

# What Happened to Authority Reform?

By Charles Brecher

For a period of about two years leading up to the 2006 statewide elections, “authority reform” gained increasing attention as an important policy issue.<sup>1</sup> Among the events creating the drum beat for reform were:



- The Assembly’s Committee on Corporations, Authorities and Commissions held hearings revealing abuse in the awarding of contracts, sale of property and other financial management practices at the Canal Corporation, the Metropolitan Transportation Authority (MTA) and other authorities.<sup>2</sup>
- The State Comptroller issued outraged reports finding public authorities in New York to be, among other things, a “secret government,”<sup>3</sup> and he was joined by the Attorney General and some legislative leaders in proposing reforms.<sup>4</sup>
- The Governor appointed a prestigious commission to examine the topic, and its May 2006 report also recommended substantial changes.<sup>5</sup>
- The non-partisan Citizens Budget Commission issued a report charging the authorities with being poorly governed and misusing their debt issuing powers, and urging reforms in these areas.<sup>6</sup>

The calls for reform were not ignored. The Public Authorities Accountability Act (PAAA), effective beginning in 2006, established new transparency requirements for authorities, set standards of independence for authority board members, authorized training of board members, and created an Authority Budget Office (ABO) to help implement the act. But few reformers thought this legislation went far enough; most reformers looked forward to additional reforms after inauguration day in 2007.

Unfortunately, instead of gaining momentum, the effort waned. Comptroller Alan Hevesi, re-elected in 2006, subsequently resigned due to abuses in his office. His appointed successor has not embraced authority reform with equal vigor. Newly elected Governor Eliot Spitzer deferred action on authority reforms in his first year, and then he resigned due to a prostitution scandal. His successor has been obliged to focus on fiscal issues due to the severe economic downturn. While the Assembly Committee Chair Richard Brodsky continued an active program of oversight hearings for the MTA and other authorities, until the summer of 2009 his legislative proposals remained “one-house bills” that were not passed in the Senate. After much political turmoil over party control of the Senate,

a Brodsky initiated bill with notable reforms passed the Senate in July 2009 and is awaiting delivery to the Governor at the time of this writing.

This article develops three points with respect to authority reform. First, the problems identified by reformers in the 2004-2006 are serious and extensive. Second, the reforms adopted in that period address only a part of the problem, and their implementation has been problematic. Third, the unaddressed problems have worsened in recent years and still warrant major changes in State policy. The 2009 reform legislation, whose fate remains uncertain, is a partial and imperfect measure for solving the remaining problems.

## What Is the Problem?

Public authorities play a major role in delivering services to New Yorkers. A recent comprehensive count identified 583 authorities statewide.<sup>7</sup> The largest group consists of 192 local public housing authorities, followed by 173 authorities with economic development missions including 116 local industrial development authorities. Another 54 are part of the state’s transportation system, ranging from the mammoth Metropolitan Transportation Authority running the New York City regional mass transit facilities to 34 far smaller local entities operating public parking garages. Additional authorities are operating parks and recreation facilities, water and sewer systems, hospitals, and solid waste disposal. A few do not serve the public directly, but provide financing for other government agencies that do.

While it is difficult to generalize about such a diverse set of institutions, the “problem” of public authorities is considered by many critics to have two dimensions. The first relates to their governance and transparency, the second relates to their borrowing powers and practices. Five issues fall under these two headings. The problems of transparency and governance are: (1) insufficient reporting to support accountability, and (2) insufficient independence in governance. The problems with debt are: (3) misuse of the power to incur government-backed debt, (4) insufficient oversight and coordination of debt backed by authority operating revenues, and (5) ineffective use of private conduit debt. While the charges each require a short separate explanation, together they comprise a serious indictment of New York’s network of authorities.

*Insufficient Reporting.* Authorities are intended to be accountable to the public, and the primary mechanism for achieving accountability is public reporting. Information that is timely, accessible and subject to outside review or audit should be provided on the organization’s financial condition and results, financial plan for future periods, condition of capital assets, and activities and accomplishments.

Prior to the Public Authorities Accountability Act, many New York authorities failed to meet these standards for reporting. Available information was generally limited to financial condition and results, and this information was not readily accessible and suffered from inconsistencies among entities in time horizons and definitions of fiscal years. Information on future financial plans and capital assets was often unavailable. And no one entity provided a “big picture” of the finances of the multiple authorities.

*Insufficient Independence.* A defining characteristic of public authorities is a degree of insulation from the pressures of electoral politics. Authorities are governed by “independent” boards, rather than by elected officials or commissioners serving at the pleasure of elected officials. This degree of independence is intended to enable boards to make decisions that provide long-term benefits and that are fiscally responsible, even if unpopular. Politicians count on authority boards to do things like site and build power plants or raise tolls and fares for bridges and subways.

Critics charge that the desired independence of boards has been undermined by practices such as appointing only individuals who accept a role as representative of the appointing official rather than as an independent voice, and keeping board members indefinitely in a “hold over” status that makes them subject to dismissal at the will of the appointing official rather than re-appointing them or appointing a new member to a full, fixed term. Patronage-like decisions in procurement and in hiring of senior staff, and an associated decline in professionalism among staff, is associated with this erosion of board independence.

*Misuse of Tax-Backed Debt.* Debt is both a useful and respected tool of public finance, and it is a dangerous temptation for elected officials. Borrowing long-term to finance capital projects such as sewers, roads and schools makes good sense; multiple generations of taxpayers who enjoy the benefits of these facilities should also share the burden of paying for them. Tax-backed or general obligation bonds of state and local governments are suitable means for financing long-term investments.

At the same time, such borrowing can be misused. It is inappropriate for operating purposes rather than capital investments, and even capital-related borrowing can become excessive. Tax-backed bonds enable elected officials to gain short-run political credit as they cut ribbons for new projects, while passing much of the cost onto future taxpayers who have no say in the current decision to borrow.

