MHCA
MANITOBA HEAVY CONSTRUCTION ASSOCIATION

THE Heavy News Weekly

WORKSAFELY MHCA

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WORKFORCE MHCA

SPECIAL: Road to Redemption

By Mary Agnes Welch, Winnipeg Free Press

"A Third World nation."

Allow Manitobans to vent about the potholey-est road on their commute, and you get an earful. CAA Manitoba sure did during its tongue-in-cheek contest to name the worst road in Manitoba. More than 3,400 people cast votes and spewed a little vitriol about the state of the province's motorways.

Know what else earns an earful? Any hint of a tax increase.

The last politician to be blunt about taxes was Judy Wasylycia-Leis, who proposed to end the city's long property-tax freeze with a modest hike to help fix roads. Her defeat in the 2010 civic election, while not solely due to that moment of candor, serves as a cautionary tale.

And when the provincial government hiked the gas tax by 2.5 cents, media outlets carried knee-jerk kvetching by motorists from the local self-serve station, even though the province's fuel levy is among the lowest in the country.

At some point, Manitoba is going to have to do what Quebec, Nova Scotia and New Brunswick have already done -- have a mature conversation about taxes, especially a one-point hike to the PST. That's how other provinces have sought to solve their deficits. In Manitoba, a PST hike is widely viewed as the simplest, most effective solution to the province's infrastructure woes.

Manitoba's PST is already lower than most and has been untouched for 25 years. Our economy is relatively good, with low unemployment and decent growth projections. The federal Tories just freed up room in the sales tax by shaving two points off the GST, and the province's NDP government has huge political capital it never seems to spend.

Meanwhile, Manitoba's infrastructure deficit gets worse every day. It now tops $13 billion. That's the gross domestic product of Albania.

Now might be the perfect time, politically and economically, to broach a comprehensive debate about taxes. But what

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would that debate look like? From discussion with a dozen policy wonks, current and former politicians, political scientists and business leaders, it could have four key ingredients -- an end to sneaky tax hikes, a real commitment to innovative and accountable municipal spending, some political courage and the province's first referendum in 60 years.

It was 19 years ago this month the phrase "infrastructure deficit" first appeared in the Winnipeg Free Press, a phrase coined by then-city councillor Glen Murray.

"Chronic underfunding is creating what Murray calls the "infrastructure deficit, which will exceed $250 million over the next five years," wrote city hall reporter Dan Lett.

Two hundred and 50 million.

These days, councillors would throw a "mission accomplished" kegger in the city hall courtyard if the infrastructure deficit was that low.

The annual infrastructure deficit now stands at $740 million. That is to say we're short $740 million every year compared to what's needed to bring roads, sewers, buses, community centres and parks up to a reasonably decent level.

Critics wonder whether any real solutions will be found before the annual shortfall reaches $1 billion, an almost insurmountable number.

By now, the phrase "infrastructure deficit" has been repeated so often it has lost all meaning; a chronic problem no level of government seems able to solve.

It's not just potholes. It's community clubs with leaky roofs. It's transit service stuck in a time warp. It's 70-year-old water mains that crack and sewer lines that dump the city's toilet waste into the Red River. It's sidewalks and curbs that give the city a Detroit-like shabbiness.

The dollar figure attached to Winnipeg's backlog is beyond most people's fathoming, even if you assume the city's penchant for whining has inflated the number somewhat.

According to the city's last estimate, done in 2009, it will cost an extra $7.4 billion in the coming decade to fix what's in crappy condition and to keep up with the city's growth and new provincial rules governing services such as sewage treatment.

The crazy part is, even if Winnipeg got a generous share of a new point of PST, it wouldn't solve the problem. It wouldn't even stop the problem from getting worse, according to city staff.

One point of PST raises about $260 million. Based on population, Winnipeg's share would be about $145 million. If the city got to keep the share of the PST generated in the city, say 70 per cent of a point, the amount would inch up to $180 million.

