

The Public Authorities Reform Act of 2009

Bringing Transparency, Accountability, and a System of Checks and Balances to New York's Shadow Governments

By Assemblyman Richard L. Brodsky

Let me first note that as of writing this, we are in negotiation about changes in A.2209-C, the Public Authorities Reform Act of 2009 which has passed both houses of the Legislature and will shortly be sent to the Governor for signature. I will be discussing the bill in its current form.



Public Authorities often effectively deliver public services.

But they are constitutionally remote from traditional checks and balances. They are not part of the Executive Branch, and there is no effective oversight or control of their actions. They have the ability to issue revenue-backed debt, thereby avoiding the Constitutional requirement for full faith and credit indebtedness. Collectively, public authorities currently have over \$140 billion in outstanding debt, and are deeply involved in the delivery of essential services to the people of the State.

At the same time, the authority system is often characterized by ineffectiveness, secrecy, runaway debt, favoritism, failure, and corruption. It has become a shadow government, existing outside the checks and balances that define democratic governance. Over the years, the hearings we conducted and the reports we issued on the MTA, LIPA, the Erie Canal, Yankee Stadium, the Port Authority, the Olympic Regional Development Authority, the Buffalo Bridge Authority and many others have created a broad public consensus that fundamental reform of the authority system is needed.

The Legislature has addressed that need over the past years, including the enactment of the Public Authorities Accountability Act of 2006. With bipartisan support, the bill was signed by Governor Pataki creating an Authority Budget Office and greatly enhancing the transparency and reporting requirements required of state authorities. At the same time, the Commission on Public Authority Reform, led by corporate governance expert Ira Millstein, published a Report, recommending further reform of public authorities.

A.2209-C, the Public Authorities Reform Act of 2009, includes many of those recommendations, as well as others, and fundamentally transforms public authority operations and oversight. We create an Authorities Budget

Office with real power to police public authorities. We set forth a strong fiduciary duty owed by each authority board member to the public interest and the statutory mission of the authority. We insist on real whistleblower, lobbying and MWBE protections. We bring the State Comptroller into the contract review and approval process. We reform the practice of giveaways of authority property. We began the process of fundamental reform of authority debt issuance.

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There has been vocal opposition, mainly by New York City Mayor Michael Bloomberg. He has asked that the bill be vetoed, citing his desire to direct his appointees how to vote on particular issues, and his desire to direct how authority assets should be sold, especially in below-value transactions, among many other objections. While the Mayor's views need to be considered, we believe them to be mistaken.

The Mayor should no more be able to control the votes of his appointees to authority boards than he should be able to control the votes of the judges he appoints. The bill does not silence a public official such as the Mayor from voicing his opinion in connection with a board's decision. It requires that the board members take all opinions into account, and do what is best for the authority and its mission on behalf of the citizens of New York.

Reforming below-market value transactions is a key aspect of creating transparency in public authority reform. For too long, public authorities have manipulated and disposed of assets for less than fair market value in ways that are rife with abuse and corruption. Examples include the Yankee Stadium deal, the proposed sale of the Erie Canal, and the MTA 2 Broadway deal. The Mayor has objected to our provision barring below market value transactions, believing that it will harm economic development projects.

The Public Authorities Reform Act of 2009 makes a fundamental change in the way these transactions are conducted. The ability to subsidize worthy projects where

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the mission of the authority is maintained, but the public for the first time will know the value of the asset sold, and the value of the subsidy given.

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Objection has also been raised to Comptroller review of contracts. It is asserted that the 90-day review of contracts by the Comptroller may be too long, and will interfere with certain types of contracts. For instance, the New York Power Authority buys energy in markets where contracts are purchased every few minutes. Clearly, this is an area where changes in A.2209-C are appropriate.

We understand that legislation can always be improved. We are willing to consider changes that solve specific problems. But we will insist on legislation that guarantees transparency, accountability, and real checks and balances. The Legislature has taken the lead in enacting the most fundamental reform of state government in decades, and our commitment to that effort remains firm. The Public Authorities Reform Act of 2009 will finally bring these public institutions out of the shadows and we look forward to it becoming law.

Assemblyman Richard L. Brodsky is the Chairman of the New York State Assembly Committee on Corporations, Authorities and Commissions, which oversees the State's public and private corporations, including public authorities. He is the author of A.2209C, The Public Authorities Reform Act of 2009, one of the most comprehensive reforms New York has seen in decades.