



**GOVERNOR'S TASK FORCE ON THE IMPLEMENTATION
OF THE 2009 PUBLIC AUTHORITIES REFORM ACT**

REPORT

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I. EXECUTIVE SUMMARY

Public authorities impact the lives of New York's citizens on a daily basis. Some of the State's public authorities are nationally known, such as the Metropolitan Transportation Authority, while others are known only to the small communities which they serve. However, together New York's state public authorities are responsible for over \$133 billion of debt¹, equaling approximately 93 percent of New York State's total indebtedness² - undeniably impacting each citizen of this State. The public is entitled to a clear accounting of the actions of all public authorities and assurances that the public authorities are being properly managed. In recognition of this, the Legislature enacted sweeping reforms under the 2009 Public Authorities Reform Act ("PARA"), including the establishment of an independent oversight entity - the Authorities Budget Office (the "ABO").

The Governor's Task Force on the Implementation of the 2009 Public Authorities Reform Act (the "Task Force"), established by Governor Paterson in Executive Order 32, was created to: make recommendations and provide policy guidance on the implementation of PARA, with special emphasis on the parameters and scope of the fiduciary duty applicable to board members of public authorities under PARA; interact with and provide guidance to the ABO; and facilitate the maximization of New York state resources in support of the reconstituted ABO. In order to fulfill the mandate, the Task Force focused on understanding the framework of public authority boards, large and small, in light of PARA, securing the independence of the ABO and assessing the funding and staffing necessary to effectuate the far-reaching powers and duties granted to it under PARA.

Since the appointment and constitution of the Task Force in January 2010, the Task Force has met on numerous occasions amongst themselves, with the ABO, New York legislators, including the architects of the PAAA and PARA and other individuals with experience in public authority reform. Our objective was to better comprehend the impediments to the effective implementation of PARA, to formulate recommendations to address our mandate and to maximize the impact of the law. The Task Force also visited various public authority boards and participated in several public authority director training sessions, engaging in candid dialogue with public authority boards and directors with respect to PARA and its implementation. Additionally, the Task Force conducted independent research and analysis of the issues at hand. All such endeavors culminate in the Task Force's conclusion that the reform measures under PARA cannot be

¹ Authorities Budget Office, Annual Report on Public Authorities in New York State, p. 15 (July 1, 2010).

² Calculated based on the inclusion of both moral obligation and full faith and credit debt among State general obligation debt.

achieved without an enhanced appreciation of the fiduciary duty owed by all members of public authority boards, a recognition of that fiduciary duty by the individuals responsible for appointing or designating said board members and substantial increases to the funding and staffing of the ABO.

We are therefore recommending, in this Report, the following:

1. That the ABO take action to ensure that the individuals responsible for appointing and designating directors to the boards of public authorities respect the fiduciary duty owed by their appointees and designees; and that the Public Authorities Law be amended to establish a fiduciary duty owed by the individuals holding appointing and designating powers.
2. That the staffing and funding of the ABO be increased to allow the ABO to implement the reforms established under PARA.
3. That the reforms under PARA be actively enforced by the ABO, with the support of other State agencies.
4. That duplicative and defunct public authorities be identified and dissolved.
5. That the “Minority and Women Owned Business Enterprise Obligations” of public authorities be enforced by the ABO.
6. That diversity be considered in the appointment of public authority board members.
7. That public authorities implement risk management and oversight policies and procedures.
8. That effort be made to improve transparency relating to state-supported debt.
9. That the ABO issue additional policy guidance on the obligation of board members to limit their reliance on senior staff management in their decision-making.
10. That the ABO research whether public authority board members should be compensated for their efforts, and provide recommendations to the Governor and the Legislature.
11. That the Public Authorities Law be amended to establish an ABO Council and to change the name of the ABO to the Authorities Oversight Office.

II. LETTER FROM THE CHAIRMAN OF THE TASK FORCE

There is very little need for embellishing the details in the Report which follows.

The Report discusses the need for, the history of, and the execution of, a vast effort by both Governors Pataki and Paterson, their staffs, the State Senate and Assembly and their leadership and staffs, to bring the public authorities out of the shadows, and into full public view and oversight. Particular thanks go to Assemblyman Richard Brodsky, who has been there for me, and the various Committees, Commissions, and Task Forces, from before 2005 until now; to Senator Bill Perkins, who led the effort in the State Senate; to John Cahill, Governor Pataki's counsel; and to Peter Kiernan, Governor Paterson's counsel. All of them were sine qua non to this entire effort.

Special thanks also to the many boards, public officials, experts, academics and others, many of whom are mentioned throughout the report, for having given the Task Force of their expertise and time. Thanks also to the prior Committees and Commissions who provided the ground work for the PAAA and PARA itself.

Importantly, a most grateful thanks to: Cathy Bell, Scott Fein, Nancy Henze, Marvin Jacob, Lee Smith, and Tom Suozzi, members of this Task Force. They provided unstinting time, effort and expertise, and participated heavily in the preparation of this Report. This has been a remarkably cohesive group and one which I hope they had real pleasure participating in, as I did. I congratulate them all.

Finally, thanks to the two associates, Cinthia Simon and Eoghan Keenan, who Weil Gotshal & Manges provided, pro bono, to be the only staff to the Task Force. Without their attention to detail, and drafting, there would be no Report.



Ira Millstein
Chairman

III. INTRODUCTION

A. A Brief History of Public Authorities and Reform Efforts in New York State

The use of government created private corporations to fund public needs is as old as the Nation itself—the Hudson Bay Company and the Dutch East India Company were used by European sovereigns to raise money from the private sector and to colonize the new world. Public authorities and special districts have become the preferred means of raising money to underwrite large capital projects throughout the United States. There are more than 35,000 public authorities nationwide and thousands more throughout Europe and Asia.

The creation of a large number of public authorities in New York State in the twentieth century was, in large measure, a response to an amendment of the New York Constitution in 1846, mandating that all future issuance of general obligation state debt for a specific capital purpose be done through public referendum, once per election. Such a requirement was clearly too cumbersome for a modern society needing to address critical public functions, including the development of health and hospital facilities, roads, bridges and mass transportation, along with other governmental facilities. Thus the use of public authorities to accomplish the vital infrastructure needs of the state continued to expand throughout the twentieth century, first under urban-planner Robert Moses, and then under Governor Nelson Rockefeller throughout his gubernatorial term. Governor Rockefeller, confronting deteriorating infrastructure, higher education and urban housing, sought public approval of referenda to incur debt.³ The approved amounts, however, were never sufficient to accomplish the intended purposes and, eventually, the public largely declined to approve the referenda.⁴ The Governor decided to look to public authorities for revenue streams to support the state's needs, thereafter, reliance upon public authorities to support the State's infrastructure and provide public services expanded and likely will for the foreseeable future.

With the increased size and scope of governmental responsibility came an increase in the amount of debt issued by the public authorities. New York public authorities are now responsible for approximately 93 percent of the State's indebtedness if moral obligation and full faith and credit debt are included.⁵

³ See Citizens Budget Commission, *New York's Public Authorities in New York State*, April 2006 (available at <http://www.cbcny.org/PubAuthorities.pdf>).

⁴ Scott Fein, *Would a State Constitutional Amendment Promote Public Authority Fiscal Reform*, 11 N.Y.S.B.A. Gov't, Law & Policy J. vol. 12, n.1 (2010).

⁵ See Scott Fein, *Introduction: Public Authority Reform*, 11 N.Y.S.B.A. Gov't, Law & Policy J. vol. 5, n. 5 (2009).

While public authorities serve important public functions – in a more supple manner outside of direct political control than conventional government agencies – their ability to issue debt outside the regulatory restrictions and oversight applicable to government entities rightfully prompted enhanced scrutiny from commentators and legislators alike. In an effort to promote greater transparency and accountability by public authorities, New York State adopted two regulatory schemes which, together, are among the most far-reaching public authority reform programs in the United States.

First, the State enacted the Public Authorities Accountability Act of 2005 (“PAAA”), which was signed into law in January 2006. PAAA was a groundbreaking law that established guidelines for the governance of public authorities as well as disclosure requirements relating to the structure, activities and finances of said public authorities. PAAA also established the Authority Budget Office housed within the Division of the Budget. The purpose of the Authority Budget Office under PAAA was to analyze the operations, practices and financial reports of public authorities, to assess compliance with state law and the principles of good corporate governance, and to make the information readily available to the public in a central location.

In conjunction with the enactment of PAAA, Governor Pataki established the New York State Commission on Public Authority Reform (the “Commission”) in February 2005 to recommend model principles for the effective governance of public authorities, policies governing the responsible and transparent disclosure of financial information, and guidelines for the conduct of internal and independent audits. Chaired by Ira Millstein, the Commission issued a report which describes the history of public authority reform in New York State and a number of recommendations highlighting the need for additional legislation in order to effectively reform the State’s public authority system.⁶ Among the recommendations of the Commission were the need for explicit fiduciary duties of public authority directors and a restructured Authority Budget Office, insulated from political influence, and equipped with enhanced examination and enforcement powers.

From 2006 to 2009, the Authority Budget Office continued to collect and collate increasing amounts of data each year, resulting in a greater understanding of public authorities’ programmatic and fiscal operations. Not surprisingly, the newly available information revealed areas in which public authority operations could be improved.

Acknowledging the need for additional improvement, Assemblyman Richard Brodsky, Senator Bill Perkins, Mr. Millstein and Governor Paterson’s

⁶ New York State Commission on Public Authority Reform Report, dated as of May 17, 2006 (available at <http://www.abo.state.ny.us/>).

office - in particular Peter Kiernan, counsel to the Governor – worked together to develop additional legislative reform, resulting in the passage of the Public Authorities Reform Act (“PARA”).⁷ PARA expands the scope of public authorities reform beyond the public disclosure requirements, to the implementation and enforcement of reform measures designed to ensure that the way public authorities conduct the business of the State is founded on fiduciary and fiscal best practices.

Specifically, PARA calls for the creation of an independent Authorities Budget Office with expanded regulatory responsibilities and compliance enforcement authority, including subpoena power.

In December 2009, shortly after the passage of PARA, Governor Paterson established the Task Force. Chaired by Mr. Millstein, the Task Force is comprised of seven individuals with demonstrated expertise in corporate governance and public finance.⁸ In accordance with Executive Order 32,⁹ Governor Paterson appointed Mr. Millstein, a leading expert on corporate governance and senior partner at Weil, Gotshal & Manges LLP; Scott Fein, a partner at Whiteman, Osterman & Hanna LLP; Nancy Henze, former executive director of Municipal Assistance Corporation for the City of New York; and Lee Smith, president of Hartland Asset Management Corporation; State Comptroller Tom DiNapoli appointed Thomas Suozzi, senior advisor to Lazard and of counsel at Harris Beach PLLC; Senate President Pro Tempore Malcolm A. Smith appointed Cathy Bell, managing director at Loop Capital Markets, LLC; and Speaker of the Assembly Sheldon Silver appointed Marvin E. Jacob, former partner Weil, Gotshal & Manges LLP. The primary charge of the Task Force was to make recommendations and provide policy guidance on the implementation of PARA.

Since the appointment of the Task Force in January 2010, as noted in the Executive Summary, the Task Force members have met regularly to examine the operation of public authorities and the ABO. Additionally, the Task Force has met with public officials, legislators, public policy institutes and experts in the fields of public finance and municipal bond law. The Task Force has also met with a number of boards of directors of state and local public authorities to discuss their obligations under PARA. These meetings and conversations helped shape the Task Force's understanding of the public authorities system and contributed significantly to the Task Force's final recommendations. The Task Force is grateful to all for their assistance.

⁷ See Appendix A – *2009 Public Authorities Reform Act*.

⁸ See Appendix B – *Biographies*.

⁹ See Appendix C – *Executive Order No. 32*.

B. Task Force Mandate

Governor Paterson's Executive Order 32 charged the Task Force with providing policy guidance and recommendations concerning the implementation of PARA, with a special focus on (i) the parameters and scope of the fiduciary duty applicable to board members of public authorities and (ii) the maximization of available physical State resources to complement the administration of the ABO and the definition of the ABO's role and independence.¹⁰

¹⁰ See Appendix C – *Executive Order No. 32*.

IV. ACTIVITIES OF THE TASK FORCE

A. Outreach to Public Authorities

As part of its due diligence efforts, the Task Force determined that it was of utmost importance to meet with the boards of directors of a broad range of public authorities. The Task Force met with the boards of directors of the Empire State Development Corporation, NYC Industrial Development Agency, Dormitory Authority of the State of New York, Westchester County Health Hospitals Corporation, Dutchess County Resource Recovery Agency, Power Authority of the State of New York and New York State Thruway Authority.

The objective of these meetings was both educational and fact-finding. The board members with whom the Task Force met had different levels of understanding of PARA, the ABO and the fiduciary duty owed to the public authority and its stakeholders. In conducting these meetings, the Task Force balanced the discussion between educating the public authorities boards on the enhanced requirements of PARA with fact-finding about the governance and decision-making processes currently employed by each public authority board.

The Task Force has concluded that a vast majority of the board members serving on these public authority boards are diligent, competent and hard working, especially in light of the fact they are not compensated. The Task Force has given considerable weight to their invaluable experiences, comments and suggestions in the formulation of its recommendations and conclusions.

B. Open Training Sessions and Public Interest Groups

Acknowledging that there are simply too many public authority boards for the Task Force to meet with on an individual basis, Chairman Millstein and Mr. Fein conducted training sessions, open to the board members of all public authorities. Mr. Fein has been conducting these board member training sessions for the past five years in connection with the ABO, PAAA and now PARA, and continues to do so. Chairman Millstein and Mr. Fein also participated in a symposium at the Government Law Center at Albany Law School. Mr. Fein rendered a historical account of public authorities and the circumstances which led to the enactment of PAAA and PARA. Chairman Millstein spoke to the fiduciary duties of board members under the new statute. Also speaking at the symposium were David Kidera, Director of the ABO, and Luke Bierman, General Counsel for the Office of the State Comptroller. Both the training sessions and the symposium were well attended by board members and management of state and local public authorities. These meetings provided the Task Force with an additional opportunity to educate the individuals responsible for operating the State's public authorities and to consider their questions and suggestions regarding the implementation of PARA.

The Task Force also met with representatives from the following public interest groups in New York City: the New York Public Interest Research Group, Common Cause, the League of Women Voters of New York, the Citizen's Union of the City of New York, the Women's City Club of New York City and the Brennan Center for Justice, all frequent commentators on the public authority system. The Task Force welcomed their opinions and has given strong consideration to their commentary in the formulation of its recommendations and conclusions.

C. Collaboration with the Authorities Budget Office Staff

Since the appointment of the Task Force in January 2010, the Task Force has worked closely with Mr. Kidera and the staff of the ABO on implementation strategies, issuance of policy guidance, instances of non-compliance, resource availability, enforcement measures and legislative support. The input provided by Mr. Kidera and the staff of the ABO on these matters proved invaluable to the Task Force's understanding of the logistical and administrative impediments hindering effectuation of the reform measures under PARA. It is the opinion of the Task Force that Mr. Kidera and the staff of the ABO are committed to implementing these reforms. However, unless additional resources are made available to the ABO, its effectiveness is certain to be limited.

D. Issuance of ABO Policy Guidance

Central to all aspects of public authority reform is the articulation, understanding, and enforcement of the fiduciary duties of the boards of directors of these public authorities. Public authorities are corporations independent of the State, and their boards, much like the boards of all corporations, public and private, are the bodies responsible for the efficient, effective, fair and honest execution of their respective missions. Public authorities differ, however, in that they have no shareholders, and thus, no one to enforce the fiduciary duties of the directors.

Over the years, the Delaware courts have articulated and enforced fiduciary duties of directors under state law on a case-by-case basis. This body of law has become the backbone of best practices for boards of public corporations. In recent times, it has also been recognized as applicable to not-for-profit corporations, irrespective of the fact that not-for-profit corporations have no shareholders, on the grounds that they have identifiable constituents that are highly dependent on them.¹¹ If anything, the case is even stronger for public authorities—the identifiable constituents in this instance are the citizens of the State and the resources public authorities expend, are the State's resources. The public is increasingly dependent on the critical infrastructure and public

¹¹ N.Y. Not-For-Profit Corp. Law § 717.

services provided by public authorities. A lack of fiduciary commitment at the board level imperils the mission of the authority.

In large part, prior to the current reform measures, no statute stated explicitly and unambiguously that those boards of public authorities in the State of New York have an obligation to act in the best interests of the public authority for which they serve. And, up until now, no one was watching closely and publicly (except sporadically) for specific “incidents” of this type of misconduct. Under PARA, the ABO is authorized (and expected) to do both.

The ABO is tasked with communicating and disseminating PARA’s first-time articulation in the law that directors of public authority boards in the State of New York have a fiduciary duty to the public authority they serve. To that end, the ABO is charged with taking appropriate measures to ensure that directors know and understand the common meaning of fiduciary duties, as spelled out by courts and commentators.

The ABO and the Task Force believe in the importance of educating directors of public authorities. It is apparent that, in the best of faith, many directors simply are unaware of what fiduciary duty means, and that it applies to them with the force of law. In fact, the Task Force often found a lack of real understanding. This lack of understanding does not appear to be a result of indifference, but rather because, until the current reform effort under Governors Pataki and Paterson, no one ever articulated said duties to board members or explained what they entailed.

When and if boards of public authorities fully understand that these are enforceable fiduciary duties, the reform of governance practices in public authorities will follow almost automatically. This has been the lesson of the governance movement in public companies - good governance practices followed from the understanding of fiduciary duties.

We cannot assure that good governance will always improve performance, but with “good” governance and the effectuation of fiduciary duties, it is far more likely that “bad” performance will be avoided. Accordingly, the Task Force started its work by assisting the ABO to develop the means of articulating and continually re-enforcing the need for public authority directors to understand and effectuate their fiduciary duties. With the assistance of the Task Force, the ABO has issued four policy statements providing guidance on the fiduciary duty and other obligations of public authority board members since the effective date of PARA: (1) “Acknowledgment of Fiduciary Duty”, (2) “Public Authority Mission Statements and Measurement Reports”, (3) “Posting and Maintaining Reports on Public Authority Web Sites” and (4) “Fiduciary Duty of the Designee of a Voting Ex Officio Board Member.” The Acknowledgement of Fiduciary Duty and the Public Authority Mission Statements and Measurement Reports publications are

of particular importance and should be read and understood by all public authority board members.

1. *Policy Guidance No. 10-01: Acknowledgement of Fiduciary Duty*

PARA adds to the Public Authorities law an explicit requirement that each board member act as a fiduciary for the public authority and serve and discharge his or her role in the best interest of the public authority for which they serve. The fiduciary duty set forth in Section 2824(g) codifies both the allegiance owed to the public authority and the level of care required of board members in execution of their role. In recognition of the fiduciary duty, PARA requires the ABO to promulgate and each board member to sign an Acknowledgement of Fiduciary Duties and Responsibilities (the “Acknowledgement”) by May 1, 2010.¹² One of the core components of the mandate issued to the Task Force under Executive Order 32 is to provide guidance on the parameters and scope of the fiduciary duty applicable to board members of public authorities. For this reason the Task Force has worked to assist the ABO in the promulgation of public guidance to all public authorities on this issue.

Simply stated, a fiduciary duty is an obligation to act in the best interest of another party. The fiduciary duty of a public authority board member is generally equivalent to that of a board member in the private or not-for-profit sector. There are two principal fiduciary duties owed by each board member to the public authority; duty of care and duty of loyalty. The public authorities law states that “[b]oard members shall perform each of their duties ... *in good faith* and with that *degree of diligence, care and skill* which an ordinarily prudent person in like position would use in similar circumstances....”¹³

The duty of loyalty, established by the statutory requirement that public authority board members act “in good faith”, requires board members to be disinterested, so that they do not appear on both sides of a transaction nor expect to derive personal financial benefit from the transaction. The sole motivating factor in the decision-making process of a board member must be the best interest of the public authority. If a board member’s judgment is, or could be, influenced by a factor (fear, friendship, personal gain), the board member cannot appropriately exercise his or her duty. In such a situation, the board member must, at least, disclose his or her conflict to the rest of the board members and, beyond this, should a conflict exist, need to recuse himself or herself from the decision-making process.

