg15ym5keehsmugvyjz5hw4zr3g8246p>

In addition to these immediate benefits, many infrastructure projects produce ongoing economic impacts as users benefit from the use of the resulting facility. For example, users of a new bridge may benefit from shorter drive times, faster delivery times for goods and services, and lower repair or fuel costs for their vehicles. Infrastructure investments can also help to provide a foundation for future economic growth, stimulating and supporting new business activity and investment among private firms. These benefits are in addition any non-economic benefits, such as increased leisure time or increased safety. To the extent that the measure results in reduced infrastructure investment, the economic and non-economic benefits of these projects would be forgone.

What Kinds of Projects Might Be Affected

Because of the considerable uncertainty with respect to the scope and reach of the measure's provisions, specifically as it relates to covered entities and the definition of "project," it is not possible to predict its impact with certainty. However, the following types of projects are potentially subject to the measure's voter approval requirements.

The State's Water Storage and Distribution System

The California Department of Water Resources (DWR) is responsible for managing the state's water, including the state water project. DWR is involved in the financing and/or operation of projects including above and below ground water storage, water distribution infrastructure, flood control infrastructure, levee fortification and other investments.

To the extent that the state's water supply and distribution system is considered a single "project" under the terms of the measure (the elements of the system are physically connected and serve inter-related purposes), the ability of DRW to issue revenue bonds would be limited by the measure. In fact, during the past fifteen years, the department has issued nearly \$5 billion in revenue bonds for water supply, storage, and distribution.¹¹

Local dams and reservoirs

In the coming years, infrastructure and financing needs for water storage and central valley flood protection, among other purposes, could total many billions of dollars. The proposed California Water Fix project would almost certainly be covered by the terms of the measure, requiring voter approval before revenue bonds could be issued to finance the project. Potential water storage projects (which could exceed the measure's \$2 billion threshold or be deemed to be part of larger project and thereby require voter approval) include raising Shasta Dam, expanding Los Vaqueros Reservoir, constructing the Temperance Flat Dam, and building the Sites Reservoir. A local water storage project such as the proposed Sites Reservoir could be covered by the measure because (a) it may become part of the State Water Project and DWR might directly issue revenue bonds to finance the construction of the project or (b) as a result of Section 79759(b) of the State Water Code, which requires that the state be a part of a local JPA that uses state bond funds to finance part of the construction.

¹¹ See CDIAC Individual Debt Issuance Data, 1999 - 2014: <http://www.treasurer.ca.gov/cdiac/debtdata/excel.asp>

University of California

During the past 15 years the University has issued nearly \$20 billion using revenue bonds and other financing mechanisms that would potentially be subject to the terms of the measure. The University of California uses revenue bonds to finance new educational and research facilities, dormitories and student housing, hospitals and medical facilities, and other projects.

There are multiple currently planned “projects” that, when combined with “geographically proximate” or “physically joined” structures or with projects where a shared purpose is enhanced by the construction of two (or more) buildings, would reach the \$2 billion threshold.

For example, the most recent University of California Capital Plan identifies \$13.3 billion in proposed capital expenditures over the period 2015-2020.¹² Whether or to what extent this plan could be considered to be a “project” under the terms of the measure is not clear. It is at least conceivable that all of these individual projects could be considered a single project given that the University of California is implicitly stating with its capital plan that all of the included projects further the purposes of the University (and therefore could meet the measure’s test for projects in which completion of more than one project is required to allow another project to accomplish its stated purpose).

Even if the entire University of California capital plan is not considered a “project,” there is nevertheless the potential for certain subsets of these expenditures, such as the proposed \$2.4 billion for medical centers identified in the plan, to be considered by a court as a single project. In other cases, individual campuses (in which individual structures would clearly be “geographically proximate” or “physically connected”) would exceed the \$2 billion threshold, such as the \$2.5 billion planned for University of California, Davis, or the \$2.1 billion planned for U.C. Irvine. In all, four individual campuses have proposed or planned capital expenditures in excess of the \$2 billion threshold, including Davis, Irvine, Los Angeles, San Diego, and San Francisco.¹³

While it is not clear whether or to what extent the individual “projects” included in the University of California Capital Plan would constitute a single project under the terms of the measure, it is nevertheless clear that a plausible argument at least can be made that certain subsets of this planned spending, such as medical center spending or spending by individual campuses would trigger the voter approval requirement in the measure.

California State University System

Similar to the University of California, the California State University (CSU) could be affected by the measure to the extent that individual structures are considered to be part of a larger project, whether on the same campus or across the system. The CSU system also uses financing

¹² See University of California Capital Plan 2014-2014: <http://www.ucop.edu/capital-planning/files/capital/201424/2014-24-capital-financial-plan.pdf>, p. 12.

¹³ UCLA’s total capital expenditures projected at \$2.29 billion over the period 2015 – 2025. UCSD projects \$3 billion over this period. See Capital Expenditure Plan pp. 31 and 41.

mechanisms that likely meet the measure’s definition of “revenue bonds” to finance classrooms and libraries, health centers, student housing and other infrastructure.