In recent weeks, as the NDP geared up for its 13th provincial budget, there have been renewed calls to hike the PST by one point to help tackle the infrastructure deficit

The province's top CEOs support the idea, as do various chambers of commerce, the Association of Manitoba Municipalities and CAA Manitoba. Report after report has recommended a PST hike as among the most reasonable solutions, one that makes economic sense in a province trying to sell itself as a transportation hub.

Still, it remains the third rail of provincial politics.

If you run on a tax hike, you risk getting thumped, as Wasylycia-Leis did.

If you don't run on it and, instead, float the idea after an election, you could get thumped even worse, as in the case of former British Columbia premier Gordon Campbell. His post-election plan to harmonize the sales tax killed his political career.

Jim Carr, president and CEO of the Business Council of Manitoba, said he and his CEOs pitched the idea of a PST hike to fix infrastructure a couple of years ago. Then-finance minister Rosann Wowchuk said 'no' within 10 seconds.

Both opposition leaders were a little more open-minded, said Carr. They waited 20 seconds before saying 'no.' The political fallout was the major reason.

"What troubles me is we have people in public life afraid to lead," said Carr. "Political leadership requires risk-taking."

That's never been the NDP's strong suit. The NDP government is among the most stable and consistently popular provincial regimes in Canada and faces little pushback from an opposition in disarray, but it has rarely spent any of that political capital to do anything bold.

Instead, the province tinkers around the edges, taking political flak for tax hikes without actually solving the infrastructure problem.

City crews work to repair a huge sinkhole on Corydon Avenue just west of Wilton Avenue in April. The earth beneath the roadway had washed away after a broken line saturated the area surrounding it.

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Right now, the NDP is getting pounded by the opposition Tories for breaking an election promise and hiking the gas tax, a decision that's adding less than $50 million to provincial coffers. Like cash raised from adding PST to manicures or boosting vehicle registration fees, it's a pittance that will have no noticeable effect on the overall quality of roads, bridges, transit or community clubs.

"It won't solve the big problems," said University of Manitoba political scientist Richard Sigurdson.

When Bev Oda ordered a $16 glass of orange juice at a swanky London hotel, Manitoba's roads got a little worse.

Petty spending scandals like the one dogging the international development minister breed a general mistrust of government.

In Manitoba, that mistrust has an even more specific focus. Voters have repeatedly heard every cent of some new tax or levy will be spent on roads, only to find out a shell game is afoot.

Last year, the city raised frontage levies, bringing in new revenue worth $14 million. Mayor Sam Katz said every penny would be spent on road improvements, but the road budget never increased by $14 million. More old money was shifted into general revenue than there was new money coming in from frontage levies.

Similarly, legitimate questions have been raised at the provincial level about the new roads budget. It's not clear $49 million in additional gas tax revenue will actually mean $49 million in additional spending on infrastructure.

"That breeds further distrust, dislike, disbelief, the association of dishonesty and lack of credibility with government," said Chris Lorenc, president of the Manitoba Heavy Construction Association and chairman of the latest municipal task force on infrastructure funding.

The real problem with the gas-tax hike was its sneakiness.

In last fall's election, Premier Greg Selinger repeatedly ruled out a tax hike and then raised the gas tax and expanded the PST's scope in his first post-election budget.

Winnipeg Mayor Sam Katz is guilty of a similar sin.

Katz always said the property-tax freeze couldn't last forever, but in the last civic election he used robocalls to attack Judy Wasylycia-Leis' plan for a modest property-tax increase. Then, just over a year later, he hiked taxes higher than she planned to.

And there is a credible argument to be made city hall's cash crunch is not nearly as dire as many mayors have claimed, that the city has a lot more wiggle room on taxes, debt and user fees. Property taxes have been largely frozen for more than a decade, the business tax has shrunk, there's more than $200 million stashed in reserve funds and the city's self-imposed rule against new debt has eliminated a source of financing most other governments use.

The province is in a net debt position to the tune of $4.5 billion. That means if the province sold off all its land, its hydro dams, its office furniture and other assets and paid off all its creditors, it would still be $4.5 billion in the hole.

