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Essays on the Federal Budget Process, The Line-Item Veto, and Examples of Issues That May Be Experienced When Moving a Bill Through the New York State Budget Process

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ABSTRACT: This article discusses six issues in the budgeting process. The first essay addresses the federal budget process, with the second describing constitutional issues related to a line-item veto. The essay proposes that Congress adopt a Single Subject Rule that is similar to the rule in Florida. The remaining four essays describe budgeting issues that exist in the New York State budget process. The third essay outlines a proposal to tax New York State drug manufacturers. Such a bill would likely face federal opposition under the Commerce Clause, the Dormant Commerce Clause, and possibly the Supremacy Clause. The fourth essay adopts a more conversational approach, in which the parties to a negotiation consist of the bill's proponents, while the other parties include the New York State House and Senate. The idea behind this essay is to familiarize the reader with how to conduct, suggesting what to say, and when to say it. The fifth essay explains how to handle a surprise budget addition. The sixth and final essay discusses under what circumstances a municipal bond issue is appropriate.

KEYWORDS: Dormant Commerce Clause, Federal Budget Process, Health Electronic Response Data System, Interstate Commerce Clause, Line-Item Veto, Municipal Bonds, New York State Budget Process, Single Subject Rule, Statewide Planning and Research Cooperative System

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LIST OF ABBREVIATIONS

Abbreviation	Description
AAA	Agricultural Adjustment Act of 1933
AMA	Agricultural Marketing Agreement Act of 1937
BCCA	Bituminous Coal Conservation Act of 1935
CBO	Congressional Budget Office
CFO	Chief Financial Officer
DEC	Department of Environmental Conservation
DOH	Department of Health

FDA	Food and Drug Administration
FLSA	Fair Labor Standards Act of 1938
GAO	Government Accounting Office
GFA	Grain Futures Act of 1922
HERDS	Health Electronic Response Data System
IG	Inspector General
NCI	National Cancer Institute
NIRA	National Industrial Recovery Act of 1933
NLRA	National Labor Relations Act of 1935
OMB	Office of Management and Budget
PUCA	Public Utility Holding Company Act of 1935
RRA	Railroad Retirement Act of 1934
PSA	Packers and Stockyards Act of 1921
SAA	Sherman Antitrust Act of 1890
SEA	Securities Exchange Act of 1934
SPARCS	Statewide Planning and Research Cooperative System
SSR	Single Subject Rule

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INTRODUCTION

This article discusses six issues in the budgeting process. The first essay addresses the federal budget process, with the second describing constitutional issues related to a line-item veto. The essay proposes that Congress adopt a Single Subject Rule that is similar to the rule in Florida. The remaining four essays describe budgeting issues that exist in the New York State budget process. The third essay outlines a proposal to tax New York State drug manufacturers. Such a bill would likely face federal opposition under the Commerce Clause, the Dormant Commerce Clause, and possibly the Supremacy Clause. The fourth essay adopts a more conversational approach, in which the parties to a negotiation consist of the bill's proponents, while the other parties include the New York State House and Senate. The idea behind this essay is to familiarize the reader with how to conduct, suggesting what to say, and when to say it. The fifth essay explains how to handle a surprise budget addition. The sixth and final essay discusses under what circumstances a municipal bond issue is appropriate.

FEDERAL BUDGET PROCESS

This essay provides a brief outline of the federal budgeting process. First, the federal budget process comprises four phases: formulation, congressional action, execution, and audit. Second, the formation prong is discussed. Third, the congressional action phase is described. Fourth, the execution portion of the process is highlighted. Fifth, the audit prong is explained. Finally, the essay concludes that the federal budget process works well when adhered to in good faith. Otherwise, it can be a rocky road.

Definition of the Federal Budget Process

The federal budget process is the method whereby the President and Congress create the federal budget, delineating the planned government revenues and spending for the federal fiscal year.[1] The federal fiscal year runs from October 1 to September 30.[2] The

[1] James V. Saturno, Introduction to the Federal Budget Process, *Congress.gov* (Jan. 23, 2023), *available at* https://www.congress.gov/crs-product/R46240.
[2] John Haughey, The Federal Budget Timeline & Process, Fiscal Note (Dec. 5, 2024), available at https://fiscalnote.com/blog/14-steps-to-the-federal-budget-timeline#:~:text=119th%20Congress%20Demographics:%20The%20People,Congress%20in%202025%20and%202026.&text=Every%20year%2C%20federal%20agencies%2C%20the,and%20issues%20are%20represented%20fairly.

federal budget process involves multiple steps, starting with the President's submission of a budget proposal.[3] Congress then holds hearings and passes a budget resolution, which may or may not reflect the President's budget proposal. Both the House and the Senate approve the appropriations, thereby funding the various government programs.[4] Third, the President signs or vetoes the budget passed by Congress.[5] Finally, the Government Accounting Office (GAO) audits expenditures to determine whether the appropriations are being spent as previously agreed upon by the President and Congress.[6] The four main phases of the federal budget process are formulation, congressional action, execution, and audit.[7]

Formulation of the President's Budget Proposal

In this part of the federal budget process, the President's budget request is formulated and prepared over several months before the new fiscal year begins, with the assistance of the Office of Management and Budget (OMB).[8] This final proposal is submitted to Congress, typically in early February or the middle of the current fiscal year. It consists of spending requests for all executive departments and agencies, together with estimates for spending, revenue, and borrowing.[9]

Congressional Budget Resolution, Appropriations Bills, and Reconciliation

Congressional action consists of the following three prongs:[10]

- Budget resolution;
- Appropriation bills; and
- Reconciliation

In the January-February time frame, the Congressional Budget Office (CBO) submits a report to the congressional budget committees. The report examines the current economic conditions, forecasts the next fiscal year's budget outlook, and estimates the costs of the budget request.[11] As April comes to pass, Congress finalizes its actions on the concurrent budget resolution by establishing broad spending and revenue levels.[12] By September, Congress typically, but not always, finishes its activities on the appropriations bills for the new fiscal year. Congress may also vote on a continuing resolution.[13]

Budget Resolution

Congress generates a separate budget plan to establish spending and revenue targets.[14] The House of Representatives and Senate Budget and Appropriations committees conduct hearings.[15] [16] The House and Senate may pass their own budgets and appropriations bills.[17] The bills from the House and Senate are then reconciled in a conference committee.[18]

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[3] CBPP Staff, Introduction to the Federal Budget Process, *Center on Budget and Policy Priorities* (n.d.), *available at* https://www.cbpp.org/research/federal-budget/introduction-to-the-federal-budget-process.

[4] *Id.*

[5] *Id.*

[6] *Id.*

[7] James V. Saturno, *supra*, note 1.

[8] PPS Staff, Understanding the Federal Budget Cycle: Ready to Govern® Resources for Political Appointees, *Partnership for Public Service* (Dec. 12, 2022), *available at* https://presidentialtransition.org/wp-content/uploads/sites/6/2022/12/R2G-Budget-Cycle-Graphics_Online-Resource_FINAL-12.12.22.pdf.

[9] Budget Committee Staff, Budget Process, Budget Committee (n.d.), available at https://budget.house.gov/budgets/process.

[10] PPS Staff, *supra*, note 8.

[11] *Id.*

[12] *Id.*

[13] *Id.*

[14] *Id.*

[15] EBSCO Staff, United States House Committee on the Budget, *EBSCO* (n.d.), *available at* https://www.ebsco.com/research-starters/history/united-states-house-committee-budget.

[16] SCB Staff, Committee History, *United States Senate: Committee on the Budget* (n.d.), *available at* https://www.budget.senate.gov/about/committee-history#:~:text=The%20Budget%20Committee%20is%20one,revenue%2C%20and%20the%20federal%20budget.

[17] AIC Staff, Government Funding Explained: The Appropriations Process & Immigration, *American Immigration Council* (Sep. 8, 2025), *available at* https://www.americanimmigrationcouncil.org/fact-sheet/overview-government-funding-process-appropriations/#:~:text=Nevertheless%2C%20all%20government%20funding%20bills,the%20final%20bill(s).