¹² N.Y. Pub. Auth. Law § 2824-1(h).

¹³ N.Y. Pub. Auth. Law § 2824-1(g) (emphasis added).

The duty of care, established by the statutory requirement that public authority board members act “with the degree of diligence, care and skill which an ordinarily prudent person in like position would use in similar circumstances”, requires board members to inform themselves prior to making business decisions utilizing material information reasonably available to them and to exercise reasonable care in the discharge of their responsibilities. The practical meaning of this is that board members should, by their regular attendance at board meetings and otherwise, collect information and consider the relevant information before making a decision, refrain from making a decision unless the issues involved are fully understood and refrain from deferring to others. It is not adequate for a board member to simply defer to another member who possesses more expertise on a particular issue. Moreover, the duty of care requires board members to avoid the waste of the authority's assets by ensuring that the costs of goods and services to the authority are first and foremost necessary and if so, that the prices are competitive.

As one of its first actions, the Task Force worked closely with the ABO to develop and issue the Acknowledgement of Fiduciary Duty on the effective date of PARA. In addition to clearly stating the fiduciary duty of board members, in drafting the Acknowledgement the Task Force sought to address four important issues: the central role of the public authority's mission statement; acceptable standards for deliberation of issues; the obligation of confidentiality; and a succinct conflict of interest policy.

The need for a clear mission statement is crucial to the proper execution of a public authority board's responsibilities and something the Task Force believed each board member should acknowledge as having read and understood. It serves as a compass to guide the board's deliberations. The importance of each public authority's mission statement is described in detail below in Section IV(D)(2).

Board members are entitled to consider, and encouraged to seek out, the views of interested parties. The uninhibited collection of information from any source is the foundation of sound decision-making. However, the Acknowledgement makes clear that the ultimate decision should be made in an independent capacity and be consistent with the mission statement of the public authority and in the best interest of the public authority. The distinction between listening to all, but yielding to none, is the benchmark of fiduciary duty.

The obligation of confidentiality is established by statute and a responsibility that the Task Force believed should be stated in the Acknowledgement.

The conflict of interest provision of the Acknowledgment does not attempt to provide a definitive conflict of interest policy. Instead, it notes several of the key elements consistent with the provisions of the State Public Officers Law and

the General Municipal Law. The provision reinforces that all conflicts should be disclosed to the other members of the board and that no board member should have any interest which is “in substantial conflict with the proper discharge of [his or her] duties in the public interest.” The Task Force believes that these two points are essential to the development of any public authority board conflict of interest policy. It is the understanding of the Task Force that many public authorities have already incorporated these concepts into their Codes of Ethics.

PARA requires that the board members of both state and local public authorities, their current board members and any board member appointed in the future execute the Acknowledgement. Each board member of a public authority must execute the Acknowledgement upon taking the oath of office and again at the beginning of each term of office. The failure to execute the Acknowledgement will be considered a failure to comply with the requirements of the public authorities law. The Task Force believes that in reading and considering the Acknowledgement, board members will be made aware of the extent of their duties and responsibilities and will improve the performance of public authorities through greater oversight and closer focus on the mission statement of the public authority.

2. *Policy Guidance No. 10-02: Mission Statements and Measurement Reports.*

Second only in importance to the fiduciary duty is the role of the public authority’s mission statement. Where the fiduciary duty governs how a board member should act, the mission statement governs the factors that should guide the decision. PARA sought to make clear that mission statements were not to be platitudes suitable for framing, imparting little guidance. Rather, PARA explicitly stated that the mission statement should be “a brief document expressing the purpose and goals of the authority, a description of the stakeholders of the authority and their reasonable expectations from the authority, and a list of measurements by which the performance of the authority and the achievement of its goals may be evaluated.”¹⁴

A public authority’s mission statement should accomplish two purposes; to direct the actions of the public authority and to provide a standard by which the public authority’s actions may be measured. In all decisions made by the public authority, the board of directors should consider the public authority’s mission and whether their decision will further that mission. For this reason great care must be taken in drafting the mission statement and it must be consistently referenced and reexamined. In fact, under PARA, the board must reexamine the mission statement on an annual basis and publish a self-evaluation of the authority based on the measurements contained within the mission statement.

¹⁴ N.Y. Pub. Auth. Law § 2824-a.

The purpose of the mission statement is to provide a framework for both the management and the board of directors to operate and evaluate the business of the public authority. As a matter of law and public policy, it is important that the board develop a clear and concise mission statement to guide the actions of the public authority. The mission statement should make clear who is intended to benefit from the public authority (i.e. the stakeholders) and what those stakeholders should expect from the public authority. These considerations should inform each decision made by the board of directors. In addition to providing guidance on the actions of management, the performance measures will also provide the board with reference points to determine if management is accomplishing the goals of the public authority. It is one of the responsibilities of management to consider the long-term effectiveness of the authority in achieving its goals.

In drafting the mission statement and performance measures, the board of directors should review and consider the public authority's enabling statute and the recent operations of the public authority. The board should discuss the purpose and goals of the authority, re-think how those goals may be achieved and the intent of the enabling statute. The board must ensure both that the mission statement does not exceed the authorization established under the enabling statute and that the activities do not exceed the mission over time, a problem frequently referred to as "mission creep." The mission statement should not be a business plan or static list of empirical points, but rather an expression of the philosophy and guiding principles of the public authority. The performance measurements should be specific enough to provide the board with the ability to objectively evaluate the effectiveness of the public authority, but general enough to remain a consistent source of reference over the long-term. Finally, it is crucial that the board actively participate in the drafting of the mission statement and not defer to management. The drafting and evaluation of the mission statement is one of the primary obligations of the board of directors and the delegation of this obligation would be a violation of the fiduciary duty of the board members.

Under section 2824-a of the Public Authorities Law, each state authority had to submit its mission statement and performance measures to the ABO by March 31, 2010. As of the date of this report, the ABO has received these documents from 44 of the 46 state public authorities. Two state public authorities have not yet submitted their mission statements and performance measures. The failure of these state public authorities to comply with one of the most important requirements of the public authorities law is unacceptable and denies both the authorities' stakeholders and the public at large an opportunity to understand and evaluate the effectiveness of these public authorities. The ABO issued policy guidance 10-02 on March 1, 2010 clearly stating the requirement for compliance and providing direction on the proper preparation of the mission statement and performance measurements. The failure of these public

authorities to provide this documentation to the ABO in a timely fashion is in violation of the public authorities law and evidence of the failure of their respective boards of directors to fulfill their fiduciary duty.

Currently, the ABO is reviewing each of the mission statements submitted to determine whether the submissions satisfy the requirements set forth in PARA. In making this decision, the ABO considers the clarity of the statement, whether it is consistent with the authority's enabling statute and operations, whether the statement has been approved by the authority board members and the overall content of the statement.

The requirement to provide the ABO with a copy of the mission statement and performance measurements is not limited to the 46 state public authorities. Each local authority is also obligated to provide this documentation to the ABO by March 31, 2011. Additionally, both state and local public authorities are required to post the mission statement and performance measurements on their website. The purpose of this publication is to provide each public authority's stakeholders with the opportunity to understand the public authority's purpose and goals and to evaluate whether or not the authority is achieving those goals. The Task Force believes that this will aid transparency and improve both the effectiveness of the public authorities and the public's faith in the public authority system.

V. RECOMMENDATIONS OF THE TASK FORCE

A. **Establish a Fiduciary Duty Owed by the Appointing and Designating Entities and Ensure Appointing and Designating Entities Respect the Fiduciary Duty Owed by their Appointees and Designees.**

PARA explicitly states that board members of public authorities have a fiduciary duty to the public authority for which they serve, and not to the appointing entity.¹⁵ It is the opinion of the Task Force that the majority of public authority board members understand and appreciate the underlying premise—that their fiduciary duty is owed to the public authority for which they serve. What is less clear to board members, is whether, or to what extent, appointees' and designees' decision-making should be controlled by the interests of those parties responsible for appointing or designating them to public authority boards.

The majority of public authority board members are appointed by a state or local official, or hold the board seat in an ex officio capacity or as an appointed designee of an ex officio board member. As such, appointees, ex officios and designees are susceptible to the interests of the person or entity responsible for appointing or designating them to their respective public authority board. This susceptibility must be curtailed, and the independence of appointees and designees safeguarded, to ensure that board members of public authorities are fulfilling their fiduciary duty obligations and acting in the best interests of the public authority for which they serve. Appointees, ex officios and designees, once appointed or designated, are board members of the public authority board for which they serve, and, as such, must act in a way that is consistent with the best interests of that public authority and that public authority alone.

The Task Force is troubled by some accounts of instances where an appointing or designating party has attempted to control the decision-making of an appointee or designee and requested such appointee or designee to act in the interest of the appointing or designating party. Ex officios and designees were often surprised to learn that their fiduciary duty is to the board on which they serve rather than to the individual who designated them to their position or the interest of the agency or entity that employs them. This type of behavior is unacceptable and a direct violation of the law. PARA is explicitly clear on this point.¹⁶ Regardless of whether a board member is an appointee, an ex officio member or a designee of an ex officio member, the fiduciary duty of the board member is exactly the same – to act in the best interests of the public authority for which such board member serves, not solely to reflect the interests of the

¹⁵ N.Y. Pub. Auth. Law § 2824(1)(g).

¹⁶ N.Y. Pub. Auth. Law § 2824(1)(g).

appointing or designating party. This is not to say that an appointee, ex officio, or designee, or any other board member for that matter, is precluded from considering the input of individuals outside of the public authority, including appointing or designating parties. Appointing officials can, as can other members of the public, share their views with a public authority board member. Those views can inform the decision of a board member, but they cannot dictate that decision. In order to be properly informed and satisfy the duty of care, board members can and should frequently consider the input and advice of interested parties.¹⁷ The fiduciary duty requires, however, that the ultimate decision be that of the appointee, ex officio, or designee alone, and that it be made in the best interest of the public authority in question.¹⁸

1. *Education and Enforcement.*

The Task Force is convinced (despite our inability to visit every public authority board) that the potential for appointing and designating entities to exert improper control over appointees, ex officios and designees is considerable. This is of great concern to the Task Force and the public at large. It is therefore the recommendation of the Task Force that the ABO take action to educate appointing and designating entities on the fiduciary duty owed by their appointees, ex officios and designees to the public authority for which they serve.

The Task Force recommends that the ABO endeavor to educate appointing and designating entities on the fiduciary duty owed by appointees and designees through the publication of policy guidance and targeted training sessions. Additional policy guidance should be issued by the ABO reiterating the applicability of the fiduciary duty to all board members, including appointees, ex officios and designees. Such policy guidance should be directed and distributed to both public authority board members and any individual having appointment or designation power with respect to a public authority board. The policy guidance should focus on the importance of the appointing and designating entities' understanding and acknowledgment of the fiduciary duty owed by their appointees and designees to the public authority for which they serve.

Recognizing that the issuance of policy guidance, while helpful, may not be sufficient to effect real change, the Task Force further recommends that the ABO develop training sessions targeting individuals with appointment or designation powers with respect to a public authority board. Educating board members on the fiduciary duty to act in the best interest of the public authority for which they serve is clearly not enough. The expectations of the appointing and

¹⁷ N.Y. Pub. Auth. Law § 2824(1)(g).

¹⁸ N.Y. Pub. Auth. Law § 2824(1)(g).

designating entities, and their understanding of the fiduciary duties owed by their appointees and designees, must also be addressed.

While it is the opinion of the Task Force that education is the most efficient means of correcting behavior, it is clear that the ABO must also undertake rigorous enforcement of the current law to ensure compliance. The Public Authority Law provides for removal of board members of public authorities for breach of fiduciary duty, in addition to other causes such as inefficiency, neglect of duty or misconduct of office.¹⁹ Under PARA, the ABO has the power to review the books and records of public authorities, act upon complaints regarding public authorities, initiate formal investigations, issue subpoenas, publicly warn and censure public authorities for non-compliance and recommend the suspension or dismissal of public authority board members and officers.²⁰ And while the ABO does not have the authority or power to actually remove board members of public authorities for breach of fiduciary duty (such power is explicitly reserved for appointing and designating entities), it can issue a recommendation of suspension or dismissal to the appropriate authorities. It should be noted that, in the unlikely event that a recommendation for removal is disregarded, it is within the power of the ABO to refer the matter to the Office of the New York State Attorney General or the local district attorney for further consideration.²¹

On May 1, 2010, the ABO issued a letter to the Governor's office recommending the suspension or dismissal of the entire board of directors of the New York State Theatre Institute Corporation ("NYSTI") based upon a "persistent pattern of neglect in the performance of its duties and fiduciary obligations."²² Less than a week following such recommendation, a demand was issued by Governor Paterson for the resignation of the entire board of directors of NYSTI.

The Task Force believes that the recommendation for removal power granted to the ABO under PARA is a meaningful enforcement measure, and that the ABO should rigorously exercise it to ensure compliance. Recommendations for removal should be made upon a finding that an appointee or designee succumbed to improper influence exerted by an appointing or designating entity.

¹⁹ N.Y. Pub. Auth. Law § 2827.

²⁰ N.Y. Pub. Auth. Law § 6(2)(a) - (g).

²¹ N.Y. Pub. Auth. Law § 6(2)(h).

²² Letter from David Kidera, Director of the Authorities Budget Office to Hon. David A. Paterson, Governor of the State of New York, dated May 1, 2010.

2. *Establishment of a Fiduciary Duty Owed by the Appointing and Designating Entities*

Further, the Task Force recommends that the Public Authorities Law be amended to explicitly provide for a fiduciary duty owed by appointing and designating entities by virtue of their appointing powers, and that such fiduciary duty specifically preclude any appointing or designating entity from controlling or otherwise improperly influencing any appointee or designee. The Task Force believes that while this duty is implied, it should be made explicit. Such a fiduciary duty would establish a clear obligation on appointing and designating entities to act in the best interests of the public authority by not exerting improper influence on appointees or designees. The Task Force is of the opinion that, unless the responsible parties, in this case the appointing and designating entities, are held directly accountable for their actions, the potential for improper influencing of appointees and designees will continue to exist. The power to appoint or designate a board member to a public authority is a considerable one, as any such appointment or designation can potentially impact the effective operation of the State's public authorities. As such, the power to appoint or designate cannot be taken lightly, and it certainly cannot remain unchecked. The Task Force further recommends that the law also be amended to provide the ABO with enforcement measures, such as the ability to refer a breach of fiduciary duty by an appointing or designating entity to the Office of the State Attorney General or the local district attorney for further action and consideration.

B. Increase the Staffing and Funding of the ABO.

Since its formation in 2006, the ABO has had an authorized staffing level of seven professionals²³ and a no-growth budget of approximately \$1.3 million. The ABO does not receive General Fund (state tax) dollars. Rather, the ABO is funded from a portion of the assessment levied on public authorities in accordance with Section 2975 of the Public Authorities Law. Within these resource limitations, the ABO implemented the initial corporate governance, accountability, and transparency reforms advanced by the PAAA. The ABO directed its available funds to support the design, implementation and maintenance of PARIS to collect budget, financial and program information from state and local public authorities; analyzed this data and made it available to the public through the ABO website; provided policy guidance, advice and assistance to public authorities; responded to information requests from the Executive, Legislature, public and the media; and conducted 21 on site reviews of the operations of public authorities and their compliance with state law. Pursuant to

²³ See Appendix D – *Current ABO Structure*.

PARA, the ABO is no longer a part of the Division of the Budget²⁴ and therefore requires sufficient resources to operate as an independent entity.

The 2010-11 adopted State Budget authorizes an increase in staffing to eleven full-time positions and provides the ABO with \$1.8 million in funding. These actions represent a commendable increase in investment in the ABO, given the uncertainty of the State's financial position. The Task Force is of the opinion, however, that this commitment – particularly if held constant even over the short term, much like what was done with the ABO's original appropriation and staffing – is insufficient to meet the expanded oversight responsibilities, enforcement powers, and analytical duties vested in the ABO by the reform legislation. Simply stated, the current funding is insufficient to preserve the ABO's organizational and operational independence as required under PARA.

The table below provides a point of comparison between proposed staffing levels for the ABO and projected staffing for other oversight, regulatory or investigatory agencies.

<u>Agency</u>	<u>2010-11 Projected Staffing</u>
Commission on Quality of Care and Advocacy for Persons with Disabilities	101
State Racing and Wagering Board	99
Office of the State Inspector General	62
Commission on Public Integrity	50
Governor's Office of Regulatory Reform	22
<i>Authorities Budget Office</i>	11

As the table illustrates, the ABO's current staffing levels are well below those of comparable agencies that perform similar functions. At a minimum, the ABO's staffing should be brought in line with these agencies, given its responsibilities under PARA, the number of public authorities under its jurisdiction, and the importance of its mission. As a start, the Task Force recommends that the State create 30 positions that can be filled over time to provide an organizational framework and structure upon which to base future funding decisions.

The Task Force is of the opinion that, even with its additional funding in 2010-11, the ABO continues to need resources to develop an effective examination and enforcement strategy, including conducting on-site examinations and, where appropriate, follow-up investigations of potential misdeeds or non-compliance with state law. The ABO must address the fact it has functioned without its own legal counsel, which impairs the ability of an agency whose activities are rooted in the application of statutes and regulations.

²⁴ N.Y. Pub. Auth. Law § 4.

The Task Force has also found that the ABO does not have sufficient staff to undertake an analysis of debt practices, study the consolidation, restructuring or reformation of authorities, conduct simultaneous on site reviews, or to focus on other issues of importance.

In support of this opinion, on May 5, 2010, the Task Force submitted a recommendation to the Office of the Governor that the 2010-11 budget increase of \$500,000 be enacted and that additional resources be provided to establish a Deputy Director of Examinations and Enforcement. The Task Force recommended the resources be provided for a Deputy Director of Examinations and Enforcement because of the need for expertise in the promulgation of regulations, conduct of examinations and enforcement investigations and imposition of sanctions. The Task Force renews its recommendation that the Governor and the Legislature provide additional supplemental funding for the establishment of a Deputy Director for Examinations and Enforcement and related personnel. This funding should be directed toward developing the capability, and the processes, regulations, techniques, policies and protocols for conducting examinations of books and records, investigating potential violations of a board's fiduciary duty, executive mismanagement, or alleged acts of misconduct uncovered during the course of its official business or reported to it by whistleblowers or the public. A strong examinations and enforcement function is at the core of the reforms enacted by PARA.

The passage of PARA set high expectations for this new office, and its actions and effectiveness will be scrutinized. With appropriate support, the ABO will be positioned to achieve groundbreaking reforms long demanded by the public and elected officials. For these reasons, the Task Force strongly recommends that the size of the ABO be sufficient to perform its expanded powers and duties effectively, that it be given the required resources to meet the expectations set for it by statute, and that it is adequately and appropriately staffed. All of these steps are necessary to assure the ABO's functional independence.

C. Enable Active Enforcement of PARA.

Allegations of inappropriate practices in the operation of a number of public authorities triggered public authority reform. PARA established many expectations, but few more important than that the ABO would fairly, but vigorously, enforce the provisions of the law. The Task Force understands that enforcement in an area that has known only voluntary compliance is a watershed change. Nonetheless, enforcement is the foundation of PARA, and the ABO has the responsibility to enforce the law with the means it has available.

Recent events have illustrated the importance of the ABO's function as a policing entity. Allegations of excessive compensation, the failure to report required information to the ABO, or, worse, intentional misreporting and the

failure of one or more public authority boards to be actively involved in key authority decisions, all suggest that some number of public authorities simply don't get it.

