

Assessing the Fourth Branch of Government: The Benefits and Challenges of Public Authorities in New York State

Introduction

During the 1846 State Constitutional Convention, to prevent a massive state bankruptcy, the State was prohibited from contracting debt without a vote of the people¹ and state assistance to private enterprises was banned.² These restrictions were responses "to the borrowing excesses, especially for the financing of railroads and canals, of the 1820's and 1830's which created a financial crisis for the state in the aftermath of the Panic of 1837."³ "Through much of the 1800's, New York was permitted to incur public debt for special purposes."⁴ Such expenditures "authorized by the legislature in the unrealized hope that the receipts from canal tolls and other indirect sources would furnish sufficient means for the payment of all obligations had some time before the [1846] Convention brought financial affairs to a condition which demanded radical treatment in order to save the good name and credit of the state."⁵

¹ Draft Interim Report of the Public Authorities Governance Advisory Committee, 1 (June 22, 2004); See N.Y. Const., Article VII, Section 11.

² N.Y. Const., Article VII, Section 8.

³ Briffault, "Local Government and the New York State Constitution," 1 Hofstra Law and Policy Symposium 79, 91 (1996).

⁴ Draft Interim Report supra note 1 at p. 1.

⁵ Lincoln, 2 Constitutional History of New York, 174 (1906).

While there were some preliminary steps in establishing public authorities, the modern public authority dates from April 30, 1921⁶ when the Port of New York Authority of New York/New Jersey was established. Among these early ancestors were the use of canal revenue certificates,⁷ river regulating districts,⁸ the Port of London Authority,⁹ the Port of New Orleans,¹⁰ and the Boston Transit Commission.¹¹

The Port Authority was established to provide the coordination necessary to fully develop the facilities of the Port of New York. It was created by acts of both the New York¹² and the New Jersey¹³ legislatures, as well as an act of the United States Congress pursuant to Article I, Section 10 of the Constitution, which permits compacts between states only with congressional consent.¹⁴ The acts established a bi-state area of jurisdiction called the "Port of New York District" that included approximately 1,500 square miles within a

⁶ The Port Authority of New York and New Jersey, at <http://www.panynj.gov/AboutthePortAuthority/HistoryofthePortAuthority/> (site visited Jan. 2005).

⁷ L. 1851, Ch. 485, but see Newell v. People 7 NY 9 (1852).

⁸ L. 1915, Ch. 662.

⁹ Temporary State Commission on Coordination of State Activities, Staff Report on Public Authorities Under New York State 13 (1956).

¹⁰ Axelrod, Shadow Government, 24 (1992).

¹¹ *Id.*

¹² See L. 1921, Chs. 154 and 203.

¹³ L. N.J. 1921, Chs. 151 and 152.

¹⁴ Ch. 77, 42 Stat. 174, Joint Resolution No. 17 (1921).

twenty-five mile radius of the Statue of Liberty.¹⁵ The interstate compact provided:

The port authority shall constitute a body, both corporate and politic, with full power and authority to purchase, construct, lease and/or operate any terminal or transportation facility within said district; and to make charges for the use thereof; and for any of such purposes to own, hold, lease and/or operate real or personal property, to borrow money and secure the same by bonds or by mortgages upon any property held or to be held by it.¹⁶

Governor Nathan Miller soon after the creation of the Port Authority noted:

"I know of no safer subject to discuss than the question of the proper development of port and terminal facilities in the Port of New York. There ought to be no politics in that question, although some try to play politics with it. But it is a question to be settled upon its merits divorced from all political considerations."¹⁷

The Port Authority soon sought to meet its mission to coordinate "the terminal, transportation and other facilities of commerce in, about and through the port of New York"¹⁸ by increasing the access for cars and trucks to the region by a series of bridges and tunnels. This effort met with rapid success. For example, the Port Authority undertook the construction of the George Washington Bridge connecting New York

¹⁵ The Port Authority of New York and New Jersey, *supra* note 6; Mitchell, The American Experiment With Government Corporations 28 (1999); N.Y. Unconsolidated Law § 6403.

¹⁶ 42 Stat 174, *supra* note 14 at 177.

¹⁷ Public Papers of Governor Miller, (1921) at pp. 442 – 443.