[18] NAEYC Staff, The Federal Legislative Process, or How a Bill Becomes a Law, *National Association for the Education of Young Children* (n.d.), *available at* https://www.naeyc.org/our-work/public-policy-advocacy/federal-legislative-process-or-how-bill-becomes-law#:~:text=After%20the%20conference%20report%20has,veto%22%20and%20the%20legislation%20dies.

Appropriations Bills

Given the budget resolution, Congress then passes the annual appropriations bills to underwrite specific government programs and agencies. The House and Senate appropriations committees manage this process.[19]

Reconciliation

Before the President signs an appropriations bill, both the House and the Senate must agree on its final form. Recently, this was accomplished through an omnibus bill instead of separate appropriations bills.[20]

Spending by Government Agencies

After both the House and the Senate pass a final appropriations bill, the President signs it into law. Once an appropriations bill becomes a law, the funds can be spent by the various government agencies.[21] This phase denotes the beginning of a new fiscal year. It is concerned with implementing the funding decisions made in the previous phase and complying with presidential administration policy priorities. The OMB allocates appropriations available in the new fiscal year and other available funds.[22]

Once OMB apportions the funds for the new fiscal year, a government agency decides how to allocate this money among its programs within the scope of the apportionment.[23] An agency is responsible for maximizing its performance to ensure that its mission is attained. Because the timing of the spending bill's passage is uncertain, an agency must manage its expenditures wisely.[24]

Audit, Accountability, and Review

The final step in the federal budget process is an audit and accountability phase. The GAO and a government agency's inspector general (IG) review how a federal government agency spends the money.[25] An agency's chief financial officer (CFO) and their team should cooperate with the GAO and the agency's IG to ensure that it was spent within the confines of the approved budget.[26]

Federal Budget Conclusion

In conclusion, the federal budget process is a well-defined set of activities that, when adhered to, ensures an effective and efficient government function. Problems occur when governmental and outside forces either attempt to game the system or to ensure that the system works in their favor. The key to a well-oiled federal budget process is for the individual players to place the nation's needs ahead of their own desires. Only then will the federal government achieve the goals of good governance rather than the selfish aspirations of competitive governance. Simply stated, the good of the many should override the good of the few.

FEDERAL BUDGET AND THE LINE ITEM VETO

This essay consists of five sections beyond this introduction. In the first section, a line-item veto is defined. The second section is a brief of *Clinton v. City of New York*, 524 U.S. 417 (1998). The third section presents reasons for or against reintroducing the line-item veto. In the fourth subsection, the line-time veto issues are listed. Here, it is argued that if provisions similar to those in the Florida Constitution are implemented on the federal level, the need for a line-item veto may be moot. The section concludes that if the provisions of the Florida Constitution are ratified, the violations of the Separation of Powers Principle and the Presentation Clause no longer apply.

Definition of the Line-Item Veto

A line-item veto is a veto power that "allows the executive to cancel specific parts of a bill (usually spending provisions) while signing into law the rest of the bill."[27] Some states provide their governors with a line-item veto. In *Clinton*, the Supreme Court decided that the line-item veto was unconstitutional.[28] According to the Court, the line-item veto was unconstitutional because it violated the Separation of Powers Principle. The Separation of Powers Principle divides the federal government into three branches:

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[19] *See generally*, NSF Staff, Federal Budgeting and Appropriations Process, *United States National Science Foundation* (n.d.), *available at* https://www.nsf.gov/about/budget/process.
[20] *Id.*
[21] PPS Staff, *supra*, note 8.
[22] *Id.*
[23] *Id.*
[24] *Id.*
[25] *Id.*
[26] *Id.*
[27] LII Staff, Line-Item Veto, *Legal Information Institute* (Jun. 2023), *available at* https://www.law.cornell.edu/wex/line-item_veto.
[28] C*linton v. City of New York*, 524 U.S. 417 (1998), *available at* https://supreme.justia.com/cases/federal/us/524/417/#tab-opinion-1960375.

legislative, executive, and judicial.[29] [30] This structure ensures that no branch becomes too powerful, as each branch has specific functions, such as lawmaking, law enforcement, and law interpretation.[31] The structure comprises of a system of checks and balances that limit the power of the other branches.[32] According to the Court, a federal line-item veto violated Article I, § 7 of the Constitution because it gave the President the power to alter the text of a statute passed by the House and the Senate.[33] The Court further declared that for the line-item veto to be constitutional, an amendment to the Constitution must be enacted.[34]

Clinton v. City of New York, 524 U.S. 417 (1998)

This section is divided into five parts, utilizing the IRAC (Issue, Rule, Analysis, and Conclusion) method. The first part of the case brief states the facts of the case.[35] In 1997, President Clinton exercised a line-item veto under the Line Item Veto Act of 1996[36] to cancel two provisions of the Balanced Budget Act of 1997[37] that affected New York State.[38] The Supreme Court held that the Line Item Veto Act of 1997 was unconstitutional because under the Constitution, a President must either veto an entire law or approve an entire law.[39]

The issue is whether the provisions in the Line Item Veto Act of 1996 permit the President to remove constitutional parts of a law. The Line Item Veto Act was unconstitutional because it gave the President unilateral authority to change the text of a duly enacted statute, and thus violated Article I § 7 of the Constitution. The judgments of the lower federal courts were affirmed. There is no provision in the Constitution authorizing the President to enact, amend, or repeal statutes, although the President may initiate and influence legislative proposals. The Court opined that a line-item veto was the functional equivalent of partial repeal of an Act of Congress. The Court concluded that the Line Item Veto Act gave the President unilateral power to change the text of enacted statutes. The Act's cancellation provisions violated Article I § 7 of the Constitution.[40]

Should the Line Item Veto Be Reintroduced?

This subsection describes arguments in favor of and against the reintroduction of the line-item veto for a Congressional vote. The following subsection discusses the Florida Single Subject Rule (SSR) and offers it as a federal alternative to the line-item veto. The essay concludes that a federal SSR is likely the best of all possible worlds, in which the advantages of a line-item veto manifest. In other words, the federal congressional budgeting powers remain with Congress and are not delegated to the Executive Branch.

Arguments For Reintroduction (Pros)

The following are several arguments in favor of reinstituting the line-item veto:[41] [42]

- ***Fiscal Discipline****:* A line-item veto would give the President the ability to remove wasteful pork-barrel spending as well as unnecessary earmarks that are typically embedded in appropriation bills.

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[29] Patrick M. Garry, Principle of the Separation of Powers, Involving Checks and Balances on Those Powers, *250* (n.d.), *available at* https://constitutingamerica.org/90day-fp-principle-of-separation-of-powers-involving-checks-and-balances-on-those-powers-guest-essayist-patrick-m-garry/#:~:text=The%20separation%20of%20powers%20principle%20is%20a,laws%20*%20**Courts**%20Interprets%20and%20applies%20laws.

[30] Andrew James Klassen, Separation of Powers, *ResearchGate.net* (n.d.), *available at* https://www.researchgate.net/publication/328216540_Separation_of_Powers.

[31] *Id.*

[32] *Id.*

[33] *Id.*

[34] *Id.*

[35] CB Staff, Clinton v. City of New York, *Case Briefs* (n.d.), *available at* https://www.casebriefs.com/blog/law/constitutional-law/constitutional-law-keyed-to-cohen/separation-of-powers/clinton-v-city-of-new-york-2/.

[36] EBSCO Staff, Line Item Veto Act of 1996, *EBSCO Knowledge Advantage* (n.d.), *available at* https://www.ebsco.com/research-starters/history/line-item-veto-act-1996.

[37] Wikipedia Staff, Balanced Budget Act of 1997, *Wikipedia.org* (Sep. 28, 2025), *available at* https://en.wikipedia.org/wiki/Balanced_Budget_Act_of_1997.