The city is in the exact opposite position. According to the latest figures, the city is $4.5 billion in the black. If it sold off all its police stations, parks and parking garages and used the cash to pay off its debts, the city would still have $4.5 billion left over. That number grows every year.

Provincial officials say the city could easily spend billions on roads and bridges, move itself into a net debt position like the province and still be a strong, stable civic government.

Winnipeg has for years worked to shrink its debt by paying cash for capital projects. The province argues the city's aversion to debt is a dumb policy, that debt-financing public assets over their long life is more effective, much like using a mortgage to buy a house.

And the city keeps spending on new infrastructure -- $300 million earmarked for new freeways last week alone -- instead of fixing what's already crumbling.

"I wouldn't support a dime of new money going to Winnipeg from new taxes until it had a separate, capital-maintenance budget cycle, at a minimum, to prove that new money was actually going to the maintenance we've deferred for so long," said Brian Kelcey, a policy consultant and one of the mayor's former staffers.

For many, a series of internal improvements at city hall must come before a PST hike, in part to squeeze every dime out of existing tax dollars and in part to convince voters a PST hike is really the last-ditch option.

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In-house fixes include far better long-term planning, a cost-benefit analysis for all new projects, smarter regional projects that serve more than one municipality and getting aggressive about new building technology that can extend the life of a project. Off the top of his head, municipal task force chairman Lorenc points to a new kind of carbon-fibre wrap that extends the life of bridge pilings. There are many more innovations that could save the city money.

To assuage the fear any tax hike will disappear into the black hole called general revenue, any PST hike would also need to come with strict rules that guarantee accountability. The hike would have to be finite, perhaps lasting a decade. Legislation would guarantee new revenue would be spent on infrastructure, over and above current provincial spending levels. An independent watchdog, perhaps the cranky Public Utilities Board, would have a mandate to oversee spending annually to ensure it was being done as efficiently and transparently as possible.

And once the groundwork is laid, the ultimate decision should rest with voters. Hiking the PST, or any tax rate, would require a provincial referendum, the first time the Filmon government's legislation has ever been used.

Bring it on, Carr says. He has already brainstormed a possible ballot question: "Do you support an increase to the PST dedicated by legislation to municipal infrastructure, reviewable by the PUB?"

Politicians cringe at the thought of running on a tax hike, and a referendum is not much more politically palatable.

But Carr and several others say it could spark a genuine discussion about tax policy in the province and end the Chinese water torture that has become the go-nowhere debate over the infrastructure deficit. Manitobans would either agree to a PST hike or they would finally quite complaining about potholes.

"If its too risky for politicians to run on a tax increase, then run on a referendum," said Carr. "I don't have any worry in trusting the judgment of the province."

THE POLLS

-- In 2008, during the economic downturn, only one in five Manitobans favoured boosting the PST to fund infrastructure improvements. According to a Probe Research poll, half of Manitobans favoured waiting for an economic recovery and a balanced budget before spending big money on roads and bridges.

-- In January, an online survey done for the Association of Manitoba Municipalities found almost two out of three Manitobans supported a one per cent municipal sales tax if funds are guaranteed to be spent on infrastructure.

REFERENDUM RULES

Manitoba hasn't had a provincial referendum since 1952, when farmers voted on grain marketing.

But former premier Gary Filmon's Balanced Budget, Fiscal Management and Taxpayer Accountability Act says the province must call one if it wants to raise income, sales or payroll tax rates.

The thing is, the rules are very sketchy. The act contains only three paragraphs on how a referendum might work and most of those say "cabinet can decide."

The rules are so vague that, a few years back, Elections Manitoba asked the province for new legislation governing referendums. Many of the rules for general elections apply, but Elections Manitoba said it wanted clarity on who writes a referendum question, how long a campaign should last, how to regulate the spending and operations of the Yes and No committees, and a bunch of other questions.

Elections Manitoba chief operating officer Mary Skanderbeg said her agency could run a referendum pretty easily. Elections are what they do. They might have to do another door-to-door enumeration if the vote wasn't held at the same time as a general election, but the logistics of a referendum are simpler than a general election.

