

IN THE
SUPREME COURT OF ILLINOIS

| | | |
|--|---|---|
| W. Rockwell Wirtz, an individual, and Wirtz Beverage Illinois, LLC, an Illinois limited liability company, on behalf of and for the benefit of the Taxpayers of the State of Illinois, |) | |
| Plaintiffs-Appellants-Respondents, |) | On Petition for Leave to Appeal from the Illinois Appellate Court, First District, Nos. 1-09-3163 & 1-10-0344 |
| v. |) | |
| Hon. Patrick Quinn, in his official capacity as Governor of the State of Illinois; Daniel W. Hynes, in his official capacity as Comptroller of the State of Illinois; Alexi Giannoulas, in his official capacity as Treasurer of the State of Illinois; The Illinois Department of Revenue and its Director Brian Hamer; The Illinois Gaming Board and its members Hon. Aaron Jaffe, Charles Gardner, Rev. Eugene Winkler, Joe Moore, Jr. and Hon. James E. Sullivan in their official capacities; the Illinois Lottery and its Superintendent Jodie Winnett, |) | There on Appeal from the Circuit Court of Cook County, Illinois, County Department, Law Division, Tax and Miscellaneous Remedies Section, No. 09 CH 30136 (transferred to Law Division) |
| Defendants-Appellces-Movants. |) | Honorable Lawrence O'Gara, Judge Presiding |

**SUPPORTING RECORD TO RESPONSE TO MOTION FOR ACCELERATED
DOCKET AND FOR CONTINUED STAY OF APPELLATE COURT JUDGMENT**

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*Attorneys for Plaintiffs-Appellants-
Respondents W. Rockwell Wirtz and
Wirtz Beverage Illinois, LLC*

FILED

FEB 23 2011

CHICAGO
SUPREME COURT CLERK

NO. 111903

IN THE
SUPREME COURT OF ILLINOIS

| | | |
|---|---|---|
| W. Rockwell Wirtz, et al., |) | On Petition for Leave to Appeal from |
| |) | the Illinois Appellate Court, First |
| Plaintiffs-Appellants-Respondents, |) | District, Nos. 1-09-3163 & 1-10-0344 |
| |) | |
| v. |) | There on Appeal from the Circuit |
| |) | Court of Cook County, Illinois, |
| Hon. Patrick Quinn, et al., |) | County Department, Law Division, |
| |) | Tax and Miscellaneous Remedies |
| Defendants-Appellees-Movants. |) | Section, No. 09 CH 30136 (transferred |
| |) | to Law Division) |
| |) | |
| |) | Honorable Lawrence O’Gara, |
| |) | Judge Presiding |

ILLINOIS SUPREME COURT RULE 328 AFFIDAVIT OF CLAUDETTE P. MILLER

CLAUDETTE P. MILLER, being duly sworn, deposes and states as follows:

1. I am a legal adult of sound mind, have personal knowledge of the facts stated in this Affidavit, and, if called upon to do so, could testify competently to those facts.
2. I am an attorney licensed to practice law in the State of Illinois.
3. I am one of the attorneys responsible for filing the Supporting Record to Response to Motion for Accelerated Docket and for Continued Stay of Appellate Court Judgment (the “Supporting Record”) in this matter.
4. I have reviewed the materials included in the Supporting Record.
5. To the best of my knowledge, the documents contained in the Supporting Record are true and accurate copies of the materials they purport to be.

FURTHER AFFIANT SAYETH NAUGHT.

[THE REMAINDER OF THIS PAGE IS INTENTIONALL BLANK.]

Claudette P. Miller

Claudette P. Miller

SUBSCRIBED and SWORN to
before me this 23rd day of February, 2011.

Claudia M. Iannelli

Notary Public



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RESPONSE TO MOTION FOR ACCELERATED DOCKET AND
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IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION
TAX AND MISCELLANEOUS REMEDIES SECTION

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FILED
CLERK OF THE CIRCUIT COURT
LAW DIVISION
C.D. 11

W. Rockwell Wirtz, on Behalf of)
and for the Benefit of the)
Taxpayers of the State of Illinois,)
and Wirtz Beverage Illinois, LLC,)
an Illinois Limited Liability)
Company,)

Petitioner-Plaintiffs,)

v.)