¹⁸ N.Y. Unconsolidated Law § 6401.

and New Jersey across the Hudson River.¹⁹ The bridge was "built well ahead of schedule and entirely under budget; it was primarily self-financed through the use of revenue bonds, and it was immediately used by thousands of people."²⁰

The establishment of the Port Authority did not immediately spur the creation of additional public authorities, and the next authority was created in 1927 when Vermont and New York established the Lake Champlain Bridge Commission.²¹

Though perhaps initially conceived to solve jurisdictional problems between states, public authorities were soon used by New York lawmakers for intra-state purposes. As early as 1938, the Constitutional Convention Committee formed to provide research for the 1938 Constitutional Convention noted the rise of public authorities. It stated:

"On the theory that use of the orthodox governmental organization is unsatisfactory for the performance of certain functions, there have been established, in recent years, a number of quasi-governmental agencies known as authorities. These authorities are intended to resemble in many respects a private business corporation, carrying with them the duty of a corporation to be financially an organizationally self-sustaining. They issue their own obligations and are expected to retire them from their own revenues."²²

¹⁹ See L. 1931, Ch. 47.

²⁰ Mitchell, *supra* note 15 at 29.

²¹ L. 1927, Ch. 321. It has been argued that the second de facto public authority was the Albany Port District Commission established pursuant to L. 1925, Ch. 192.

²² New York State Constitutional Convention Committee, *State and Local Government in New York*, 189 (1938).

The report found that there were 33 authorities in New York in 1938.²³ Three were interstate in nature. Eight were local, and 22 had varying purposes.²⁴ "Most of them were set up to build or operate or submit plans for the acquisition of bridges, tunnels, parkways and parks, or to undertake other construction projects."²⁵

The report found a number of potential problems that might arise as a result of the resort to public authorities: a concern that they were undemocratic and almost self-perpetuating;²⁶ that they might impose a potential financial obligation on the State upon the failure of a public authority; and that they did not conform to the trend towards administrative integration of agencies in New York.²⁷ Nonetheless, the report concluded that "there has been little public opposition to the establishment of new authorities, and often there is a great deal of public approbation of their accomplishments... It is held that although many evils may conceivably result from the future use of authorities, actual past experience with this form of organization has been almost entirely favorable."²⁸

²³ *Id.* at 190.

²⁴ *Id.* at 190-191.

²⁵ *Id.* at 191.

²⁶ *Id.*

²⁷ *Id.* at 192.

²⁸ *Id.* at 193.

At the 1938 Convention, Delegate Abbott Moffat²⁹ proposed a resolution which would have reformed the system of establishing public authorities by establishing minimum requirements. Moffat's original proposal would have: (a) required that public authorities be created only pursuant to special acts; (b) that there would be no single person authorities, (c) that the Governor have the right to appoint at least one member to every authority, (d) that the Comptroller could audit all authorities; and (e) that the State would not be liable for authority debt.³⁰

In defending his proposal, Moffat said, "[t]here came a whole deluge of authorities in this State, most of which were established simply to evade debt limitations imposed by the Constitution; they had nothing to do with jurisdictional lines...These authorities, starting originally as important instrumentalities of the state government, or rather of two state governments working in concert, . . . very shortly were used as a device for State business, thereafter for municipal business . . . But soon they became local appointees and the whole authority system degenerated into a debt-evading device."³¹

Moffat continued by saying:

"Authorities are corporate government agencies with extraordinary powers. Were the locality itself performing

²⁹ Moffat was an Assembly member from Manhattan who chaired the Committee on State Finance at the Convention.

³⁰ Int. 356, Print No. 375.

³¹ Revised Record of the Constitutional Convention of the State of New York, vol. 3, at 2259 (1938).

the functions assigned to an authority, all steps, all appropriations, would be subject to the approval of duly elected representatives of the people. In an authority, the only check is the power of removal of a member of the board, and except for this power the authority is supreme and the board has complete power. If in any other type of government one man were given this complete control, the cry of dictatorship would ring throughout the land."³²

Moffat's proposal was basically opposed by delegates Robert Moses and former Governor Alfred Smith. Moses took issue with the notion that authorities were a debt evasion ploy. In reference to the Triborough Bridge Authority, he stated, "Why was the agency created? Because the authority could be sustained by the tolls. You can call that debt evasion if you please. I call it sound business, and that is what pretty nearly everybody in the metropolitan district and all the people who use the facility call it."³³

Smith also in opposition to the Moffat proposal noted, "I think that the proper title for this would be, 'An amendment to the Constitution to paralyze the one method we have discovered of getting work done expeditiously and without overly taxing our people to get it done.'"³⁴

As a result of this opposition, Moffat watered down his proposal so that it dealt only with creating public authorities by special act, granted audit powers to the State or local comptroller, and relieved

³² *Id.* at 2260-2261.