A common solution to this dilemma is constitutional limits on state and local borrowing. In New York, the State limit takes the form of a constitutional provision requiring voter approval for the amount and purpose of any general obligation bonds. The limit on local government general

obligation debt in New York is typically set as a percentage of the jurisdictions’ property values.

State leaders have been frustrated by the constitutional debt limit. Since 1946, voters have been asked to approve 34 different bond proposals; 22 passed and 12 failed. Of the six considered since 1990, four have failed.<sup>8</sup>

Authorities have been used to circumvent the limit on state debt with a device called “backdoor borrowing.” Three financing mechanisms enable authorities to borrow on behalf of the State: lease-purchase agreements, dedicated taxes, and securitization. Under lease-purchase agreements, an authority issues the bond with debt service covered by contractual payments from the State. State payments are subject to annual appropriations from the Legislature, but the mechanism has proven suitable for large-scale borrowing at interest rates only slightly above those for general obligation bonds. Similarly, a part of the revenue collected as state taxes can be dedicated to an authority to repay its debt issued for the state’s purposes. For example, New York State has dedicated a part of its sales tax revenues to support the Local Government Assistance Corporation, and it has dedicated a part of its personal income tax revenue to support bonds issued by five authorities.<sup>9</sup> Securitization is a mechanism to pledge future non-tax revenues for the repayment of bonds. The prime example in New York is the creation in 2003 of the Tobacco Settlement Financing Corporation to issue bonds backed by court-ordered payments to the State from tobacco companies.

The combination of creative financing mechanisms and multiple authorities available to use them means that there is no effective limit on the amount of State-funded debt despite the intention of the constitutional drafters. Equally important, there is no effective constraint on the uses of the proceeds from these borrowings, permitting the State to borrow for operating purposes as well as capital investments. The proceeds of the Local Government Assistance Corporation’s borrowing were used to make aid payments to school districts and localities, and the proceeds of the Tobacco Settlement Corporation’s borrowing were used to help cover the State’s deficits in fiscal years 2003, 2004 and 2005. In addition, some authority borrowing was used to “purchase” assets from the State so that the money could be applied to the operating budget including, for example, the “sale” of a prison to the Urban Development Corporation and roads to the Thruway Authority.

The City of New York also has used authorities to circumvent its debt limit. Because of the rapid increase in real estate values over the past decade, the City’s debt limit is currently well above the amount of outstanding debt—\$70.4 billion versus \$59.1 billion.<sup>10</sup> However, in the mid-1990s a combination of hard economic times and a growing capital budget put the City close to its debt limit. In order to continue borrowing, the City obtained state legislation creating the Transitional Finance Authority

(TFA). It used the device of dedicated taxes; a portion of the City's income tax was allocated to pay debt service on the new authority's bonds.<sup>11</sup> Another form of City borrowing outside the constitutional limit is the Sales Tax Asset Receivable Corporation (STARC). Created in 2004 to replace the outstanding debt of the Municipal Assistance Corporation, its bonds are backed by state sales tax revenue paid to the City through the State's Local Government Assistance Corporation. The City's Tobacco Settlement Asset Securitization Corporation, created in 1999, issued bonds outside the constitutional debt limit that are backed by court-ordered tobacco company payments. The City also uses lease-purchase agreements with multiple authorities including the Dormitory Authority and the Urban Development Corporation.

*Insufficient Oversight and Coordination of Revenue-Backed Debt.* Although authorities are misused to avoid debt limits, it is desirable for authorities to borrow for other reasons. Debt supported by revenues generated by authority investments, such as water systems, bridges, and housing, are a legitimate and vital use of authorities' powers and capacities.

While project revenue-backed debt is generally an appropriate and desirable form of authority borrowing, the way in which this borrowing takes place in New York raises two important issues: (1) limited coordination with capital planning by state agencies, and (2) inadequate advance review of the projects.

Investments financed by project revenue borrowing are not coordinated with the State's capital plan for its direct agencies, leading to fragmentation of capital planning. State capital plans are prepared by the Governor on a rolling five-year basis and are reviewed and authorized by the Legislature. An example of successful coordination between the State government and an authority is State legislation which requires that the Metropolitan Transportation Authority (MTA) prepare a five-year capital plan, and that the plan be subject to approval by a Capital Program Review Board. Authorities other than the MTA are not required to prepare multiyear capital plans and their capital plans are not subject to review by the Governor's Division of the Budget or by the Legislature. Each state authority develops its own procedure for capital planning, and the plan is reviewed only by the authority's board. Yet several State authorities control large-scale capital assets and make substantial annual capital investments financed with their independent revenues. State authorities with capital assets valued at more than \$1 billion include the Thruway Authority, the Long Island Power Authority, and the New York Power Authority.

Project revenue borrowing is not subject to sufficient advance review to protect the State or the relevant local government from an authority taking on a project that might not be financially viable. The Public Authority Control Board (PACB), established in 1975 to review and

approve some State authority borrowing, suffers from three limitations:

- (1) Much authority borrowing is exempt from PACB review, including large borrowers such as the New York State Power Authority, the Metropolitan Transportation Authority, and the Thruway Authority. In addition, all the local authorities are exempt. As a result less than one-third of all revenue-backed debt is subject to PACB review.<sup>12</sup>
- (2) The review of covered borrowings is not sufficiently rigorous or transparent. When the PACB reviews a proposed borrowing, the analysis behind its decision is not presented in public documents. An authority prepares an application for the PACB, and the PACB adopts a formal resolution of approval for the projects it accepts. However, the documents typically contain data relating only to the sources and uses of funds; they do not analyze whether the cost estimates are reasonable, whether the future revenue stream will make repayment of the debt likely, or whether the project has long-run financial viability.
- (3) The timing of the review is typically a "last step" in the planned borrowing that can delay transactions and limit the flexibility of authorities in taking advantage of market conditions for low-cost borrowing.