[38] CB Staff, *supra*, note 9.

[39] C*linton v. City of New York*, *supra*, note 2.

[40] *Id.*

[41] Office of the Press Secretary, Fact Sheet: The Legislative Line-Item Veto: Constitutional, Effective, and Bipartisan, *The White House* (Jun. 27, 2006), *available at* https://georgewbush-whitehouse.archives.gov/news/releases/2006/06/20060627-2.html#:~:text=A%20Line-Item%20Veto%20Offers,up-or-down%20vote.

[42] Robert Longley, Line-Item Veto: Why the U.S. President Does Not Have This Power, *ThoughtCo* (Jun.10, 2025), *available at* https://www.thoughtco.com/presidents-cannot-have-line-item-veto-3322132#:~:text=Pros%20and%20Cons,the%20federal%20government%2C%20legislators%20contended.

- ***Accountability**:* A line-item veto would compel legislators to consider whether their favorite parochial project should be inserted in a bill. If the president had line-item veto power, they could remove the parochial project, because they would know that the veto would single it out for public scrutiny.
- ***Efficient Government**:* A line-item veto would permit the president to approve essential spending while avoiding objectionable provisions. It would avoid the necessity of approving a flawed bill or vetoing the entire legislation.

Arguments Against Reintroduction (Cons)

The following are some arguments against reinstituting the line-item veto:[43]

- ***Unconstitutional Power Shift**:* Opponents to a line-item veto contend that a line-item veto would give a president the unilateral power to cancel or remove parts of a law, thereby violating the Separation of Powers Principle or the Presentment Clause. A line-item veto expands the power of the presidency while contracting the power of the legislature.
- ***Possible Political Weapon**:* A line-item veto could be utilized by a president to punish political opponents, reward political allies, or gain leverage regarding policy issues or judicial nominations.
- ***Potentially Ineffective**:* The CBO has suggested that a line-item veto is ineffective for controlling overall spending. It could result in more spending by encouraging horse-trading between the executive and legislative branches.
- ***Could Undermine Compromise**:* Under the current budgetary system, the executive and legislative branches negotiate and compromise the characteristics of a bill. A line-item veto would undercut this process, allowing the president to avoid compromise and potentially pursue an agenda not necessarily supported by Congress.

The Single Subject Rule Alternative to the Line-Item Veto

In the best of all possible worlds, as Leibnitz was fond of saying,[44] there would be no need for a line-item veto because the parochial projects and pork-belly spending would not be included in an appropriations bill. On the federal level, we do not live in an ideal world. In federal budgets, parochial projects and pork-belly spending are typically the norm rather than the exception.[45] However, all is not lost. It should be remembered that the purpose of a line-item veto is so that a president can remove parochial projects and pork-belly spending from an appropriations bill. However, there is an alternative worth exploring that would likely resolve this conundrum.

In the State of Florida, according to Article III, Section 6 of the State Constitution, the title of a bill must be related to its content.[46] There cannot be projects in a bill that are unrelated to the bill's content. The provision is known as the SSR.[47] The SSR states that every law must cover only one subject and matters properly connected to it, where the subject is clearly stated in the title, thereby preventing logrolling, or the combining of unrelated items to attract broader support.[48] In Florida, the courts interpret what constitutes a single subject, which may lead to ongoing legal challenges.[49] For example, a bill dealing with the Registry of Motor Vehicles cannot include an appropriation to fund the management of the Everglades or procedures for building houses. In Florida, a bill must be focused on what it wants to achieve. No extraneous provisions should be included in a bill.[50] However, under the Florida Constitution, if a bill's title is misleading or its provisions are inconsistent, the bill is void on its face.[51]

These Florida provisions should likely be included in the United States Constitution. In this way, pork-belly, extraneous, and parochial projects could not be included in a federal appropriations bill. If such waste were to be included in a federal

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[43] CBPP Staff, Factsheet: Expanded Presidential Power under Senate "Line-Item Veto" Unlikely To Improve Fiscal Discipline, *Center on Budget and Policy Priorities* (Jan. 10, 2007), *available at* https://www.cbpp.org/research/factsheet-expanded-presidential-power-under-senate-line-item-veto-unlikely-to-improve#:~:text=January%2010%2C%202007-,Factsheet:%20Expanded%20Presidential%20Power%20under%20Senate%20"Line-Item%20Veto,little%20to%20improve%20fiscal%20discipline.

[44] Britannica Editors, Best of All Possible Worlds, *Encyclopedia Britannica* (n.d.), *available at* https://www.britannica.com/biography/Gottfried-Wilhelm-Leibniz.

[45] HF Staff, How Congressional Earmarks and Pork-Barrel Spending Undermine State and Local Decisionmaking, *The Heritage Foundation* (Apr. 2, 1999), *available at* https://www.heritage.org/budget-and-spending/report/how-congressional-earmarks-and-pork-barrel-spending-undermine-stateand#:~:text=Obviously%2C%20should%20such%20a%20trend,three%20highway%20program%20authorization%20bills.

[46] Michael D. Gilbert, Single Subject Rules and the Legislative Process, 67 *University of Pittsburgh Law Review* 803 (2006), *available at* https://lawreview.law.pitt.edu/ojs/lawreview/article/download/55/55/0#:~:text=Despite%20generating%20thousands%20of%20cases%20on%20important,define%20the%20term%20"subject"%20using%20legal%20doctrine.

[47] *Id.*

[48] *Id.*

[49] *Id.*

[50] *Id.*

[51] *Id.*

appropriations bill, it would be void on its face. Furthermore, there would be less need for a line-item veto because extraneous expenditures would void the bill. In other words, such a provision would likely possess the necessary fiscal discipline to make line-item issues moot. By amending the United States Constitution along the lines of the Florida Constitution, or by passing a law consistent with the SSR, the dilemma of the line-item veto would not exist. The risk of violating the Separation of Powers Principle or the Presentment Clause would cease to exist, and signing an inherently flawed bill to implement its beneficial aspects would no longer occur. The dilemma would be gone.

Line Item Veto Conclusion

In conclusion, on the federal level, the advantage of ratifying an SSR that is similar to what is in the Florida Constitution is that it completely avoids the Court's observation that a line-item veto violates the Separation of Powers Principle and the Presentation Clause. By implementing an SSR on the federal level, that which belongs to the federal legislative branch remains with the federal legislative branch. No encroachment by the executive branch occurs. This suggestion is the best of all possible worlds. The pork-belly, parochial project problem is solved without constitutional objections arising.

PROPOSED NEW YORK STATE BILL ON TAXING DRUG MANUFACTURERS

This essay is divided into three sections. The first section discusses the legal issues, including the Interstate Commerce Clause, the Dormant Commerce Clause, and the Supremacy Clause. The first three prongs of the second section address operational issues, such as the definitions of a drug, a drug manufacturer, and price. The fourth prong addresses tracking price increases, while the fifth prong addresses which companies to tax. The third section presents four recommendations: the bill's scope, tax-structure issues, enforcement mechanisms, and the advantages of delaying implementation. Each subsection is outlined in turn.

Legal Issues

In this subsection, three legal issues are considered. First, the Interstate Commerce Clause is discussed. Second, the Dormant Commerce Clause is applied to the proposed New York State tax on drug manufacturers. Finally, the preemption and the Supremacy Clause show that even if the tax is constitutional under the New York State Constitution, if it violates the United States Constitution, the tax is illegal.