The most recent California State University Capital Plan identifies some \$9 billion in planned capital facilities needs over the next five years.¹⁴ And, while no individual structure or campus need exceeds the measure’s \$2 billion threshold, there is nevertheless the possibility that CSU projects would be covered to the extent the definition of “project” under the measure is interpreted broadly. For example, the California Environmental Quality Act’s definition of “project” has been interpreted quite broadly in some instances, treating an entire CSU campus as a “project” that requires an EIR in conjunction with an update to that campus’ master plan.

State and Local Transportation Projects

One of the most important areas potentially affected by the measure is transportation. Transportation project such as bridges and roads can be financed with revenue bonds repaid by road users’ toll revenues. Two examples of these kinds of projects include the seven San Francisco Bay Area toll bridges and the Orange County toll roads. In addition, the state can issue revenue bonds to obtain up-front financing for large-scale projects that are repaid by existing user-fees on motorists (gas taxes, etc).

One important project that would likely be affected by the measure is the state high speed rail project. Although the financing for the first portion of this project was approved by statewide voters through a general obligation bond, it is likely that additional future financing will come from train riders whose fare revenues will be used to repay revenue bonds.

Bay Area Toll Authority

The Bay Area Toll Authority (BATA) is the entity responsible for managing the San Francisco Bay Area’s seven state-owned toll bridges, including the recently rebuilt San Francisco Bay Bridge. The multi-billion dollar Bay Bridge reconstruction was financed with revenue bonds. Therefore, had the measure been in effect, voter approval would have been required in order to complete the financing for the reconstruction. This approval would have been required in spite of the fact that bridge users – not state taxpayers – are responsible for repaying the bonds with toll revenues. Furthermore, under the terms of the measure, a statewide majority would have needed to approve the project, including voters from Southern California in spite of the fact that these voters would bear no responsibility for paying for the structure (unless they happened to use the bridges when visiting the Bay Area).

Should significant bridge construction or reconstruction be required in the future, for example following an earthquake like the 1989 Loma Prieta quake, which caused a section of the older Bay Bridge to collapse, voter approval would be required prior to proceeding with the financing of the bridge(s).

¹⁴ See CSU Capital Expenditure Plan: http://calstate.edu/cpdc/Facilities_Planning/documents/2016-17through2020-21CIP.pdf

Other facilities such as the Coronado Bridge in San Diego could also be affected by the measure to the extent that the state decided to replace or rebuild this bridge and finance the reconstruction using revenue bonds.¹⁵

Orange County Toll Roads

The Orange County Transportation Corridor Agencies are two joint powers agencies created to manage the planning, financing, construction and operation of State Routes 73, 133, 241 and 261. The agencies were formed under state law governing joint powers agencies and granted the authority to construct new toll roads and issue bonds as a result of legislation passed in 1987. As a result, these agencies would likely be considered joint powers agencies “created by the state” and would therefore be affected by the measure’s voter approval requirements. During the past five years, one of these agencies (the Foothill/Eastern Transportation Corridor Agency) issued nearly \$2.3 billion in bonds for refunding of the previously issued debt.

While the toll roads have already been constructed, were the measure to pass, potential future refundings would be made more difficult. Perhaps more significantly, any future efforts to establish similar toll roads (roads constructed largely without taxpayer money) could be hampered as a result of the measure’s requirement for a statewide vote for certain regional projects. In fact, the Orange County Transportation Corridor Agencies are currently evaluating plans for additional toll road projects that could be affected should the measure pass.

San Diego Regional Airport

The San Diego International Airport is owned and operated by the San Diego Regional Airport Authority, an entity similar in many respects to a JPA that was created pursuant to special legislation, the San Diego County Regional Airport Authority Act. The Airport is currently planning for the replacement of Lindbergh Field's Terminal 1, a project expected to cost in excess of \$2 billion.¹⁶ While the Airport is clearly a local project, the Airport Authority could well meet the definition of a state created joint powers authority “or similar body.” As a result, any large infrastructure project pursued by the airport and financed with revenue bonds would potentially be subject to the terms of the measure. At a minimum, local residents opposing the expansion of the airport could sue and delay or derail the airport’s plans, claiming that the project meets the definition of a state created JPA “or similar body.” If covered by the measure, voters across the state would control the fate of the San Diego region’s airport.

Transbay Terminal

The Transbay Terminal project is a multi-billion dollar transit hub and new “transit-oriented neighborhood” currently under construction in downtown San Francisco. The project is managed and financed by the Transbay Joint Powers Authority (TJPA), which was created by

¹⁵ See comments by State Treasurer John Chiang: <http://www.treasurer.ca.gov/newsletter/2016/201604/lead.asp>

¹⁶ Showley, Robert, “Lindbergh Terminal 1 due for \$2.2B replacement,” The San Diego Union Tribune, July 15, 2015: <http://www.sandiegouniontribune.com/news/2015/jul/15/airport-terminal-replacement/>

Bay Area local governments and Caltrans.¹⁷ While this is clearly a local project, the fact that the JPA was created, in part, by Caltrans, suggests that it would fall under the terms of the measure. As a consequence, efforts to secure financing for this project using revenue bonds could be subject to a statewide vote, with voters in Central and Southern California controlling the fate of a local northern California project in which they have a limited stake.