Hon. Patrick Quinn, in his official)
capacity as Governor of the State)
of Illinois; et al.)

Respondents.)

No. 09 CH 30136
Transferred to Law Division
Judge Lawrence O'Gara

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3004

MEMORANDUM OF LAW IN OPPOSITION TO PETITION FOR LEAVE TO
FILE VERIFIED COMPLAINT FOR DECLARATORY AND INJUNCTIVE
RELIEF

INTRODUCTION

On August 25, 2009, Petitioners, W. Rockwell Wirtz and Wirtz Beverage, filed a Petition for Leave to File and Verified Complaint for Declaratory and Injunctive Relief ("Petition"), a procedure required by Section 11-303 of the Code of Civil Procedure, 735 ILCS 5/11-303. A taxpayer seeking leave to file a lawsuit pursuant to Section 11-303 of the Code of Civil Procedure is requesting the court to restrain and enjoin officers of the state government from disbursing public funds of the state. 735 ILCS 5/11-301. Only if the court is "satisfied that there is a reasonable ground for the filing" of the complaint, will the complaint be filed and process issued to the defendants. 735 ILCS 5/11-303.

Place Facilities in *Geja's Café v. Metropolitan Pier & Exposition Authority*, 153 Ill.2d 239 (1992); *see also, Bocclair*, 202 Ill.2d 89 (finding an enactment which included substantive criminal law matters and administrative provisions related to building and maintenance of correctional facilities to be constitutional); *Malchow*, 193 Ill.2d 413 (2000) (upholding an act which was entitled "An Act in relation to criminal and correction matters, amending named Acts" and amended the Medical Practice Act, Civil Administrative Code and Code of Civil Procedure); *Ogilvie v. Lewis*, 49 Ill.2d 476 (1971) (upholding an enactment where its provisions were naturally and logically connected to using the issuance and sale of transportation bonds to aid public transportation); and *Stein v. Howlett*, 52 Ill.2d 570 (1972) (upholding an enactment where its provision were all connected to ethics).

The Court did find a violation of the single subject rule in *People v. Reedy*, where the Court invalidated an enactment because the criminal justice system and hospital liens did not share a logical and natural connection to a single subject. 186 Ill.2d 1 (1999). Also, in *Johnson v. Edgar*, the Court invalidated an enactment because there was no natural and logical connection to a single subject in an Act concerning the diverse subjects of child sex offenders, employer eavesdropping and environmental impact fee. 176 Ill.2d 499 (1997).

In the present case, Petitioners fail to present reasonable grounds to support a claim that Public Acts 096-0034, 096-0037 and 096-0038 violate the single subject rule. For example, Public Act 096-0034 is "An Act concerning revenue". It addresses methods to accrue State revenue as well as where and how the revenue will be used. In their proposed Complaint, Petitioners allege that since the Act involves provisions related

to video gaming, lottery, and taxes imposed on liquor and candy, as well as related accountability laws and amendments to various other acts, that it somehow violates the single subject rule. However, the legislature can pass legislation that amends several acts, so long as the amendments relate to a single subject. *Malchow*, 193 Ill.2d at 443. In this case, it is apparent that each of these additions and amendments relate back to the subject of revenue.

Petitioners cite to the case *People v. Olender*, 222 Ill.2d 123, which found a lack of connection between the subject of revenue and the creation of the Illinois Research Park Authority Act, the Illinois Geographic Information Council Act and an amendment to the Communicable Disease Prevention Act, when it considered that:

Black's Law Dictionary defines "revenue" as "[g]ross income or receipts" and defines "general revenue" as "[t]he income stream from which a state or municipality pays its obligations...."

Id. at 141 (citing *Black's Law Dictionary* 1344 (8th ed. 2004)). In the instant case, on the other hand, the provisions cited by Petitioners to be problematic directly relate to this definition. For example, video gaming, lottery and taxes imposed on liquor and candy bring in revenue to be deposited into the Capital Projects Fund created by the Act. *See i.e.*, Proposed Complaint, Exhibit A, pp. 16, 39, 70, 89, 144, 183. This Fund is deposited into the General Revenue Fund, which is used to pay the obligations of the State. *See* Proposed Complaint, Exhibit A, p. 40.