Meaningful enforcement of PARA requires investigators, lawyers and program staff. The ABO is expected to make thoughtful referrals to prosecutors and other law enforcement authorities as a predicate for judicial proceedings, and that involves far more than fact-gathering or cursory review of public information. The Task Force has, in this Report, emphasized and re-emphasized the need for additional personnel to support a vigorous enforcement function. Enforcement is the foundation of PARA, and it is critical that the ABO be adequately staffed to carry this function out.

The Task Force believes that the ABO should make its enforcement attitude broadly known. If the ABO communicates its commitment to investigate and refer any and all "irregularities" deserving of such enforcement action, it will put the public authorities on notice to adhere to appropriate behavior. Effective enforcement of PARA, however, will require that the ABO team up with existing law enforcement entities, like the Office of the Attorney General and the State Inspector General, to ensure that, following such referral, the alleged wrongdoing is properly investigated and remedied. The Task Force recommends that the Office of the Attorney General and the State Inspector General designate investigators and lawyers to assist the ABO with enforcement of the law. Collaborative enforcement is the key to keeping with PARA's statutory intent.

D. Dissolve Duplicative and Defunct Public Authorities.

Public authorities are generally authorized by an act of the State Legislature and created by a subsequent act of the local government for whose purpose it was created. In addition, certain public authorities have established subsidiaries, often as limited liability corporations, for the purpose of financing or managing a specific project in the authority's overall project portfolio. In many cases, these projects have long been completed. In other cases, the project was never initiated and the subsidiary never formally existed. This ad hoc process has led to disagreement and confusion over how many public authorities – and subsidiary corporations – actually exist and actively perform the public purpose for which they were originally established. The Task Force recommends that public authorities review the purpose of any subsidiary and formally dissolve those that are no longer necessary. The same review should be done by the ABO of those public authorities authorized by state law, but which are either no longer performing its public purpose or are duplicative of other public authorities. The elimination or consolidation of such authorities would reduce public spending, make the system of public authorities more rational, and eliminate unnecessary issuance of debt. The ABO has taken the first step toward streamlining the public authority system. It has recommended that those public authorities that have ceased operations and have no outstanding obligations be

dissolved in law. The Governor has endorsed this recommendation. Governor Paterson has put forth a program bill, sponsored by Assemblyman Hoyt and Senator Stewart-Cousins²⁵ which will dissolve 127 public authorities that have been determined to be defunct by the New York State Comptroller, the ABO and the Commission.²⁶ These public authorities, which have been inactive for varying periods of time and have no outstanding debt or other obligations, are a prime example of the inefficiency of the public authority system. The Task Force commends the anticipated elimination of these public authorities and recommends the expedited dissolution of any other public authorities determined to be defunct by the ABO or the State Comptroller.

However, PARA does not limit the review of public authorities to the elimination of those which are defunct. PARA amended the Public Authorities Law to empower the ABO with the duty to review the potential for consolidation among public authorities.²⁷ This provision of PARA reflects the opinion that there is unnecessary duplication of purpose among the public authorities. To the extent certain public authorities are duplicative, resulting in waste or inefficiency, the ABO should examine the public authorities involved and make a recommendation to the Governor, the temporary President of the Senate and the Speaker of the Assembly, for the merger or consolidation of the affected public authorities. However, this review will require more analysis than that used to determine whether a public authority is defunct. Additionally, the ABO will need to give due consideration to the benefits of competition among public authorities operating for the same or similar purpose. It is the recommendation of the Task Force that the ABO conduct a review of the mission statements, annual reports and activities of the public authorities to determine the specific instances where inefficient duplication may be eliminated through the merger, consolidation or elimination of public authorities.

E. Enforce the “Minority and Women Owned Business Enterprise Obligations” of Public Authorities.

State public authorities entered into over 25,000 procurement contracts during the past year resulting in payments in excess of \$6.7 billion.²⁸ It is the

²⁵ The Assembly bill is co-sponsored by Assemblymen Brodsky, Lupardo, Kavanaugh, Rosenthal, Thiele and Galef. The Senate bill is co-sponsored by Senators Perkins, Klein, Oppenheimer, Parker, Peralta and Valesky.

²⁶ Introduced as Assembly bill A11106 and Senate bill S8165.

²⁷ N.Y. Pub. Auth. Law § 6(d).

²⁸ Authorities Budget Office, Annual Report on Public Authorities in New York State, p. 20 (July 1, 2010); (Authorities are required to report procurement transactions for the fiscal year with an actual or estimated value of \$5,000 or more, unless their enabling statute cites a higher reporting threshold).

opinion of the Task Force that state public authorities should comply with, and the ABO should actively review and ensure compliance with, the Minority and Women Owned Business Enterprise (“MWBE”) obligations established under the Executive Law applicable to these procurement contracts.

The PARA legislative findings specifically emphasize the importance of the participation of MWBE in the procurement processes of state public authorities.²⁹ Article 15-A of the Executive Law establishes certain laws and regulations that must be met by “state agencies”, which is defined to include state public authorities.³⁰ Article 15-A charges state agencies with establishing employment and business participation goals for NYS certified minority- or women-owned businesses for procurements exceeding \$25,000 for labor, services, supplies, equipment, or materials and for procurements exceeding \$100,000 for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements. PARA amends Section 310 of the Executive Law to make clear that compliance with the MWBE requirements extends to all state public authorities in addition to state agencies.³¹ PARA also broadens the scope of state contracts for professional services covered by MWBE provisions to include “legal, financial and other professional services”. As originally drafted, the term “services” was defined under Article 15-A to specifically exclude banking relationships, the issuance of insurance policies or contracts, or other contracts for the sale of bonds, notes or other securities. PARA makes clear that MWBE laws and regulations apply to all state contracts for professional services that meet the dollar value threshold without exception.

Specifically under Section 312 of the Executive Law, state public authorities must act to ensure and promote equal procurement opportunities through the inclusion of certain proscribed language in all state contracts and certain subcontracts prohibiting discrimination in employment; the solicitation of statements of nondiscrimination from unions and employment agencies and the inclusion of a nondiscrimination clause in employment solicitations and advertisements.

State public authorities are also charged with monitoring contractor compliance with the law and may recommend corrective action to the State Division of Minority and Women’s Business Development when a contractor fails or refuses to comply with equal employment requirements. In addition, the Director of the State Division of Minority and Women’s Business Development promulgates rules and regulations to ensure that MWBEs are awarded a “fair

²⁹ See 2009 Public Authorities Reform Act, Chapter 506, 2009 N.Y. Laws (legislative findings).

³⁰ N.Y. Executive Law §§ 310-318.

³¹ N.Y. Executive Law §§ 310(11)(b).

share" of state contracts. These regulations require contractors to submit a MWBE utilization plan for each of their contracts and require state public authorities to review these utilization plans for compliance and notify contractors of deficiencies.

Section 315 of the Executive Law establishes the responsibilities of state agencies regarding the solicitation and awarding of public contracts. Under this section, state public authorities have the responsibility of monitoring contracts and recommending corrective action to the Director of the State Division where appropriate; to comply with rules and regulations promulgated by the Director; to make available a current copy of the directory of certified minority and women-owned firms to prospective bidders and to contractors; to report activities undertaken to promote MWBE contract participation and employment of minorities and women to the Director; and to generally provide such information and assistance as necessary to carry out the intent of the statute. The Division of Minority and Women's Business Development evaluates and assesses agency goal plans.

The Task Force is working with the ABO to ensure that State public authorities disclose information on their efforts to comply with these new requirements. State public authorities are expected to demonstrate a commitment to providing full and fair opportunities to MWBE companies to participate equally in the procurement process. The Task Force and the ABO have agreed that State public authorities will report the following information each year through the Public Authorities Reporting Information System ("PARIS"):

- Confirmation that the authority has designated a person or persons to oversee its MWBE compliance.
- Confirmation that the authority maintains an up-to-date list of qualified/certified MWBE companies.
- Confirmation that the authority solicits bids from MWBEs as part of the procurement process.
- The authority's participation goals for MWBEs, expressed as a percentage of total procurements expected to be awarded.
- The number of bids/proposals received from MWBEs for each procurement.
- The actual percentage of procurement contracts awarded to MWBE certified firms during the reporting period.

It is the opinion of the Task Force that the MWBE obligations of public authorities, as established under PARA and the Executive Law, are of great importance to the citizens of the state of New York and should be implemented by state public authorities. The Task Force recommends that all state public authorities comply with the MWBE obligations under PARA and that the ABO actively review and enforce these obligations.

F. Consider Diversity When Appointing Public Authority Board Members

While the previous recommendation focused on the procurement operations of public authorities, it is the opinion of the Task Force that recognition of the importance of diversity, in broader terms, should extend to the management of public authorities as well. PAAA, for the first time, charged the governance committee of each public authority with recommending to the appointing official the “skills and experience required of potential board members.”³² The Task Force believes that this provision has never fully been given voice, in part, perhaps, because the members of the governance committees assumed that their recommendations would carry little weight with the appointing official. More recently, the Public Authorities Law was amended to require that an appointing individual or entity consider diversity when appointing an individual to the board of a state public authority.³³ The Task Force believes that, if this provision is met with a serious commitment, it may materially expand the pool of suitable candidates. However, absent a meaningful commitment, it runs the risk of becoming hollow guidance.

These changes to the Public Authorities Law mirror developing practices for publicly held, and other, corporations.

The rules of the Securities and Exchange Commission provide that the board nominating committees of public companies describe how diversity was considered in identifying nominees for the board of directors.³⁴ The SEC has not imposed a specific definition of diversity, noting that some companies may see diversity as encompassing differences of viewpoint and professional and educational background, while others may focus on characteristics such as race, gender and national origin. The Task Force believes that, for the purpose of selecting board members of public authorities, all of these factors should be given weight.

³² N.Y. Pub. Auth. Law § 2824(7).

³³ N.Y. Pub. Auth. Law § 2825(2) (effective October 1, 2010).

³⁴ See Item 407(c) of Regulation S-K.

The Task Force encourages that each governance committee member fully consider the range of diversity required for the board of directors to provide meaningful oversight of the operations of that public authority.

No less important is that each appointing official make every effort to ensure that the boards of public authorities have a degree of diversity that in some measure reflects the heterogeneous nature of the State of New York. An informal survey of certain of the State's large public authorities, conducted by the Government Law Center at Albany Law School, reveals that the number of women and racial minorities serving on the boards is disproportionately low when measured against the demographics of the State or even composition of the State legislature. The Task Force finds the disparity unsettling.

G. Require Public Authorities to Implement Risk Management and Oversight.

Public authorities have been utilized to develop and maintain a significant portion of the infrastructure of the State of New York and provide public services directly to the State's citizens on a broad scale. A number of these public authorities, both large and small, state and local, directly impact the health, welfare and safety of New York citizens on a daily basis through the provision of bridges, tunnels, roads and other services, such as hospitals, electricity and waste removal facilities. The failure of these public authorities to properly assess the risks associated with their operations would likely result in serious consequences for the public at large. Despite the potential severity of the risks involved, the Task Force found that some of these public authorities did not have a risk assessment or risk management or risk committee in place at the board level. We should note that the New York State Thruway Authority has provided the Task Force with a detailed description of its risk assessment and risk management procedures – evidencing a clear appreciation for its role in preserving the safety and welfare of State's citizens.

In recent years, public companies have recognized the importance of proper risk assessment and risk management, resulting in the development of certain best practices, including the establishment of a risk committee at the board level. In the last year, the SEC promulgated enhanced regulations requiring public companies to disclose their risk assessment and risk management policies and practices as part of their annual proxy statement filings.³⁵ These regulations address a number of issues including credit risk, liquidity risk and operational risk.³⁶ Most recently, President Obama signed into law the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010

³⁵ See Item 407(h) of Regulation S-K.

³⁶ See Proxy Disclosure Enhancements, Securities Act Release No. 33-9089, Fed. Sec. L. Rep. (CCH) ¶ 88,827 (Dec. 16,2009).

(the “Dodd-Frank Act”) which, among other things, requires the establishment of risk committees by the boards of directors of a substantial portion of the Nation’s financial institutions.³⁷ In defining the composition of the risk committee, the Dodd-Frank Act provides for the inclusion of at least one risk management expert, “having experience in identifying, assessing, and managing risk exposures of large, complex firms.”³⁸

Given that the mission of many public authorities affects the health, welfare and safety of the citizens of the State of New York, the Task Force is of the opinion that public authorities should be held to the same or similar standards with respect to risk assessment and risk management as those currently required of certain publicly traded companies. While financial risk has received more attention due to recent events, public authorities should place at least as great an emphasis on the operational risks associated with their activities. The Task Force was not in a position to complete a formal analysis of all public authorities on this issue, but urges the ABO to conduct a thorough analysis of the current risk assessment and risk management practices of state and local public authorities, and thereafter develop rules and regulations for the implementation of these risk assessment and risk management practices using the recent SEC regulations and the Dodd-Frank Act as models, taking into account the fact that the variation in scope and size of public authorities may warrant different levels of risk management and risk assessment.³⁹

H. Recognize All State Supported Debt.

Few topics relating to public authorities have received greater commentary and analysis than debt issuance. The crux of the issue is that state public authorities are, as noted earlier, responsible for more than 93% of the State’s debt, and are increasingly being used as a mechanism to raise money, without approval of the electorate (but often at the direction of the State legislature), to fund the State’s annual budget.⁴⁰ Some commentators suggest that this unorthodox approach to raising money is the only means to ensure a balanced budget and the State’s fiscal stability. Others have suggested that such off-the-books borrowing practices have stretched public authorities beyond the purposes

³⁷ H.R. 4173, 111th Cong. § 165(h) (2010).

³⁸ H.R. 4173, 111th Cong. § 165(h)(3) (2010).

³⁹ Note: The intent of this recommendation is not to replace existing risk assessment and risk management practices of certain public authorities, (e.g. under the Internal Controls Act of 1987) but to supplement it.

⁴⁰ See Citizens Budget Commission, *New York’s Public Authorities: Promoting Accountability and Taming Debt*, September 2006 (available at <http://www.cbcny.org/browseby/type/report>).

for which they were originally intended and violates the State's constitutional requirement that the public approve all issuance of the State's debt.

The Task Force is not in a position to opine on the merits of either view. Our meetings and conversations with a number of the state public authorities responsible for issuing debt suggests that the boards of directors are committed to ensuring that debt practices are appropriate and necessary. However, it is the opinion of the Task Force that additional transparency would better allow the public to make an educated assessment of the increased role of state public authorities in financing the State's capital plan and to render an opinion whether this approach is appropriate.

Further, PARA directs the ABO to make recommendations to the Governor and the Legislature on setting debt limitations for public authorities without statutorily required debt limits.⁴¹ It is the opinion of the Task Force that such recommendations will be difficult without greater access to information about the issuance of debt by public authorities. In support of this opinion, the Task Force recommends that the ABO conduct research on the necessity for enhanced disclosure and transparency in the following four ways.

Increase the scope of state-supported debt. The New York State Debt Reform Act of 2000 (the "Debt Reform Act")⁴² established statutory limitations on state supported debt. However, the definition of state supported debt in the Debt Reform Act does not include certain borrowings by state public authorities where the State is not contractually obligated to pay the debt service or the debt is a contingent obligation of the State. To the extent however that the State guarantees these bonds directly or is obligated to pay debt service in the event that the primary security for the bonds is insufficient to meet debt service, the Task Force believes that this debt such be accounted for and acknowledged in measuring outstanding debt of the State in order to provide the public a more comprehensive picture of the State's outstanding indebtedness.

Modify the Public Authorities Control Board. The Public Authority Control Board ("PACB") was established in 1975 to review and approve selected state public authority borrowing, but certain state public authority borrowing and all local public authorities are exempt from PACB review.⁴³ However, it has been contended that the PACB has been used as a way to promote political agendas. The PACB might be modified to establish a non-partisan body to oversee and rationalize all state public authority borrowings of state supported debt, as described above.

⁴¹ N.Y. Pub. Auth. Law § 6(m).

⁴² N.Y. State Fin. Law § 67.

⁴³ N.Y. Pub. Auth. Law § 50.

Enhance the disclosure of PACB-approved debt issuances. Although the PACB debt analysis is presumably comprehensive, the information provided to the public is prepared in a summary manner and the analysis underlying the decisions are not presented in public documents. The PACB documents made available to the public do not reflect cost estimates, future revenue stream and the long run financial viability of the project. The PACB review of state public authority financings should analyze those borrowings within the context of the State's capital budget plan. This analysis could be used to provide a comprehensive view of the State's overall indebtedness and a more balanced understanding of public authorities as vehicles for the State capital financing program. This analysis would enable the public to better understand the role played by state public authorities on behalf of the State.

Clarify Executive Budget decision-making. Finally, consideration might be given to clarifying in the Executive Budget the manner in which projects requiring the issuance of State debt are prioritized and the collective impact on the State's budget during the debt service period.

I. Limit Board Reliance on Senior Staff Management.

In addition to meeting with the boards of several public authorities, the Task Force also met with the senior staff at a number of public authorities. The Task Force is of the opinion that these individuals are diligent, hard-working and respectful of the duties and obligations of the board of directors at their respective public authorities. However, the competence of the senior staff of a public authority does not in any way diminish the obligations of the board of a public authority.

The Task Force recognizes the potential for public authority boards to defer to senior staff in the discussion and evaluation of matters submitted for board approval. However, public authority board members must not defer to staff as a courtesy or time management tool or to accelerate the pace of board meetings. It is part of each board member's fiduciary duty to question and evaluate both the materials presented to the board and the rationale behind the proposals made by management. In our meetings with certain public authorities, board members stated that given the amount of nuanced data and important issues at stake, staff should not be micromanaged. The Task Force concurs. However, it is the board's obligation, serving as a whole and through its committee structure, to satisfy themselves that staff recommendations comport with the facts, circumstances and mission of the public authority. To do less may be an abdication of the board's responsibility and a violation of its fiduciary duty.

It is the recommendation of the Task Force that the ABO issue additional policy guidance on the obligation of board members to actively evaluate and question the management of the public authority, in particular, the proposals submitted by senior staff to the board for approval.

J. Analyze Board Member Compensation.

PARA directs the ABO to make recommendations concerning whether public authority board members should be compensated and, if so, to provide options for the proper compensation of such board members.⁴⁴

The issue of compensation is among the more nuanced and sensitive of the topics pertaining to public authorities. The compensation to which board members are entitled varies among public authorities, for example, certain state public authority board members are prohibited from receiving any compensation. Chapter 55 of the Laws of 1992 provided for the consolidation of various boards and the elimination of compensation for board members of twenty-one state public authorities, including those that have the largest role in managing the infrastructure of the State.⁴⁵ Board members of local public authorities often have enabling statutes that provide compensation to be fixed by the board of supervisors or the county legislature. The Public Housing Law allows for board members to be compensated on a per diem basis.⁴⁶ This inconsistency in compensation schemes does not have a readily apparent rationale.

Some commentators suggest that board members responsible for billions of dollars in State expenditures and management of the State's infrastructure merit compensation. Others suggest the compensation would likely increase the commitment and independence of authority boards. Yet others suggest that public authority board participation is a voluntary commitment and payment for the service is unnecessary. The implications of providing compensation to board members affects more than the finances of the public authorities. Although some public authority board members are already subject to disclosure requirements under the Public Officer's Law, the receipt of compensation could subject additional board members to disclosure requirements. Currently, unpaid and per diem board members are not covered by Section 73 of the Public Officer's Law for general business or professional activities.⁴⁷ This effectively means they are not covered by some of the more limiting provisions of the State Code of Ethics, including post-employment restrictions and the gift ban.⁴⁸

Due to the legislative and systemic complexities of board compensation across the public authority system, the Task Force is not in a position to opine on

⁴⁴ N.Y. Pub. Auth. Law § 6(n).

⁴⁵ Chapter 55 of the New York State Laws of 1992.

⁴⁶ N.Y. Pub. Hous. Law § 32(3).

⁴⁷ See N.Y. Pub. Off. Law § 73.

⁴⁸ See N.Y. Pub. Off. Law § 74.

the merits of the issue. The Task Force therefore recommends that the ABO commit adequate resources to examine this issue and make recommendations to the Governor and the Legislature.

