

Interpreting the Public Authorities Accountability Act of 2005

By Judson Vickers

The Public Authorities Accountability Act of 2005 (the “PAA Act”)¹ was signed into law by the Governor four years ago. Since then, not much has surfaced on how to interpret and apply the act, which most would agree can be vague or even hopelessly ambiguous in many respects. There has been no case law or law review articles addressing the PAA Act, and there is little guidance (authoritative or otherwise) to assist those subject, or potentially subject, to the act.



This article does not purport to be a comprehensive interpretative guide to the PAA Act. Through the use of a few examples, however, it does attempt to provide (primarily for local authorities) a framework for navigating some of the more challenging provisions of the act. The areas of the PAA Act addressed herein are: (1) which entities (specifically, not-for-profit corporations) fall within the definition of “local authority”; (2) the proper scope of the PAA Act given the inconsistent use of terminology; and (3) the contours of the board member independence requirement. This article concludes that the best approach to interpreting these and other problematic provisions in the act is a “rule of reason” approach that emphasizes legislative intent over literal interpretations that would yield unreasonable or irrational results.

Background

Public authorities have existed in New York State since the Port of New York Authority (now the Port Authority of New York and New Jersey) was created almost 90 years ago.² Since that time, numerous authorities have been established to, *inter alia*, finance the construction and maintenance of transportation projects (such as bridges and roads) and other public facilities (such as schools, hospitals and housing developments).³ Estimates of the number of authorities in existence today in New York State range from less than 300⁴ to more than 1,000.⁵ As observed by a commission appointed by the Governor in 2005 to assess the need for public authority reform, “[t]he historical expansion in the number and importance of public authorities paralleled the growth in size and complexity of government.”⁶

Efforts to more closely regulate public authorities have had a long history, as well.⁷ The most comprehensive legislative effort was the PAA Act, which was enacted after a series of private and public corporate scandals and irregularities that came to light in the early part of the decade. In the private sector, in late 2001 and early 2002, there was the collapse of Enron, which was followed closely by the demise of other corporations like World-Com and Tyco. The federal government’s response was the Sarbanes-Oxley Act, which sought to rectify at least some of the problems that led to these corporate downfalls by enhancing regulatory oversight, corporate disclosure and corporate governance standards for publicly held companies.⁸

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Thereafter, in New York State, investigations by the State Legislature and Comptroller revealed a variety of irregular practices by some of New York’s public authorities, most notably the attempted sale by the Canal Corporation (a subsidiary of the Thruway Authority) of development rights to the Erie Canal corridor for \$30,000.⁹ The state’s initial response was essentially two-fold. Legislatively, several bills aimed at increasing the state’s regulatory control over public authorities were introduced in the State Legislature in 2004. The most comprehensive of these bills was the proposed Public Authorities Reform Act of 2004, which was developed by the State Comptroller and Attorney General. This proposed act would have directly regulated state authorities in areas such as debt issuance, corporate governance, lobbying and procurement, leaving the Temporary Commission on Public Authority Reform (to be established by the proposed act) to provide recommendations regarding entities with local, interstate or international jurisdiction.¹⁰ That same year, the Governor appointed the Public Authority Governance Advisory Committee chaired by Ira Millstein (the “Millstein Committee”)¹¹ to develop a set of “Model Governance Principles” for state public authorities, which attempted

to incorporate elements of the Sarbanes-Oxley Act and other best practices standards. In its June 2004 report, the committee set forth its recommendations, many of which were subsequently incorporated into the PAA Act (at least in concept).¹²

The following year, the bill that eventually would become the PAA Act (Governor's Program Bill #90—S.5927)¹³ was introduced. Though S.5927, which primarily amended the Public Authorities Law, included some of the concepts contained in the Sarbanes-Oxley Act and the Public Authorities Reform Act of 2004 (which was not reintroduced in 2005), it reflected more of the work of the Millstein Committee. Unfortunately, S.5927 had the appearance of a bill that was hastily drafted and/or pieced together from separately drafted sections. The bill contained, and now the PAA Act contains, numerous inconsistent and vague provisions, as well as other carelessly worded provisions that create confusion where there should have been more clarity.