³³ *Id.* at 2264.

³⁴ *Id.* at 2268.

the State of liability for the debt of public authorities. As mended, this proposal passed the Convention and was ratified by the electorate. It became Article 10, §5 of the Constitution and has been unaltered since 1938. It provides:

§ 5. No public corporation . . . possessing both the power to contract indebtedness and the power to collect rentals, charges, rates or fees for the services or facilities furnished or supplied by it shall hereafter be created except by special act of the legislature.

* * *

The accounts of every such public corporation heretofore or hereafter created shall be subject to the supervision of the state comptroller, or, if the member or members of such public corporation are appointed by the mayor of a city, to the supervision of the comptroller of such city;

provided, however, that this provision shall not apply to such a public corporation created pursuant to agreement or compact with another state or with a foreign power, except with the consent of the parties to such agreement or compact.

Neither the state nor any political subdivision thereof shall at any time be liable for the payment of any obligations issued by such a public corporation heretofore or hereafter created, nor may the legislature accept, authorize acceptance of or impose such liability upon the state or any political subdivision thereof; but the state or a political subdivision thereof may, if authorized by the legislature, acquire the properties of any such corporation and pay the indebtedness thereof.

By the 1950's the number of public authorities had continued to grow. The Temporary State Commission on Coordination of State Activities found that 33 State public authorities were active in 1956, plus the Albany Port District Commission and 45 local housing

authorities.³⁵ The commission further found that "there has been no systematic examination of the public authorities in New York State. Their organization and administration, their capital financing and their relationships with State and local government have never been fully studied and evaluated."³⁶ Modest actions were taken by the legislature in the aftermath of this report including strengthening the Governor's oversight over the Port Authority and formally terminating the existence of a number of public authorities that had ceased to function.³⁷ Both of these measures had been advanced by the Temporary Commission.

The report stated, "Not only has the public not generally realized the nature and extent of government aid to public authorities but the legislative and executive branches of State government have not had adequate information assembled in usable form for their information and guidance on this subject. Public authority financing should be reported better and in a more systematic fashion so that the policy-making organs of the State government can conveniently obtain information."³⁸

The 1960's brought a rapid escalation in the use of public authorities in New York. The State government, in an attempt to solve

³⁵ Temporary State Commission on Coordination of State Activities, Staff Report on Public Authorities Under New York State, pp. 583 and 654 (1956).

³⁶ *Id.* at 5.

³⁷ L. 1956, Chs. 215 and 557.

³⁸ *Id.* at 452 - 453.

social problems and to develop better housing, better schools, and better health care, embarked on a program of using moral obligation bonds. These bonds – whose origin is frequently attributed to former United States Attorney General John Mitchell³⁹ – were designed to attract borrowers by using the “moral obligation” of the state to guarantee the repayment of the debt.

While public authorities before the 1960’s concentrated on building facilities that were revenue producing and self-sustaining,⁴⁰ the authorities of the 1960’s included social projects that had traditionally been financed through the State budget process and projects that were previously provided by private enterprises.⁴¹ Part of the need for these public authorities was due to continued public rejections of major bond issues,⁴² and “these projects were not intended to be self-supporting and thus were to be heavily subsidized by the government and taxpayers.”⁴³ Non-traditional public authorities that were created during the 1960’s included the Metropolitan

³⁹ “How Authorities Get Around the Voters,” Buffalo News, May 16, 2004, Pg. G1. Mitchell supra note 15. Former Governor Carey has stated, “The moral obligation [the state’s non-binding promise to use state revenue to make up shortfalls in debt service] was created in New York. Some say it was the creature of the famous John Mitchell, who was a bond counsel [under Rockefeller.] And this was nice. You didn’t have to go to a constitutional amendment to borrow money. You didn’t need to go to a bond issue passed by the voters. You do it by exposing yourself to a moral obligation to pay it back. A future Legislature would put the money up.” Larkin, “New York Debt: Past and Present: A Talk with Gov. Hugh L. Carey,” The Bond Buyer, December 2, 2003, Pg. 1.