*Ineffective Use of Private Conduit Debt.* Authorities are the mechanism by which states can bestow federal tax benefits on private organizations. By borrowing on behalf of a private party, the government entity can gain a federal tax exemption for the interest paid on the debt. In competitive capital markets, this lowers the interest rate that the borrower must pay. Thus, in effect, by borrowing on behalf of a private party, a public authority gives that party a subsidy at the expense of the federal government. In New York, the State also grants exemptions to state and local income taxes, increasing the value of the subsidy.

In 2004 the total amount of private conduit debt issued by authorities in New York was about \$40 billion. State authorities (principally the Dormitory Authority) account for more than half this total, the New York City Industrial Development Agency nearly one-fifth, and other local IDAs more than one-fifth.<sup>13</sup>

While desirable and appropriate in certain situations, this type of borrowing poses a significant problem. The allocation of the benefits of tax-exempt borrowing among private parties is not guided by a set of strategic priorities that maximize the social return and avoid counter-productive competition among multiple authorities. Federal laws set the rules for what types of projects are eligible for private conduit borrowing and, for some purposes, cap the amount that can be issued. The State Legislature determines the broad allocation of the state's cap annually.

Generally, the Legislature divides the statewide cap into thirds. One-third is allocated to local governments, one-third is allocated to state agencies, including state authorities, and the last one-third is set aside for a “statewide reserve” and is jointly administered by the Department of Economic Development and the Division of the Budget.

Some of the conduit debt that authorities issue is not subject to the cap. This is primarily borrowing for health care and higher education institutions. Such borrowing has little strategic guidance from state officials, which in some cases has led to suboptimal use. One result, evident in the hospital sector, is a surplus of facilities. As a result, a recent gubernatorial commission recommended closing some hospital facilities financed with conduit borrowing by the Dormitory Authority. New subsidies were recommended to retire that debt with the expectation that future operating savings will justify the needed additional subsidy.<sup>14</sup>

### Limited Progress on Transparency and Governance

The most important step taken in the name of “authority reform” was creation of the Authority Budget Office (ABO) under the Public Authorities Accountability Act. The nature of the office was itself a matter of controversy. Some reformers wanted any agency charged with monitoring authorities to be independent in the sense that it not be accountable directly to either the Governor or legislative leaders. At the same time the State Comptroller, who already had some role in monitoring authorities, wanted to enhance the powers of his office. The eventual legislation put the new ABO under the Governor and within the Division of the Budget. However, the act called for cooperation between the ABO and the Comptroller’s Office.

Since its creation, the ABO has focused on three of its mandated activities: advancing transparency by collecting and maintaining publicly available information on authorities’ finances, training authority board members, and conducting reviews of authorities’ compliance with requirements of State laws including the Public Authorities Accountability Act and other good management practices.

With respect to transparency, the ABO worked with the Office of the State Comptroller to design and implement the Public Authorities Reporting Information System (PARIS), an electronic reporting system that makes information submitted by authorities available in a standard format on the Internet. However, during the system’s first year compliance was a problem. Of the 268 authorities required by statute to submit budget reports by June 30, 2008, only 165, or 62 percent, had done so. For submission of required annual reports, the compliance rate was 65 percent.<sup>15</sup> At the end of the second year the compliance rates were 70 percent and 63 percent, respectively, and the

staff was concerned that some of the reported information was of questionable accuracy.<sup>16</sup>

To promote responsible governance, the reform law required authority board members to participate in State-approved training programs. The ABO has approved the personnel and curricula of 11 training organizations and has developed a partnership with the City University of New York as an additional source for training of board members. From the start of the program in 2006 through mid-2009, more than 2,000 board members and staff from 41 state authorities and 260 local authorities participated in approved training. While these absolute numbers are impressive, they represent only limited compliance with the law. No board members from two state authorities and 52 local authorities had attended training, and many other authorities had some board members who have not yet participated.<sup>17</sup>

The ABO has developed protocols for compliance review and in the year ended June 30, 2008 completed five such reviews. In the next year they completed three additional reviews with the reports of two released by June 30, 2009 and the third to be released after review and comment by the authority staff. The results are not encouraging from the perspective of authority concern for good governance and management practices. While the ABO found two of the five authorities examined in the first year (the Environmental Facilities Corporation and the Albany County Airport Authority) to be well functioning with a well-informed board, the favorable review was tempered by recommendations to continue to improve transparency and accountability by updating policies and procedures.

The three other reviews indicated serious compliance issues. At the Colonie Industrial Development Agency, “...progress toward compliance with certain provisions of the Public Authorities Accountability Act and other laws has been limited. In particular, the Agency has consistently failed to meet certain reporting requirements, has not established required policies and guidelines, and record management and retention practices have been inadequate.”<sup>18</sup> At the Olympic Regional Development Authority, the ABO found that “while the Board of Directors does oversee operations at a summary level, a more thorough review of supporting financial operations including additional long-term capital and financial planning is needed.”<sup>19</sup>

Most troubling was the situation at the Seneca County Industrial Development Agency. The ABO found “... examples where the Board may not have acted in adherence with Open Meetings law, did not fully adhere to its bylaws and resolutions, signed or relied on documents that were incomplete or inaccurate, and did not make all relevant material available to the public, or did not thoroughly document the basis for its actions.”<sup>20</sup> Moreover, the Agency’s response to the review was that the require-

ments of the law were viewed only as aspirational goals and not firm requirements.