Despite the bill's flaws, S.5927 was passed by the Legislature on June 24, 2005 and signed into law as the PAA Act by the Governor on January 13, 2006.¹⁴

PAA Act Interpretation for Local Authorities

As noted, the PAA Act was not artfully drafted, which can present significant challenges for local authorities seeking to determine whether the act applies to them and, if so, the scope and nature of their compliance. Exacerbating these interpretation issues is the further problem that many of the traditional tools of statutory construction are not available for directly deciphering the meaning or legislative intent of many of the act's provisions. For example, in some instances, the plain meaning of words cannot be used because the resulting interpretation would be inconsistent with other provisions of the act or what appears to be the overall purpose of the act, or would be plainly absurd. In addition, the legislative history of the act is generally unhelpful. The Introducer's Memorandum in Support for S.5927 (the "Introducer's Memo") does not discuss the bill in detail,¹⁵ and the available Assembly and Senate debate transcripts are not illuminating either.¹⁶ Although the Introducer's Memo asserts that the bill would represent an enactment of the Millstein Committee's "Model Governance Principles," the Millstein Committee's recommendations and analysis are not always helpful. Moreover, a comparison between the PAA Act and the committee's principles reveals that the two diverge in significant areas.¹⁷

Under these circumstances, the primary guiding principle for interpreting the PAA Act should be a rule of reason that is, as best as can be determined, consistent with legislative intent in passing the bill.¹⁸ As courts have advised, the primary consideration in interpreting statutes is to ascertain and give effect to the intention of the Legislature.¹⁹ "When several provisions of a statute are drafted

in such a way that literal interpretation could result in a 'skewed and inartful interlock,' the court will 'approach the statute's provisions sequentially and give the statute a sensible and practical over-all construction, which is consistent with and furthers its scheme and purpose and which harmonizes all its interlocking provisions.'"²⁰ Statutes should be read "so as to avoid an unreasonable or absurd application of the law."²¹ "While some statutes are so clear as to foreclose courts from construing or interpreting them, in an appropriate case the courts may depart from a too literal reading of the statute when such a reading destroys the meaning, intention, purpose or beneficial end for which the statute was designed."²²

What follows is an application of these principles to selected areas of the PAA Act. They are not the only areas of ambiguity in the act, nor are they necessarily the most important, but they highlight some of the PAA Act interpretation obstacles that face local authorities and provide a framework for applying the act as a whole.

Defining Local Authority

The first, and arguably the most challenging, issue a would-be local authority must confront is whether the act even applies to it. Obviously this inquiry is critical because a determination that the PAA Act applies requires the entity to undertake obligations that range from burdensome reporting requirements to a potential alteration of the entity's board structure or even the way the entity is permitted to do business.

The PAA Act defines a local authority as:

- (a) a public authority or public benefit corporation created by or existing under this chapter or any other law of the state of New York whose members do not hold a civil office of the state, are not appointed by the governor or are appointed by the governor specifically upon the recommendation of the local government or governments;
- (b) a not-for-profit corporation affiliated with, sponsored by, or created by a county, city, town or village government;
- (c) a local industrial developmental agency or authority or other local public benefit corporation; or
- (d) an affiliate of such local authority.²³

Paragraphs (a) and (c) typically don't present any interpretation problems. The authorities described in these provisions are (or are closer to) what one might call "classic public authorities," like the New York City Health and Hospitals Corporation and the New York City School Construction Authority. The primary interpretation problem lies in paragraph (b), which on its face broadly includes any not-for-profit corporation as long as it is "affiliated with, sponsored by, or created by" a local government.²⁴

At first glance, it would appear as though Public Authorities Law § 2(2)(b) encompasses not-for-profit corporations ranging from a locally controlled economic development corporation (such as the New York City Economic Development Corporation) to a private not-for-profit corporation that receives contractual or grant funds from a local government. Whereas it seems clear that municipally created, controlled and funded local development corporations should be subject to the PAA Act, it at least intuitively seems inappropriate to subject (say) a municipal contractor to the full scope of the act simply because it is, in whole or in part, “sponsored by” the municipality as a result of receiving contract payments. If a distinction between the two is appropriate, and it is hard to argue that it is not, the question is where along the continuum should the line be drawn?