⁴⁰ “Bob Moses never set up a public authority that didn’t pay its own way. He didn’t have any dogs out there.” James Biggane quoted in Bang-Jensen, New York State’s Other Government: The Long Shadow of Public Authorities 6 (1984).

⁴¹ Underwood and Daniels, Governor Rockefeller in New York 161 (1982).

⁴² *Id.* at 163. See also Clines, “Rockefeller Set Up Urban Development Group on Rebound from Voter Rejection,” New York Times, February 26, 1975, Pg. 20.

⁴³ *Id.* at 161.

Transportation Authority, the Facilities Development Corporation, the Housing Finance Agency, the State University Construction Fund, and the Urban Development Corporation.

These additional authorities and the desire to achieve significant social goals had the effect of increasing significantly the amount of State debt held by authorities. By Governor Rockefeller's fourth term, "mechanisms of indirect financing, lease-purchase and moral obligation bonding were being used to finance thirty-four different programs."⁴⁴ The Temporary State Commission on the Constitutional Convention in 1967 found that the State Constitution had "permitted massive circumvention of necessary limits on State debt... [and] that the present constitution [had] been inadequate to prevent the State from engaging in 'backdoor' financing without approval at referendum."⁴⁵

The 1967 Temporary State Commission found that the number of active non-local housing or urban renewal agencies had increased from 33 in 1956 to about 50 in 1965.⁴⁶ It also found that the 22 major authorities had assets of \$6.8 billion up from \$2.3 in 1954.

⁴⁴ *Id.* at 173.

⁴⁵ Temporary State Commission on the Constitutional Convention, "State Finance," Book 8, 181 (1967). The Commission similarly said, "Such agencies frequently are devices to circumvent debt limits and referendum requirements, and in many cases are subsidized by general governments, at a higher over-all cost." See p. 163. See also Kerker, "State Government Finance," pg. 93 in Benjamin and Dullea, Decision 1997, (1997).

⁴⁶ *Id.* at 161.

The 1967 Commission was by no means a polemic against public authorities. In fact, it also listed numerous reasons for establishing public authorities. These reasons were:

1. To finance public improvements without resort to additional taxes, through charges on users of the facilities.
2. To finance public improvements without conflict with constitutional debt limitations.
3. To secure additional revenues and greater financial autonomy for certain activities of regular state agencies.
4. To take advantage of certain types of federal loans and grants.
5. To finance improvements through revenues bonds without earmarking of taxes.
6. To facilitate the transition from private to public operation of enterprises.
7. To remove the operation of enterprises from direct control by politically responsible officers.
8. To provide a more flexible administrative instrument to manage commercial-type public enterprises.
9. To overcome jurisdictional problems in the operation of facilities or services on a regional, interstate or international basis.⁴⁷

The increased debt load established by the public authorities of the 1960's coupled with the recession of the early 1970's created a massive problem for the public authorities of New York. These problems came to a head when the Urban Development Corporation (UDC) defaulted on its bond anticipation notes in February of 1975.⁴⁸ This was the first wave of a financial crisis which forced the state to

⁴⁷ *Id.* at 165. Much of this discussion is modeled on the Temporary State Commission on Coordination of State Activities, *supra* note 35 at 43 – 60.

⁴⁸ "Urban Development; House of Cards," The Economist, February 15, 1975, Pg. 54; Greenhouse, "Governor Orders Inquiry to Save Faltering UDC," New York Times, February 6, 1975, Pg. 1.