The efforts of the ABO are likely to continue to yield some progress toward greater transparency and better governance. But the limited compliance with reporting and other requirements highlights an issue anticipated in the Final Report of the State Commission. It noted that the ABO lacked needed enforcement powers:

The powers of the ABO as currently structured cannot accomplish the Commission's objectives...[t]he Act itself left the ABO's power and role unclear. If the ABO's powers are only implied, we question whether the public authorities will fully comply with the ABO's assertion of power. To carry out effective oversight, the role and power of the ABO must be legislatively created...[t]hese missing elements must be filled by new legislation.<sup>21</sup>

### The Debt Problems Worsen

If the ABO is a weak remedy for the problems of transparency and governance, it still is better than the absence of action to deal with debt problems. As a result, the debt situation has worsened as past trends continue.

*State Supported Debt.* The state continues to borrow against its future revenues by using authorities rather than general obligation debt. Between the end of fiscal

year 2004 and fiscal year 2009, the state's outstanding debt grew by \$4.9 billion from \$46.8 billion to \$51.7 billion. (See Table 1.) Yet during this period outstanding general obligation debt actually declined. All the growth was in the form of debt issued by authorities, and the general obligation share of outstanding debt fell from 8.1 percent to 6.4 percent.

This pattern is projected to continue in coming years even after approval of a general obligation bond issue of \$2.9 billion for transportation in 2005. Use of this new authority will increase outstanding general obligation debt from \$3.3 billion at the end of fiscal year 2009 to about \$4.0 billion at the end of fiscal year 2014, but state debt issued by authorities will grow even more. Thus, the general obligation share of total state debt at the end of 2014 is projected to be a modest 6.7 percent.

It is worth noting that the debt totals in Table 1 do not include the \$2.3 billion outstanding from the STARC and about \$2.0 billion in Building Aid Revenue Bonds (BARBs) issued by the TFA. While these issuers are authorities classified as New York City authorities, the revenue supporting these bonds are, respectively, state sales tax revenues and state education aid payments. The State Comptroller has suggested that this debt should be considered state-related debt;<sup>22</sup> in that case the total outstanding state debt at the end of fiscal year 2009 would be about \$56 billion. In the case of STARC, the borrowing is for operating rather than capital purposes, since the refinancing of Municipal Assistance Corporation bonds with

	Actual						Projected				
	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014
<b>General Obligation</b>	<b>3,804</b>	<b>3,654</b>	<b>3,470</b>	<b>3,302</b>	<b>3,221</b>	<b>3,323</b>	<b>3,566</b>	<b>3,882</b>	<b>4,030</b>	<b>4,119</b>	<b>3,984</b>
<b>Authority Debt</b>	<b>42,968</b>	<b>43,094</b>	<b>43,462</b>	<b>44,836</b>	<b>46,358</b>	<b>48,407</b>	<b>50,966</b>	<b>53,435</b>	<b>55,080</b>	<b>55,840</b>	<b>55,883</b>
Dormitory Authority	13,157	13,099	13,989	15,287	15,825	17,010	18,481	20,184	21,598	22,009	24,208
Thruway Authority	8,526	8,896	8,607	9,238	9,889	10,398	10,942	11,386	11,485	11,543	11,586
Empire State Development Corporation	6,061	6,294	6,363	6,267	6,914	7,524	8,175	8,954	9,538	9,534	9,201
Local Government Assistance Corporation	4,569	4,449	4,317	4,204	4,021	3,848	3,651	3,449	3,221	2,981	2,748
Tobacco Settlement Financing Corporation	4,551	4,495	4,278	4,084	3,870	3,551	3,208	2,839	2,443	2,018	1,562
Metropolitan Transit Authority	2,395	2,354	2,311	2,266	2,219	2,169	2,117	2,063	2,005	1,945	1,882
Housing Finance Agency	1,267	1,317	1,398	1,334	1,388	1,474	1,768	1,820	1,876	1,869	1,769
EFC/NYSERDA*	536	638	727	759	862	1,085	1,260	1,358	1,487	1,524	1,598
MBBA Prior Year School Aid Claims	510	507	504	484	464	442	419	396	371	345	319
Other	1,397	1,046	967	912	906	906	943	987	1,056	2,072	1,011
<b>Total State Related Debt</b>	<b>46,772</b>	<b>46,748</b>	<b>46,932</b>	<b>48,139</b>	<b>49,579</b>	<b>51,730</b>	<b>54,532</b>	<b>57,317</b>	<b>59,110</b>	<b>59,959</b>	<b>59,867</b>
General Obligation Debt as Percent of Total	8.1%	7.8%	7.4%	6.9%	6.5%	6.4%	6.5%	6.8%	6.8%	6.9%	6.7%

Sources and Notes: All 2004 data with the exception of the Tobacco Settlement Financing Corporation, MBBA and a portion of "Other" is from NYS Division of Budget, 2004-05 Capital Program and Financing Plan Update, November 14, 2004, pg. 20; additional data from NYS Office of the State Comptroller, Comprehensive Annual Financial Report (CAFR) 2004, pg. 26. All 2005 data with the exception of the Tobacco Settlement Financing Corporation, MBBA and a portion of "Other" is from the 2005-06 Enacted Budget Capital Program and Financing Plan, April 25, 2005, pg. 27; additional data is from the NYS CAFR 2005, pg. 26. 2006 data, 2006-07 Enacted Budget Capital Program and Financing Plan, May 26, 2006, pgs. 71-72. 2007 data, 2007-08 Enacted Budget Capital Program and Financing Plan, April 25, 2007, pgs. 76-77. 2008 data, 2008-2009 Enacted Budget Capital Program and Financing Plan, May 14, 2008, pgs. 61-62. All 2009-2014 data, 2009-10 Enacted Budget Capital Program and Financing Plan, May 1, 2009, pgs. 61-61.

\* EFC - Environmental Facilities Corporation, NYSERDA - New York State Energy Research and Development Authority.