However, the Task Force believes that directors have a fiduciary duty regarding staff salaries and bonuses, to assure they are commensurate with the mission of the authority, the performance of staff, State law and other relevant considerations so as not to be excessive.

K. Amend the Public Authorities Law to Change the Name of the ABO and Also Establish an ABO Council.

It is the opinion of the Task Force that the effectiveness of the ABO would be further improved by the establishment of an ABO Council, a group of individuals with relevant expertise, tasked with providing advice and consultation to the management of the ABO on a broad range of matters relating to PARA and its implementation. The ABO Council would not serve an oversight function. Instead, the ABO Council's purpose would be to provide support to the ABO in its effort to secure additional funding and staffing from the State, and to be available to the ABO for advice and consultation as needed.

To render the ABO Council's advice and consultation meaningful, the Task Force believes that it be comprised of five individuals with expertise in the following areas; (i) public authorities, (ii) debt markets, (iii) examination and enforcement, and (iv) law, regulation and the legislative process. Additionally, the terms of the members of the ABO Council should be staggered (in order to provide continuity) and last for a period of four years (in order to provide independence and credibility). The Task Force therefore recommends that the draft legislation attached hereto as Appendix E be enacted as an amendment to the Public Authorities Law.

Furthermore, it is the opinion of the Task Force that the name applied to the ABO – the Authorities Budget Office – does not adequately reflect the responsibility of the ABO to oversee and review the State's public authorities. Although originally established under PAAA as the Authority Budget Office, this name appears to reflect the ABO's prior existence within the Division of the Budget. As reconstituted, the ABO is an independent entity whose role has little to do with the budget, but, rather, is primarily related to the review and oversight of the State's public authorities. It is the opinion of the Task Force that the name of the ABO is important and should clearly and unambiguously convey its purpose. For this reason, it is the recommendation of the Task Force that the Public Authorities Law be further amended to eliminate and replace all references to the Authorities Budget Office with a new name – the Authorities Oversight Office. Draft legislation reflecting this recommendation is attached hereto as Appendix F.

VI. CONCLUSIONS OF THE TASK FORCE

A. Future Topics to be Reviewed by the ABO.

In addition to establishing a framework to improve the operation of public authorities, PARA seeks to promote the examination of specific topics to further improve the operations of public authorities over the long term. To that end, in addition to the recommendations described above regarding debt issuance and the compensation of board members of public authorities, PARA directs the ABO to examine and make recommendations concerning board terms and performance evaluations.

As an initial step, the Task Force asked the Government Law Center of Albany Law School to assemble information about these topics and determine what the practices are in other States. We commend the Government Law Center and their students for their contribution.

It is apparent to the Task Force that many of the recommendations requested of the ABO in PARA by the Legislature have the potential to materially alter the manner in which public authorities operate. All members of the Task Force believe that, in order to make informed recommendations on these issues, the ABO needs to further examine and evaluate the impact of any proposed changes.

Additionally, the Task Force recognizes that the State of New York is not alone in its efforts to reform the public authority system. Despite the uniqueness of the reforms adopted in the State of New York, the exercise of surveying other states has identified reforms enacted by those states that may also be appropriate for the State of New York. The reforms include: consolidation of financing authorities into a single entity (Michigan) and compulsory audits (Rhode Island) and regulation of compensation (New Jersey, Massachusetts). The Task Force is of the opinion that there may be additional reforms enacted by other states which merit consideration for the State of New York. To that end, the Task Force recommends that the ABO consider what public authority reforms have been implemented in other states, and whether they merit consideration for the State of New York.

B. Vision for the Future of the Authorities Budget Office.

Annexed as Appendix G is "*Accomplishments of the ABO*", a document prepared by the ABO at the Task Force's request. We believe that it presents a fair description of what the ABO was able to accomplish when it was part of the Division of the Budget and had very limited resources. But now, under PARA, the ABO is independent of State government and has expanded regulatory and

enforcement responsibilities. It is the belief of the Task Force that the implementation of these recommendations will further enhance the ABO's capacity to implement the law – leading to a time when public authorities come completely out of the shadows and are visible to all. Hopefully, there is a will by the Governor and the Legislature to provide it with a budget enabling it to perform. What follows is the Task Force's vision of the ABO's future.

The mission of the ABO is to make state and local public authorities more accountable and transparent; to promote a culture within each authority that is sustained by adherence to good corporate governance practices; and to assess whether these authorities act in accordance with their statutory purpose and the public interest.

To achieve its mission, the ABO must continue its focus on educating and training boards of directors and management on their fiduciary duty and governance responsibilities. The ABO will need an expanded and continuous presence “in the field” to address inappropriate actions, insufficient oversight, and other inefficiencies or weaknesses identified through its reviews and investigations. In addition, the ABO must strengthen its examinations and enforcement programs, legal services, and analytical capabilities.

The success of PARA will ultimately be measured by how well the ABO, and the State, respond to this challenge. The Task Force believes that the ABO should - and will be - the preeminent oversight, analytical and regulatory office of its kind. At its core, the future envisioned for the Authorities Budget Office is one in which:

- Comprehensive, transparent and accurate financial and performance information is centrally maintained and accessible to the public and the New York State government;
- In depth, high quality analysis guides the ABO's recommendations to the Governor and the Legislature on the future role, structure, purpose and reform of public authorities in New York State; and
- The presence of multiple compliance and enforcement teams reporting their findings and recommendations to the public ensures that both those who appoint and those who serve as directors of public authorities understand and fulfill their fiduciary duty to the public authority, thereby providing assurance that the actions and decisions of these authorities are in the public interest.

C. On-Going Role of the Task Force.

As indicated by the recommendations and findings contained in this Report, the implementation of the reforms enacted under PARA are on-going and

will require continued diligent effort on the part of the ABO, the New York State Legislature and the Office of the Governor. For this reason, Governor Paterson has issued Executive Order No. 38⁴⁹ which extends the life of the Task Force until the end of the Governor's term of office. Governor Paterson found that the implementation of PARA would benefit from the continued guidance and expertise of the Task Force and the Task Force is honored to continue to serve the State of New York. The Task Force will continue to provide advice and consultation to the ABO regarding the findings contained in this Report, as well as all matters it deems appropriate and necessary to the ongoing implementation of PARA.

⁴⁹ See Appendix H – *Executive Order No. 38*.

VII. **APPENDICES**

A. **Public Authorities Reform Act of 2009**

(see attached)

CHAPTER 506

AN ACT to amend the public authorities law and the executive law, in relation to creating the authorities budget office, to repeal certain provisions of the public authorities law relating thereto; to repeal section 27 of chapter 766 of the laws of 2005 constituting the public authorities accountability act relating thereto; to repeal a chapter of the laws of 2009, amending the public authorities law and the executive law, relating to the creation of an authorities budget office, as proposed in legislative bills numbers S.1537-C and A.2209-C; and providing for the repeal of certain provisions upon expiration thereof

Became a law December 11, 2009, with the approval of the Governor. Passed on message of necessity pursuant to Article III, section 14 of the Constitution by a majority vote, three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Legislative findings. The legislature finds that chapter 766 of the laws of 2005 was the beginning of the process to reform the way public authorities conduct business in New York state. However, the fundamental problems of transparency, accountability, the responsibilities and functions of board members and oversight have not been addressed, leading to a lack of public trust in these institutions. The creation of an independent authorities budget office is necessary to provide oversight of the operations and finances of public authorities in real time and to inform the legislature and executive on issues relating to debt, compensation of board members, the role minority- and women-owned businesses play in the procurement process, the disposition of property and the governance of authorities. Public authorities should be required to publish, in real time, their finances, policies, plans and decisions. Real-time review by the public, the legislature, the executive and the authorities budget office will facilitate the prevention of problems, not just their explanation after they have arisen.

§ 2. Section 2 of the public authorities law is amended by adding a new subdivision 6 to read as follows:

6. "authorities budget office" shall mean the entity established pursuant to section four of this article.

§ 3. Subdivision 5 of section 2 of the public authorities law, as added by chapter 766 of the laws of 2005, is amended to read as follows:

5. "subsidiary" shall not include, for the purposes of this chapter, corporations that have been certified by the parent corporation to the [~~entity created pursuant to section twenty-seven of the chapter of the laws of two thousand five which added this section~~] authorities budget office as being inactive for the past twelve months, having an identical board of its parent corporation, or not having separate and independent operational control. Provided, however, the parent corporation, in response to any request, shall address any provision or provisions of this chapter.

EXPLANATION--Matter in italics is new; matter in brackets [-] is old law to be omitted.

§ 4. Sections 1 and 2 of article 1 of the public authorities law are designated title 1 and a new title heading is added to read as follows:

SHORT TITLE; DEFINITIONS

§ 5. Article 1 of the public authorities law is amended by adding a new title 2 to read as follows:

TITLE 2

AUTHORITIES BUDGET OFFICE

Section 4. Establishment of the independent authorities budget office.

5. Director of the authorities budget office.

6. Powers and duties of the authorities budget office.

7. Reports of the authorities budget office.

§ 4. Establishment of the independent authorities budget office. There is hereby established the independent authorities budget office as an independent entity within the department of state, which shall have and exercise the powers and duties provided by this title.

§ 5. Director of the authorities budget office. The director of the authorities budget office shall be appointed by the governor, upon the advice and consent of the senate. The director shall hold office for a term of four years beginning on the date of confirmation. The salary of the director shall be established by the governor within the limit of funds available therefor; provided, however, such salary shall be no less than the salaries of certain state officers holding the positions indicated in paragraph (d) of subdivision one of section one hundred sixty-nine of the executive law. The director may be removed by the governor only after notice and opportunity to be heard, and only for:

1. permanent disability;

2. inefficiency;

3. neglect of duty;

4. malfeasance;

5. a felony or conduct involving moral turpitude; or

6. breach of fiduciary duty.

§ 6. Powers and duties of the authorities budget office. 1. The authorities budget office shall:

(a) conduct reviews and analysis of the operations, practices and reports of state and local authorities to assess compliance with the provisions of this chapter and other applicable provisions of law;

(b) maintain a comprehensive inventory of state and local authorities and subsidiaries and the annual reports of such state and local authorities as defined in section twenty-eight hundred of this chapter;

(c) verify the existence of all authorities listed in state law;

(d) review the potential for consolidation or name change of certain authorities;

(e) assist state and local authorities in improving management practices and the procedures by which the activities and financial practices of state and local authorities are disclosed to the public;

(f) make recommendations to the governor, the temporary president of the senate, the speaker of the assembly and the chairs and ranking minority members of the following committees: the senate finance committee, the assembly ways and means committee, the senate committee on corporations, authorities and commissions and the assembly committee on corporations, authorities and commissions and authority board members concerning opportunities to improve the performance, reporting, reformation, structure and oversight of state and local authorities;

(g) provide such additional information and analysis as may be reasonably requested by the legislature and state comptroller;

(h) promulgate regulations to effectuate the purposes of this title and title one of this article, and article nine of this chapter, relating to the statutory responsibilities of the authorities budget office;

(i) develop and issue, after consultation with the office of the attorney general, a written acknowledgement that a board member must execute at the time that the member takes and subscribes their oath of office, or within sixty days after the effective date of this paragraph if the member has already taken and subscribed his or her oath of office, in accordance with subdivision one of section twenty-eight hundred twenty-four of this chapter;

(j) develop a comprehensive definition of public authorities including a consolidated listing by class and name;

(k) standardize content and format of state and local authority annual reports;

(l) assess individual authorities and based upon their ability and resources, set a date by which changes made pursuant to this title shall be implemented;

(m) issue recommendations to the legislature and governor on setting debt limitations for authorities without statutorily required debt limits;

(n) make recommendations to the legislature and governor with respect to options for, and whether there should be, compensation for boards of directors; and

(o) review the potential for and make recommendations to the legislature and governor regarding change in the terms of office of public authorities board members.

2. The authorities budget office shall have the authority to:

(a) request and receive from any state or local authority, agency, department or division of the state or political subdivision such assistance, personnel, information, books, records, other documentation and cooperation as may be necessary to perform its duties;

(b) enter into cooperative agreements with other government offices to efficiently carry out its work and not duplicate resources;

(c) receive and act upon complaints or recommendations from the public or other persons or entities regarding any authority covered by this title;

(d) initiate formal investigations in response to complaints or appearances of non-compliance by an authority;

(e) issue subpoenas pertaining to investigations which such office is authorized to conduct under this title, for the purposes of effectuating the powers and duties of this title;

(f) publicly warn and censure authorities for non-compliance with this title, and to establish guidelines for such actions;

(g) recommend to the entity that appointed the officer or director suspension or dismissal of officers or directors, based on information that is, or is made, available to the public under law;

(h) report suspected criminal activities to the attorney general and other prosecutorial agencies;

(i) compel any authority which is deemed to be in non-compliance with this title and title one of this article or article nine of this chapter to submit to the authorities budget office a detailed explanation of such failure to comply; and

(j) commence a special proceeding in supreme court, when it does not receive from a state or local authority upon request information, books, records or other documentation necessary to perform its duties, seeking an order directing the production of the same.

3. The reports and non-proprietary information received by and prepared by the authorities budget office shall be made available to the public, to the extent practicable, through the internet.

§ 7. Reports of the authorities budget office. On July first, two thousand ten and annually thereafter the authorities budget office shall issue reports on its findings and analyses to the governor, the chair and ranking minority member of the senate finance committee, the chair and ranking minority member of the assembly ways and means committee, the chair and ranking minority member of the senate standing committee on corporations, authorities and commissions, the chair and ranking minority member of the assembly standing committee on corporations, authorities and commissions, the state comptroller and the attorney general, with conclusions and opinions concerning the performance of public authorities and to study, review and report on the operations, practices and finances of state and local authorities as defined by section two of this article.

§ 5-a. Section 27 of chapter 766 of the laws of 2005, constituting the public authorities accountability act of 2005, is REPEALED.

§ 6. Subdivisions 1 and 2 of section 2800 of the public authorities law, subdivision 1 as amended and subdivision 2 as added by chapter 766 of the laws of 2005, are amended to read as follows:

1. State authorities. (a) For the purpose of furnishing the state with systematic information regarding the status and the activities of public authorities, every state authority continued or created by this chapter or any other chapter of the laws of the state of New York shall submit to the governor, the chairman and ranking minority member of the senate finance committee, the chairman and ranking minority member of the assembly ways and means committee [~~and~~], the state comptroller, and the authorities budget office, within ninety days after the end of its fiscal year, a complete and detailed report or reports setting forth: (1) its operations and accomplishments; (2) its [~~receipts and disbursements, or revenues and expenses, during such fiscal year in accordance with the categories or classifications established by such authority for its own operating and capital outlay purposes~~] financial reports, including (i) audited financials in accordance with all applicable regulations and following generally accepted accounting principles as defined in subdivision ten of section two of the state finance law, (ii) grant and subsidy programs, (iii) operating and financial risks, (iv) current ratings, if any, of its bonds issued by recognized municipal bond rating agencies and notice of changes in such ratings, and (v) long-term liabilities, including leases and employee benefit plans; (3) [~~its assets and liabilities at the end of its fiscal year including the status of reserve, depreciation, special or other funds and including the receipts and payments of these funds~~] its mission statement and measurements including its most recent measurement report; (4) a schedule of its bonds and notes outstanding at the end of its fiscal year, together with a statement of the amounts redeemed and incurred during such fiscal year as part of a schedule of debt issuance that includes the date of issuance, term, amount, interest rate and means of repayment. Additionally, the debt schedule shall also include all refinancings, calls, refundings, defeasements and interest rate exchange or other such agreements, and for any debt issued during the reporting year, the schedule shall also include a detailed list of costs of issuance for such debt; (5) a compensation schedule, in addition to the report described in section twenty-eight hundred six of this title, that shall include, by position, title and name of the person holding such

position or title, the salary, compensation, allowance and/or benefits provided to any officer, director or employee in a decision making or managerial position of such authority whose salary is in excess of one hundred thousand dollars; (5-a) biographical information, not including confidential personal information, for all directors and officers and employees for whom salary reporting is required under subparagraph five of this paragraph; (6) the projects undertaken by such authority during the past year; (7) a listing and description, in addition to the report required by paragraph a of subdivision three of section twenty-eight hundred ninety-six of this article of [~~(i)~~] all real property of such authority having an estimated fair market value in excess of fifteen thousand dollars that the authority [~~intends to dispose of; (ii) all such property held by the authority at the end of the period covered by the report; and (iii) all such property disposed~~] acquires or disposes of during such period. The report shall contain [~~an estimate of fair market value for all such property held by the authority at the end of the period and~~] the price received or paid by the authority and the name of the purchaser or seller for all such property sold or bought by the authority during such period; (8) such authority's code of ethics; [~~and~~] (9) an assessment of the effectiveness of its internal control structure and procedures; (10) a copy of the legislation that forms the statutory basis of the authority; (11) a description of the authority and its board structure, including (i) names of committees and committee members, (ii) lists of board meetings and attendance, (iii) descriptions of major authority units, subsidiaries, and (iv) number of employees; (12) its charter, if any, and by-laws; (13) a listing of material changes in operations and programs during the reporting year; (14) at a minimum a four-year financial plan, including (i) a current and projected capital budget, and (ii) an operating budget report, including an actual versus estimated budget, with an analysis and measurement of financial and operating performance; (15) its board performance evaluations; provided, however, that such evaluations shall not be subject to disclosure under article six of the public officers law; (16) a description of the total amounts of assets, services or both assets and services bought or sold without competitive bidding, including (i) the nature of those assets and services, (ii) the names of the counterparties, and (iii) where the contract price for assets purchased exceeds fair market value, or where the contract price for assets sold is less than fair market value, a detailed explanation of the justification for making the purchase or sale without competitive bidding, and a certification by the chief executive officer and chief financial officer of the public authority that they have reviewed the terms of such purchase or sale and determined that it complies with applicable law and procurement guidelines; and (17) a description of any material pending litigation in which the authority is involved as a party during the reporting year, except that no hospital need disclose information about pending malpractice claims beyond the existence of such claims.

(b) [~~To the extent practicable, each~~] Each state authority shall make accessible to the public, via its official or shared internet web site, documentation pertaining to its mission, current activities, most recent annual financial reports, current year budget and its most recent independent audit report unless such information is covered by subdivision two of section eighty-seven of the public officers law.

(c) The authorities budget office shall make accessible to the public, via its official or shared internet web site, documentation pertaining to each authority's mission, current activities, most recent annual

financial reports, current year budget and its most recent independent audit report unless such information is covered by subdivision two of section eighty-seven of the public officers law.