"rely on emergency measures to keep several agencies and the largest city in the nation from default."⁴⁹

A Moreland Act Commission formed by Governor Carey to investigate the default blamed the UDC's problems on overly optimistic assumptions, a lack of management controls, and contradictory mandates.⁵⁰ It found that State debt had increased considerably in the period from 1964-1974 with guaranteed debt increasing by \$2 billion and non-guaranteed debt increasing by \$8 billion.⁵¹ Total State debt was \$3.9 billion in 1964 and \$13.4 billion in 1974.⁵² The per capita debt of New York State was \$739 while the per capita debt for other state governments was \$269.⁵³ The report found that "the data make clear that the burden of State and local government debt in New York has been increasing more rapidly than in the nation at large. They also indicate that even when New York's relative wealth is taken into account, as measured by personal income, the burden is heaviest here, and it has steadily grown heavier."⁵⁴

The Moreland Act Commission further found that the moral obligation bond "is a dangerous and misleading illusion and now a

⁴⁹ A Report to the Governor by the New York State Moreland Act Commission on the Urban Development Corporation and Other State Financing Agencies, Restoring Credit and Confidence 9 (1976).

⁵⁰ Greenhouse, "Fiscal Collapse of U.D.C. Was Result Of 3 Wrong Moves, Panel Concludes," New York Times, May 27, 1976, Pg. 39.

⁵¹ Restoring Confidence and Credit pg. 77 supra note 49.

⁵² *Id.* at 80.

⁵³ *Id.*

⁵⁴ *Id.* at 81.

totally discredited device."⁵⁵ The referendum requirement for bond issues in the State Constitution "has failed to serve the needs of all the people of the State because New York is a large and diverse state that cannot make important decisions in town meetings."⁵⁶

The main recommendation of the commission was that public authorities should continue to carry out capital construction programs, and "these authorities should be brought under the control of a permanent Public Authorities Control Commission (PACC) created by the Legislature, appointed by the Governor and accountable to the Governor, the Legislature and the public."⁵⁷

This call for a centralized coordinating device was picked up by Governor Carey in his State of the State address in 1976. He stated, "What has been lacking in New York State's public authorities is centralized planning; but the imposition of controls should be done in such a way as not to paralyze initiative."⁵⁸

Based on these recommendations, the legislature established the Public Authorities Control Board in 1976.⁵⁹ "The board consists of five persons appointed by the governor, including one recommended by each of the four legislative leaders. Those nominated by the minority leaders of the Senate and the Assembly do not vote but can enter

⁵⁵ *Id.* at 10.

⁵⁶ *Id.* at 9 -10.

⁵⁷ *Id.* at 12.

⁵⁸ Annual Message to the Legislature, January 7, 1976 Public Papers of Governor Carey 16 (1976)

⁵⁹ L. 1976, Chs. 38 and 39. See Public Authorities Law, Article 1-A.

comments into the record of proceedings. The three voting members must unanimously approve financing and construction of any project proposed by UDC and nine other authorities. The effect is to give the governor and the leaders of the two houses veto power over any projects undertaken by the affected agencies."⁶⁰

Although there have been no cataclysmic events involving public authorities in the thirty years since the default of the Urban Development Corporation, New York State has continued in its love-hate relationship with public authorities. While public authorities, as a general rule have not engaged in the pursuit of broad activist social goals of the 1960's,⁶¹ the pattern of public activity growth has remained unchanged. Public authorities continue to grow. Their debts continue to mount,⁶² and public support of public authorities waxes and wanes.

In the early 1990's in the midst of a recession, New York State utilized public authorities as a way – not of achieving social ends – but to keep the budget in balance while not requiring the State to raise

⁶⁰ Ward, New York State Government: What It Does, How It Works, 303 (2002). See Public Authorities Law, §50. Ward notes that the list of authorities does not include the Port Authority, the Metropolitan Transportation Authority and the Thruway Authority. Operation of the Public Authorities Control Board was described in Swope, "The Phantom of New York," Governing Magazine, November 2004, Pg. 43. See also Walter, "New York's Shadow Government," Buffalo News, May 16, 2004, Pg. G-1.

⁶¹ One occasion where public authorities were used to support a social goal was the authorization in 1983 to permit the Urban Development Corporation to build prisons. See Barbanel, "Cuomo and Leaders Rejoice as Budget Is Passed on Time," New York Times, March 29, 1983, Section B, Pg. 1.