STARC bonds was intended to provide fiscal relief for the City of New York's operating budget.

Some of the State's new authority borrowing is being used for operating purposes, albeit in subtle ways. Two examples are in the state's fiscal year 2010 adopted budget. The Environmental Facilities Corporation is required to transfer \$95 million of its currently available cash to the State's general fund, and was authorized to borrow an additional \$95 million to replace that. Similarly, the Battery Park City Authority was authorized to transfer some of its cash balances to the general fund while simultaneously receiving increased borrowing authority.<sup>23</sup>

The State's borrowing practices are expected to approach or exceed borrowing limits established by State legislation by the fiscal year 2013 or 2014. The Debt Reform Act of 2000 required that (1) debt issued after April 1, 2000 be used only for capital purposes, (2) debt outstanding could not exceed 4 percent of the state's personal income, and (3) debt service on such debt could not exceed 5 percent of the state's all-funds receipts.<sup>24</sup> The latter two provisions were phased in over 10 years and 13 years, respectively.

These statutory debt caps proved relatively generous because they applied only to newly issued debt and excluded previously outstanding debt because the legislature subsequently exempted large amounts of new debt from the limit, and because personal income rose rapidly during much of the post-2000 period. However, the Division of the Budget projected that the capital plan included as part of the enacted fiscal year 2010 budget would lead to borrowing that exceeds the cap in fiscal year 2013,<sup>25</sup> but the Division subsequently revised its projections to indicate borrowing would remain \$700 million below the cap through fiscal year 2014.<sup>26</sup> The narrowing of the available margin is due to the combination

of a slowdown in personal income growth as a result of the current severe recession and the pace of new borrowing; the variability in the estimates is due primarily to the assumptions made about the volatility of personal income in the projections.

*New York City Debt.* Like the State, the City of New York has continued to rely heavily on authority borrowing. Between the end of fiscal year 2004 and fiscal year 2009, the City's debt increased by \$19.2 billion to nearly \$82.7 billion. (See Table 2.) Of the increase, nearly \$11.0 billion was in authority debt. As part of this growth, two new authorities were created—the STARC with outstanding debt of nearly \$2.3 billion and the Hudson Yards Infrastructure Development Corporation (HYIDC) with \$2.0 billion. The HYIDC bonds are backed by payments in lieu of taxes from real estate owners who make investments in the area, but until such development takes place the City pays the interest on the bonds. In addition, the TFA was given new authority to issue BARBs for another \$1.4 billion. The City's Water and Sewer Finance Authority, whose bonds are backed by water and sewer charges, also increased its debt substantially. As a result, even though regular TFA borrowing was reduced, the City's general obligation debt accounted for a smaller share of total outstanding debt at the end of fiscal year 2009 than at the end of fiscal year 2004.

**Table 2**  
New York City Related Debt Outstanding, 2004-2009 at Fiscal Year-End  
(Millions of Dollars)

	Actual					Projected
	2004	2005	2006	2007	2008	2009
<b>General Obligation and Other*</b>	<b>31,378</b>	<b>33,903</b>	<b>35,844</b>	<b>34,506</b>	<b>36,100</b>	<b>39,644</b>
<b>Authority Debt</b>	<b>32,076</b>	<b>33,787</b>	<b>34,646</b>	<b>40,078</b>	<b>41,733</b>	<b>43,053</b>
Transitional Finance Authority (TFA)	13,364	12,977	12,233	13,307	12,828	12,674
TFA Building Aid Revenue Bonds (TFA BARBs)	NAP	NAP	NAP	1,300	2,000	1,394
Tobacco Settlement Asset Securitization Corp (TSASC)	1,256	1,283	1,334	1,317	1,297	1,271
Capital lease and city-guaranteed	2,848	2,766	2,719	2,611	1,831	1,750
Municipal Assistance Corp (MAC)	1,758	NAP	NAP	NAP	NAP	NAP
Sales Tax Asset Receivable Corp (STARC)	NAP	2,552	2,470	2,368	2,339	2,287
Hudson Yards Infrastructure Corp (HYIC)	NAP	NAP	NAP	2,100	2,067	2,000
Water Finance Authority	12,850	14,209	15,890	17,075	19,371	21,677
<b>Total City Related Debt</b>	<b>63,454</b>	<b>67,690</b>	<b>70,490</b>	<b>74,584</b>	<b>77,833</b>	<b>82,697</b>
General Obligation Debt as Percent of Total	49.4%	50.1%	50.8%	46.3%	46.4%	47.9%

Sources and Notes: Actual data from the New York City Office of the Comptroller, Comprehensive Annual Financial Reports (NYC CAFR) for Fiscal Years 2004 to 2008, with the exception of the Water Finance Authority. Actual data for the Water Finance Authority from the City of New York, Office of Management and Budget Analysis, Executive Budgets for Fiscal Years 2004 to 2008. 2004 data, *NYC CAFR 2004*, pg. 21, and *City of New York Executive Budget Fiscal Year 2005*, pg. 111; 2005 data, *NYC CAFR 2005*, pg. 21, and the *Executive Budget FY2006*, pg. 116; 2006 data, *NYC CAFR 2006*, pg. 23, and the *Executive Budget FY2007*, pg. 111; 2007 data, *NYC CAFR 2007*, pg. 24 and the *Executive Budget FY 2008*, pg. 85; 2008 data, *NYC CAFR 2008*, pg. 24, and the *Executive Budget FY2009*, pg. 73; 2009 data for General Obligation, TFA, and TSASC is from the *Executive Budget FY 2009*, pg. 73, data for TFA BARBs from NYS Office of the State Comptroller, *Debt Impact Study*, January 2008, pg. 28, data for STARC based on actual debt outstanding as of prior fiscal year-end and projected debt retirements is SFY 2009 from *Debt Impact Study*, pg. 29, 2009 HYIC debt outstanding is an estimate.