Interstate Commerce Clause

Taxing increases in drug prices could be challenged in federal court as an undue burden on interstate commerce. In other words, the tax could violate the Interstate Commerce Clause. In Article I, Section 8, Clause 3 of the United States Constitution, Congress has the power to regulate interstate commerce. Clause 3 states that Congress can "regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes."[52] Federal laws that may be relevant include the Sherman Antitrust Act (SAA) of 1890, Packers and Stockyards Act (PSA) of 1921, the Grain Futures Act (GFA) of 1922, the National Industrial Recovery Act (NIRA) of 1933, the Agricultural Adjustment Act (AAA) of 1933, the Railroad Retirement Act (RRA) of 1934, the Securities Exchange Act of 1934 (SEA), the Public Utility Holding Company Act (PUCA) of 1935, the Bituminous Coal Conservation Act (BCCA) of 1935, the National Labor Relations Act (NLRA) of 1935, the Agricultural Marketing Agreement Act (AMAA) of 1937, and the Fair Labor Standards Act (FLSA) of 1938.[53] In federal court, New York State would have to prove that it validly exercises its power to tax and does not discriminate against out-of-state drug manufacturers or commerce.[54]

Dormant Commerce Clause

The Dormant Commerce Clause constrains states from passing laws that have a discriminatory impact on interstate commerce. The Dormant Commerce Clause is an implied constitutional boundary on a state's power to enact laws that discriminate against or impose an undue burden on interstate commerce, even though Congress has not yet enacted legislation on the matter.[55] If the New York State tax disproportionately impacts out-of-state drug manufacturers, it is likely unconstitutional.[56]

[52] U.S. Const., Section 8, Clause 3, *available at* https://constitution.congress.gov/browse/article-1/section-8/clause-3/.
[53] *Id.*
[54] *Id.*
[55] Linda Coberly, Supreme Court Limits Challenges to State Laws and Regulatory Authority Under Dormant Commerce Clause Doctrine, *Winston & Strawn, LLP* (Jun. 5, 2023), *available at* https://www.winston.com/en/insights-news/supreme-court-limits-challenges-to-state-laws-and-regulatory-authority-under-dormant-commerce-clause-doctrine#:~:text=Under%20the%20Constitution's%20Commerce%20Clause,the%20dormant%20Commerce%20Clause%20doctrine.
[56] *Id.*

Preemption and New York State Law

Due to the Supremacy Clause, the federal government can override state law when the state law violates the Constitution.[57] In other words, even if the tax is constitutional under the New York State Constitution, it is still illegal if it violates the United States Constitution.[58]

Operational Issues

This section contains five subsections. The first subsection defines a drug and suggests which types of drugs could be taxed. Second, a drug manufacturer is defined. Third, the price of a drug is defined and explained. Fourth, the difficulty in tracking price increases is discussed. Finally, the firms to be taxed are identified.

Drug Definition

According to the National Cancer Institute (NCI), a drug is "[a]ny substance (other than food) that is used to prevent, diagnose, treat, or relieve symptoms of a disease or abnormal condition."[59] Drugs can influence how an individual's brain and the rest of their body work.[60] A drug can affect a person's mood, awareness, thoughts, feelings, or behavior.[61] Some drugs, such as opium, may be abused or foster addiction.[62]

The tax should state specifically the definition of a drug. A drug could be a prescription drug, an over-the-counter drug, a supplement (e.g., Vitamin C or Vitamin D), or an illegal drug, such as marijuana or cocaine. The law should specify the characteristics of the drug so it is taxed correctly. Over-the-counter drugs and supplements should likely not be taxed, whereas prescription drugs is likely the target of the bill.

Definition of a Drug Manufacturer

A drug manufacturer should be defined so that it is evident which companies' products are to be taxed.[63] The New York State tax bill should likely follow the Food and Drug Administration's (FDA) definition of a drug manufacturer to simplify the law.

Price Definition

The term "price" in the proposed New York State law could be the list or retail price, the net price after rebates, or the wholesale price that distributors or pharmacies pay.[64] The price should likely not include shipping costs. The definition of price should be unambiguous and well-defined to avoid legal disputes.[65]

Tracking Increases in Prices

Given the vast number of drugs available on the retail and wholesale markets, tracking price increases over 24 months will likely be an onerous task.[66] It may be more practical to gather price data on what New York State firms sell in the state. It will demand a computer system to ensure that the price data from manufacturers is correct.[67] The system will probably be complex to both implement and maintain.

Identifying the Companies to Tax

Although the bill uses the word "manufacturer," it may be practical to collect the tax from the firm that sells the drug in New York State on the retail market.[68] The advantage of taxing the transaction on the retail level is that the tax can be applied fairly and consistently.

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[57] LII Staff, Supremacy Clause, *Legal Information Institute* (n.d.), *available at* https://www.law.cornell.edu/wex/supremacy_clause#:~:text=The%20Supremacy%20Clause%20refers%20to,CIVICS.

[58] *Id.*

[59] NCI Staff, Drug, *National Cancer Institute* (n.d.), *available at* https://www.cancer.gov/publications/dictionaries/cancer-terms/def/drug.

[60] *Id.*

[61] *Id.*

[62] *Id.*

[63] Renu Lal, Registration and Drug Listing, *United States Food and Drug Administration* (Sep. 11, 2014), *available at* https://www.fda.gov/media/116709/download#:~:text=a%20firm's%20product.-,Who%20should%20register?,relabeling%20of%20any%20drug%20package.

[64] *See generally*, Karl Montevirgen, Price, *Britannica Money* (Oct. 14, 2025), *available at* https://www.britannica.com/money/price-economics.

[65] *Id.*

[66] *See generally*, Nasiha Salwati, & David Wessel, How Does the Government Measure Inflation?, *Brookings Institution* (Jun. 28, 2021), *available at* https://www.brookings.edu/articles/how-does-the-government-measure-inflation/#:~:text=The%20Consumer%20Price%20Index%20(CPI,greater%20impact%20on%20the%20CPI.

[67] *Id.*

[68] Laura Schmidt, Understanding Sales Tax in the Reselling Industries, *Wolters Kluwer* (Apr. 28, 2025), *available at* https://www.wolterskluwer.com/en/expert-insights/understanding-sales-tax-in-the-reselling-industries#:~:text=Resellers%2C%20such%20as%20department%20stores,physically%20present%22%20within%20a%20state.

Recommendations

This section contains four subsections. First, the bill's scope is briefly discussed. Second, the tax structure issues are highlighted. Third, the enforcement mechanisms are concisely explained. Finally, a delay in implementation is suggested to ensure that both drug manufacturers and New York State have sufficient time to implement the law effectively.

Scope of the Bill

The bill should be tailored to tax only the drugs sold in New York State.[69] This would address the issues under the Commerce Clause, the Dormant Commerce Clause, and the Supremacy Clause discussed above.

Tax Structure Issues

Rather than basing a tax structure on fluctuating prices, a simpler tax structure might yield similar results with much less state overhead.[70] For example, the tax could be a fixed fee or a tax on the net profit of a drug manufacturer or drug retailer.[71] This mechanism would be easier to enforce and administer.

Enforcement Mechanisms

The bill should include specific, transparent enforcement mechanisms, such as financial penalties, to ensure compliance. It should be remembered that New York State would likely have to invest in a dedicated enforcement agency to collect and audit tax data.[72] This action might invoke the ire of the electorate because it increases government spending and complexity.

Delay Implementation

Because a new tax system is a complex endeavor, New York State should delay the law's effective date to allow the state to build the necessary administrative infrastructure.[73] The delay would also give the drug industry time to adjust to the new law.

Drug Manufacturing Conclusion

The bill will likely face significant legal challenges due to potential violations of the Interstate Commerce Clause, the Dormant Commerce Clause, and the Supremacy Clause. The terms in the bill should be specifically defined to prevent the law from being adjudicated void for vagueness. Also, the definitions above should be explicitly stated to avoid administrative excesses and costly litigation. The bill should be narrowly tailored to include only drugs sold in New York State, while a simpler fee structure might improve enforceability.