⁶² As of March 31, 1998, the State Comptroller found that there was \$33.954 billion in State-supported debt of which 14% was general obligation debt approved by the voters. Office of the State Comptroller, New York's Debt, 2 (1998). In a 2005 report, the Comptroller found \$46.8 billion in State-supported debt on a GAAP basis as of March 31, 2004. General obligation debt is now 8% of the total debt. Office of the State Comptroller, New York State's Debt Policy, 25 – 26 (2005).

taxes. The primary example of this was the purchase of Attica Prison by the UDC in 1990 for \$200 million. That sale may eventually cost the state \$565 million by the time the debt is paid off in 2020.⁶³ In addition, budget balancing contrivances included the sale of a parking lot at Aqueduct Race Track run by the New York Racing Association,⁶⁴ the sale of the Cross-Westchester Parkway to the Thruway Authority,⁶⁵ and the takeover of the State canals by the Thruway Authority.⁶⁶

Nonetheless, public authorities were instrumental in saving New York City and other municipalities from bankruptcy in New York. The modernization and refurbishment of mass transportation in the New York was accomplished through the workings of public authorities.⁶⁷ In 2001, one commentator noted that public authorities are "well regarded by the interested public who may see them as flexible, business-like, and less immersed in 'politics' than other parts of State government. Authorities will continue to play an important role in New York State."⁶⁸

⁶³ Stashenko, "The Attica Prison 'Sale' Continues to Haunt Albany," Associated Press, February 2, 2005.

⁶⁴ See L. 1992, Ch. 304. While the New York Racing Association has frequently been called a public authority, it is technically a nonprofit racing association and not a public authority. Saumell v. New York Racing Association, 58 N.Y. 2d 231, 239 (1983).

⁶⁵ "NY State for Sale - to NY State," Newsday, April 7, 1991, Pg. 29.

⁶⁶ L. 1992, Ch. 766. Additionally, in 1997 the State established a public authority to take over the operation of the Roswell Park Institute from the Department of Health. See New York State Comptroller, Public Authority Reform, 40 (February 2004).

⁶⁷ See for example Blair, "Gunn to Leave Transit Agency; Says System Is Now Acceptable," New York Times, January 6, 1990, Section 1, Pg. 27; "The Super Schmoozer," Times Of London, April 14, 2004, Features Pg. 17.

⁶⁸ Henderson, "Other Governments: The Public Authorities," in Stonecash, Governing New York State, 4th Edition, 186 (2001).

Public authorities have frequently faced general public criticism throughout the years. For example, the Commission on Government Integrity [generally known as the Feerick Commission] found that public authorities still operated with limited scrutiny. "[W]ithout any clearly applicable conflict-of-interest rules, without statutory standards governing how to decide who will or will not receive various benefits, officials are all but invited to use these bodies to reward friends and favorites, to benefit supporters and deny benefits to opponents."⁶⁹ Numerous legislators have castigated public authorities over the years.⁷⁰

The response to these criticisms has been modest. Governor Carey established the State Securities Coordinating Committee in 1977 to coordinate the scheduling of debt offerings made by public authorities,⁷¹ and that executive order was subsequently amended by Governor Cuomo.⁷² Governor Cuomo issued an executive order calling for more accountability for public authorities,⁷³ and Governor Pataki established a public disclosure requirement for procurement contracts

⁶⁹ New York State Commission on Government Integrity, "Underground Government: Preliminary Report on Authorities and Other Public Corporations," 31 (1990).

⁷⁰ See Bang-Jensen *supra* note 40 at pp 5 – 6.

⁷¹ 9 NYCRR § 3.61.

⁷² 9 NYCRR § 4.11.

⁷³ 9 NYCRR § 4.173.

before state agencies and public authorities.⁷⁴ In 2000, a Debt Reform Act was passed to limit the increase in State debt.⁷⁵

Yet, public authorities in New York State have rarely faced the vast barrage of criticism that they are facing today. In addition to massive increases in the amounts of debt and increases in the number of public authorities, there are concerns over governance standards, patronage, corruption, criminality and criminality.

State Comptroller Alan Hevesi has fueled much of the debate by claiming that there were more than 640 public authorities as of February 2004,⁷⁶ and by the end of 2004, the Comptroller identified additional agencies expanding the number to 778.⁷⁷

The media reported a number of recent "scandals" at public authorities including:⁷⁸

- Former U.S. Sen. Alfonse D'Amato, receiving \$500,000 as a lobbyist for placing a phone call on a matter involving the Metropolitan Transportation Authority.⁷⁹
- Thruway Authority officials testified that with the guidance of the governor's office they intentionally withheld documents from an Assembly committee investigating the contract. They also testified they routinely hired employees recommended by the governor's office, although the authority is supposed to be independent.⁸⁰

⁷⁴ 9 NYCRR §5.127

⁷⁵ L. 2000, Ch. 59.