\* Other includes Samurai Funding Corp.  
NAP-not applicable.

**Project Revenue Debt.** Eight large authorities account for the bulk of project revenue debt issued by state authorities. (See Table 3.) At the end of fiscal year 2008 these entities had about \$44.1 billion in outstanding debt.

based on an updated needs assessment, and it has not yet released an updated assessment for developing the next plan spanning 2010-2014. The projects in the current plan have suffered from delays and cost overruns, suggesting weak project management.<sup>28</sup>

Another problematic issuer of project revenue debt is the Urban Development Corporation (recently operating as the Empire State Development Corporation, or ESDC). Its borrowings are subject to review by the PACB, but this review has become politicized and sometimes uses criteria other than financial viability. Perhaps the most widely covered example of PACB rejection of a project was the veto of the football stadium proposed by Mayor Michael Bloomberg as part of the plan for

**Table 3**  
**Estimated Project Revenue Backed Debt Outstanding, 2003 and 2008 at Fiscal Year-End**  
*(Millions of Dollars)*

<u>Issuer</u>	<u>2003</u>	<u>2008</u>	<u>Percent Change</u>
Metropolitan Transportation Authority (MTA) (a)	15,872	22,687	30.0%
NYS Thruway Authority (b)	1,709	2,238	23.6%
Housing Finance Agency (HFA) (c)	4,273	7,590	43.7%
Urban Development Corporation (UDC) (d)	492	1,250	60.6%
Long Island Power Authority (LIPA) (e)	7,146	6,831	-4.6%
Power Authority of the State of New York (f)	2,526	2,287	-10.5%
Battery Park City Authority (g)	1,162	1,044	-11.3%
Niagara Frontier Transportation Authority (h)	196	183	-6.9%
<b>Total Estimated Project Revenue Backed Debt</b>	<b>33,376</b>	<b>44,110</b>	<b>24.3%</b>

Sources: 2008 numbers: (a) NYS Office of the State Comptroller, *Comprehensive Annual Financial Report (CAFR) 2008*, pg. 66, project revenue debt is calculated as the difference between total and state funded amounts; (b) NYS Thruway Authority, *Annual Report 2008*, pgs. 30-32; (c) Housing Finance Agency, *Annual Report 2008*; (d) *NYS CAFR 2008*, pgs. 3, 44, 66, calculated as the difference between the total and the state and city funded amounts; (e) and (f) *NYS CAFR 2008*, pgs. 44-45; (g) Battery Park City Authority, *Basic Financial Statements, October 31, 2008 and 2007*, pg. 20; (h) Niagara Frontier Transportation Authority, *Basic Financial Statements, March 31, 2009*, pg. 22. All data for 2003 from Citizens Budget Commission, *Public Authorities in New York State*, April 2006, with the exception of the Housing Finance Agency, which is from NYS Office of the State Comptroller, Public Authority Information, <<http://www.osc.state.ny.us/pubauth/data/authorities/HFA.htm>> (July 3, 2009). 2004 UDC data is as of 2004 fiscal year-end.

More than half this total is accounted for by the Metropolitan Transportation Authority (MTA). The MTA's large and growing debt is problematic in three ways. First, it is not fully backed by true "project revenues." While fares and tolls provide a large share of the MTA's revenues, it also is heavily dependent on dedicated taxes, some of which must be appropriated by the State Legislature each year. In this sense, the MTA's borrowing is as much State-supported debt as it is independent-revenue-backed debt. Second, the debt service related to the MTA's borrowing has put pressure on its operating budget. The combination of growth in debt service and in operating expenses led the MTA in 2009 to both impose significant fare increases and obtain a new, dedicated regional payroll tax. Even with these new measures, the MTA will require additional fare increases and other new revenues to support its operations and its capital investment plan in less than two years.<sup>27</sup> Third, the debt supports a capital investment program that is not based on updated needs assessments and is poorly managed. The MTA's current five-year capital plan spanning 2005-2009 was not

developing the Hudson Yards and as part of New York City's bid for the 2012 Olympics. The project had approvals from the relevant municipal agencies, and the involvement of the ESDC for a part of the project had also been approved by the ESDC board. However, the legislative representatives on the PACB rejected the project at a late stage. Assembly Speaker Sheldon Silver had his representative vote against it on grounds that development in that area would compete with development in lower Manhattan (a part of his district).<sup>29</sup>

The State's two large power-generating authorities are not subject to PACB review, their capital plans are not formally coordinated with planning of other state agencies, and their capital planning procedures do not receive significant public attention. Both entities have reduced their outstanding debt. A more complete review of their capital plans would be necessary to judge if this results from sound financial management or reflects underinvestment in needed infrastructure.

*Private Conduit Debt.* The large and growing amount of private conduit debt issued by authorities consists primarily of two types. (See Table 4.) Fully \$22.8 billion of the \$47.2 billion total has been issued by industrial development agencies, with the New York City IDA accounting for nearly half that sum. Another \$16.4 billion has been issued by the Dormitory Authority, largely for nonprofit organizations.

The IDA borrowings are typically part of packages including tax exemptions put together to attract or retain firms to the areas served by multiple agencies. The activities continue to be subject to the same criticisms raised by reformers in previous years. The agencies sometimes compete with each other, raising the cost of any justifiable subsidies, and sometimes give incentives that are based on political access more than economic need. The limited

transparency surrounding negotiations with private firms limits the accountability of the IDAs.