NEGOTIATING A BUDGET BILL

This essay describes the opening remarks on the budget negotiation for a bill that would establish a small-business subsidy program, providing funds to small businesses to establish commuter programs. In this program, employers would provide employees with matching funds to pay for mass transit options for commuting to work. The Department of Environmental Conservation (DEC) would administer the program. A compromise solution is offered, rather than a $1 increase in the vehicle registration fee. The Assembly wants the program funded by a tax on car manufacturers, so New Yorkers are not required to pay for it. The Senate believes that this program should not be applied in New York City because most commuters do not drive to work. The Senate is requesting a report from the DEC explaining the organization's efforts to prevent fraud and abuse during the first five years of the program. An annual report may require hiring additional staff beyond the budgeted level of DEC staff. The automobile manufacturers have expressed their concerns to the Governor’s office, including that the program in its current form may violate the Interstate Commerce Clause, the Dormant Commerce Clause, or both. Thus, a multi-party negotiation is appropriate.

Presentation to the Assembly and Senate

Hello. Thank you, Assembly Speaker, the Majority Leaders, the Minority Leaders from both the Assembly and the Senate, the members of the Assembly and Senate, and the members of the Department of Environmental Conservation for permitting me to speak. We are having this conversation because we are committed to advancing a sustainable economic recovery and enriching the

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[69] TPC Staff, How Do State and Local General Sales and Gross Receipts Taxes Work?, *Tax Policy Center* (Jan. 2024), *available at* https://taxpolicycenter.org/briefing-book/how-do-state-and-local-general-sales-and-gross-receipts-taxes-work#:~:text=California%20and%20Iowa.-,What%20purchases%20are%20subject%20to%20the%20general%20sales%20tax?,from%20their%20general%20sales%20taxes.

[70] TPA Staff, Complexity of the Tax Code, *Taxpayer Advocate Service* (2022), *available at* https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2023/01/ARC22_MSP_02_Complexity.pdf.

[71] *Id.*

[72] *See generally*, DTF Staff, Audits, Bills, and Collections, *New York State Department of Taxation and Finance* (n.d.), *available at* https://www.tax.ny.gov/enforcement/#:~:text=The%20New%20York%20State%20Tax%20Department's%20Civil,by%20mail%20before%20beginning%20the%20collection%20process.

[73] Nicholas Bednar, Justifying Delay: Why Agencies Delay Compliance Dates and How They Do It, 4 *Loyola University Chicago Journal of Regulatory Compliance* 1 (2019), *available at* https://scholarship.law.umn.edu/faculty_articles/1144.

lives of New Yorkers. Please understand that the Governor is committed to establishing consensus in developing an effective small-business commuter program that does not unduly burden the state's citizens. We believe that our original proposal is fiscally sound and administratively easy to implement. We are confident that by reasoning together, a path forward will emerge. I suggest that we utilize the Governor's proposed agenda as the basis for our discussion.

Program Funding

The Governor appreciates the Assembly's desire to ensure that New Yorkers do not bear the brunt of the program's costs. However, the motor vehicle retailer's lobby believes that a direct tax could lead to litigation or adversely affect automobile sales in New York. Thus, we propose to fund the program by increasing the statewide vehicle registration fee by $0.50 and by a targeted contribution from the motor vehicle industry comparable to the additional fee paid by New York automobile owners. The $0.50 annual fee paid by motor vehicle owners bears a reasonable relationship to the program's cost. Also, a $0.50 fee is significantly less than the original $1 increase. The fee also distributes the cost over individuals who benefit from using New York State roads. Trucking companies whose trucks are registered in New York State would be required to pay an additional $1 registration fee because, unlike individuals domiciled in New York State, they use New York State roads almost continuously. Individuals do not continuously drive on New York State roads. Instead, they typically drive to and from work, business places (e.g., grocery stores, etc.), or family and friends. Federal, state, city, town, and village government vehicles would be exempt from paying the tax.

For new automobiles sold within New York State, a one-time tax would be imposed, linking new vehicle sales to the proposed program. Used cars sold in New York State would not be taxed, as it would constitute double taxation. By taxing only new automobiles sold in New York State, the proposed law would avoid federal violations of the Interstate Commerce Clause and the Dormant Commerce Clause. If the amount of money collected from both sources exceeds the amount of money spent on the program, the difference would be placed in a special fund that would only invest in New York State municipal bonds that are rated:

Table 1. Two Highest Bond Ratings for Moody's, S&P Global, and Fitch

Bond Rating	**Moody's**	**S&P Global**	**Fitch**
Best Quality	Aaa	AAA	AAA
High Quality	Aa1 Aa2 Aa3	AA+ AA AA-	AA+ AA AA-

Any municipal bond rated medium grade or below would not be acceptable due to the perceived high risk of the investment.[74] If the cost of running the program exceeds the amount collected, the difference can be covered by either the special fund or the New York State legislature. The details would be worked out later.

The one-time tax would be a fixed amount for every new car sale in New York State. For a given manufacturer, the total tax amount would be the number of retail cars sold in a calendar year multiplied by the tax rate. For example, for a specific automobile manufacturer, suppose that the number of new automobiles sold on a retail basis was 100,000, and the tax was $100 per vehicle. Then, the total tax collected would be $10,000,000 (= 100,000 automobiles * $100 per automobile).

Please understand that if tax is collected from new automobile manufacturers, the companies would pass the tax on to their distributors as higher prices, who in turn would increase the vehicle price to customers. Thus, in the end, the customer would be indirectly paying the tax. Also, if the vehicle manufacturers were to pay the tax to the State of New York, the taxing process would likely violate the Interstate Commerce Clause, the dormant Commerce Clause, or both. If so, the automobile manufacturers would sue New York State in federal court. If the vehicle manufacturers won, the law would be invalidated, and New York State may have to disgorge itself of the taxes previously collected, paying the automobile owners the taxes that they paid under the program. Thus, to avoid potential legal liability, it is preferable to collect the tax on new vehicle sales at the retail level.

Program Scope

The Senate raised a valid concern about the transportation environment in New York City, where public transportation is far more common than driving an automobile. We propose a compromise in which the program is implemented statewide, but businesses in New York City can opt in. For New York City, where mass transit opportunities are extensive, the program can be adjusted to match funds for Metro Cards or other public transportation passes. Thus, equity is achieved throughout the state because individuals possess an incentive independent of their domicile.

Oversight and Reporting

The Senate's desire for accountability is both commendable and reasonable, but the DEC has observed that an annual intensive fraud and abuse report would be an administrative burden. As a compromise, we believe that a bi-annual report from the DEC,

[74] WM Staff, Municipal Bond Ratings, *WM Financial Strategies* (n.d.), *available at* https://www.munibondadvisor.com/rating.htm.

focusing on program metrics such as outcomes and financial health, along with information on fraud and abuse, would not unduly burden the organization. We suggest that the DEC establish well-defined protocols and procedures for fraud and abuse, ensuring their effectiveness is conveyed in the bi-annual report. The employment of a bi-annual report balances the administrative realities with the requirement for accountability.

Concluding Remarks

Please understand that this program outline is a good-faith effort to address the concerns of the Assembly and the Senate. It permits the Governor's Office and the legislature to forge ahead with a program that has a real chance to make a significant difference for small businesses and New York commuters. Thank you for the opportunity to speak with you today, and for your careful consideration of the program. It is appreciated.

Response as a Member of the Senate

This is a reasonable starting point for negotiations. The Senate has reservations about a statewide approach to funding the program. The Senate does not want New York citizens to bear the entire cost of the program. The Senate understands that if only vehicle manufacturers are taxed, these companies will likely pass the tax on to consumers indirectly. An additional $0.50 cost for vehicle registrations is negligible, but automobile owners pay it. We are considering increasing the tax on new automobile sales to reduce the fee on vehicle registrations.

The differences between urban and rural commuting are overlooked when the program is applied statewide. Please remember that utilizing personal vehicles in rural areas is frequently the only viable transportation option. Mass transit infrastructure has been in existence in New York City for many years. New York City residents should not be subsidizing the program in other parts of the state. Some of the funds raised from the New York City boroughs should be conveyed to New York City for necessary improvements in its mass transit infrastructure.

Finally, the Senate recommends that annual reports be created for the first five years to ensure the program operates as intended and that anti-fraud measures are effective. After five years, the reporting can be reduced to once every two years. The Senate believes that the DEC has the financial resources to make this happen.