⁷⁶ See Public Authority Reform supra note 67 at pg. 5.

⁷⁷ Zehren, "Hevesi Takes Aim at Public Authorities," Newsday, December 19, 2004, Pg. E04.

⁷⁸ Many of these scandals are summarized in Public Authority Reform supra note 66 at pp. 30-38.

⁷⁹ See Gormley, "Pataki's Legacy Dogged by Pay-to Play Scandals," Associated Press, December 25, 2004.

⁸⁰ Santora, "Agency Admits Withholding Details on Canal Land Deal," New York Times, December 22, 2004 Section B Pg. 7.

- Lucrative development rights along the Erie Canal sold by the Thruway Authority for a paltry \$30,000.⁸¹
- The MTA's apparent use of two sets of financial books.⁸²
- The head of the New York State Bridge Authority pleading guilty to two misdemeanor counts for attempting to defraud the government by billing the agency for personal.⁸³
- A State University Construction Fund deal for a fired manager.⁸⁴
- Lavish spending by and tax fraud committed through the New York Racing Association.⁸⁵
- High pay for limited work at the Hudson River- Black River regulating district.⁸⁶
- Failure to fill the seats of many people on the State's public authorities.⁸⁷
- The \$580,000 paid to an interim executive of the Long Island Power Authority (LIPA) for 14 months' work.⁸⁸

Based on the perceived defects and inefficiencies in the manner that public authorities are treated in New York State, many major public officials have called for major reforms in the systems.

Comptroller Hevesi, along with Attorney General Spitzer, proposed the "Public Authority Reform Act of 2004."⁸⁹ This legislation was not acted on by either house in 2004.

Assemblyman Brodsky, the chair of the Assembly Committee on Corporations, Authorities and Commissions, has introduced a number

⁸¹ New York State Attorney General and New York State Inspector General, A Joint Investigation into the Contract Between The New York State Canal Corporation and Richard A. Hutchens CC, LLC., 2004

⁸² Robin, "Riders Rebel on Hike," Newsday, April 24, 2003, Pg. A05.

⁸³ Valkys, "Gaffney Receives \$10,000 Fine, Probation," Poughkeepsie Journal, December 21, 2004, Pg.

1A.

⁸⁴ Odato, "State Authority Withdraws Payout," Albany Times Union, October 19, 2004, Pg. B3.

⁸⁵ "NYRA's New Excesses," Westchester Journal News, January 15, 2005, Pg. 6B.

⁸⁶ Stashenko, "Hevesi's Latest Authority Target Hardly a Stranger to Trouble," Associated Press, November 25, 2004.

⁸⁷ Office of the State Comptroller, "Opportunity Exists To Strengthen Public Authority Boards Of Directors," Press Release, August 26, 2004.

⁸⁸ Lambert, "Hevesi Says LIPA Paid Far Too Much To a Top Aide," New York Times, October 25, 2003 Section B Pg. 6.

⁸⁹ See Public Authority Reform, supra note 66. S. Bill No. 7301, A. Bill No. 11414 (2004).

of bills to reform public authorities by establishing, among other restructurings, a public authority inspector general and a public authorities independent budget officer.⁹⁰ His bill A. 9010-C passed the Assembly in 2004, but was not acted upon in the Senate⁹¹. He has reintroduced this bill as Assembly Bill 3 for the 2005 legislative session. In February 2005, Assemblyman Brodsky introduced A. 5626 along with Comptroller Hevesi and Attorney General Eliot Spitzer. Under his leadership, the Assembly has held numerous public hearings across the State on the subject of public authorities.

On the Senate side, Senator Leibell, the chairman of the Corporations, Authorities, and Commissions Committee, introduced the "Public Authorities Accountability Act of 2004."⁹² This bill would have provided greater legislative oversight over public authorities, greater public disclosures by authorities, and mandating better financial practices. It was not acted on by the Senate in 2004, but has been reintroduced in 2005 as S. Bill 1135. The Senator has scheduled

⁹⁰ See A. Bill Nos. 9010, 9012, 9013, and 9288 (2004).