2. Local authorities. (a) Every local authority, continued or created by this chapter or any other chapter of the laws of the state of New York shall submit to the chief executive officer, the chief fiscal officer, the chairperson of the legislative body of the local government or local governments and the [~~entity established pursuant to section twenty-seven of the chapter of the laws of two thousand five which added this subdivision~~] authorities budget office, within ninety days after the end of its fiscal year, a complete and detailed report or reports setting forth: (1) its operations and accomplishments; (2) [~~its receipts and disbursements, or revenues and expenses, during such fiscal year in accordance with the categories or classifications established by such authority for its own operating and capital outlay purposes~~] its financial reports, including (i) audited financials in accordance with all applicable regulations and following generally accepted accounting principles as defined in subdivision ten of section two of the state finance law, (ii) grants and subsidy programs, (iii) operating and financial risks, (iv) current ratings if any, of its bonds issued by recognized municipal bond rating agencies and notice of changes in such ratings, and (v) long-term liabilities, including leases and employee benefit plans; (3) [~~its assets and liabilities at the end of its fiscal year including the status of reserve, depreciation, special or other funds and including the receipts and payments of these funds~~] its mission statement and measurements including its most recent measurement report; (4) a schedule of its bonds and notes outstanding at the end of its fiscal year, together with a statement of the amounts redeemed and incurred during such fiscal year as part of a schedule of debt issuance that includes the date of issuance, term, amount, interest rate and means of repayment. Additionally, the debt schedule shall also include all refinancings, calls, refundings, defeasements and interest rate exchange or other such agreements, and for any debt issued during the reporting year, the schedule shall also include a detailed list of costs of issuance for such debt; (5) a compensation schedule in addition to the report described in section twenty-eight hundred six of this title that shall include, by position, title and name of the person holding such position or title, the salary, compensation, allowance and/or benefits provided to any officer, director or employee in a decision making or managerial position of such authority whose salary is in excess of one hundred thousand dollars; (5-a) biographical information, not including confidential personal information, for all directors and officers and employees for whom salary reporting is required under subparagraph five of this paragraph; (6) the projects undertaken by such authority during the past year; (7) a listing and description, in addition to the report required by paragraph a of subdivision three of section twenty-eight hundred ninety-six of this article of [~~(i)~~] all real property of such authority having an estimated fair market value in excess of fifteen thousand dollars that the authority [~~intends to dispose of; (ii) all such property held by the authority at the end of the period covered by the report; and (iii) all such property disposed~~] acquires or disposes of during such period. The report shall contain [~~an estimate of fair market value for all such property held by the authority at the end of the period and~~] the price received or paid by the authority and the name of the purchaser or seller for all such property sold or bought by the authority during such period; (8) such authority's

code of ethics; ~~[and]~~ (9) an assessment of the effectiveness of its internal control structure and procedures; (10) a copy of the legislation that forms the statutory basis of the authority; (11) a description of the authority and its board structure, including (i) names of committees and committee members, (ii) lists of board meetings and attendance, (iii) descriptions of major authority units, subsidiaries, (iv) number of employees, and (v) organizational chart; (12) its charter, if any, and by-laws; (13) a listing of material changes in operations and programs during the reporting year; (14) at a minimum a four-year financial plan, including (i) a current and projected capital budget, and (ii) an operating budget report, including an actual versus estimated budget, with an analysis and measurement of financial and operating performance; (15) its board performance evaluations provided, however, that such evaluations shall not be subject to disclosure under article six of the public officers law; (16) a description of the total amounts of assets, services or both assets and services bought or sold without competitive bidding, including (i) the nature of those assets and services, (ii) the names of the counterparties, and (iii) where the contract price for assets purchased exceeds fair market value, or where the contract price for assets sold is less than fair market value, a detailed explanation of the justification for making the purchase or sale without competitive bidding, and a certification by the chief executive officer and chief financial officer of the public authority that they have reviewed the terms of such purchase or sale and determined that it complies with applicable law and procurement guidelines; and (17) a description of any material pending litigation in which the authority is involved as a party during the reporting year, except that no provider of medical services need disclose information about pending malpractice claims beyond the existence of such claims.

(b) ~~[To the extent practicable, each]~~ Each local authority shall make accessible to the public, via its official or shared internet web site, documentation pertaining to its mission, current activities, most recent annual financial reports, current year budget and its most recent independent audit report unless such information is covered by subdivision two of section eighty-seven of the public officers law.

§ 6-a. Section 2800 of the public authorities law is amended by adding a new subdivision 4 to read as follows:

4. The authorities budget office may, upon application of any authority, waive any requirements of this section upon a showing that the authority meets the criteria for such a waiver established by regulations of the authorities budget office. Such regulations shall provide for consideration of: (a) the number of employees of the authority; (b) the annual budget of the authority; (c) the ability of the authority to prepare the required reports using existing staff; and (d) such other factors as the authorities budget office deems to reflect the relevance of the required disclosures to evaluation of an authority's effective operation, and the burden such disclosures place on an authority. Each waiver granted pursuant to this subdivision shall be disclosed in the reports of such office issued pursuant to section seven of this chapter.

§ 7. Section 2801 of the public authorities law, as amended by chapter 766 of the laws of 2005, is amended to read as follows:

§ 2801. Budget reports by authorities. 1. State authorities. Every state authority or commission heretofore or hereafter continued or created by this chapter or any other chapter of the laws of the state of New York shall submit to the governor, ~~[chairman]~~ the chair and ranking minority member of the senate finance committee, ~~[and—chairman]~~ the

chair and ranking minority member of the assembly ways and means committee and the authorities budget office, for their information, annually not more than one hundred twenty days and not less than ninety days before the commencement of its fiscal year, in the form submitted to its members or trustees, budget information on operations and capital construction setting forth the estimated receipts and expenditures for the next fiscal year and the current fiscal year, and the actual receipts and expenditures for the last completed fiscal year.

2. Local authorities. For the local authority fiscal year ending on or after December thirty-first, two thousand seven and annually thereafter, every local authority heretofore or hereafter continued or created by this chapter or any other chapter of the laws of the state of New York shall submit to the chief executive officer, the chief fiscal officer, the chairperson of the legislative body of the local government or governments and the ~~[entity established pursuant to section twenty-seven of the chapter of the laws of two thousand five which added this subdivision,]~~ authorities budget office for their information, annually not more than ninety days and not less than sixty days before the commencement of its fiscal year, in the form submitted to its members or trustees, budget information on operations and capital construction setting forth the estimated receipts and expenditures for the next fiscal year and the current fiscal year, and the actual receipts and expenditures for the last completed fiscal year.

3. If any state or local authority has provided the information required by this section as part of the annual report required by section twenty-eight hundred of this title, such authority may comply with the provisions of this section by reference to such information with any necessary updates.

§ 8. Subdivisions 1 and 2 of section 2802 of the public authorities law, subdivision 1 as amended and subdivision 2 as added by chapter 766 of the laws of 2005, are amended to read as follows:

1. State authorities. Every state authority or commission heretofore or hereafter continued or created by this chapter or any other chapter of the laws of the state of New York shall submit to the governor, chairman and ranking minority member of the senate finance committee, chairman and ranking minority member of the assembly ways and means committee ~~[and]~~, each chair and ranking member of the senate and assembly committees on corporations, authorities and commissions, the state comptroller, ~~[within thirty days after receipt thereof by such authority,]~~ and the authorities budget office, together with the report described in section twenty-eight hundred of this title, a copy of the annual independent audit report, performed by a certified public accounting firm in accordance with generally accepted ~~[government]~~ auditing standards as defined in subdivision eleven of section two of the state finance law, and management letter and any other external examination of the books and accounts of such authority other than copies of the reports of any examinations made by the state comptroller.

2. Local authorities. For the local authority fiscal year ending on or after December thirty-first, two thousand seven and annually thereafter, every local authority heretofore or hereafter continued or created by this chapter or any other chapter of the laws of the state of New York shall submit to the chief executive officer, the chief fiscal officer, the chairperson of the legislative body of the local government or local governments ~~[and to the entity established pursuant to section twenty-seven of the chapter of the laws of two thousand five which added this subdivision, within thirty days after receipt thereof by such authori-~~

~~ty,~~ and the authorities budget office, together with the report described in section twenty-eight hundred of this title, a copy of the annual independent audit report, performed by a certified public accounting firm in accordance with generally accepted ~~government~~ auditing standards as defined in subdivision eleven of section two of the state finance law, and management letter and any other external examination of the books and accounts of such authority other than copies of the reports of any examinations made by the state comptroller.

§ 9. Section 2806 of the public authorities law, as added by chapter 149 of the laws of 1993, is amended to read as follows:

§ 2806. Personnel reports by ~~public~~ state and local authorities and public benefit corporations. 1. Every ~~public~~ state and local authority and public benefit corporation shall submit to the comptroller, the director of the budget ~~and~~, the chairpersons of the legislative fiscal committees and the authorities budget office, for their information, annually, on or before the fifteenth day of January of each calendar year, personnel information setting forth personal service schedules by subsidiary, division and unit which indicate position, grade, salary and title for each employee and in summary form.

2. If any state or local authority has provided the information required by this section in the annual report required under section twenty-eight hundred of this title, such authority may comply with the provisions of this section by references to such information with any necessary updates.

§ 10. Subdivisions 1, 4, 6 and 7 of section 2824 of the public authorities law, as added by chapter 766 of the laws of 2005, are amended to read as follows:

1. Board members of state and local authorities shall (a) execute direct oversight of the authority's chief executive and other ~~senior~~ management in the effective and ethical management of the authority; (b) understand, review and monitor the implementation of fundamental financial and management controls and operational decisions of the authority; (c) establish policies regarding the payment of salary, compensation and reimbursements to, and establish rules for the time and attendance of, the chief executive and ~~senior~~ management; (d) adopt a code of ethics applicable to each officer, director and employee that, at a minimum, includes the standards established in section seventy-four of the public officers law; (e) establish written policies and procedures on personnel including policies protecting employees from retaliation for disclosing information concerning acts of wrongdoing, misconduct, malfeasance, or other inappropriate behavior by an employee or board member of the authority, investments, travel, the acquisition of real property and the disposition of real and personal property and the procurement of goods and services; ~~and~~ (f) adopt a defense and indemnification policy and disclose such plan to any and all prospective board members; (g) perform each of their duties as board members, including but not limited to those imposed by this section, in good faith and with that degree of diligence, care and skill which an ordinarily prudent person in like position would use under similar circumstances, and may take into consideration the views and policies of any elected official or body, or other person and ultimately apply independent judgment in the best interest of the authority, its mission and the public; (h) at the time that each member takes and subscribes his or her oath of office, or within sixty days after the effective date of this paragraph if the member has already taken and subscribed his or her oath of office, execute an acknowledgment, in the form prescribed by the authorities

budget office after consultation with the attorney general, in which the board member acknowledges that he or she understands his or her role, and fiduciary responsibilities as set forth in paragraph (g) of this subdivision, and acknowledges that he or she understands his or her duty of loyalty and care to the organization and commitment to the authority's mission and the public interest.

4. Board members of each state and local authority, or subsidiary thereof, shall establish an audit committee to be comprised of not less than three independent members, who shall constitute a majority on the committee, and who shall possess the necessary skills to understand the duties and functions of the audit committee; provided, however, that in the event that a board has less than three independent members, the board may appoint non-independent members to the audit committee, provided that the independent members must constitute a majority of the members of the audit committee. The committee shall recommend to the board the hiring of a certified independent accounting firm for such authority, establish the compensation to be paid to the accounting firm and provide direct oversight of the performance of the independent audit performed by the accounting firm hired for such purposes.

6. [~~To the extent practicable, members~~] Members of the audit committee [~~should~~] shall be familiar with corporate financial and accounting practices.

7. Board members of each state and local authority, or subsidiary thereof, shall establish a governance committee to be comprised of not less than three independent members, who shall constitute a majority on the committee, and who shall possess the necessary skills to understand the duties and functions of the governance committee; provided, however, that in the event that a board has less than three independent members, the board may appoint non-independent members to the governance committee, provided that the independent members must constitute a majority of the members of the governance committee. It shall be the responsibility of the members of the governance committee to keep the board informed of current best governance practices; to review corporate governance trends; to [~~update~~] recommend updates to the authority's corporate governance principles; [~~and~~] to advise appointing authorities on the skills and experiences required of potential board members; to examine ethical and conflict of interest issues; to perform board self-evaluations; and to recommend by-laws which include rules and procedures for conduct of board business.

§ 11. Section 2824 of the public authorities law is amended by adding a new subdivision 8 to read as follows:

8. Board members of each state and local authority, or subsidiary thereof which issues debt, shall establish a finance committee to be comprised of not less than three independent members, who shall constitute a majority on the committee, and who shall possess the necessary skills to understand the duties and functions of the committee; provided, however, that in the event that a board has less than three independent members, the board may appoint non-independent members to the finance committee, provided that the independent members must constitute a majority of the members of the finance committee. It shall be the responsibility of the members of the finance committee to review proposals for the issuance of debt by the authority and its subsidiaries and make recommendations.

§ 11-a. Section 2827 of the public authorities law, as added by chapter 613 of the laws of 1961 and as renumbered by chapter 838 of the laws of 1983, is amended to read as follows:

§ 2827. Removal of authority members. Except as otherwise provided in this chapter, every member of every authority or commission heretofore or hereafter continued or created by this chapter, except ex-officio members, that is, members whose membership results by virtue of their incumbency of a public office, shall be removable by the public officer or public body which is empowered by this chapter to appoint such authority or commission member, for inefficiency, breach of fiduciary duty, neglect of duty or misconduct in office, provided, however, that such member shall be given a copy of the charges against him and an opportunity of being heard in person, or by counsel, in his or her defense upon not less than ten days' notice.

§ 11-b. Subdivision 5 of section 1678 of the public authorities law, as added by chapter 524 of the laws of 1944 and such section as renumbered by chapter 914 of the laws of 1957, is amended to read as follows:

5. To appoint officers, agents and employees and fix their compensation, provided, however, that the appointment of the executive director shall be subject to confirmation by the senate in accordance with section twenty-eight hundred fifty-two of this chapter;

§ 11-c. Subdivision 6 of section 354 of the public authorities law, as amended by chapter 766 of the laws of 1992, is amended to read as follows:

6. To appoint officers, agents and employees and fix their compensation, provided, however, that the appointment of the executive director shall be subject to confirmation by the senate in accordance with section twenty-eight hundred fifty-two of this chapter; subject however to the provisions of the civil service law, which shall apply to the authority and to the subsidiary corporation thereof as a municipal corporation other than a city;

§ 11-d. Section 1004 of the public authorities law, as amended by chapter 766 of the laws of 2005, is amended to read as follows:

§ 1004. Officers and employees; expenses. The trustees shall choose from among their own number a chairman and vice-chairman. They shall [~~from time to time~~] select such officers and employees, including a chief executive officer whose appointment shall be subject to confirmation by the senate in accordance with section twenty-eight hundred fifty-two of this chapter, and such engineering, marketing and legal officers and employees, as they may require for the performance of their duties and shall prescribe the duties and compensation of each officer and employee. They shall adopt by-laws and rules and regulations suitable to the purposes of this title. As long as and to the extent that the authority is dependent upon appropriations for the payment of its expenses, it shall incur no obligations for salary, office or other expenses prior to the making of appropriations adequate to meet the same.

§ 11-e. Subdivision 3 of section 2824 of the public authorities law is REPEALED and a new subdivision 3 is added to read as follows:

3. No chair who is also the chief executive officer shall participate in determining the level of compensation or reimbursement, or time and attendance rules for the position of chief executive officer.

§ 11-f. Subdivision (c) of section 1020-f of the public authorities law, as added by chapter 517 of the laws of 1986, is amended to read as follows:

(c) To appoint officers, agents and employees, without regard to any personnel or civil service law, rule or regulation of the state and in accordance with guidelines adopted by the authority, prescribe their duties and qualifications and fix and pay their compensation, provided,

however, that the appointment of the chief executive officer shall be subject to confirmation by the senate in accordance with section twenty-eight hundred fifty-two of this chapter;

§ 11-g. The public authorities law is amended by adding a new section 2852 to read as follows:

§ 2852. Senate confirmation of certain chief executive officers. Where the appointment of any chief executive officer is subject to confirmation by the senate pursuant to subdivision five of section sixteen hundred seventy-eight of this chapter, subdivision six of section three hundred fifty-four of this chapter, section one thousand four of this chapter, or subdivision (c) of section one thousand twenty-f of this chapter the senate shall vote to confirm any such appointment within sixty days of its submission to the senate during session, or if such submission is made when the senate is not in session, within seven days of the convening for session. If the senate fails to vote to confirm any such appointment within the time prescribed in this section, such appointment shall be deemed confirmed without any further action by the senate.

§ 12. The public authorities law is amended by adding a new section 2824-a to read as follows:

§ 2824-a. Mission statement and measurement report. Each state authority shall submit to the authorities budget office on or before March thirty-first, two thousand ten, and each local authority shall submit to the authorities budget office on or before March thirty-first, two thousand eleven, a proposed authority mission statement and proposed measurements which the authorities budget office shall post on its website. The proposed authority mission statement and proposed measurements shall have the following components: a brief mission statement expressing the purpose and goals of the authority, a description of the stakeholders of the authority and their reasonable expectations from the authority, and a list of measurements by which performance of the authority and the achievement of its goals may be evaluated. Each authority shall reexamine its mission statement and measurements on an annual basis, and publish a self-evaluation based on the stated measurements; provided, however, such reexamination may be waived pursuant to a determination by the director of the authorities budget office that such undertaking is unnecessary for an individual authority.

§ 13. The opening paragraph of subdivision 2 of section 2825 of the public authorities law, as added by chapter 766 of the laws of 2005, is amended to read as follows:

Except for members who serve as members by virtue of holding a civil office of the state, the majority of the remaining members of the governing body of every state or local authority shall be independent members; provided, however, that this provision shall apply to appointments made on or after the effective date of [~~the~~] chapter seven hundred sixty-six of the laws of two thousand five which added this subdivision. The official or officials having the authority to appoint or remove such remaining members shall take such actions as may be necessary to satisfy this requirement. For the purposes of this section, an independent member is one who:

§ 14. The public authorities law is amended by adding a new section 2879-a to read as follows:

§ 2879-a. Comptroller approval of contracts. 1. Except as set forth in subdivision three of this section, where the comptroller determines pursuant to his or her authority to supervise the accounts of public corporations, that contracts or categories of contracts in excess of one

million dollars (a) to be awarded by a state authority to a single source, a sole source or pursuant to any other method of procurement that is not competitive, or (b) which are to be paid in whole or in part from monies appropriated by the state to a state authority for such contractual expenditure, require supervision in the form of prior review and approval of such contracts, and the comptroller so notifies such authority of such determination, then any such contract entered into subsequent to such notification shall be submitted to the comptroller for his or her approval and shall not be a valid enforceable contract unless it shall first have been approved by the comptroller. Such notification shall identify the process for submission, the categories of contracts at issue and the time period for which such submission is to take place. The comptroller shall promulgate such rules and regulations as may be necessary to carry out his or her responsibilities under this section, including but not limited to the standards for determining which contracts will be subject to his or her review and for approving such contracts.

2. Where the comptroller, pursuant to subdivision one of this section, has notified a state authority that any contract or category of contracts shall be subject to his or her approval, such authority shall include or cause to be included in each such contract a provision informing the other party that such contract is subject to the comptroller's approval pursuant to the comptroller's authority to supervise the accounts of public corporations. If the comptroller has not approved or disapproved any contract subject to his or her approval within ninety days of submission to his or her office, such contract shall become valid and enforceable without such approval.

3. This section shall not apply to: (a) contracts entered into for the issuance of commercial paper or bonded indebtedness, other than contracts with the state providing for the payment of debt service subject to an appropriation; (b) contracts entered into by an entity established under article ten-c of the public authorities law that are for: (i) projects approved by the department of health or the public health council in accordance with articles twenty-eight, thirty-six or forty of the public health law or article seven of the social services law; (ii) projects approved by the office of mental health, the office of mental retardation and developmental disabilities, or the office of alcoholism and substance abuse services in accordance with articles sixteen, thirty-one, or thirty-two of the mental hygiene law; (iii) services, affiliations or joint ventures for the provision or administration of health care services or scientific research; (iv) payment for direct health care services or goods used in the provision of health care services; or (v) participation in group purchasing arrangements; (c) contracts entered into for the procurement of goods, services or both goods and services made to meet emergencies arising from unforeseen causes or to effect repairs to critical infrastructure that are necessary to avoid a delay in the delivery of critical services that could compromise the public welfare; (d) contracts of purchase or sale of energy, electricity or ancillary services made by an authority on a recognized market for goods, services, or commodities in question in accordance with standard terms and conditions of purchase or sale at a market price; (e) contracts for the purchase, sale or delivery of power or energy, fuel, costs and services ancillary thereto, or financial products related thereto, with a term of less than five years; and (f) contracts for the sale or delivery of power or energy and costs and services ancillary thereto for economic development purposes pursuant to

title one of article five of this chapter or article six of the economic development law, provided, however, that the authority shall file copies of any such contract with the comptroller within sixty days after the execution of such contract.

4. The provisions of this section do not grant or diminish any power or right to review contracts beyond or from that which the comptroller may have pursuant to his or her authority to supervise the accounts of public authorities. If any provisions of this section or its application to any person or circumstance is held invalid by a court of last resort, then this section shall be deemed to be invalid in its entirety.