"Voting would be the easy part," said Skanderbeg. "It's the rules that would be hard."

It cost $12 million to run last fall's general election, including office rentals, salaries for returning officers and phone bills. But because of new fixed election-day rules, that race was longer than a normal 33-day campaign.

A referendum would likely cost less than a general election, especially if online voting was available.

Visit the MHCA website at www.mhca.mb.ca and participate in our poll question: ***Do you support an increase to the PST dedicated by legislation to municipal infrastructure, reviewable by the PUB?***

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MANITOBA HEAVY CONSTRUCTION ASSOCIATION

SPRING MIXER

Wednesday June 13, 2012 | Assiniboia Downs
Reception – 5:30pm ▪ Dinner – 6:00pm ▪ Live Racing – 7:00pm

SEATING IS LIMITED. TO ORDER TICKETS, FAX FORM BACK TO 943-2279. **TICKETS: $75.00 + GST.

Company: _____

Number of tickets (tables of 8): _____Contact person:_____

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Invoice: _____ Visa/MC/AMX #: _____ Exp: _____

Signature: _____

For more information please contact Christine at the MHCA office by phone: 947-1379, fax: 943-2279 or by email at christine@mhca.mb.ca

As per MHCA Board Policy, only registrations cancelled 72 hours prior to the commencement of this event will be refunded.

Groundbreaking MHCA

MHCA Welcomes a New Members!

Advance Drainage Systems Canada

Dan Parisien
Box 838, Ile de Chaines, MB
R0A 0T0
Ph: (204) 930-2751

Fax: 866-884-6192
Email: dan.parisien@ads-pipe.com
Additional Information: ADS Canada is the world's largest manufacturer of corrugated HDPE pipe. In addition to its flagship N-12 Pipe, they offer a complete line of fittings and other accessories.

Red River West Contracting Inc.

Gary Tolpa
184 Eveline Street, Selkirk, MB
R1A 2K7
Ph: (204) 403-0203

Fax: n/a
Email: garytolpa@hotmail.ca
Additional Information: General contracting - culvert installations, contaminated soil clean up, road construction, and gravel hauling.

Nisichawayasihk Construction LP

Adolph Gawaziuk
Box 288 Nelson House, MB
R0B 1A0
Ph: (204) 484-2084/679-1059

Fax: (204) 484-2197
Email: adolph@ncip.ca
Additional Information: Specializes in gravel trucks, water trucks (pressure testing), graders, bulldozers, snow removal, and work for oil companies.

SAFE Roads Campaign Begins Next Week

For the eighth year in a row, a group of community stakeholders are teaming up as safety partners to launch the annual SAFE Roads campaign, aimed at raising awareness of the safety of road construction workers.

Soon you'll be seeing radio, billboard and transit bus ads urging motorists to simply slow down when driving through construction zones.

This year's campaign will run May 14 – June 18, 2012, and two campaign media launch events take place on May 17 in Winnipeg and in Brandon

We were very pleased in 2011 to learn during our market research that:

» 58% polled recognized the campaign – up from 34% in 2009

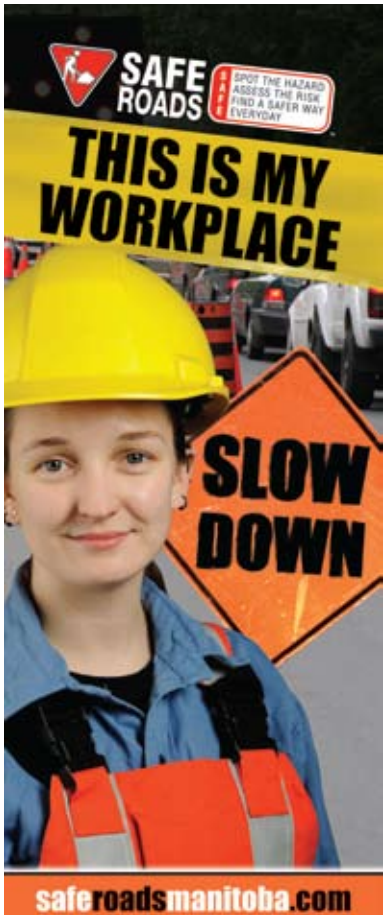
» More than 50% are frustrated at driving through construction zones

» Roughly 70% 'witness' others driving too fast or in an unsafe manner through construction zones

» More than 95% recognize the importance of worker safety within construction zones

Watch the Heavy News Weekly for a complete wrap up on the Winnipeg media event.