Although there is scant authority to guide localities on the meaning of this provision, what little there is suggests that the targeted entities were those that manage public projects, issue debt, or otherwise engage in economic development activities on behalf of the locality. In its report, the Millstein Committee indicated that public authorities are those “created to undertake specific purposes to serve the public” and those whose “activities cover a wide spectrum of public projects and initiatives, from building infrastructure to developing and maintaining the State’s waterways to financing debt.”²⁵ Similar statements can be found in the State Comptroller’s reports on public authorities,²⁶ as well as the Introducer’s Memo.²⁷ With this scant authority in mind, the three criteria set forth in Public Authorities Law § 2(2)—namely, “affiliated with, sponsored by, or created by”—will be looked at *seriatim*.

The PAA Act defines “affiliated with” as “a corporate body having substantially the same ownership or control as another corporate body.”²⁸ The question remains, however, what constitutes sufficient “ownership or control” by a local government to bring an entity within this definition? Arguments ranging from mere appointment authority by a local elected official to the type of corporate domination necessary to pierce the corporate veil could be made.²⁹ Neither extreme seems appropriate. The day-to-day operations of a not-for-profit corporation cannot be said to be controlled by a local official where the board members are appointed for a term of years and cannot be removed at will by the official, and the “complete domination” necessary to impose corporate liability would seem to be too strict a test. A more reasonable approach would take into account appointment authority, but would additionally require that a majority of the board be appointed by one or more local government officials and serve at the pleasure of such official(s). Such a test would serve to include those entities that are truly controlled by the local government, as the PAA Act requires,³⁰ but would exclude those that are free to manage their affairs without government interference.

The “sponsored by” aspect of Public Authorities Law § 2(2) might be the most problematic inquiry of the local authority assessment. The American Heritage Dictionary of the English Language defines “sponsor” as including “[o]ne that finances a project or an event carried out by another person or group.”³¹ This “plain meaning” would include not-for-profit corporations that contract with local governments (as previously noted), as well as other entities, such as cultural institutions, that receive grants from the locality to subsidize their operations and programs. In this instance, however, the dictionary definition of sponsorship should not exclusively control.³² Though evidence of the Legislature’s intent is slim in this area, it seems doubtful that the State Legislature intended the PAA Act to invade the arm’s-length contracting process or to apply to independent entities merely because they receive government grants. Given the overall intent of the PAA Act to regulate those entities that act as an arm of (or at least on behalf of) state and local governments,³³ a workable definition of “sponsored by” probably should take into account programmatic control as well as funding. Such a definition would include entities that issue debt for local government purposes and those that are at least primarily supported by the local government and use such support to further programs controlled by the local government. More autonomous entities, such as not-for-profit corporations that expend government funds pursuant to competitively procured contracts or pursuant to arrangements that give them programmatic and administrative control over their own activities, would be excluded.

As with the other two criteria, “created by” on its face can be overly broad in light of the purposes of the PAA Act, since it is entirely possible for a local government to create a not-for-profit corporation only to relinquish control over it at a later date. One way this can happen is for a local government, as accommodation to a private party, to perform the legal requirements necessary for incorporation (including acting as the corporation’s incorporator and/or initial directors), then subsequently turn over legal control of the entity to such party.³⁴ Another is where a not-for-profit corporation created and controlled by a local government becomes independent over a period of time because of changes in government policy or for other reasons.³⁵ It seems doubtful that the PAA Act was intended to cover such entities that have no connection to a local government other than the mere fact of creation. Although the PAA Act and its legislative history provide no direct guidance here, the other state and local authorities described in Public Authorities Law § 2 that include an element of creation are “public authorit[ies] and public benefit corporation[s] created by or existing under this chapter or any other law of the state of New York,” which suggests that legislation or some other official policy declaration might be an appropriate prerequisite. If this is the case, then it could be argued that a local law, rule or regulation authorizing the corporation’s creation would

be necessary before it would be considered “created by” a local government.

In sum, if the above criteria were to be applied, those entities that the Legislature appears to have been concerned with when it passed the PAA Act—namely, not-for-profit corporations established for economic development and other local public purposes—would be included within the scope of the PAA Act. Excluded would be entities like local libraries and similar fund-raising entities that have decision-making autonomy.³⁶