Petitioners also, for example, complain of the Capital Spending Accountability Law, which requires the Governor to provide a report as to the status of State Capital Projects. *See* Proposed Complaint, ¶ 30, Exhibit A, p. 19. However, this provides for accountability directly relating to the use of the revenue brought in under the Act through

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(30 ILCS 105/5.724 new)

Sec. 5.724. The Local Government Video Gaming Distributive Fund.

(30 ILCS 105/6z-77 new)

Sec. 6z-77. The Capital Projects Fund. The Capital Projects Fund is created as a special fund in the State Treasury. The State Comptroller and State Treasurer shall transfer from the Capital Projects Fund to the General Revenue Fund \$61,294,550 on October 1, 2009, \$122,589,100 on January 1, 2010, and \$61,294,550 on April 1, 2010. Beginning on July 1, 2010, and on July 1 and January 1 of each year thereafter, the State Comptroller and State Treasurer shall transfer the sum of \$122,589,100 from the Capital Projects Fund to the General Revenue Fund. Subject to appropriation, the Capital Projects Fund may be used only for capital projects and the payment of debt service on bonds issued for capital projects. All interest earned on moneys in the Fund shall be deposited into the Fund. The Fund shall not be subject to administrative charges or chargebacks, such as but not limited to those authorized under Section 8h.

(30 ILCS 105/8.3) (from Ch. 127, par. 144.3)

Sec. 8.3. Money in the Road Fund shall, if and when the State of Illinois incurs any bonded indebtedness for the construction of permanent highways, be set aside and used for

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STATE OF ILLINOIS
OFFICE OF THE COMPTROLLER

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FUND TRANSFER REPORT - BFY 2010
AS OF 06/30/10

FUND: 0694 CAPITAL PROJECTS

TRANSFERS OUT

| MONTH | TRANSFERRED TO | AMOUNT | MONTHLY TOTAL |
|----------|------------------------------|----------------|---------------|
| DECEMBER | 0001 GENERAL REVENUE | 23,255,150.42 | |
| | 0011 ROAD | 387,625.02 | |
| | 0101 GENERAL OBLIGATION BR&I | 129,208.34 | 23,771,983.78 |
| JANUARY | 0001 GENERAL REVENUE | 14,736,098.75 | |
| | 0101 GENERAL OBLIGATION BR&I | 129,208.34 | 14,865,307.09 |
| FEBRUARY | 0101 GENERAL OBLIGATION BR&I | 4,821,575.01 | |
| | 0970 BUILD ILLINOIS B R & I | 4,190,793.37 | 9,012,368.38 |
| MARCH | 0001 GENERAL REVENUE | 23,303,300.83 | |
| | 0101 GENERAL OBLIGATION BR&I | 4,830,283.34 | 28,133,584.17 |
| APRIL | 0001 GENERAL REVENUE | 7,000,000.00 | |
| | 0101 GENERAL OBLIGATION BR&I | 9,926,922.70 | 16,926,922.70 |
| MAY | 0001 GENERAL REVENUE | 10,000,000.00 | |
| | 0101 GENERAL OBLIGATION BR&I | 9,926,922.70 | 19,926,922.70 |
| JUNE | 0001 GENERAL REVENUE | 32,000,000.00 | |
| | 0101 GENERAL OBLIGATION BR&I | 9,926,922.70 | 41,926,922.70 |
| | TRANSFERS OUT TOTAL: | 154,564,011.52 | |
| | TOTAL NET TRANSFERS: | 154,564,011.52 | |

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STATE OF ILLINOIS
OFFICE OF THE COMPTROLLER

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FUND TRANSFER REPORT - BFY 2011
AS OF 01/31/11