Remember to drive safely this summer!



Owner liable for faulty past experience assessment

Bid Protest Bulletin | Paul Emanuelli

While the duty to award to the low bid remains an implied rule of the tendering process, the courts have recognized circumstances where owners can legitimately bypass the low bidder.

For example, in its decision in Acme Building & Construction v. Newcastle (Town), the Ontario Court of Appeal held that the low bid rule was not an implied industry custom and that even if it was, it did not override a privilege clause. The case involved a municipal tender call for the construction of an administration centre. The second-lowest bidder was selected due to its proposed shorter construction time, which would save the municipality $25,000 in rent at its current premises. The low bidder sued.

As the Court of Appeal noted, since all bidders were asked to state their completion date in their tenders, that criterion was clearly a material consideration in the tender call. The tender call also contained a provision which stated that 'the [o]wner shall have the right not to accept the lowest or any other tender". The Court of Appeal found that this clause, when taken with the express request for a completion time, permitted the municipality to bypass the low bidder in favour of a bid that reflected a better overall value.

Similarly, in its decision in McKinnon v. Dauphin (Rural Municipality), the Manitoba Court of Queen's Bench upheld a municipality's decision to use its privilege clause to bypass the low bidder. The case involved a tender call for gravel crushing and hauling.

While the three councillors who sat on the municipality's gravel committee recommended the low bidder, the full council rejected that bidder in favour of the next best bidder. The low bidder sued. The court rejected the claim, finding that there was no implied industry low bid rule in the circumstances.

Furthermore, the court found that even if there were an implied low bid rule, it could not prevail over the express privilege clause and found that the municipality had the right to reject the plaintiff's low bid.

By way of another example, in its June 2002 decision in J. Oviatt Contracting Ltd. v. Kitimat General Hospital Society, the British Columbia Court of Appeal also upheld the owner's right to use its privilege clause to bypass the low bidder. The case involved a tender call for site preparation work for the Kitimat Community Health Centre in Kitimat, British Columbia.

The Society bypassed the low bidder in favour of the second-lowest bidder. The trial judge found that the Society had bypassed the low bidder in good faith. The Court of Appeal agreed with that conclusion:

There was no commitment by Boden to supply extra material at the con-tract price and no departure from the tendered terms in the discussion between Mr. McIntyre and Boden.

Boden's lower price for the contracted amount, however, did raise a reasonable prospect that if extra material was required it could be obtained at a lower cost from Boden than from Oviatt. In my view, it was not bad faith to prefer the Boden bid on that account.

While the Society was able to use its privilege clause to bypass the low bidder, this case highlights the need to show legitimate reasons for exercising reserved rights and privileges since an owner's actions may be subject to judicial scrutiny in the event of a legal challenge.

As these cases illustrate, owners who bypass low bidders may be able to defend their process if they can convince the court that their decisions were made for legitimate reasons.

Paul Emanuelli's procurement law practice focuses on all aspects of the tendering cycle including bid dispute resolution. Reach Paul at paul.emanuelli@procurementoffice.ca.

Fiscal Drag Masks Success

By Peter Hall, Vice-President and Chief Economist of Export Development Canada

If the prosperity of the last economic cycle sent public spending exiting stage left, recession handed it the lead role. Its initial act was heroic – rescuing a world economy destined for depression. Now it's the villain: paying back fiscal largesse is dragging down economic growth, fuelling near-term jitters and bringing down governments. To most, this is just the near end of a long, drawn-out act.