Much of the increase in New York City IDA conduit debt is related to the building of baseball stadiums for the New York Yankees and the New York Mets. The stadiums in which the teams previously played were built and owned by the City's Parks Department, and were leased to the teams for their use. The costs of building and later renovating these stadiums were covered with general obligation debt and were part of the City's capital budget. The arrangements for financing the new stadiums make use of conduit debt. The IDA issues bonds on behalf of the teams' owners, and the bonds are repaid with payments in lieu of taxes (PILOTs) from the owners. Rather than the Parks Department owning the facilities, new private entities that are subsidiaries of the teams lease the stadiums from the IDA and control them. In the case of the Mets the conduit borrowing is about \$613 million; for the Yankees the initial borrowing was about \$943 million for the stadium plus \$295 million for related parking facilities, and the team requested an additional \$370 million in conduit financing in 2009 to cover previously unanticipated costs. These transactions, and particularly the more expensive ar-

**Table 4**  
**Estimated Private Conduit Debt Outstanding, 2004 and 2008 at Fiscal Year-End**  
Millions of Dollars

<u>Issuer</u>	<u>2004</u>	<u>2008</u>
<b>Port Authority of New York and New Jersey (a)</b>	<b>1,379</b>	<b>1,118</b>
<b>State Authorities (b)</b>	<b>22,015</b>	<b>23,280</b>
Dormitory Authority of the State of NY	14,694	16,438
Health Care Facilities	9,379	9,246
Education	5,314	7,192
NYS Energy Research & Development Authority (NYSERDA)	3,705	3,626
State of NY Mortgage Agency	3,298	2,948
NYS Environmental Facilities Corporation	318	267
<b>NYC Industrial Development Agency (c)</b>	<b>7,471</b>	<b>10,831</b>
<b>Industrial Development Agencies* (excl. NYC) (d)</b>	<b>9,383</b>	<b>11,968</b>
Erie County	N/A	1,135
Nassau County	N/A	964
Suffolk County	N/A	818
Syracuse	N/A	653
Dutchess County	N/A	628
Monroe	N/A	550
Albany City	N/A	499
Westchester County	N/A	496
Hempstead	N/A	473
All other	N/A	5,752
<b>Total</b>	<b>40,248</b>	<b>47,197</b>

Sources and Notes: (a) The Port Authority of New York and New Jersey, Financial Statements and Appended Notes, years 2004 and 2008; privately funded amount represents Special Project Bonds outstanding. (b) Data for 2004 from Citizens Budget Commission, *Public Authorities in New York State*, April 2006. 2008 data from the following: Dormitory Authority of the State of New York, Schedule of Bonds and Notes Outstanding, March 31, 2008, pgs. 6-19; NYSERDA, Financial Statements, March 31, 2008, pg. 22 and 5; State of NY Mortgage Agency from NYS Office of the State Comptroller, *NYS CAFR 2008*, pgs. 44-45; NYS Environmental Facilities Corporation, *2008 Annual Report*, pg. 30. (c) Data for 2004 from Office of State Comptroller, Financial Data for Local Governments, <<http://www.osc.state.ny.us/localgov/datanstat/findata/2003idas.xls>> (November 28, 2005). Data for 2008 from NYC Industrial Development Authority, Audited Financial Statements FY2008, conduit and bonds payable. (d) Data for 2004 from Office of State Comptroller, Financial Data for Local Governments, <<http://www.osc.state.ny.us/localgov/datanstat/findata/2003idas.xls>> (November 28, 2005). Data for 2008 provided by the Office of the New York City Comptroller and the New York State Authority Budget Office.

N/A - Not Available.

\* Figures exclude debt issued on behalf of local governments.

rangements with the Yankees, have been questioned as large tax subsidies unjustified by economic development benefits; in addition, the legality of the arrangement with the Yankees under Internal Revenue Service rules has also been questioned.<sup>30</sup>

IDAs can and do provide conduit borrowing for nonprofit entities, but the bulk of this activity is handled by the Dormitory Authority. The recent decline in that authority's outstanding conduit debt for health facilities (see Table 4) suggests some rationalization of investment in that sector as a result of heightened cost-control concerns. However, debt for educational institutions has grown notably, suggesting possible future issues of financial viability for that sector.

## Conclusion

Public authorities play a major role in providing services to New Yorkers and raising capital for public and private facilities. But their potential benefits are being limited by practices that hinder their effective governance and misuse their borrowing capacity. Efforts at reform in 2005 and 2006 yielded only modest progress before they waned in the light of more dramatic events in Albany.

After a reversal in party control of the State Senate in July 2009, an authority reform bill initiated in the Assembly was passed by the Senate and is, at the time of this writing, awaiting delivery to the Governor. It includes several positive measures that bolster the powers of the ABO, support a more independent role for authority board members, and potentially limit procurement and other abuses by authorities. However, it also compromises the independence of authority boards by making their large contract awards subject to approval by the State Comptroller, and—most importantly—it does not address the serious debt problems related to authorities.

A revived movement to enhance the powers of the ABO, to pursue a constitutional amendment that effectively limits the uses and amount of State-supported debt, and better oversight for authority capital planning and borrowing is needed to enable New York's authorities to better serve the public. These are the directions that "authority reform" should take in the second half of 2009 and beyond.

## Endnotes

1. See, e.g., N.Y. COMP. CODES R. & REGS. tit. 9, § 5.135 (2005) (establishing, by executive order issued by New York Governor George E. Pataki, the New York State Commission on Public Authority Reform).
2. Richard L. Brodsky, *2004 Legislative Update from the NYS Assembly Committee on Corporations, Authorities and Commissions*, N.Y. STATE ASSEM. COMM. ON CORP., AUTH., AND COMMISSIONS, January 2005, available at <http://assembly.state.ny.us/comm/Corp/20050103/>; Richard L. Brodsky, *2005 Legislative Update from the NYS Assembly Committee on Corporations, Authorities and Commissions*, N.Y.S. ASSEM. COMM. ON CORP., AUTH. AND COMM.'S, April 2006, available at <http://assembly.state.ny.us/comm/Corp/20060330/>. See also Public Authorities Accountability Act, ch. 766 L. 2005, 228th Sess.