Scope of Local Authority Compliance

After a local authority determines that it should be classified as such, there still remains the question of the extent to which the PAA Act (or even the Public Authorities Law as a whole) applies to the authority. Of course, in instances where the act differentiates between state and local authorities, the portion of the act the local authority must comply with is clear. However, in at least two areas, the PAA Act creates interpretation problems: (1) where the PAA Act refers to “public authority” rather than “local authority” or “state authority,” and (2) where the PAA Act refers to a “local authority heretofore or hereafter continued or created by this chapter or any other chapter of the laws of the state of New York” rather than just “local authority.” Upon closer examination, however, these definitional inconsistencies appear to be the result of careless drafting and should not affect application of the PAA Act to local authorities (except where such authorities are otherwise excluded). Again, the guiding principle should be what appears to be the Legislature’s intent rather than the mere fact that different terminology was used.³⁷

Where the PAA Act refers to “public authority” (which the act does not define) rather than “local authority” and/or “state authority” (which are the proper, defined terms), the errors likely were the result of: (1) hasty, last-minute drafting and/or the wholesale inclusion of new sections without proper conforming edits; or (2) simply careless initial drafting that went uncorrected. Most of the problematic provisions arguably belong in the first group. These provisions—namely those contained in PAA Act §§ 20 (relating to property dispositions), 27 (relating to the Authority Budget Office)³⁸ and 28 (relating to the Office of the State Inspector General)—were added to Governor’s Program Bill #69 (S.5642) in June 2005 to create Governor’s Program Bill #90 (S.5927).³⁹ In these instances there are indications in the PAA Act that the intent of the drafters was to apply §§ 20 and 27 to state and local authorities despite the incorrect use of terminology.⁴⁰ Both PAA Act §§ 20 and 27 include an isolated reference to Public Authorities Law § 2,⁴¹ as well as references that appear to complement (albeit imperfectly) local authority reporting requirements.⁴² The scattered provisions in the second group include Public Authorities Law § 2824(2)-(3). Here, “public authority” seems to be used as shorthand for state and local authority, which are not generalized in this man-

ner in other subdivisions of that section. Because there appears to be no reason to create a separate (sub)category of public authorities for these isolated sections, one should assume “state and local authority” was intended.⁴³

Provisions of the PAA Act that refer to a “local authority heretofore or hereafter continued or created by this chapter or any other chapter of the laws of the state of New York” were included in the initial version of the PAA Act (S.5642), so their inclusion in the final version of the PAA Act was not the result of the redrafting that took place in June 2005. Rather, the drafters apparently thought in these instances—namely, those contained in PAA Act §§ 15-17 (relating to annual reports, budget reports and independent audits, respectively)—the language was an appropriate technical change to conform the provisions to their state authority counterparts, which in part were already included in state law. Although the wisdom of these “technical changes” is debatable, “local authority heretofore or hereafter continued or created by this chapter or any other chapter of the laws of the state of New York” likely should be construed to mean “local authority” as that term is defined in Public Authorities Law § 2(2).⁴⁴ Both terms are used seemingly interchangeably in the sections in question,⁴⁵ and these sections relate to other provisions applicable to “local authorities.”⁴⁶

The foregoing should not lead one to conclude that all references to “public authority” in the Public Authorities Law must be construed to include local authorities as defined by Public Authorities Law § 2(2). Although the Introducer’s Memo states that section 2 of the PAA Act “would amend section 2 of the Public Authorities Law to define public authorities for the purposes of the Public Authorities Law to include State and local authorities,”⁴⁷ the provision in fact defines “local authority” and “state authority,” not “public authority.” There does not appear to be any other indication that the drafters (let alone the Legislature) contemplated that Public Authorities Law § 2(2) would have such broad application. One would think that there should be more legislative clarity before blindly imposing an entire chapter on entities not previously subject to such regulation.⁴⁸

Board Member Independence

Another ambiguous area of the PAA Act relates to the concept of board member independence. The two aspects of the PAA Act that require “independent” board members are the PAA Act’s mandatory committee provisions,⁴⁹ and the provision that requires board independence.⁵⁰

With respect to the latter, the PAA Act provides:

Except for members who serve as members by virtue of holding a civil office of the state, the majority of the remaining members of the governing body of every state or local authority shall be independent members...For the purposes of this

section, an independent member is one who:

(a) is not, and in the past two years has not been, employed by the public authority or an affiliate in an executive capacity;

(b) is not, and in the past two years has not been, employed by an entity that received remuneration valued at more than fifteen thousand dollars for goods and services provided to the public authority or received any other form of financial assistance valued at more than fifteen thousand dollars from the public authority;

(c) is not a relative of an executive officer or employee in an executive position of the public authority or an affiliate; and

(d) is not, and in the past two years has not been, a lobbyist registered under a state or local law and paid by a client to influence the management decisions, contract awards, rate determinations or any other similar actions of the public authority or an affiliate.⁵¹

“Affiliate” is defined earlier in the PAA Act as “a corporate body having substantially the same ownership or control as another corporate body.”⁵² For full board assessments, one must first exclude any “members who serve as members by virtue of holding a civil office of the state.” Then, the independence criteria must be applied. For committee assessments, one applies only the independence criteria.