FUND: 0694 CAPITAL PROJECTS

TRANSFERS OUT

| MONTH | TRANSFERRED TO | AMOUNT | MONTHLY TOTAL |
|-----------|------------------------------|---------------|---------------|
| JULY | 0001 GENERAL REVENUE | 58,000,000.00 | |
| | 0101 GENERAL OBLIGATION BR&I | 14,376,439.00 | |
| | 0970 BUILD ILLINOIS B R & I | 4,145,839.85 | 76,522,278.85 |
| AUGUST | 0001 GENERAL REVENUE | 15,589,100.00 | |
| | 0101 GENERAL OBLIGATION BR&I | 14,422,072.33 | |
| | 0970 BUILD ILLINOIS B R & I | 4,145,839.85 | 34,157,012.18 |
| SEPTEMBER | 0001 GENERAL REVENUE | 6,000,000.00 | |
| | 0101 GENERAL OBLIGATION BR&I | 14,693,551.21 | |
| | 0970 BUILD ILLINOIS B R & I | 4,145,839.85 | 24,839,391.06 |
| OCTOBER | 0001 GENERAL REVENUE | 10,000,000.00 | |
| | 0101 GENERAL OBLIGATION BR&I | 14,908,287.69 | |
| | 0970 BUILD ILLINOIS B R & I | 4,145,839.85 | 29,054,127.54 |
| NOVEMBER | 0001 GENERAL REVENUE | 15,000,000.00 | |
| | 0101 GENERAL OBLIGATION BR&I | 14,908,287.69 | |
| | 0970 BUILD ILLINOIS B R & I | 4,145,839.85 | 34,054,127.54 |
| DECEMBER | 0001 GENERAL REVENUE | 10,000,000.00 | |
| | 0101 GENERAL OBLIGATION BR&I | 14,908,287.69 | |

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STATE OF ILLINOIS
OFFICE OF THE COMPTROLLER

FUND TRANSFER REPORT - BFY 2011
AS OF 01/31/11

FUND: 0694 CAPITAL PROJECTS

TRANSFERS OUT

| MONTH | TRANSFERRED TO | AMOUNT | MONTHLY TOTAL |
|----------|-----------------------------|-----------------|---------------|
| DECEMBER | 0970 BUILD ILLINOIS B R & I | 4,145,839.85 | 29,054,127.54 |
| JANUARY | 0001 GENERAL REVENUE | 20,294,550.00 | 20,294,550.00 |
| | TRANSFERS OUT TOTAL: | 247,975,614.71 | |
| | TOTAL NET TRANSFERS: | 247,975,614.71- | |



Illinois Jobs Now!

Pat Quinn, Governor

Fiscal Year 2012 CAPITAL BUDGET

**STATE OF ILLINOIS
Pat Quinn
Governor**

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CAPITAL BUDGET OVERVIEW

State of Illinois

Chart A

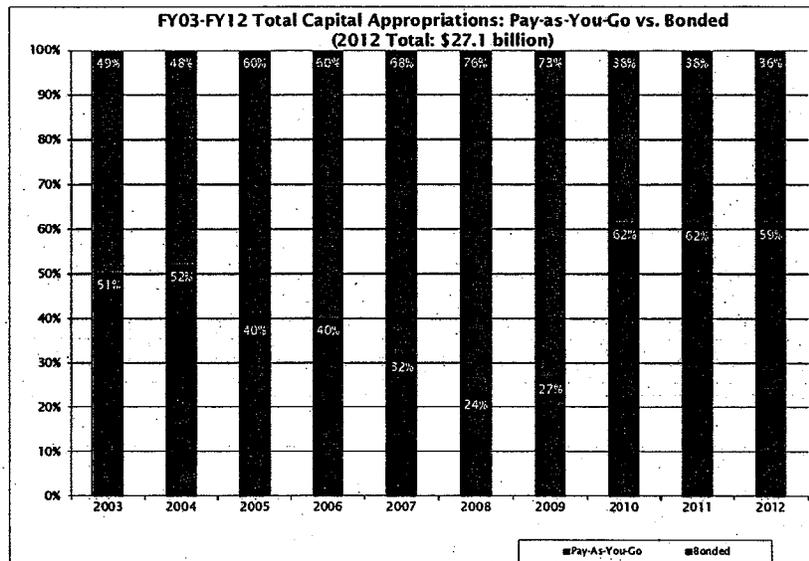
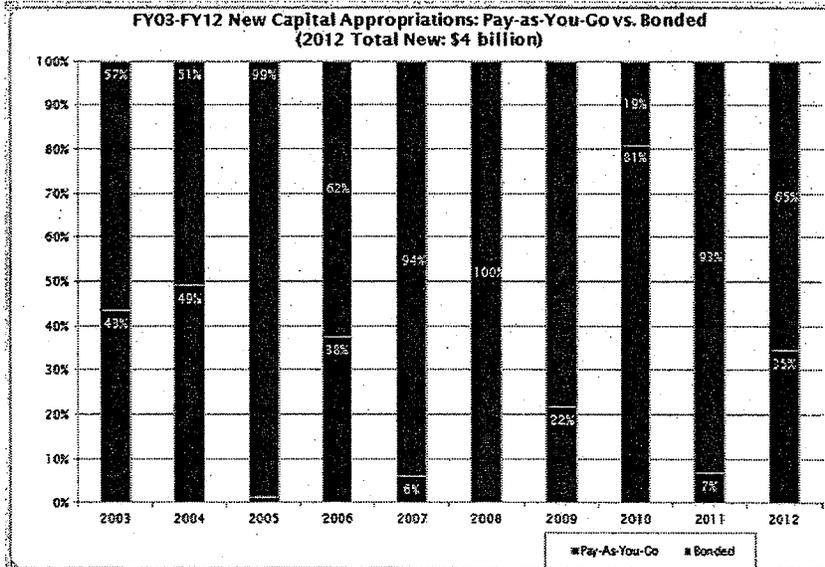