- (N.Y. 2005) (codified as amended at PUB. AUTH. LAW §§ 2 *et seq.* (2006)).
3. Office of the N.Y. State Comptroller, Public Authority Reform: Reining in New York's Secret Government (Feb. 2004); see also Office of the N.Y. State Comptroller, Strengthening State Procurement Practices: Producing the Best Results for New Yorkers (April 2005).
4. Press Release, Office of the N.Y. State Comptroller, Hevesi, Spitzer, Silver, Brodsky Issue Sweeping Public Authority Reform Proposal (Feb. 17, 2005), available at <http://www.osc.state.ny.us/press/releases/feb05/021705b.htm>.
5. N.Y. State Commission on Pub. Auth. Reform, New York State Commission on Public Authority Reform Report (May 17, 2006), available at <http://www.abo.state.ny.us/commissionPublicAuth/FinalReport.pdf>.
6. Charles Brecher and Jo Brill, Citizens Budget Commission. Auth. Reform Comm., Public Authorities in New York State (April 2006) (a summary of this report was issued as Citizens Budget Comm'n, New York's Public Authorities: Promoting Accountability and Taming Debt (Sept. 2006)).
7. The tally is based on data compiled in 2005 by the Office of the State Comptroller, analyzed by the Citizens Budget Commission staff, and published in CITIZENS BUDGET COMM'N, NEW YORK'S PUBLIC AUTHORITIES: PROMOTING ACCOUNTABILITY AND TAMING DEBT at 3, tbl. 1 (Sept. 2006).
8. *Id.* at 11 (data from New York State Board of Elections presented by Brecher and Brill).
9. The five authorities are the Urban Development Corporation, Housing Finance Agency, Thruway Authority, Dormitory Authority and Environmental Facilities Corporation.
10. OFFICE OF THE N.Y. STATE COMPTROLLER, BUREAU OF FISCAL AND BUDGET STUDIES, FISCAL YEAR 2009 ANNUAL REPORT OF THE COMPTROLLER ON CAPITAL DEBT AND OBLIGATIONS, January 2009 at vii, 1, tbl. 1 (setting the limit as of July 1, 2008 and debt outstanding as of June 30, 2008).
11. As its name indicates, the TFA was initially intended to serve as a transitional mechanism, pending enactment of a new constitutional debt limit. However, no constitutional amendment providing for a different debt limit has been proposed by the City. In fact, TFA interest rates have generally been lower than rates for City general obligation bonds, so the City has sought to rely increasingly on the TFA to support its capital program even when the constitutional debt limit was not a factor. In addition, in 2006 the TFA was authorized to borrow against state aid pledged for public school capital projects.
12. CITIZENS BUDGET COMM'N, *supra* note 7, at 18, fig. 1 (showing the data from 2004 which includes all project revenue and private conduit debt, totaling an estimated \$96.1 billion).
13. *Id.* at 19, fig. 7.
14. See N.Y. HEALTH CARE COMM'N IN THE 21ST CENTURY, FINAL REPORT: A PLAN TO STABILIZE AND STRENGTHEN NEW YORK'S HEALTH CARE SYSTEM (Dec. 2006).
15. AUTH. BUDGET OFFICE, ANNUAL REPORT ON PUBLIC AUTHORITIES IN NEW YORK STATE 5 (July 1, 2008) (stating that the authorities subject to the reporting requirements include most active state and local authorities, but exclude housing authorities, inactive authorities, interstate and international authorities, and subsidiaries of authorities).
16. Auth. Budget Office, Annual Report on Public Authorities in New York State 6-10 (July 1, 2009).
17. *Id.* at 4-5.
18. *Id.* at 8.
19. *Id.*
20. Auth. Budget Office, *supra* note 16, at 7.
21. N.Y. State Comm'n on Pub. Auth. Reform, *supra* note 5, at 27-28.

22. Office of the N.Y. State Comptroller, Debt Impact Study 13-14 (Jan. 2008).
23. Office of the N.Y. State Comptroller, Report on the State Fiscal Year 2009-10 Enacted Budget, 36 (May 2009).
24. N.Y. Fin. Law § 67a-b (2000).
25. N.Y. State Div. of Budget, 2009-10 Enacted Budget, Capital Program and Financing Plan 47 (May 1, 2009).
26. N.Y. State Div. of Budget, 2009-10 Financial Plan First Quarterly Update 14 (July 30, 2009).
27. Office of the N.Y. State Comptroller, Financial Outlook for the Metropolitan Transportation Authority\_Report 4-2010 (2009).
28. Office of the N.Y. State Comptroller, Progress Report: The MTA Capital Security Program, Report 6-2009 (2008); Office of the N.Y. State Comptroller, Metropolitan Transportation Authority Proposed 2008-2013 Capital Program, Report 11-2008 (2008); Permanent Citizens Advisory Comm. to the MTA, 2008 Annual Performance Review of the MTA and Its Operating Agencies, available at [http://www.pcac.org/wp-content/reports/2008\\_MTA\\_performance\\_review.pdf](http://www.pcac.org/wp-content/reports/2008_MTA_performance_review.pdf).
29. Charles V. Bagli & Michael Cooper, *Olympic Bid Hurt as New York Fails in West Side Stadium Quest*, N.Y. Times, June 7, 2005, available at <http://www.nytimes.com/2005/06/07/nyregion/07stadium.html>.
30. Richard L. Brodsky, "The House That You Built: An Interim Report Into the Decision by New York City to Subsidize the New Yankee Stadium," N.Y. State Assem. Comm. on Corp., Auth. and Comm'ns,

available at [http://assembly.state.ny.us/member\\_files/092/20081105/report.pdf](http://assembly.state.ny.us/member_files/092/20081105/report.pdf).

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