AN INCLUSION IN THE NEW YORK STATE BUDGET

There are five sections to this essay. The first section summarizes the situation. The second section succinctly states the issue. The third section analyzes the policy team's options. The third section has three subsections, including one on the advantages and disadvantages of using the Statewide Planning and Research Cooperative System (SPARCS) database.[75] The second subsection describes the issues associated with employing the Health Electronic Response Data System (HERDS) database.[76] The third subsection highlights the issues surrounding the use of outside consultants, with or without policy team members, to analyze the data and write the report. The fourth section summarizes the five alternatives discussed herein. Finally, the conclusion states that the least risky alternative is the fifth alternative. However, alternatives two through four could be selected, depending on facts not currently specified.

Situation Encountered by the NYS Department of Health's Policy Team

The New York State Department of Health (DOH) policy team is working on implementing a surprise inclusion in the state's budget. The language requires the team to collect information on specific surgical procedures performed in New York State and then analyze the health outcomes. The goal is to inform Medicaid about reimbursements regarding these health outcomes. The legislation gives the team eight months to collect the data, analyze it, and issue a report to the New York State legislature. Current members of the policy team indicate they would not be able to complete the project without putting other work on hold.

Issue Faced by the Policy Team

The issue is whether the New York State Department of Health policy team should put its other projects on hold to collect information on specific surgical procedures performed in New York State and then analyze the health outcomes.

Analysis of the Policy Team's Options

The short answer to the issue question is No. The New York State Department of Health policy team should not put its other projects on hold so that the team may collect information on specific surgical procedures performed in New York State and then analyze the health outcomes. The policy team should determine if another agency has already collected the needed data. If so, the instrument or

[75] DOH Staff, Statewide Planning and Research Cooperative System (SPARCS), *New York State Department of Health* (n.d.), *available at* https://www.health.ny.gov/statistics/sparcs/.

[76] HD Staff, Hospital Electronic Response Data System (HERDS) Hospital Survey: COVID-19 Hospitalizations and Beds - pn8j-3ihx - Archive Repository, *HealthData.gov* (Sep. 3, 2024), *available at* https://healthdata.gov/dataset/Hospital-Electronic-Response-Data-System-HERDS-Hos/d63e-5f4v/about_data.

questionnaire does not need to be created, testing of the instrument is not necessary, and data collection is not required. The majority of the eight months can be spent analyzing the data obtained from another agency. This will save project time while allowing the policy team the ability to complete its other projects.

Thus, the suggestion is to use a pre-existing database, or possibly two databases, that are likely to contain the information desired by the New York State Department of Health policy team. The existing data from the SPARCS database may satisfy this criterion. Using SPARCS data, the policy team will likely meet the eight-month deadline, as it would avoid a lengthy data-collection process, thereby allowing more time for data analysis.

It should be remembered that SPARCS was created by the New York Public Health Law Section 2816.[77] It is an all-inclusive data reporting system that gathers patient-level details on ambulatory surgery, characteristics, charges for inpatient and outpatient hospital visits, diagnoses, services, and treatments throughout New York State. The data is available as public, limited, or identifiable, depending on an individual's access privileges. However, if not all the desired data are available in SPARCS, the HERDS database could be used to ensure the data used are up to date.

Advantages and Disadvantages of Using SPARCS

Some of the advantages of utilizing SPARCS data include:[78]

- ***Analysis Period:*** Because the data are already collected and is accessible to the policy team via an existing process, data analysis may begin shortly. This is an essential advantage, given the eight-month legislative deadline.
- ***Efficiency of the Analysis:*** This approach circumvents the time, cost, and logistical issues associated with designing new surveys, obtaining institutional review board (IRB) approvals, developing new reporting mechanisms, and training staff on requirements.
- ***Comprehensive Scope:*** SPARCS data includes all facilities regulated by New York State, covering diagnosis details, treatments, and patient charges, and provides the groundwork for analyzing surgical procedures.
- ***Established Compliance:*** Medical facilities are already mandated by law to report to SPARCS, ensuring that the data are consistently available, where compliance protocols and support already exist.

On the other hand, a few of the disadvantages of employing SPARCS are:[79]

- ***SPARCS Data Limitations:*** Although SPARCS contains extensive patient data, it primarily collects information on charges, procedures, and basic patient characteristics. SPARCS data may not include specific health or patient-reported outcomes that would enable an in-depth quality-of-care analysis.
- ***Data Quality and Specificity Issues:*** The existing data may have to be modified to ensure that it is consistent with the specific surgical procedures that are mentioned in the upcoming budget.
- ***Internal Workload Issues:*** While the option avoids external data collection, the DOH policy team would still be mandated to manage the analysis and reporting phases of the project within the eight-month timeframe. Even so, the policy team may still need to reallocate resources to finish the project on time.

Employing the HERDS Database

Depending on the data required for specific surgical procedures to analyze health outcomes, the policy team may find that the HERDS database contains real-time data on the procedures and outcomes to be investigated. It may also turn out that the needed data are in SPARCS and in HERDS. If it is the latter, it may be advisable to merge the two databases into a single, massive database. If the latter is appropriate, some individuals may be in one database but not the other. There are advanced, sophisticated statistical techniques to address this issue. Missing data can be handled using deletion techniques, such as listwise deletion,[80] pairwise

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[77] FindLaw Staff, New York Consolidated Laws, Public Health Law - PBH § 2816. Statewide Planning and Research Cooperative System, *FindLaw* (Jan. 1, 2024), *available at* https://codes.findlaw.com/ny/public-health-law/pbh-sect-2816.

[78] *See generally*, Alchemer Staff, Why You Should Consider Secondary Data Analysis for Your Next Study, *Alchemer* (n.d.), *available at* https://www.alchemer.com/resources/blog/secondary-data-analysis/#:~:text=Secondary%20data%20analysis%20has%20several%20advantages%2C%20including:,available%20data%20to%20avoid%20years%20of%20labor.

[79] *See generally*, Michela Mora, Secondary Research Advantages, Limitations, and Sources, *Relevant Insights* (Jan. 25, 2022), *available at* https://www.relevantinsights.com/articles/secondary-research-advantages-limitations-and-sources/.

[80] Karen Grace-Martin, When Listwise Deletion Works for Missing Data, *The Analysis Factor* (n.d.), *available at* https://www.theanalysisfactor.com/when-listwise-deletion-works/.

deletion,[81] or imputation techniques that fill in missing values with estimates, such as mean or median imputation,[82] regression imputation,[83] or multiple imputation.[84] Other methods include model-based approaches[85] or maximum likelihood estimation.[86] The optimal method selected depends on the characteristics of the data and the reasons for missing data. The advantage of utilizing HERDS is that it may capture current outcomes, such as specific rates or readmission rates for specific surgical procedures. The disadvantage is that there may be substantial pushback and compliance issues.

Hiring Third-Party Consultants to Do the Analysis

A common business solution to solving a workload problem is to hire outside consultants. This occurs when an organization's in-house staff lacks the expertise to perform the required activities.[87] If this option is selected, the issue is how many consultants are needed, what level of expertise they should have, and who will manage them. In many situations, the group engaged in the activities consist of both employees and consultants. The advantage of hiring consultants is that it frees up employees to perform other duties. The disadvantages include the time required to find the right people and the additional cost of hiring consultants. If the search is done early or if the DOH has an existing relationship with a given consulting firm, the listed disadvantages may not significantly affect the expected outcome at the end of the eight months.

Summary of the Alternatives

In summary, here are the alternatives discussed above.