Chart B



**New Bonded and Pay-As-You-Go
Capital Appropriations by Capital Component
(\$ millions)**

| | |
|------------------------------------|----------------|
| Next Generation | 219.0 |
| Economic Development | 36.4 |
| Transportation | 2,226.5 |
| Higher Education | 425.8 |
| Environment, Energy and Technology | 613.8 |
| State Facilities | 520.5 |
| Total New Appropriations | 4,042.0 |

Debt Management

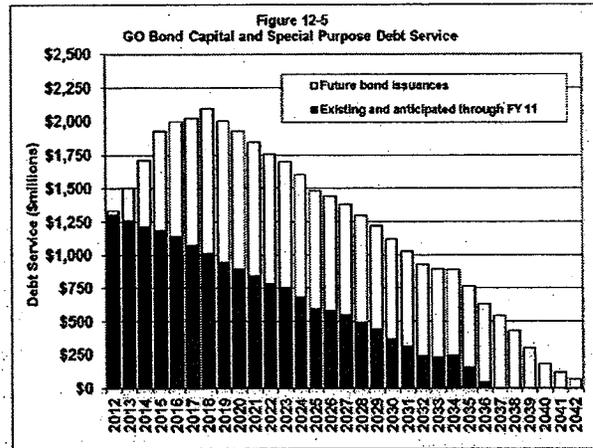
State of Illinois

constitutes an irrevocable and continuing appropriation of all amounts necessary for that purpose and the irrevocable and continuing authority for, and direction to, the treasurer and the comptroller to make the necessary transfers, as directed by the governor, out of, and disbursements from, the revenues and funds of the state.

Debt Service Obligation. GO Bonds are primarily supported by revenue realized in the state's General Revenue Fund. The primary revenue sources that repay the GO Bonds are sales taxes, income taxes and motor fuel taxes. In addition, bonds issued for certain capital investments are supported by the following budgetary resources:

- Roads and Bridges - GO Bonds issued for road construction projects are primarily supported by motor fuel taxes received by the Road Fund.
- School Construction - GO Bonds for school construction purposes are repaid, in part, from cigarette and telecommunications taxes received by the School Infrastructure Fund.
- *Illinois Jobs Now!* - GO Bonds issued for *Illinois Jobs Now!* will be primarily supported by revenue realized in the state's Capital Projects Fund.

Figure 12-5 below displays GO Capital Bond debt service for all bonds issued and expected to be issued by June 30, 2011, and debt service for anticipated future issuances of Capital Bonds in fiscal years 2012-2017.



Refunding Bonds. The GO Bond Act also authorizes the issuance of General Obligation Refunding Bonds in an amount up to \$4,839,025,000 outstanding. Refunding bonds are issued to refund or advance refund the GO Bonds that are currently outstanding, in order to take advantage of favorable market conditions and reduce the state's debt service.

In February 2010, GO refunding bonds were issued to refund all or a portion of certain maturities of outstanding General Obligation bonds. Pursuant to the General Obligation Bond Act (30 ILCS 330), refunding bonds may only be issued if the net present value of debt service savings is at least 3 percent of the principal amount of the refunding bonds to be issued. The Series February 2010 bonds achieved approximately 7 percent, or \$106 million, in net present value savings and also reduced the average life of the refunded bonds.