§ 14-a. The public authorities law is amended by adding a new section 2879-b to read as follows:

§ 2879-b. Labor peace. 1. As used in this section:

(a) "Contractor" means a company undertaking a covered project, or the operator of a hotel or convention center that is part of a covered project.

(b) "Substantial proprietary interest" means the authority: (i) owns fee title or a leasehold interest in the project of at least forty years; or (ii) provides financing for the project, whether by direct loan or indirectly by a guarantee, subsidy, deposit, credit enhancement or similar method.

(c) "Covered project" means any project in which an authority enters into an agreement for a development after the effective date of this section, where: (i) a hotel is one of the principal functions of the project; (ii) the recipient of authority financing or its contractor or subcontractor contracts for the development of such hotel or convention center; (iii) the authority has a substantial proprietary interest in the project, or in the hotel or convention center; and (iv) the hotel or convention center will have more than fifteen employees.

(d) "Labor peace agreement" means an agreement between the contractor and a labor organization that represents a substantial number of hotel or convention center employees in the state, which requires that the labor organization and its members refrain from engaging in labor activity that will disrupt the hotel's operations, including strikes, boycotts, work stoppages, corporate campaigns, picketing or other economic action against the covered project.

(e) "Public authority" shall mean a state public authority.

2. No public authority shall enter into any agreement or contract under which the public authority has a substantial proprietary interest in a covered project unless the agreement or contract requires as a material condition that the contractor or a subcontractor thereof enter into a labor peace agreement with a labor organization that represents hotel employees in the state, for a period of at least five years.

3. Any contractor or subcontractor covered by subdivision two of this section shall incorporate the terms of the labor peace agreement in any contract, subcontract, lease, sublease, operating agreement, concessionaire agreement, franchise agreement or other agreement or instrument giving a right to any person or entity to own or operate a hotel or convention center.

4. Notwithstanding any provision of this section, a public authority may enter into an agreement or contract wherein the public authority has a substantial proprietary interest in a covered project without a contractor entering into a labor peace agreement, if the authority determines that the project would not be able to go forward if a labor peace agreement was required, or the costs of the project to the public authority would be substantially increased by such requirement. Such a

determination shall be supported by a written finding by the public authority setting forth the specific basis for such determination, which may include experience with similar projects, earlier requests for proposal for the same project, or a detailed evaluation of potential bidders. Such written determination shall be included in any public materials provided to any board or agency official in connection with the project and shall be maintained by the authority.

§ 15. Subdivision 3 of section 2896 of the public authorities law, as added by chapter 766 of the laws of 2005, is amended to read as follows:

3. a. Each public authority shall publish, not less frequently than annually, a report listing all real property of the public authority. Such report shall [~~consist of~~] include a list and full description of all real and personal property disposed of during such period. The report shall contain the price received by the public authority and the name of the purchaser for all such property sold by the public authority during such period.

b. The public authority shall deliver copies of such report to the comptroller, the director of the budget, the commissioner of general services, [~~and~~] the legislature and the authorities budget office.

§ 16. Section 2975 of the public authorities law is amended by adding a new subdivision 3-a to read as follows:

3-a. A direct portion of these funds shall be allocated to fund the authorities budget office established by section four of this chapter.

§ 17. The public authorities law is amended by adding a new section 2827-a to read as follows:

§ 2827-a. Subsidiaries of public authorities. 1. Notwithstanding any law to the contrary, no state authority shall hereafter have the power to organize any subsidiary corporation unless the legislature shall have enacted a law granting such state authority such power for the organization of a specific corporation, provided, however, that a state authority may organize a subsidiary corporation pursuant to the following requirements:

a. the purpose for which the subsidiary corporation shall be organized shall be for a project or projects which the state authority has the power to pursue pursuant to its corporate purposes;

b. the primary reason for which the subsidiary corporation shall be organized shall be to limit the potential liability impact of the subsidiary's project or projects on the authority or because state or federal law requires that the purpose of a subsidiary be undertaken through a specific corporate structure; and

c. the subsidiary corporation shall make the reports and other disclosures as are required of state authorities, unless the subsidiary corporation's operations and finances are consolidated with those of the authority of which it is a subsidiary.

2. In such cases where a state authority has the power to organize a subsidiary corporation pursuant to subdivision one of this section, the state authority shall file, no less than sixty days prior to the formation of such subsidiary, notice to the authorities budget office, the governor, the comptroller, and the legislature that it will be creating a subsidiary.

3. Subsidiary corporations formed under subdivision one of this section shall not have the authority to issue bonds, notes or other debts, provided, however, that such subsidiary corporations may issue notes or other debt to the public authority of which it is a subsidiary. No such debt issued by the subsidiary to its parent authority shall in total exceed, at any time, a principal amount of five hundred thousand

dollars or, during the nine months after the formation of the subsidiary, one million dollars.

4. The certificate of incorporation or other document filed to organize a subsidiary corporation under this section shall state that the state authority is the person organizing the corporation.

5. Provided, however, that nothing in this section shall be construed to grant an authority the power to create a subsidiary where the authority does not otherwise have the power to do so.

6. On or before the first day of January, two thousand eleven, and annually on such day thereafter, any subsidiary public benefit corporation, in cooperation with its parent public benefit corporation, shall provide to the chair and ranking minority member of the senate finance committee, the chair and ranking minority member of the assembly ways and means committee, and each chair and ranking member of the assembly and senate committees on corporations, authorities and commissions a report on the subsidiary public benefit corporation. Such report shall include for each subsidiary:

a. The complete legal name, address and contact information of the subsidiary;

b. The structure of the organization of the subsidiary, including the names and titles of each of its members, directors and officers, as well as a chart of its organizational structure;

c. The complete bylaws and legal organization papers of the subsidiary;

d. A complete report of the purpose, operations, mission and projects of the subsidiary, including a statement of justification as to why the subsidiary is necessary to continue its operations for the public benefit for the people of the state of New York; and

e. Any other information the subsidiary public benefit corporation deems important to include in such report.

7. Notwithstanding any inconsistent provision of this section, paragraph b of subdivision one and subdivision three of this section shall not apply to an entity established in article ten-c of this chapter; provided, however, that no such public benefit corporation shall have the power to organize a subsidiary for the purpose of:

a. evading the requirements of an existing collective bargaining agreement; or

b. replacing or removing a certified employee organization.

§ 18. The public authorities law is amended by adding a new section 2856 to read as follows:

§ 2856. Consideration of public authority debt. On or before a date fixed by the authorities budget office, every authority not subject to a statutory limit on bonds, notes, or other debt obligations it may issue, shall submit to the authorities budget office a statement of intent to guide the authority's issuance and overall amount of bonds, notes, or other debt obligations it may issue.

§ 19. Subdivision 3 of section 2897 of the public authorities law, as added by chapter 766 of the laws of 2005, is amended to read as follows:

3. Method of disposition. Subject to section twenty-eight hundred ninety-six of this title, any public authority may dispose of property for not less than the fair market value of such property by sale, exchange, or transfer, for cash, credit, or other property, with or without warranty, and upon such other terms and conditions as the contracting officer deems proper, and it may execute such documents for the transfer of title or other interest in property and take such other action as it deems necessary or proper to dispose of such property under

the provisions of this section. Provided, however, that no disposition of real property, or any interest in real property, [~~or any other property which because of its unique nature is not subject to fair market pricing~~] shall be made unless an appraisal of the value of such property has been made by an independent appraiser and included in the record of the transaction, and, provided further, that no disposition of any other property, which because of its unique nature or the unique circumstances of the proposed transaction is not readily valued by reference to an active market for similar property, shall be made without a similar appraisal.

§ 20. Paragraphs c and d of subdivision 6 of section 2897 of the public authorities law, as added by chapter 766 of the laws of 2005, are amended to read as follows:

c. Disposals and contracts for disposal of property may be negotiated or made by public auction without regard to paragraphs a and b of this subdivision but subject to obtaining such competition as is feasible under the circumstances, if:

(i) the personal property involved [~~is of a nature and quantity which, if~~] has qualities separate from the utilitarian purpose of such property, such as artistic quality, antiquity, historical significance, rarity, or other quality of similar effect, that would tend to increase its value, or if the personal property is to be sold in such quantity that, if it were disposed of under paragraphs a and b of this subdivision, would [~~aversely~~] adversely affect the state or local market for such property, and the estimated fair market value of such property and other satisfactory terms of disposal can be obtained by negotiation;

(ii) the fair market value of the property does not exceed fifteen thousand dollars;

(iii) bid prices after advertising therefor are not reasonable, either as to all or some part of the property, or have not been independently arrived at in open competition;

(iv) the disposal will be to the state or any political subdivision, and the estimated fair market value of the property and other satisfactory terms of disposal are obtained by negotiation; or

(v) [~~the disposal is for an amount less than the estimated fair market value of the property, the terms of such disposal are obtained by public auction or negotiation, the disposal of the property is intended to further the public health, safety or welfare or an economic development interest of the state or a political subdivision (to include but not limited to, the prevention or remediation of a substantial threat to public health or safety, the creation or retention of a substantial number of job opportunities, or the creation or retention of a substantial source of revenues, or where the authority's enabling legislation permits), the purpose and the terms of such disposal are documented in writing and approved by resolution of the board of the public authority;~~] under those circumstances permitted by subdivision seven of this section; or

(vi) such action is otherwise authorized by law.

d. (i) An explanatory statement shall be prepared of the circumstances of each disposal by negotiation of:

(A) any personal property which has an estimated fair market value in excess of fifteen thousand dollars;

(B) any real property that has an estimated fair market value in excess of one hundred thousand dollars, except that any real property disposed of by lease or exchange shall only be subject to clauses (C) [~~through (E)~~] and (D) of this subparagraph;

(C) any real property disposed of by lease [~~for a term of five years or less~~], if the estimated [~~fair~~] annual rent over the term of the lease is in excess of [~~one hundred thousand dollars for any of such years~~] fifteen thousand dollars;

(D) [~~any real property disposed of by lease for a term of more than five years, if the total estimated rent over the term of the lease is in excess of one hundred thousand dollars; or~~

~~(E)]~~ any real property or real and related personal property disposed of by exchange, regardless of value, or any property any part of the consideration for which is real property.

(ii) Each such statement shall be transmitted to the persons entitled to receive copies of the report required under section twenty-eight hundred ninety-six of this title not less than ninety days in advance of such disposal, and a copy thereof shall be preserved in the files of the public authority making such disposal.

§ 20-a. Section 2897 of the public authorities law is amended by adding a new subdivision 7 to read as follows:

7. Disposal of property for less than fair market value. a. No asset owned, leased or otherwise in the control of a public authority may be sold, leased, or otherwise alienated for less than its fair market value except if:

(i) the transferee is a government or other public entity, and the terms and conditions of the transfer require that the ownership and use of the asset will remain with the government or any other public entity;

(ii) the purpose of the transfer is within the purpose, mission or governing statute of the public authority; or

(iii) in the event a public authority seeks to transfer an asset for less than its fair market value to other than a governmental entity, which disposal would not be consistent with the authority's mission, purpose or governing statutes, such authority shall provide written notification thereof to the governor, the speaker of the assembly, and the temporary president of the senate, and such proposed transfer shall be subject to denial by the governor, the senate, or the assembly. Denial by the governor shall take the form of a signed certification by the governor. Denial by either house of the legislature shall take the form of a resolution by such house. The governor and each house of the legislature shall take any such action within sixty days of receiving notification of such proposed transfer during the months of January through June, provided that if the legislature receives notification of a proposed transfer during the months of July through December, the legislature may take any such action within sixty days of January first of the following year. If no such resolution or certification is performed within sixty days of such notification of the proposed transfer to the governor, senate, and assembly, the public authority may effectuate such transfer. Provided, however, that with respect to a below market transfer by a local authority that is not within the purpose, mission or governing statute of the local authority, if the governing statute provides for the approval of such transfer by the executive and legislative branches of the political subdivision in which such local authority resides, and the transfer is of property obtained by the authority from that political subdivision, then such approval shall be sufficient to permit the transfer.

b. In the event a below fair market value asset transfer is proposed, the following information must be provided to the authority board and the public:

(i) a full description of the asset;

(ii) an appraisal of the fair market value of the asset and any other information establishing the fair market value sought by the board;

(iii) a description of the purpose of the transfer, and a reasonable statement of the kind and amount of the benefit to the public resulting from the transfer, including but not limited to the kind, number, location, wages or salaries of jobs created or preserved as required by the transfer, the benefits, if any, to the communities in which the asset is situated as are required by the transfer;

(iv) a statement of the value to be received compared to the fair market value;

(v) the names of any private parties participating in the transfer, and if different than the statement required by subparagraph (iv) of this paragraph, a statement of the value to the private party; and

(vi) the names of other private parties who have made an offer for such asset, the value offered, and the purpose for which the asset was sought to be used.

c. Before approving the disposal of any property for less than fair market value, the board of an authority shall consider the information described in paragraph b of this subdivision and make a written determination that there is no reasonable alternative to the proposed below-market transfer that would achieve the same purpose of such transfer.

§ 21. Paragraph (b) of subdivision 11 of section 310 of the executive law, as amended by chapter 628 of the laws of 2003, is amended to read as follows:

(b) a "state authority," as defined in subdivision one of section two of the public authorities law, and the following:

Albany County Airport Authority;
 Albany Port District Commission;
 Alfred, Almond, Hornellsville Sewer Authority;
 Battery Park City Authority;
 Cayuga County Water and Sewer Authority;
 (Nelson A. Rockefeller) Empire State Plaza Performing Arts Center Corporation;
 Industrial Exhibit Authority;
 Livingston County Water and Sewer Authority;
 Long Island Power Authority;
 Long Island Rail Road;
 Long Island Market Authority;
 Manhattan and Bronx Surface Transit Operating Authority;
 Metro-North Commuter Railroad;
 Metropolitan Suburban Bus Authority;
 Metropolitan Transportation Authority;
 Natural Heritage Trust;
 New York City Transit Authority;
 New York Convention Center Operating Corporation;
 New York State Bridge Authority;
 New York State Olympic Regional Development Authority;
 New York State Thruway Authority;
 Niagara Falls Public Water Authority;
 Niagara Falls Water Board;
 Port of Oswego Authority;
 Power Authority of the State of New York;
 Roosevelt Island Operating Corporation;
 Schenectady Metroplex Development Authority;
 State Insurance Fund;
 Staten Island Rapid Transit Operating Authority;

State University Construction Fund;
 Triborough Bridge and Tunnel Authority.
 Upper Mohawk valley regional water board.
 Upper Mohawk valley regional water finance authority.
 Upper Mohawk valley memorial auditorium authority.
 Urban Development Corporation and its subsidiary corporations.

§ 21-a. Subdivision 13 of section 310 of the executive law, as added by chapter 261 of the laws of 1988, is amended to read as follows:

13. "State contract" shall mean: (a) a written agreement or purchase order instrument, providing for a total expenditure in excess of twenty-five thousand dollars, whereby a contracting agency is committed to expend or does expend funds in return for labor, services including but not limited to legal, financial and other professional services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting agency; (b) a written agreement in excess of one hundred thousand dollars whereby a contracting agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; and (c) a written agreement in excess of one hundred thousand dollars whereby the owner of a state assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project. [~~For the purposes of this article the term "services" shall not include banking relationships, the issuance of insurance policies or contracts, or contracts with a contracting agency for the sale of bonds, notes or other securities.~~]

§ 22. Article 9 of the public authorities law is amended by adding a new title 12 to read as follows:

TITLE 12

WHISTLEBLOWER ACCESS AND ASSISTANCE PROGRAM

Section 2986. Whistleblower access and assistance program.

§ 2986. Whistleblower access and assistance program. 1. Definitions.
a. "Employees of state and local authorities" means those persons employed at state and local authorities, including but not limited to: full-time and part-time employees, those employees on probation, and temporary employees.

b. "Attorney general" shall mean the attorney general of the state of New York.

c. "Whistleblower" shall mean any employee of a state or local authority who discloses information concerning acts of wrongdoing, misconduct, malfeasance, or other inappropriate behavior by an employee or board member of the authority, concerning the authority's investments, travel, acquisition of real or personal property, the disposition of real or personal property and the procurement of goods and services.

2. The director of the authorities budget office, after consultation with the attorney general, shall develop and recommend to the legislature a whistleblower access and assistance program which shall include, but not be limited to:

a. evaluating and commenting on whistleblower programs and policies by state and local authorities pursuant to paragraph (e) of subdivision one of section twenty-eight hundred twenty-four of this article;

b. establishing toll-free telephone and facsimile lines available to employees at state and local authorities;

c. offering advice regarding employee rights under applicable state and federal laws and advice and options available to all persons; and

d. offering an opportunity for employees of state and local authorities to identify concerns regarding any issue at a state or local authority.

3. Any communications between an employee and the authorities budget office pursuant to this section shall be held strictly confidential by the authorities budget office, unless the employee specifically waives in writing the right to confidentiality, except that such confidentiality shall not exempt the authorities budget office from disclosing such information, where appropriate, to the state inspector general in accordance with section fifty-five of the executive law, or prevent disclosure to any law enforcement authority.

§ 23. The public authorities law is amended by adding a new section 2857 to read as follows:

§ 2857. Actions by an authority. No state or local authority shall fire, discharge, demote, suspend, threaten, harass or discriminate against an employee because of the employee's role as a whistleblower, insofar as the actions taken by the employee are legal.

§ 24. Article 9 of the public authorities law is amended by adding a new title 12-A to read as follows:

TITLE 12-A

PUBLIC AUTHORITIES LOBBYING CONTACTS

Section 2987. Lobbying contacts.

§ 2987. Lobbying contacts. 1. Definitions. As used in this title:

a. "lobbyist" shall have the same meaning as defined in section one-c of the legislative law.

b. "lobbying" shall mean and include any attempt to influence:

(i) the adoption or rejection of any rule or regulation having the force and effect of law by a public authority, and

(ii) the outcome of any rate making proceeding by a public authority.

c. "contact" shall mean any conversation, in person or by telephonic or other remote means, or correspondence between any lobbyist engaged in the act of lobbying and any person within a state authority who can make or influence a decision on the subject of the lobbying on behalf of the authority, and shall include, at a minimum, all members of the governing board and all officers of the state authority.

2. Every state authority shall maintain a record of all lobbying contacts made with such authority.

3. Every member, officer or employee of a state authority who is contacted by a lobbyist shall make a contemporaneous record of such contact containing the day and time of the contact, the identity of the lobbyist and a general summary of the substance of the contact.

4. Each state authority shall adopt a policy implementing the requirements of this section. Such policy shall appoint an officer to whom all such records shall be delivered. Such officer shall maintain such records for not less than seven years in a filing system designed to organize such records in a manner so as to make such records useful to determine whether the decisions of the authority were influenced by lobbying contacts.

§ 25. Subdivision 1 of section 552 of the public authorities law, as amended by section 7 of part H of chapter 25 of the laws of 2009, is amended to read as follows:

1. A board, to be known as "Triborough bridge and tunnel authority" is hereby created. Such board shall be a body corporate and politic constituting a public benefit corporation. It shall consist of seventeen members, all serving ex officio. Those members shall be the persons who from time to time shall hold the offices of chairman and members of

metropolitan transportation authority. The chairman of such board shall be the chairman of metropolitan transportation authority, serving ex officio, and, provided that there is an executive director of the metropolitan transportation authority, the executive director of the authority shall be the executive director of the metropolitan transportation authority, serving ex officio. Notwithstanding [~~subdivision three of section twenty-eight hundred twenty-four of this chapter or~~] any [~~other~~] provision of law to the contrary, the chairman shall be the chief executive officer of the authority and shall be responsible for the discharge of the executive and administrative functions and powers of the authority. The chairman and executive director, if any, each shall be empowered to delegate his or her functions and powers to the executive officer of the Triborough bridge and tunnel authority or to such person as may succeed to the powers and duties of said executive officer. The chairman and other members of the board hereby created, and the executive director, if any, shall not be entitled to compensation for their services hereunder but shall be entitled to reimbursement for their actual and necessary expenses incurred in the performance of their official duties.