⁹¹ The stated purpose of 9010-C was to "provide for transparency and responsiveness for the many public authorities and public benefit corporations in the state by establishing a truly independent inspector general, and an independent budget office, by requiring each public authority to establish a central procurement office, and establishing procedures governing the disposition of property by public authorities and other public benefit corporations."

⁹² S. Bill No. 7292.

public hearings in early March 2005 on public authority reform with a focus on S. Bill 1135.⁹³

In 2004 Governor Pataki called on Ira Millstein, Esq., a recognized expert on corporate governance, to chair the Public Authorities Governance Advisory Committee, a six member panel charged with looking into the reform of public authorities. Millstein was "to develop a series of principles to govern how the state's authorities operate."⁹⁴ The committee issued its preliminary report in June of 2004.⁹⁵ Focusing on corporate governance, the report called for authorities to make "public more of their currently secretive financial information and to strengthen their boards and auditing processes."⁹⁶

In 2005, the Governor renewed his call for public authority reform. In his State of the State address, the Governor stated that he would "introduce an authority reform bill to put these model principles into law, and to remove any remaining barriers to full compliance for all of our authorities."⁹⁷ The Governor also stated that he would issue an Executive Order establishing a new, broadly inclusive Commission on Public Authority Reform, with Ira Millstein as chairman of the

⁹³ See, New York State Senate, Standing Committee on Corporations, Commissions and Authorities, "Reforming New York's Public Authorities: Providing Improved Transparency, Accountability, Efficiency and Oversight to Meet the Challenges of the 21st Century: Hearing Handbook," (February 2005).

⁹⁴ Cooper, "Six Named by Pataki to Overhaul Authorities," New York Times, May 11, 2004, Section B, Pg. 7.

⁹⁵ See Draft Interim Report of the Public Authorities Governance Advisory Committee, supra note 1.

⁹⁶ Cooper, "Trying to Untangle the Web of State Public Authorities," New York Times, July 2, 2004, Section B, Pg. 2.

⁹⁷ State of the State address at <http://www.state.ny.us/governor/> (site visited Feb. 2005).

Commission. On February 3, 2005 Governor Pataki signed Executive Order No. 135 creating the New York State Commission on Public Authority Reform.⁹⁸ This commission, consisting of 13 members including representatives of the four legislative leaders, the State Comptroller, and the Attorney General, is charged with:

- *studying, reviewing and evaluating of the operations of practices of public authorities;
- *providing advice and assistance to public authority boards in developing and adopting model governance principles designed to strengthen external oversight, management accountability, internal operations and public disclosure practices;
- *examining the statutory intent, public purpose and mission of any public authority and recommending to the Governor and Legislature where appropriate: the elimination or dissolution of any authority; the discontinuance of any authority based program or activity; consolidation or merger of two or more authorities; realignment of public authority functions or transfer of function from one authority to another;
- *developing model principles for effective governance of public authorities (including training and ethics codes);
- *examining salary structures for staff and board of public authorities;
- *recommending policies for public disclosure of financial information;
- *recommending appropriate policies for internal and external audit procedures; and
- *conducting compliance reviews and monitoring the compliance of public authorities with established principles of model governance.⁹⁹

The Commission is charged with issuing a final report as soon as practicable, and it may issue interim and supplemental reports at its discretion.¹⁰⁰

⁹⁸ "Governor Announces Independent and Broadly-Inclusive New York State Commission on Public Authority Reform," Press Release, February 3, 2005 at <http://www.state.ny.us/governor/> (site visited Feb. 2005.)

⁹⁹ Governor George Pataki, Executive Order No. 135 (February 3, 2005).

At the start of 2005, leading elected officials in New York State have pledged allegiance to the cause of reforming various aspects or practices of public authorities. While the cause of reform has proven an elusive goal in the past, it appears as though current efforts suggest that meaningful reforms may be instituted in this decade to, among other things, streamline the work of public authorities and address board governance and oversight issues. The next eighteen months will reveal whether and to what extent significant agreement on reform is possible and what form such agreement might take.

¹⁰⁰ *Id.*