Other Potential Impacts

In addition to the entities discussed above, there are multiple other types of projects and entities that could potentially be affected by the measure, should it reach the ballot and be approved by the voters. To the extent JPAs are included, entities such as airports and ports and local transportation agencies would potentially face the need to seek approval from statewide voters before issuing revenue bonds (generally financed by local users of their facilities).

At the local level, entities such as the Capitol Corridor Joint Powers Authority, which runs train service between several Northern California counties and the LOSSAN Rail Corridor Agency, which runs rail service in San Diego, Orange, Los Angeles, Ventura, Santa Barbara and San Luis Obispo Counties, could be covered by the terms of the measure. Both of these entities are JPAs “created by the State.”¹⁸ As a consequence, these entities would all likely be covered by the terms of the measure should they seek a large scale capital improvement program financed with revenue bonds. These are just a handful of examples of the kinds of local-oriented JPAs “or similar bodies” that could be covered by the measure, subjecting local infrastructure projects to a statewide vote. Other JPAs could also be covered by the measure, depending on how the courts interpret such terms as “revenue bonds,” “created by the state,” and “similar body.” None of these terms is defined in the measure, and a broad interpretation could well significantly expand the reach of the measure.

At the state level, bonds issued by the State Public Works Board, California Health Facilities Financing Authority, California Municipal Finance Authority, California Infrastructure & Economic Development Bank, and other entities could potentially be affected by the measure to the extent that individual facilities financed by these entities are considered to be part of larger projects. These entities finance hospitals and health care facilities, including health care facilities for entities such as Sutter, Cedars-Sinai Medical Center, Kaiser Permanente, and Catholic Health Care West; museums, theaters and performing arts centers; jails, correctional facilities, and courts; affordable housing; and other public facilities.

¹⁷ According to the TJPA website, “the TJPA is a joint exercise of powers authority created by the City and County of San Francisco, the Alameda-Contra Costa Transit District, the Peninsula Corridor Joint Powers Board, and Caltrans.” Accessed March 8, 2016: <http://transbaycenter.org/tjpa/about-the-tjpa>.

¹⁸ With respect to the LOSSAN Rail Corridor Agency, Govt. Code Section 14070.7 states that “the LOSSAN Corridor through an interagency transfer agreement, is deemed to be an agency of the state for all purposes related to intercity passenger rail services.” The Capitol Corridor Joint Powers Authority was created pursuant to Government Code Section 14076.2, which formed the JPA’s board.

Impact on Other Financing Mechanisms

In addition to the physical infrastructure projects described above, the question arises as to whether the measure would apply to the use of specific financing tools, such as Revenue Anticipation Notes (RANs), which the state relies on to manage General Fund cash flow during the fiscal year. While on its face this appears unlikely, a legal challenge that asserted the measure's application to the issuance of a RAN could result in sufficient uncertainty as to stop the issuance pending the resolution of the challenge.

The measure, which has no exemption for emergencies, also has the potential to limit the state's ability to respond to a crisis such as the 2001 electricity crisis. In response to the severe fiscal conditions at the time, the Department of Water Resources was responsible for issuing billions of dollars in revenue bonds to purchase electricity and repay the state General Fund for past electricity purchases. Had the measure been in effect during the energy crisis, DWR would have been unable to issue these bonds without first seeking voter approval, significantly limiting the ability of the state to respond to the crisis.

More broadly, the measure could inhibit the ability of the state to refinance other existing revenue bonds, in the event that interest rates or other circumstances warrant a refinancing. The state regularly refinances higher interest debt, just like a homeowner seeking to save interest costs by refinancing a mortgage. In 2015 the Treasurer's office refinanced more than \$4.5 billion in previously issued revenue bonds at a savings of \$600 million.¹⁹

The measure could also prevent or inhibit the ability of affected entities to use an ongoing revenue stream to finance specific immediate infrastructure or other needs, such as the tobacco securitization bonds, which allowed entities slated to receive these revenues over a 25-year period to make use of the funds in the near term. More recently, some thought has been given to issuing revenue bonds against future truck weight fee receipts as a way to help pay for improvements to the state's ailing roadway infrastructure.

Conclusion

The Cortopassi measure sounds simple: give voters the ability to determine when the state takes on new debt. In practice, however, the measure also could apply to certain local projects for which statewide taxpayers have no financial obligation. The measure's requirement for voter approval for projects financed with revenue bonds and paid for by the project users would likely result in increased costs, delayed project completion, and reduced economic growth. Furthermore, the measure has the potential to disrupt the state's cash management practices and slow or inhibit the ability of California to respond emergencies such as the 2001 power crisis.

¹⁹ See comments by State Treasurer John Chiang: <http://www.treasurer.ca.gov/newsletter/2016/201604/lead.asp>