§ 26. Subdivision 2 of section 1201 of the public authorities law, as amended by section 6 of part H of chapter 25 of the laws of 2009, is amended to read as follows:

2. The chairman of such board shall be the chairman of metropolitan transportation authority, serving ex officio, and, provided that there is an executive director of the metropolitan transportation authority, the executive director of the authority shall be the executive director of the metropolitan transportation authority, serving ex officio. Notwithstanding [~~subdivision three of section twenty-eight hundred twenty-four of this chapter or~~] any [~~other~~] provision of law to the contrary, the chairman shall be the chief executive officer of the authority and shall be responsible for the discharge of the executive and administrative functions and powers of the authority. The chairman and executive director, if any, each shall be empowered to delegate his or her functions and powers to one or more officers or employees designated by him or her.

§ 27. Paragraph (a) of subdivision 4 of section 1263 of the public authorities law, as amended by section 5 of part H of chapter 25 of the laws of 2009, is amended to read as follows:

(a) Notwithstanding [~~subdivision three of section twenty-eight hundred twenty-four of this chapter or~~] any [~~other~~] provision of law to the contrary, the chairman shall be the chief executive officer of the authority and shall be responsible for the discharge of the executive and administrative functions and powers of the authority. The chairman may appoint an executive director and such other officials and employees as shall in his or her [~~judgement~~] judgment be needed to discharge the executive and administrative functions and powers of the authority.

§ 28. The opening paragraph of subdivision 5 of section 1266 of the public authorities law, as amended by section 8 of part H of chapter 25 of the laws of 2009, is amended to read as follows:

The authority may acquire, hold, own, lease, establish, construct, effectuate, operate, maintain, renovate, improve, extend or repair any transportation facilities through, and cause any one or more of its powers, duties, functions or activities to be exercised or performed by, one or more wholly owned subsidiary corporations of the authority, or by New York city transit authority or any of its subsidiary corporations in the case of transit facilities and may transfer to or from any such

corporations any moneys, real property or other property for any of the purposes of this title upon such terms and conditions as shall be agreed to and subject to such payment or repayment obligations as are required by law or by any agreement to which any of the affected entities is subject. The directors or members of each such subsidiary corporation of the authority corporation shall be the same persons holding the offices of members of the authority. The chairman of the board of each such subsidiary shall be the chairman of the authority, serving ex officio and, provided that there is an executive director of the metropolitan transportation authority, the executive director of such subsidiary shall be the executive director of the metropolitan transportation authority, serving ex officio. Notwithstanding [~~subdivision three of section twenty-eight hundred twenty-four of this chapter or~~] any [~~other~~] provision of law to the contrary, the chairman shall be the chief executive officer of each such subsidiary and shall be responsible for the discharge of the executive and administrative functions and powers of each such subsidiary. The chairman and executive director, if any, shall be empowered to delegate his or her functions and powers to one or more officers or employees of each such subsidiary designated by him or her. Each such subsidiary corporation of the authority and any of its property, functions and activities shall have all of the privileges, immunities, tax exemptions and other exemptions of the authority and of the authority's property, functions and activities. Each such subsidiary corporation shall be subject to the restrictions and limitations to which the authority may be subject. Each such subsidiary corporation of the authority shall be subject to suit in accordance with section twelve hundred seventy-six of this title. The employees of any such subsidiary corporation, except those who are also employees of the authority, shall not be deemed employees of the authority.

§ 28-a. Transfer of powers, duties and functions. All powers, duties and functions conferred upon the former authority budget office created by section 27 of chapter 766 of the laws of 2005, as repealed by section five-b of this act, shall be transferred to and assumed by the authorities budget office established by section 4 of title 2 of the public authorities law, as added by section five of this act.

§ 28-b. Transfer of appropriation authority. Upon transfer of the powers, duties and functions conferred upon the former authority budget office created by section 27 of chapter 766 of the laws of 2005, as repealed by section five-b of this act, to the authorities budget office established pursuant to a chapter of the laws of 2009, the authorities budget office shall have the authority to use any funding appropriated to the authority budget office pursuant to chapter 50 of the laws of 2009 for services, and expenses including but not limited to the responsibilities, obligations, functions, operations, and prior year liabilities of the authority budget office.

§ 28-c. Transfer of records. The former authority budget office created by section 27 of chapter 766 of the laws of 2005, as repealed by section five-b of this act, shall deliver to the authorities budget office established by section 4 of title 2 of the public authorities law, as added by section five of this act, all books, papers, records, and property as requested by the independent office of public authority accountability.

§ 28-d. Transfer of employees. Upon the transfer of the functions of the former authority budget office created by section 27 of chapter 766 of the laws of 2005, as repealed by section five-b of this act, to the authorities budget office established by section 4 of title 2 of the

public authorities law, as added by section five of this act, and as provided for in this act, any affected employees may be transferred to the authorities budget office in accordance with section 70 of the civil service law.

§ 28-e. Continuity of authority. For the purpose of succession to all functions, powers, duties and obligations transferred and assigned to, devolved upon and assumed by it pursuant to this act, the authorities budget office established by section 4 of title 2 of the public authorities law, as added by section five of this act, shall be deemed and held to constitute the continuation of the former authority budget office created by section 27 of chapter 766 of the laws of 2005, as repealed by section five-b of this act, pertaining to the powers and functions herein transferred.

§ 28-f. Completion of unfinished business. Any business or other matter undertaken or commenced by the former authority budget office created by section 27 of chapter 766 of the laws of 2005, as repealed by section five-b of this act, pertaining to or connected with the functions, powers, obligations and duties hereby transferred and assigned to the authorities budget office established by section 4 of title 2 of the public authorities law, as added by section five of this act, and pending on the effective date of this act may be conducted and completed by the authorities budget office established pursuant to section 4 of title 2 of the public authorities law, as added by section five of this act, in the same manner and under the same terms and conditions and with the same effect as if conducted and completed by the former authority budget office.

§ 28-g. Terms occurring in laws, contracts and other documents. Whenever the former authority budget office created by section 27 of chapter 766 of the laws of 2005, as repealed by section five-b of this act, is referred to or designated in any law, contract or documents pertaining to the functions, powers, obligations and duties hereby transferred and assigned to the authorities budget office established pursuant to section 4 of title 2 of the public authorities law, as added by section five of this act, such reference or designation shall be deemed to refer to the authorities budget office established pursuant to section 4 of title 2 of the public authorities law, as added by section five of this act.

§ 28-h. Existing rights and remedies preserved. No existing right or remedy of any character shall be lost, impaired or affected by reason of this act.

§ 28-i. Pending actions and proceedings. No action or proceeding pending on the effective date of this act, brought by or against the former authority budget office created by section 27 of chapter 766 of the laws of 2005, as repealed by section five-b of this act, relating to the function, power or duty transferred to or devolved upon the authorities budget office established pursuant to section 4 of title 2 of the public authorities law, as added by section five of this act, shall be affected by this act, but the same may be prosecuted or defended in the name of the authorities budget office established pursuant to section 4 of title 2 of the public authorities law, as added by section five of this act, and upon application to the court, such office established pursuant to section 4 of title 2 of the public authorities law, as added by section five of this act, shall be substituted as a party.

§ 29. A chapter of the laws of 2009 amending the public authorities law and the executive law, relating to the creation of an authorities

budget office, as proposed in legislative bills numbers S.1537-C and A.2209-C, is REPEALED.

§ 30. Severability. If any provision of this act or its application to any person or circumstance is held invalid, this invalidity does not affect other provisions or applications of this act that can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

§ 31. This act shall take effect March 1, 2010; provided, however that the amendments to paragraph (b) of subdivision 11 and subdivision 13 of section 310 of the executive law made by sections twenty-one and twenty-one-a of this act shall not affect the expiration of such section and shall be deemed to expire therewith; provided further, that the provisions of sections eleven-b, eleven-c, eleven-d, eleven-f and eleven-g of this act shall not apply to any executive director or chief executive officer appointed prior to the effective date of this act; provided further, that section fourteen-a of this act shall expire and be deemed repealed June 30, 2012; and provided further, that section twenty-a of this act shall apply only to the disposal of property authorized by the board of a public authority after such effective date.

The Legislature of the STATE OF NEW YORK **ss:**

Pursuant to the authority vested in us by section 70-b of the Public Officers Law, we hereby jointly certify that this slip copy of this session law was printed under our direction and, in accordance with such section, is entitled to be read into evidence.

MALCOLM A. SMITH
Temporary President of the Senate

SHELDON SILVER
Speaker of the Assembly

B. Task Force Member Biographies

Ira M. Millstein, senior partner at Weil, Gotshal & Manges LLP

Ira M. Millstein is a senior partner at the international law firm Weil, Gotshal & Manges, where, in addition to practicing in the areas of government regulation and antitrust law, he has counseled numerous boards on issues of corporate governance, including the boards of General Motors, Westinghouse, Bethlehem Steel, WellChoice (*fka*, *Empire Blue Cross*), the California Public Employees' Retirement System (CalPERS), Tyco International, The Walt Disney Co., and the New York State Metropolitan Transportation Authority. Mr. Millstein serves as *pro bono* counsel to the Board of Directors of the Lower Manhattan Development Corporation, the agency overseeing the redevelopment of lower Manhattan. He was also named to the board of the World Trade Center Memorial Foundation, the entity charged with overseeing the fundraising and construction of the World Trade Center Memorial, and related museums and cultural facilities located at the World Trade Center site. Most recently, he was appointed Chairman of the New York State Commission on Public Authority Reform by Governor George Pataki.

In addition to his active legal practice, Mr. Millstein is the Senior Associate Dean for Corporate Governance and the Eugene F. Williams Jr. Visiting Professor in Competitive Enterprise and Strategy at the Yale School of Management, and serves as a member of the Advisory Board of the Yale Center for Corporate Governance. He is the Chairman Emeritus, having served as Chairman from 1999-2005, of the Private Sector Advisory Group to the Global Corporate Governance Forum founded by the World Bank and the Organization for Economic Cooperation and Development (OECD). He served as Chairman of the OECD Business Sector Advisory Group on Corporate Governance in 1997-1998 and Co-Chair of the Blue Ribbon Committee on Improving the Effectiveness of Corporate Audit Committees (sponsored by the New York Stock Exchange and the National Association of Securities Dealers) in 1998-1999. In 1997, he was appointed by Vice-President Gore and Prime Minister Chernomyrdin to the U.S.-Russia Capital Markets Forum Working Group on Investor Protection. In 1996, Mr. Millstein chaired the National Association of Corporate Directors' Blue Ribbon Commission on Director Professionalism. He formerly has served as: Chairman of the Board of Advisors of Columbia University's Center for Law & Economic Studies' Institutional Investor Project; Chairman of the New York State Pension Investment Task Force; Adjunct Professor at New York University School of Law; and Fellow of the Faculty of Government at Harvard University's J.F.K. School of Government.

An Elected Fellow of the American Academy of Arts & Sciences, Mr. Millstein is a frequent lecturer and author on corporate governance, antitrust, and government regulation. In 2001, he received the first Award for Excellence in Corporate Governance by the International Corporate Governance Network. Included

among his many publications are: *The Recurrent Crisis in Corporate Governance* (co-author, Palgrave, 2003; paperback by Stanford University Press, August 2004); a trilogy of articles published in *The Business Lawyer* - "The Evolution of the Certifying Board" (1992), "The Professional Board" (1995), and "The Responsible Board" (1997); *The Limits of Corporate Power* (co-author, MacMillan, 1981); *The Impact of the Modern Corporation* (co-editor, Columbia University Press, 1984); *The Battle for Corporate Control: Shareholder Rights, Stakeholder Interests, and Managerial Responsibility* (contributing author, New York University, 1991); and "Can the Board of Directors Help the American Corporation Earn the Immortality It Holds so Dear?" in *The U.S. Business Corporation: An Institution in Transition* (contributing co-author, American Academy of Arts & Sciences, Ballinger Publishing Co., 1988).

A graduate of Columbia Law School, Mr. Millstein is a Life Trustee and former Chairman of the Board of the Central Park Conservancy, and Chairman of the Board of Overseers of the Albert Einstein College of Medicine. He serves on the Advisory Council of Transparency International, and is a former member of the Yale School of Management Advisory Board. He is Governance Counsel to the Board of the National Association of Corporate Directors (NACD) and a former board member. He is a former Chairman of the Antitrust Law Sections of both the American Bar Association and the New York State Bar Association.

Cathy A. Bell, managing director at Loop, Capital Markets, LLC

Cathy Ann Bell is an attorney and an investment banker specializing in municipal finance. Ms. Bell is currently Managing Director in the New York office of Loop Capital Markets, a full service, African American owned investment bank and broker-dealer. Ms. Bell has spent the past 15 years of her career working as an investment banker in New York City during which time she has structured over \$8 billion in bond financings for governmental and non-profit issuers across the country. She previously practiced law in the area of municipal finance and acted as bond and underwriters' counsel to various New York State agencies and authorities. Ms. Bell began her career in 1981 as an associate at the law firm of Willkie Farr & Gallagher. From 1987 to 1993, Ms. Bell served as General Counsel to the New York State Financial Control Board for the City of New York.

A native New Yorker, Ms. Bell grew up in Harlem and Queens Village, New York. She received her undergraduate degree, magna cum laude, from Howard University in Washington, DC and her law degree from Columbia University School of Law in New York City. Ms. Bell resides in Mount Vernon, Westchester County, where she served as Chair of the Finance and Budget Transition Committee for the current Mayor of Mount Vernon, Clinton I. Young. Currently, Ms. Bell is a member of the New York State Board of Real Property Tax Services, a trustee of the Citizens Budget Commission, a board member of the

Northeast Chapter of Women in Public Finance and a member of the New York Chapter of the National Association of Securities Professionals.

Scott N. Fein, partner at Whiteman, Osterman & Hanna LLP

Mr. Fein is a partner and Chair of the corporate and public sector compliance practice at Whiteman Osterman and Hanna in Albany, New York.

Mr. Fein serves as Director of the Public Authorities Project of the Government Law Center of Albany Law School, and a member of the Governor's Task Force on Public Authority Reform. He also serves as general counsel to the New York State Archives Partnership Trust and to Equinox, the Capital Region's largest social services agency, and serves as the Albany Chair of the State Bar Association Annual Ethics and Civility program for lawyers.

He has written and spoken extensively about issues relating to Public Authorities governance and ethics.

Mr. Fein received the National Law Journal's Civil Rights Award for the most significant civil rights trial of 2005 and the New York State Bar Association's President's Award for Pro Bono Service.

Mr. Fein received his law degree from Georgetown University Law School and his Masters in Law from New York University Law School. He served in the Office of the New York State Counsel to the Governor and, prior to that, as a prosecutor.

Nancy H. Henze, former executive director of Municipal Assistance Corporation for the City of New York

Ms. Henze served as the Executive Director of the Municipal Assistance Corporation for the City of New York from 1998 until 2008 when the Corporation closed in accordance with the statutory mandate. In March of 2005 she was appointed the Executive Director of the New York State Commission on Public Authority Reform. The Commission delivered its report to Governor Pataki in June of 2006. She continued as a consultant to the Commission and the Authority Budget Office until 2007. Ms. Henze also serves as a board member of Provident Resources Group Inc., a national, multi-mission non-profit corporation.

Ms. Henze's public sector service was preceded by a long career on Wall Street in public finance investment banking. She served as a managing director at Lehman Brothers and as Senior Vice President and Manger at M.R. Beal & Co.

She was the lead investment banker to numerous state and local issuers nationwide.

Ms. Henze is a graduate of the New York University Stern School of Business (MBA in finance) and Vassar College.

Marvin E. Jacob, former partner Weil, Gotshal & Manges LLP

Following service as Associate Regional Administrator, U.S. Securities & Exchange Commission, N. Y. Regional Office, Mr. Jacob became a partner at Weil, Gotshal & Manges LLP, from which he recently retired.

During his tenure as an active partner he also served as Professor of Law on the adjunct faculty of New York Law School where he taught Securities Regulation and Bankruptcy, co-edited two leading publications on Restructurings in and out of formal bankruptcy proceedings, and represented numerous pro bono and public service clients.

Prior to his appointment to the Task Force he served as a member of The New York State Commission on Judicial Conduct.

Mr. Jacob is a certified mediator in the Federal and Bankruptcy Courts for the Southern District of New York and recently participated in the mediation of the Tyco class actions that settled for almost \$3 billion. Mr. Jacob graduated Brooklyn College and New York Law School (cum laude). He has been listed for more than 20 years in Best Lawyers in America.

Lee Smith, president of Hartland Asset Management Corporation

Lee Smith is President of Hartland Asset Management, a registered investment advisor serving pension funds. He has twenty years of experience working with institutional investors on the development and execution of customized investment strategies.

Hartland has developed a variety of investment strategies and types of investments that generate market rate returns while furthering the investor's strategic objectives. For example, he currently manages an investment fund providing real estate loans to finance building renovation projects and/or new construction. Over his career, Mr. Smith has implemented over \$500 million worth of investments, mostly, though not exclusively, in real estate.

Lee Smith is also the founder and managing member of American Solar Partners, LLC, a developer of renewable energy projects. He has almost ten

years experience in the renewable energy industry and has developed dozens of commercial solar power installations and hundreds of residential installations.

He has written extensively on economic and investment issues. Before starting Hartland, Mr. Smith served in the Administration of New York Governor Mario M. Cuomo, having been appointed in 1983 as the Deputy Commissioner and general counsel of the NYS Labor Department. In 1989 he was named Executive Director of the Governor's Pension Investment Task Force, a 20 member committee of legal and financial experts and pension fund executives, chaired by Ira Millstein, to examine the role of pension funds in economy. He edited the Task Force's two reports: *Our Money's Worth*, The Report of the Governor's Task Force on Pension Fund Investment, (New York, 1989); *Competitive Plus - A Study of Economically Targeted Investments by Pension Funds*, (New York, 1990).

Before joining the Cuomo Administration, he was a lawyer in private practice, with a specialty in ERISA-related matters. He is a cum laude graduate of SUNY at Buffalo School of Law and has a BA with high honors from SUNY at Buffalo.

Thomas R. Suozzi, senior advisor to Lazard, of counsel to Harris Beach PLLC

Thomas R. Suozzi now serves as Senior Advisor to Lazard, one of the world's preeminent financial advisory firms and is Of Counsel to Harris Beach law firm, a full service New York state-based firm that was ranked as one of the country's Top 200 law firms by the *National Law Journal*.

Mr. Suozzi is an attorney and a certified public accountant. He served from 1994 to 2001 as Mayor of the City of Glen Cove, where he restored financial stability, created a national model for environmental cleanup and brought about a new era of civic pride. He then served from 2002 to 2009 as County Executive of Nassau County, New York, a county with a population and budget larger than 11 states.

Prior to Suozzi assuming office as County Executive in 2002, Nassau had been rated "the worst run county in America" by the Maxwell School of Public Policy at Syracuse University. Mr. Suozzi led a dramatic financial turnaround of Nassau's \$2.6 billion government by reducing the workforce to the smallest in 30 years, implementing technology solutions, consolidating departments, eliminating wasteful contracts, reinventing government operations, reducing borrowing, and achieving historic labor concessions. He also achieved 13 bond upgrades, more than any other municipality in the nation during a similar time period all while reducing the crime rate to the lowest in 30 years, and implementing national and statewide models for the efficient delivery of Health and Human Services and environmental stewardship.

In 2004, Mr Suozzi founded Fix Albany.com, a statewide campaign to link the dysfunction of State government to local property taxes and he successfully campaigned to cap the growth of the local share of Medicaid costs. In 2005 Governing Magazine named Suozzi as one of their national "Public Officials of the Year." From 2005 through 2009 he was Chairman and Principal of the New York Metropolitan Transit Council. As the Council's Chairman, he developed the first comprehensive downstate transportation priorities vision plan supported by elected and appointed officials from New York City and five downstate suburban counties. Through his work with the Council, Mr. Suozzi was awarded New York University's Outstanding Achievement in Transportation award.