1. Do the project from beginning to end. This includes creating the instrument or questionnaire, alpha- and beta-testing the instrument, obtaining IRC approval to use the instrument, collecting the data, analyzing the data, and writing the report. With this alternative, other projects may have to be put on hold temporarily.
2. Begin the project at the analysis phase. Avoid data collection issues by using the SPARCS database. Use only policy team members to conduct the analysis and write the report. Possibly delaying some other projects.
3. Begin the project at the analysis phase. Avoid data collection issues by using the HERDS database. Use only policy team members to conduct the analysis and write the report. Possibly delaying some other projects.
4. Begin the project at the analysis phase. Avoid data-collection issues by using the SPARCS and HERDS databases, as neither database alone contains the necessary data to do the report justice. Use only policy team members to conduct the analysis and write the report. Possibly delaying some other projects.
5. Begin the project at the analysis phase. Avoid data collection issues by using the SPARCS database or, depending on the data to be analyzed, the SPARCS database with the HERDS database. Use only consultants or consultants with policy team members to conduct the analysis and write the report, assuming that the budget for the policy team permits it. If this option is selected, it is doubtful that other projects will have to be put on hold.

Inclusion Conclusion

Given the strict eight-month time constraint, the fifth alternative is the most likely alternative. From a project management perspective, it is the least risky of the five alternatives. However, the fifth alternative assumes that the policy team has the budget or can increase its budget to hire consultants. The alternative also assumes that the data to be analyzed are contained in both the SPARCS and the HERDS databases. If these two assumptions are not satisfied, then alternatives two through four should be selected,

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[81] GFG Staff, Pairwise vs Listwise Deletion, *Geeks for Geeks* (Jul. 23, 2025), *available at* https://www.geeksforgeeks.org/machine-learning/pairwise-vs-listwise-deletion/.

[82] Tiya Vaj, When to Use Mean/Median/Mode Imputation, *Medium* (Sep. 18, 2024), *available at* https://vtiya.medium.com/when-to-use-mean-median-mode-imputation-b0fd6be247db.

[83] Craig K. Enders, *Applied Missing Data Analysis* (Guilford Press 2nd ed. 2010).

[84] Peng Li, Elizabeth A Stuart, & David B Allison, Multiple Imputation: A Flexible Tool for Handling Missing Data, *Journal of the American Medical Association*, 314-18(Nov. 1966-67), *available at* DOI: 10.1001/jama.2015.15281.

[85] Tianjing LI, Susan Hutfless, Daniel O. Scharfstein, Michael J. Daniels, Joseph W. Hogan, Roderick J. A. Little, Jaspon A. Roy, Andrew H. Law, & Kay Dickersin, Standards Should Be Applied in the Prevention and Handling of Missing Data for Patient-Centered Outcomes Research: A Systematic Review and Expert Consensus, 67 *Journal of Clinical Epidemiology* 1, 15–32 (2014), *available at* https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4631258.

[86] Joseph G Ibrahim, Haitao Chu, & Ming-Hui Chen, Missing Data in Clinical Studies: Issues and Methods, 30 *Journal of Oncology* 26, 3297–3303 (May 29, 2012), *available at* DOI: 10.1200/JCO.2011.38.7589.

[87] CCO Consulting, Is It Risky to Hire a Consultant? Exploring the Pros and Cons, *Cornerstone Consulting Organization* (Apr. 4, 2024), *available a*t https://www.ccoconsulting.com/is-it-risky-to-hire-a-consultant-exploring-the-pros-and-cons/#:~:text=There%20are%20some%20disadvantages%20to%20hiring%20a,off%20consultant%20fees%20in%20their%20yearly%20losses.

depending on the circumstances. As for other projects, if new data is not collected, there may be sufficient time to perform the current project and the other projects concurrently.

IS A MUNICIPAL BOND THE APPROPRIATE CHOICE?

This essay examines whether a municipal bond was the appropriate choice to fund a particular government expenditure. The first section defines and characterizes a municipal bond. The following section describes alternative funding mechanisms other than municipal bonds. The third section explains why a municipal bond should be used instead of other financing options. In the fourth section, features of the *Affordable Housing Revenue Bonds (Sustainability Bonds), 2025 Series F-1 & 2025 Series F-2* are listed. The essay concludes that the selection of a municipal bond to finance the specified housing construction was the right choice.

Definition and Characteristics of a Municipal Bond

`According to Chen, municipal bonds are "debt instruments that local, county, and state governments issue to secure financing for civic improvements, including the construction of highways, bridges, or schools."[88] Municipal bonds function like loans, with bondholders serving as creditors. In exchange for the price of the bond, investors are promised interest on their principal balance, which is repaid at maturity. Municipal bonds are often exempt from local taxes, making them attractive to people in higher income tax brackets.[89]

A municipal bond is characterized by the source of its interest and principal repayments. A municipal bond can be structured in various ways with different benefits, risks, and tax treatments. A municipal bond that is not qualified for federal tax exemption may be subject to federal income taxes.[90] Governmental entities issue a general obligation bond (GO) that is not backed by revenue from a particular project, such as a toll road or airport.[91] Dedicated property taxes back some GO bonds, while others are payable from general funds. In contrast, a revenue bond (RB) generates income from sales, hotel occupancy, or other taxes.[92] When a local government is a conduit bond issuer, a third party covers the interest and principal payments.[93] Municipal bonds have a lower default rate than corporate bonds. However, RBs are more susceptible to changes in consumer tastes or general economic downturns than GO bonds. Finally, municipal bonds are typically stable, making them more secure than other types of stocks and bonds.

Alternative Methods for a Municipality to Raise Money

Other than municipal bonds, local governments can alternatively raise money by increasing taxes and fees, or by employing more innovative methods, such as leveraging federal grants, issuing tax credits, creating special districts, crowdfunding, corporate sponsorships, and asset monetization to fund projects and services. The types of alternatives include leveraging partnerships with the private sector, grants/incentives, innovative financing and development tools, fees and sales, and other methods.[94] Potential alternatives include:

Leveraging Partnerships and the Private Sector[95]

- *Public-Private Partnerships:* Cooperate with private companies to share costs, risks, and expertise for projects such as infrastructure development.
- *Corporate Sponsorships:* Obtain private companies to fund specific projects, such as parks and public art, in exchange for branding.
- *Asset Monetization:* Lease or sell underutilized public assets such as parking garages and utilities for upfront cash.

Grants and Incentives[96]

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88 James Chen, Municipal Bond: Definition, Types, Risks, and Tax Benefits, *Investopedia* (Aug. 20, 2025), *available at* https://www.investopedia.com/terms/m/municipalbond.asp.
89 *Id.*
90 *Id.*
91 *Id.*
92 *Id.*
93 *Id.*
94 *See generally*, FLAG Staff, Exploring Alternative Funding Options for Municipal Capital Improvement Projects, *Front Line Advisory Group* (n.d.), *available at* https://frontlineadvisorygroup.com/exploring-alternative-funding-options-for-municipal-capital-improvement-projects/#:~:text=One%20key%20option%20at%20the,support%20infrastructure%20and%20economic%20growth.
95 NLC Staff, Four Ways to Fund Effective Economic Development In Your City, *National League of Cities* (Aug. 9, 2017), *available at* https://www.nlc.org/article/2017/08/09/four-ways-to-fund-amazing-economic-development-in-your-city/#:~:text=Public-Private%20Partnerships,Center%20for%20City%20Solutions%20online.
96 SP Staff, Alternative Funding Sources for Government Projects, *Strategic Partnerships, Inc.* (Aug. 16, 2017), *available at* https://www.spartnerships.com/alternative-funding-sources-government-projects/#:~:text=Alternative%20Funding%20Through%20New%20Business,hospital%20and%20a%20cancer%20center.

- *Federal & State Grants:* Secure grants for infrastructure, environmental projects, or economic development.
- *Tax Incentives/Credits:* Propose New Business Tax Credits (NBTCs) or other incentives to entice investment and generate revenue.
- *EB-5 Program:* Utilize federal funding for projects in distressed areas.

Innovative Financing and Development Tools[97]

- *Tax Increment Financing:* Employ increases in future property tax revenue from new development to finance current infrastructure.
- *Special Districts:* Form entities such as Public Infrastructure Districts or Community Reinvestment Agencies to focus funding efforts.