The impact of public spending cuts on the short-term outlook is shocking. Europe's austerity, perhaps best known and publicized, will carve an estimated 1.4% from GDP growth this year, and a further 0.5% in 2013. US cuts are even deeper – 1.3% of GDP in 2012, and although our view calls for another 1.5% next year, some believe it may chop off as much as 2.5%. America has the advantage of higher potential growth, so unlike Europe, its cuts won't drive it into recession.

Emerging markets also relied heavily on public spending over the past few years. However, the largest developing economies were generally in the middle of huge infrastructure programs which continue to act as a recession-buffer, and for the most part they can afford their programs. As such, fiscal withdrawal in emerging markets as a whole over the near term is expected to be negligible.

If the Western cutbacks are just beginning, how will they play out? Whether cutbacks are directive or automatic, as stimulus programs expire, they are hitting their economies in a pre-recovery state. Populations are reacting in Europe and to a lesser extent elsewhere as the measures bite and begin to affect employment. Last weekend, France dumped its president for a more socialist variety, and Greece voted in anti-austerity parties. General unrest suggests there is more voter backlash to come.

Will the recent political changes alter the fiscal paradigm? Markets were in a tizzy as they opened the week, and their ongoing reaction will condition future policy. Larger nations want to avoid at all costs running into ratings agencies and risking a run on their bonds. New leaders may find themselves with few new fiscal options and little other means to placate voters – stuck, for all intents and purposes, in a 'new normal' weighed down by governments' need to get back to balance. Or will they?

Hidden behind the fiscal withdrawal is higher private-sector growth. In spite of significant public cutbacks, there are currently double-digit gains in US factory orders, housing and auto markets. In response, even employment growth has been positive this year. This is the strong underlying growth that is actually keeping the US economy increasing at an otherwise unspectacular 2.6% pace this year and 3% in 2013. Underlying growth is more like 4-4.5% - much more like an economy on the mend. The numbers aren't as spectacular for Europe, but by implication, the underlying economy is running above the recession water-line, indicating ongoing opportunities in that market.

This faster-growing economy is the one that drives business activity. Perhaps this is the reason that, quite apart from news reports, many businesses in Canada and abroad are seeing a substantial increase in business activity. If so, we should be preparing for this upsurge to continue.

The bottom line? Behind today's considerable fiscal withdrawal is a faster-growing private sector that is leading the world economy to true recovery. Enjoy the higher growth, and get ready for a lot more.

WORKSAFELY MHCA

Construction Safety Excellence™

Training Schedule

Register by:

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» Fax: 204-943-2279

Cancellation Policy:

The *WORKSAFELY* policy states cancellation must be made at least two business days in advance, otherwise full course fee charge will apply.

MAY 2012	
May 1	Safe Work Procedures
May 2	Prime Contractor
May 3	Back Injury Prevention
May 3	Fatigue Management
May 4	Safety Administration (1/2 day AM)
May 4	Toolbox Talks (1/2 day PM)
May 14-15	COR™ Leadership
May 16	COR Principles
May 17-18	COR™ Auditor
May 25	First Aid 1 - CPR
May 28-29	Train the Trainer
May 30	WHMIS (1/2 day AM)/ TDG (1/2 day PM)
May 31	COR™ Auditor Refresher
May 31 (1-4:30pm)	Workplace Safety & Health Committee

JUNE 2012	
June 1	Excavating & Trenching (1/2 day AM)
June 1	Flagperson (1/2 day PM)
June 4-5	COR™ Leadership
June 6	COR Principles
June 7-8	COR™ Auditor
June 11	Safe Work Procedures
June 12	Prime Contractor
June 13	Back Injury Prevention
June 13	Fatigue Management
June 14	Toolbox Talks (1/2 day AM)
June 14	Safety Administrator (1/2 day PM)
June 18-19	Train the Trainer
June 20	WHMIS (1/2 day AM)/ TDG (1/2 day PM)
June 21	COR™ Auditor Refresher
June 22	Excavating & Trenching (1/2 day AM)
June 22	Flagperson (1/2 day PM)
June 29	First Aid I - CPR

REMINDER:
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