Interest Rate Exchange Agreements. The use of derivative instruments, such as interest rate exchange agreements, allows the state to limit its exposure to interest rate fluctuations on variable rate bonds. An interest rate exchange consists of an agreement between two parties (known as counterparties), in which one stream of future interest payments is exchanged for another, with one stream being fixed and the other often linked to the London Interbank Offered Rate (LIBOR) or Securities Industry and Financial Markets Association (SIFMA) rate. In October 2003, the state entered into fixed interest rate exchanges with five separate counterparties (as shown below) in connection



Illinois State Budget

Governor Pat Quinn

Fiscal Year 2012
July 1, 2011 – June 30, 2012

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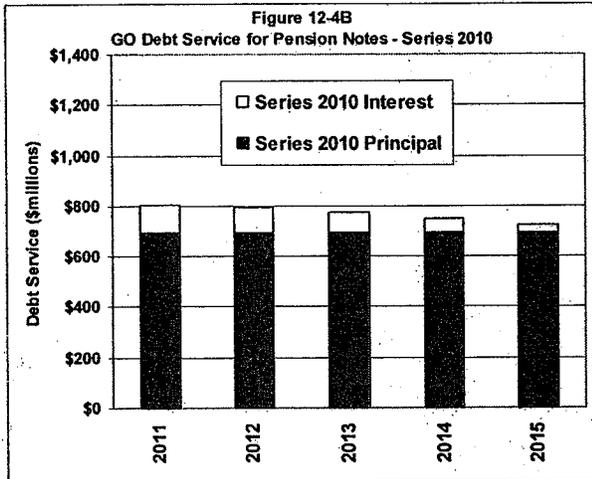
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Debt Management

State of Illinois

During the 2009 spring session, the General Assembly approved the issuance of \$3.466 billion in Pension Obligation Notes. These notes, to be repaid in five annual installments, funded the majority of the required contributions to the state's five pension funds for fiscal year 2010. The notes were issued on January 15, 2010. Future debt service is shown in Figure 12-4B.



In January 2011, the governor signed into law Public Act 1497 authorizing the sale of 8-year final maturity Pension Obligation Bonds for the state's fiscal year 2011 contribution to the designated retirement systems. The first installment of principal will not come due until 2014 and thus is structured with the prior year's Pension Obligation Notes in mind limiting the financial impact to the state. The proceeds of the sale will be used to reimburse any payments made from the General Revenue Fund or Common School Fund to the retirement systems, followed by contributions to the state's five pension funds. The bonds are expected to close in March of this year.

Security of the Bonds. GO Bonds are direct, general obligations of the state and, by law, the full faith and credit of the state is pledged for the payment of interest and principal due on these bonds. The GO Bond Act provides that the sections of the GO Bond Act containing such a pledge shall not be repealed until all GO Bonds issued under the GO Bond Act have been paid in full.

Continuing Appropriation. If, for any reason, there are insufficient funds in the General Revenue Fund, or the Road Fund, to make transfers to the General Obligation Bond Retirement and Interest Fund (GOBRI), as required by the GO Bond Act, or the General Assembly fails to make appropriations sufficient to pay the principal and interest on the outstanding GO Bonds, the GO Bond Act constitutes an irrevocable and continuing appropriation of all amounts necessary for that purpose and the irrevocable and continuing authority for, and direction to, the treasurer and the comptroller to make the necessary transfers, as directed by the governor, out of, and disbursements from, the revenues and funds of the state.

Debt Service Obligation. GO Bonds are primarily supported by revenue realized in the state's General Revenue Fund. The primary revenue sources that repay the GO Bonds are sales taxes, income taxes and motor fuel taxes. In addition, bonds issued for certain capital investments are supported by the following budgetary resources:

- Roads and Bridges - GO Bonds issued for road construction projects are primarily supported by motor fuel taxes received by the Road Fund.
- School Construction - GO Bonds for school construction purposes are repaid, in part, from cigarette and telecommunications taxes received by the School Infrastructure Fund.
- *Illinois Jobs Now!* - GO Bonds issued for *Illinois Jobs Now!* will be primarily supported by revenue realized in the state's Capital Projects Fund.

Figure 12-5 below displays GO Capital Bond debt service for all bonds issued and expected to be issued by June 30, 2011, and debt service for anticipated future issuances of Capital Bonds in fiscal years 2012-2017.