Fees, Sales, and Government-Owned Businesses[98]

- *User Fees:* Increment fees for specific services, such as permits, utilities, and parking.
- *Crowdfunding & Donations:* Employ online platforms for specific community projects or to find fiscal sponsors.
- *Social Enterprise:* Develop government-owned businesses that generate profit for public benefit.

Other Methods[99]

- *General Fund Allocation:* Reallocate existing tax revenues to specific projects.
- *Lottery Funding:* Use funds generated from state lotteries.
- *In-Kind Donations:* Accept goods, services, or volunteer labor instead of cash.

Reasons for Using a Municipal Bond versus Alternative Financing Methods

Municipal bonds are the primary financing tool for public infrastructure projects because they offer the lowest overall cost of capital, due to their typical federal tax advantages and low default risk.[100] The reasons for using a municipal bond include:[101]

- ***Lower Borrowing Costs:*** The interest on municipal bonds is usually exempt from federal income tax and sometimes state and local taxes. These facts make municipal bonds attractive to investors, mainly those individuals in high-income tax brackets. Thus, municipal bonds can offer lower interest rates than corporate bonds or bank loans.
- ***Funding Public Projects:*** Municipal bonds are designed to finance public capital expenditures such as the construction of schools, hospitals, highways, and utility systems.
- ***Stability and Low Risk:*** Municipal bonds typically have high credit ratings and very low default rates compared to corporate bonds because they are usually backed by a local government's power to tax.
- ***Longer Terms:*** Municipal bonds frequently have longer maturity dates that coincide with the long-term nature of infrastructure investments.
- ***Control for the Issuer:*** By issuing municipal bonds, municipalities have more flexibility in establishing the terms and conditions of the bond, rather than with some bank loans, which might come with specific restrictions on how to spend the money.

A Municipal Bond Issued in the Last Five Years

As an example, the New York State municipal bonds under consideration are the *Affordable Housing Revenue Bonds (Sustainability Bonds), 2025 Series F-1 & 2025 Series F-2*. Here are the features of these bond offerings:[102]

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[97] McKaia Dykema, Kyle Funk, & Brittney D. Kohler, 10 Ways to Make Your Local Match for Federal Projects, *National League of Cities* (Jul. 5, 2022), *available at* https://www.nlc.org/article/2022/07/05/10-ways-to-make-your-local-match-for-federal-projects/#:~:text=Municipal%20bonds%20are%20a%20popular,new%20bonds%20to%20be%20issued.

[98] *See generally*, LGA Staff, Finance and Funding, *Local Government Association* (n.d.), *available at* https://www.local.gov.uk/our-support/guidance-and-resources/community-action/community-action-overview/six-guiding-2#:~:text=Some%20external%20funding%20sources%20include:%20*%20Lottery,vision%20*%20Not%20relying%20on%20long-term%20funding.

[99] FLAG Staff, *supra*, note 7.

[100] Fidelity Staff, Your Complete Guide to Municipal Bonds, *Fidelity Investments, Inc.* (n.d.), *available at* https://www.fidelity.com/learning-center/trading-investing/guide-to-municipal-bonds#:~:text=Key%20takeaways,president%20of%20fixed%20income%20strategy.

[101] VanEck Staff, Corporate vs. Municipal Bonds: Key Differences Every Investor Should Know, *VanEck 70* (Apr. 9, 2025), *available at* https://www.vaneck.com/us/en/blogs/income-investing/corporate-bonds-vs-municipal-bonds/.

[102] NYS-HFAB, Affordable Housing Revenue Bonds (Sustainability Bonds), 2025 Series F-1 & 2025 Series F-2, *New York State Housing Finance Agency Bonds* (n.d.), *available at* https://bonds.hcr.ny.gov/nyshfa/bonds/bond-offering/i4831?offeringId=99968.

Offering Summary

Affordable Housing Revenue Bonds, 2025 Series F-1

Par Amount: $38,770,000
Sale Date: 12/02/2025
Sector: Housing
State: New York State
Method of Sale: Negotiated
Closing Date: 12/17/2025

Affordable Housing Revenue Bonds, 2025 Series F-2

Par Amount: $146,870,000
Sale Date: 12/02/2025
Sector: Housing
State; New York State
Method of Sale: Negotiated
Closing Date: 12/17/2025

Offering Documents

Both bonds have Official Statements. An offer to purchase the bonds should be conducted via a registered broker-dealer and an Official Statement.

Additional Information

Bond Offering Ratings: Moody's Aa2
Outlook: Stable
Date: November 2025

Offering Participants

The offering participants in alphabetical order include:

- Bancroft Capital
- Bank of America Securities
- Bond Counsel
- Hawkins Delafield & Wood LLP
- J.P. Morgan
- Jefferies
- Loop Capital Markets
- Morgan Stanley
- Pearlman and Miranda, LLC
- Ramirez & Co., Inc.
- RBC Capital Markets
- Siebert Williams Shank & Co., LLC
- Stern Brothers & Co.
- Wells Fargo Securities

Was This Municipal Bond a Good Choice?

For these two bonds, a municipal bond was a good choice. First, the purpose of municipal bonds is to finance long-term projects. Building a house is usually a lengthy project, where the house typically lasts for decades. As municipal bonds, the interest paid by these two bonds was likely not subject to federal income taxes because they were private activity bonds (PABs) used to finance housing construction.[103] There is also a high probability that the bonds were not subject to state income taxes. Moody's credit rating was Aa2, indicating high-quality, low-risk bonds. In other words, they were rated below Aa1 and above Aa3. The Aa2 rating means

[103] Libby O'Neill, Housing Bonds, *National Low Income Housing Coalition* (2025), *available at* https://nlihc.org/sites/default/files/AG-2025/5-25_Housing-Bonds.pdf#:~:text=Housing%20bonds%20are%20type%20of%20tax-exempt%20Private,mortgages%20for%20low-%20and%20moderate-income%20first-time%20homebuyers.

that the issuer has a very strong capacity to meet financial commitments, and the bonds are attractive to conservative investors seeking stability. The bonds were revenue bonds that were secured by project revenues. They were not general obligation bonds that were backed by New York State's taxing power.[104] Finally, a significant number of participants were engaged in marketing the two bonds to the public.

Municipal Bond Selection Conclusion

In conclusion, given that the *Affordable Housing Revenue Bonds (Sustainability Bonds), 2025 Series F-1 & 2025 Series F-2* were selected, the municipal bond financing method was probably the correct instrument to employ. The investment was long-term, and the bonds were not federally taxable because they funded housing construction. Moody's rated the bonds Aa2, a high-quality, stable rating. Thus, the selection of municipal bonds to finance the housing construction was a reasonable decision.

CONCLUSION

After examining the federal budget process, the line-item veto experiment of the 1990s, and then four budgeting examples of the New York State budgeting process, it seems evident that the New York State budgeting process is likely more nuanced than the federal budget process. A proposed bill taxing drug manufacturers has the Interstate Commerce Clause, the Dormant Commerce Clause, and other federal issues when deciding whether it makes legal sense. The essay on negotiating a budget bill takes the form of discussing a bill with members of the New York State House and Senate. The essay on the inclusion of a bill in a New York State budget addresses the process from a business case study perspective. Finally, the sixth essay examines whether a municipal bond is the appropriate means of raising funds for a particular project.

What can be gleaned from these essays is that the budget process, whether at the federal or state level, can be arduous and complex. Unfortunately, the President of the United States does not have the constitutional authority to remove excess port from the federal budget. However, if Congress passed a law similar to Florida's Single Subject Rule, the desire for a line-item veto might become moot. The New York State examples are instructive because they outline many of the difficulties of passing a state budget. New York State was selected for several reasons, as it is typical of many northern states. It is recommended that the four example essays be reviewed carefully so that the budget processes in other states can be similarly understood. It should be remembered that the budget process in each state is, in some sense, unique, even though it may share many commonalities with New York State. The key is to look for common ground and then proceed accordingly.

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