In January 2008 the Governor named Mr. Suozzi Chair of the bipartisan NYS Commission on Property Tax Relief and he delivered a report on the causes of, and solutions for, the state's high property taxes. Later in 2008 Mr. Suozzi was named as "the Environmentalist of the Year" by the NYS League of Conservation voters.

Prior to holding public office, Mr. Suozzi was an attorney at Shearman & Sterling, an auditor at Arthur Andersen & Company, and a clerk to Judge Thomas C. Platt, chief judge of the Federal District Court for the Eastern District of New York. Mr. Suozzi received a Juris Doctor from Fordham University School of Law and a BS from Boston College, School of Management.

C. **Executive Order No. 32**

(see attached)



State of New York

DEC 14 2009

Department of State
Secretary of State

State of New York

Executive Chamber

No. 32

EXECUTIVE ORDER

Establishing the Governor's Task Force on the Implementation of the 2009 Public Authorities Reform Act

WHEREAS, public authorities fulfill an essential function in New York State ("State") by providing capital improvements that benefit the public;

WHEREAS, the State relies extensively on such authorities in areas such as transportation, education, economic development, health care, energy, housing and the environment;

WHEREAS, it is critical, in light of such heavy reliance, that all authorities meet the highest standards of professionalism, accountability and integrity;

WHEREAS, a number of significant reforms, innovations and improvements since 1995 have increased the accountability and openness of state government and public authorities;

WHEREAS, building on previous efforts to reform public authorities, including those of Ira Millstein and the New York State Commission on Public Authority Reform, I worked this year with the Legislature to enact legislation that further improves the way public authorities conduct business in the State;

WHEREAS, chapter 506 of the laws of 2009 ("2009 Public Authorities Reform Act") contains provisions of law that will significantly improve the oversight of such public authorities and provide more effective regulation of their operations;

WHEREAS, the implementation of such provisions presents issues related to the administration of the new independent Authorities Budget Office ("ABO") and its coordination and relationship with other agencies; the management by the ABO of the ABO's additional powers and responsibilities; the reporting requirements, duties and governance of public authorities; and the development of appropriate policies, procedures and regulations by the ABO to effectuate the foregoing; and

WHEREAS, the implementation of such provisions would be informed and complemented by the expertise of a group of individuals knowledgeable in the field of corporate governance and other relevant disciplines, thereby ensuring that the salutary purposes of the 2009 Public Authorities Reform are fully realized;

NOW, THEREFORE, I, DAVID A. PATERSON, Governor of the State of New York, by virtue of the authority vested in me by the Constitution and Laws of the State of New York, do hereby order as follows:

1. There is hereby established the Governor's Task Force on the Implementation of the 2009 Public Authorities Reform Act ("Task Force"), which shall consist of 7 members appointed by the Governor, including: (i) Ira Millstein, who shall be Chair of the Task Force; (ii) one member who shall be appointed upon the recommendation of the Temporary President of the Senate; (iii) one member who shall be appointed upon the recommendation of the Speaker of the Assembly; and (iv) one member who shall be appointed upon the recommendation of the Comptroller. The members of the Task Force shall have experience and expertise in any one or more of the following areas: corporate governance, public authorities, public administration, management, finance or other relevant disciplines.

2. The Task Force shall be appointed and constituted by January 15, 2010.
3. The Task Force shall identify and examine all matters that it deems relevant to the implementation of the 2009 Public Authorities Reform Act.
4. The Task Force shall provide policy guidance and make recommendations it deems appropriate concerning the implementation of the 2009 Public Authorities Reform Act, and, without limitation:
 - (a) the parameters and scope of the fiduciary duty applicable to board members of public authorities; and
 - (b) the maximization of available physical State resources to complement the administration of the ABO and the definition of the ABO's role and independence within the Department of State.
5. No member of the Task Force shall be disqualified from holding any public office or employment, nor shall he or she forfeit any such office or employment by virtue of his or her appointment hereunder. The members of the Task Force shall receive no compensation for their services, but they shall be allowed their actual and necessary expenses incurred in the performance of their duties pursuant to this Order.
6. A majority of the appointed members on the Task Force shall constitute a quorum. The Task Force may meet in person or by telephone or by using other communication technologies and may hold meetings to discuss issues even in the absence of a quorum; provided, however, that all recommendations of the Task Force shall require approval of a majority of its members. The Task Force shall meet as often as is necessary and under circumstances as are appropriate to fulfilling its purposes under this Order.
7. Staff support for the Task Force shall be provided upon the Task Force's request by the Division of Budget, the Department of State, the Office for Technology, and the Executive Chamber.
8. Every agency, department, office, division or public authority of this State shall cooperate with the Task Force and furnish such information and assistance as the Task Force determines is reasonably necessary to accomplish its purpose.
9. The Task Force shall render its findings and recommendations no later than August 15, 2010 and shall thereafter cease to exist unless specifically extended by the Governor.

GIVEN under my hand and the Privy Seal of the State in
 the City of Albany this fourteenth day of
 December in the year two thousand nine.

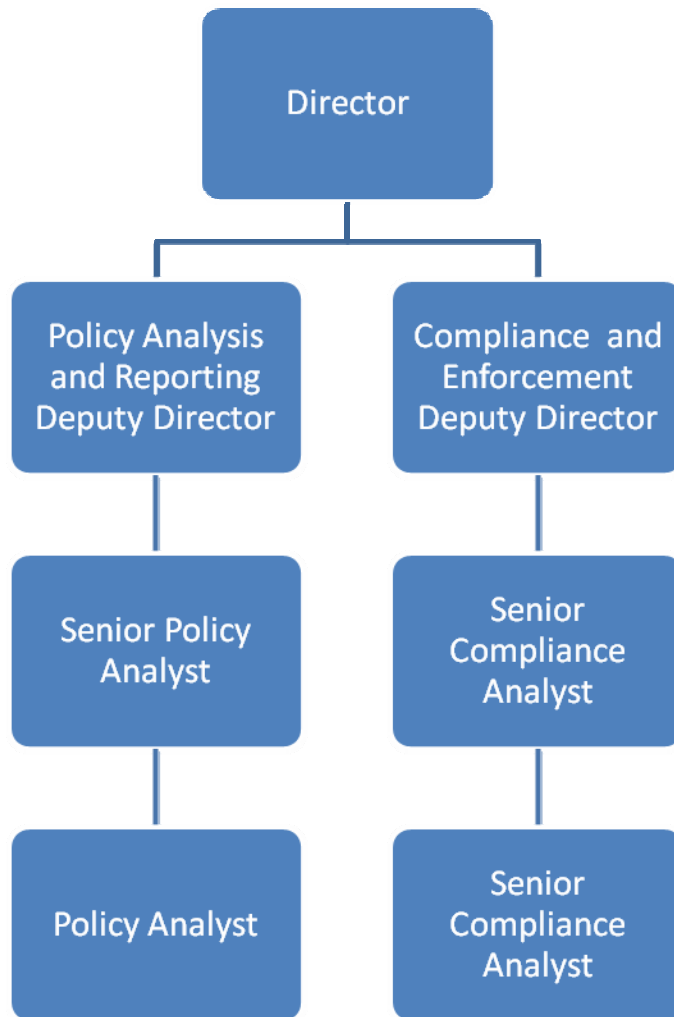


BY THE GOVERNOR

David A. Paterson

Louise Krawcheck
 Secretary to the Governor

D. **Current ABO Structure**



E. Proposed ABO Council Legislation

Article 1 of the public authorities law, as amended by chapter 506 of the laws of 2009, is amended by adding a new section 8, to read as follows:

§ 8. Advisory Council of the Authorities Oversight Office

1. There is hereby established the Advisory Council of the Authorities Oversight Office, which shall consist of five members appointed by the Governor, including one on the recommendation of the temporary president of the senate and one on the recommendation of the speaker of the assembly. The members of the Advisory Council shall include (i) a chairman appointed by the Governor; (ii) a member with experience or expertise in public authorities; (iii) a member with experience or expertise in debt markets; (iv) a member with experience or expertise in examination and enforcement and (v) a member with experience or expertise in law, regulation and the legislative process.

2. The members of the Advisory Council shall each serve for a term of four years, except that two of the members initially appointed shall serve for a term of two years.

3. The members of the Advisory Council shall serve without salary or reimbursement except for their ordinary and necessary travel expenses, but only if such members are not otherwise entitled to reimbursement from other government sources.

4. The Advisory Council shall provide advice and consultation to the executive director with regard to:

a. the statutory responsibilities of the Authorities Oversight Office contained in the Public Authorities Reform Act, including but not limited to the authority of the Authorities Oversight Office to review and approve mission statements developed by authorities; to initiate and conduct investigations; to publicly warn and censure authorities for non-compliance with the Public Authorities Reform Act and report suspected criminal activity to the attorney general and other prosecutorial agencies; and to promulgate rules and regulations relating to the powers and duties of the Authorities Oversight Office; as well as the resources and staffing to fulfill such statutory responsibilities; and

b. the rationalization of the system of public authorities in the State, including but not limited to issues relating to the proliferation or duplication of public authorities.

F. Proposed Authorities Oversight Office Naming Legislation

Article 1, Section 2 of the public authorities law, as amended by chapter 506 of the laws of 2009, is amended by striking all references to the term “authorities budget office” thereof and substituting in lieu thereof the term “authorities oversight office.”

Article 1, Section 4 of the public authorities law, as amended by chapter 506 of the laws of 2009, is amended by striking all references to the term “authorities budget office” thereof and substituting in lieu thereof the term “authorities oversight office.”

Article 1, Section 5 of the public authorities law, as amended by chapter 506 of the laws of 2009, is amended by striking all references to the term “authorities budget office” thereof and substituting in lieu thereof the term “authorities oversight office.”

Article 1, Section 6 of the public authorities law, as amended by chapter 506 of the laws of 2009, is amended by striking all references to the term “authorities budget office” thereof and substituting in lieu thereof the term “authorities oversight office.”

Article 1, Section 7 of the public authorities law, as amended by chapter 506 of the laws of 2009, is amended by striking all references to the term “authorities budget office” thereof and substituting in lieu thereof the term “authorities oversight office.”

Article 9, Section 2800 of the public authorities law, as amended by chapter 506 of the laws of 2009, is amended by striking all references to the term “authorities budget office” thereof and substituting in lieu thereof the term “authorities oversight office.”

Article 9, Section 2801 of the public authorities law, as amended by chapter 506 of the laws of 2009, is amended by striking all references to the term “authorities budget office” thereof and substituting in lieu thereof the term “authorities oversight office.”

Article 9, Section 2802 of the public authorities law, as amended by chapter 506 of the laws of 2009, is amended by striking all references to the term “authorities budget office” thereof and substituting in lieu thereof the term “authorities oversight office.”

Article 9, Section 2806 of the public authorities law, as amended by chapter 506 of the laws of 2009, is amended by striking all references to the term “authorities budget office” thereof and substituting in lieu thereof the term “authorities oversight office.”

Article 9, Section 2824 of the public authorities law, as amended by chapter 506 of the laws of 2009, is amended by striking all references to the term “authorities budget office” thereof and substituting in lieu thereof the term “authorities oversight office.”

Article 9, Section 2824-A of the public authorities law, as amended by chapter 506 of the laws of 2009, is amended by striking all references to the term “authorities budget office” thereof and substituting in lieu thereof the term “authorities oversight office.”

Article 9, Section 2827-A of the public authorities law, as amended by chapter 506 of the laws of 2009, is amended by striking all references to the term “authorities budget office” thereof and substituting in lieu thereof the term “authorities oversight office.”

Article 9, Section 2856 of the public authorities law, as amended by chapter 506 of the laws of 2009, is amended by striking all references to the term “authorities budget office” thereof and substituting in lieu thereof the term “authorities oversight office.”

Article 9, Section 2975 of the public authorities law, as amended by chapter 506 of the laws of 2009, is amended by striking all references to the term “authorities budget office” thereof and substituting in lieu thereof the term “authorities oversight office.”

Article 9, Section 2986 of the public authorities law, as amended by chapter 506 of the laws of 2009, is amended by striking all references to the term “authorities budget office” thereof and substituting in lieu thereof the term “authorities oversight office.”

G. Accomplishments of the ABO

Accomplishments of the ABO

In 2005, when the call for comprehensive public authority reform was at its peak, the Public Authorities Accountability Act was enacted establishing this office's predecessor, the Authority Budget Office. Critics of public authorities frequently argued that these entities were "shadow governments" that operated free of effective supervision, control, and the scrutiny that comes with full public disclosure. Accordingly, any public authority reforms that were enacted had to improve oversight of the operations and financial practices of state and local public authorities and promote transparency, accountability, and a code of institutional conduct that embraced good corporate governance. The Authority Budget Office, which took effect April 1, 2007, was successful achieving these objectives and creating an infrastructure for reform that will allow the new Authorities Budget Office to execute the enforcement and regulatory powers given to it by the 2009 Public Authorities Reform Act.

Despite its limited staff and modest annual appropriation, and at no expense to the State's General Fund, the ABO increased the information available to the public, improved awareness of the management activities and decisions of boards of directors and corporate officers, and highlighted both the strengths and deficiencies of the state's extensive system of public authorities. Prior to the creation of the ABO there was little information available on the scope of public authority involvement in the public purposes of government and even less effort to understand and document how public authorities conducted that business. The ABO's accomplishments over the past four years includes:

Comprehensive Internet Website: As one of its first acts, the ABO created a web site (www.abo.state.ny.us) to provide the public with a single source of information on public authorities. This web site, the only one of its kind in the country, is used to keep boards of directors, officers, and the public informed on the law, as well as policy guidance and directives issued by the ABO, and to host for public review all the reports filed by public authorities or produced by the ABO. The web site has averaged approximately 175,000 visits per year since it went online in 2006.

Public Authorities Reporting Information System (PARIS): Although public authorities were required to file budget and financial information with the State Comptroller, Legislature and Budget Director prior to 2006, such reporting was haphazard, incomplete, and often non-existent. Working with the Office of the State Comptroller, the ABO designed, developed and implemented an online reporting system to standardize the format and content of required reports and requires the Chief Executive or Chief Financial officer to certify as to the accuracy and completeness of the data. The use of PARIS is mandatory.

Reports cannot be filed if required information is missing and the use of a standardized reporting tool has made comparative analysis easier, and the data more understandable by the public.

Compliance and Operational Reviews and Analysis: One of the responsibilities of the ABO is to conduct reviews and analysis of the operations and practices of public authorities, and assess their compliance with state law. Since 2007, the ABO has concluded 23 onsite reviews of state and local public authorities. In addition to assessing compliance, these reviews have focused on the financial and management practices of authorities and led to recommendations to improve corporate governance, discontinue ineffective or inefficient practices, and strengthen oversight by boards of directors. Final reports of all of the reviews performed by the ABO are available on the ABO's web site.

In addition, the ABO is required by law to issue an Annual Report of its operations and findings. The ABO has produced this report on July 1 of each year since 2007. Copies of the reports are also available on its web site.

Policy Guidance and Recommended Practices: If the ABO was going to assess public authorities for compliance with statutory requirements, it was important that authorities understand the standards that would be applied to measure and evaluate this compliance. As a result, the ABO has issued ten policy guidance documents that explain how state law will be interpreted and applied so that public authorities can adopt the appropriate policies and practices. The policy guidance has addressed diverse topics such as basic principles of corporate governance, financial disclosure and the fiduciary duty. At the request of public authorities, the ABO has also issued six recommended practices that can be adapted by public authorities to meet specific statutory requirements. These include model charters for the audit, finance, and governance committees and a model code of ethics.

All of these policy guidance and recommended practices can be viewed on the ABO web site.

Training, Technical Support and Assistance: By law, members of public authority boards are required to participate in training on their ethical, financial, legal and fiduciary duties. The ABO, working with the City University of New York, designed a training program to satisfy this requirement that is delivered by a variety of trainers approved by the ABO. Since its inception, the program has trained more than 3000 board members, officers, and other public authority staff, with an emphasis on improving corporate governance and instilling a corporate culture that is focused on the mission of the authority and acting in the public interest.

Data Requests: For the first time, the Executive, Legislature, state oversight agencies, the public or the media have a single point of contact for information on public authority financial practices. The ABO has begun to compile a permanent multi-year data base of information on public authority revenues, finances, debt, salary and compensation practices, procurements, investments, property transactions, and the financial assistance and job creation records of industrial development agencies. Since reporting through PARIS first began in 2008, the ABO has responded to more than 120 requests for specialized reports from these interested parties.

Inter-Agency Coordination and Enforcement: To maximize use of limited resources and minimize duplication, the ABO has partnered with other oversight and enforcement agencies and developed trusted working relationships with the Office of the Inspector General, the Office of the Attorney General, the Office of the State Comptroller, and the Committee on Open Government. Information provided by the ABO has supported investigations and enforcement actions taken by these agencies and, in return, their guidance and advice are reflected in the policies and decisions of the ABO.

The ABO has also worked closely with the Executive and the Legislature on a number of issues. For example, the ABO identified approximately 130 public authorities that were inactive or defunct and recommended to the Governor and the Legislature that those authorities be dissolved. Legislation has been introduced at the request of the Governor for that purpose and the bill is currently awaiting final passage in the Legislature. The ABO also recommended that the Governor dismiss the board of the New York State Theatre Institute following a critical investigation conducted by the Office of the State Inspector General (OSIG). Upon referral of the OSIG report and its own review of the documentation, the ABO made this recommendation consistent with its new statutory enforcement authority and the Governor's Office concurred. The Governor moved quickly to dismiss the board and appoint new members so that the Institute's contribution to the arts could continue.

H. **Executive Order No. 38**

(see attached)



State of New York

JUN - 8 2010

Department of State
Secretary of State

State of New York

Executive Chamber

No. 38

EXECUTIVE ORDER

CONTINUING THE TASK FORCE ON THE IMPLEMENTATION OF THE PUBLIC AUTHORITIES REFORM ACT

WHEREAS, I signed into law on December 11, 2009, the Public Authorities Reform Act ("PARA") in order to improve the oversight of public authorities in the State; and

WHEREAS, the implementation of PARA was foreseen to be a complex process involving the growth and development of the new independent Authorities Budget Office, which has significant powers and responsibilities for the oversight and regulation of state and local public authorities; and

WHEREAS, I concluded that the implementation of PARA should be informed and complemented by the expertise of a group of individuals knowledgeable in the field of corporate governance and other relevant disciplines; and

WHEREAS, by Executive Order No. 32, I established a Task Force on the Implementation of the Public Authorities Reform Act ("Task Force"), chaired by Ira M. Millstein, Esq., which was constituted on or about January 15, 2010, to identify and examine all matters that it deems relevant to the implementation of PARA; and

WHEREAS, PARA took effect on March 1, 2010; and

WHEREAS, the Task Force has provided and continues to provide valuable policy guidance and recommendations concerning the implementation of PARA, particularly with respect to the management by the Authorities Budget Office of its expanded powers and responsibilities; and

WHEREAS, Executive Order No. 32 provides that the Task Force will render its findings and recommendations no later than August 15, 2010 and thereafter will cease to exist, unless specifically extended; and

WHEREAS, the ongoing implementation of PARA would benefit from the expert guidance and input of the Task Force beyond August 15, 2010;

NOW, THEREFORE, I, DAVID A. PATERSON, Governor of the State of New York, by virtue of the authority vested in me by the Constitution and Laws of the State of New York, do hereby order as follows:

1. Executive Order No. 32 and the Task Force established therein are hereby extended and continued.
2. The Task Force shall render a report of its findings and recommendations no later than August 15, 2010, and following the completion of such report, the Task Force shall continue to provide advice and consultation to the Authorities Budget Office regarding such report, as well as all matters it shall deem appropriate and necessary to the ongoing implementation of PARA.



BY THE GOVERNOR

Lance Schwartz
Secretary to the Governor

G I V E N under my hand and the Privy Seal of
the State in the City of Albany this
eighth day of June in the year two
thousand ten.

David A. Paterson