Several aspects of this definition create interpretation issues. First, the definition of “independent member” is set forth in § 2825 and, by its terms, is for the purposes of that section only. Technically, therefore, the term “independent member” in § 2824 (the provision relating to committees) is undefined. In keeping with a rule of reason for interpretation of the act, however, it should be assumed that the Legislature intended the definition to apply to both sections.

Second, the provision that states “[e]xcept for members who serve as members by virtue of holding a civil office of the state” technically does not take into account local authority boards. Although “civil office of the state” appropriately refers exclusively to state officials in the context of the definitions of state and local authority,⁵³ there appears to be no valid reason to treat state and local officials differently for the purposes of Public Authorities Law § 2825(2). Extending “civil office of the state” to local *ex officios* would be the preferred construction of Public Authorities Law § 2825(2) and the Legislature should clarify its intent in this regard.

Finally, even if local *ex officios* are excluded from the board membership assessment, further construction problems potentially exist in Public Authorities Law § 2825(2)(a)-(b)⁵⁴ for: (1) local officials who do not serve *ex officio*, and (2) mandatory committee members who are local officials (whether or not they serve *ex officio*). Both paragraphs (a) and (b) of Public Authorities Law § 2825(2) conceivably could prevent local officials from being considered independent (thereby disqualifying them from service on the required committees and potentially disqualifying them from service on local authority boards) because the local government could be construed to be an affiliate of the local authority⁵⁵ and/or local governments occasionally are reimbursed in excess of \$15,000 for services their employees perform for local authorities. There are, however, several reasons why such a construction would be unreasonable and that these provisions should be construed in accordance with their likely purpose—namely, to regulate such relationships that involve private entities: (1) use of the word “executive,” rather than “public official” or “public officer” (as used in Public Authorities Law § 2825(1)), is consistent with confining the regulation to such entities; (2) Public Authorities Law § 2825(1) contains a caveat that indicates that public officers should not be ineligible for local authority board membership by reason of their public office; and (3) most importantly—and possibly the impetus behind the modification to Public Authorities Law § 2825(1)—the Millstein Committee in its 2004 report expressly recognized that employment with the state or local government should not be a basis for declaring a board member non-independent.⁵⁶

In sum, as the discussion in the two preceding paragraphs highlights, local authorities act at the behest of local governments and, therefore, it makes sense to ensure that they remain accountable thereto. It would be unreasonable to permit (or in some cases require) a local government to establish a local authority to carry out a public project only to require that government to relinquish control to “independent” individuals. Any interpretation of the independence requirement of Public Authorities Law § 2825 should not lose sight of this “political reality[.]”⁵⁷

Conclusion

As the foregoing illustrates, interpreting the PAA Act can be difficult in many respects. Rather than addressing these interpretation issues and fine tuning the PAA Act, many subsequent efforts to amend the act have focused on adding to the act, frequently seeking to create additional broad provisions conceived with a particular large authority or transaction in mind and insufficient regard for the potentially detrimental scope of the provisions (particularly with respect to smaller local authorities).⁵⁸ How state and local authorities should be regulated involves policy determinations that are beyond the scope of this article. However, those who seek such regulation should be mindful of the potential scope and implications

of any proposed regulation given the varying size and functions of authorities in the state. As the Millstein Committee admonished in 2004, “governance reform is not a ‘one-size-fits-all’ solution.”⁵⁹

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Endnotes

1. Public Authorities Accountability Act, ch. 766 L. 2005, 228th Sess. (N.Y. 2005) (codified as amended at PUB. AUTH. LAW §§ 2 *et seq.* (2006)).
2. See, e.g., CITIZENS BUDGET COMM’N, PUBLIC AUTHORITIES IN NEW YORK STATE 1 (Apr. 2006).
3. See generally *id.*, at 1; NEW YORK STATE COMM’N ON PUB. AUTH. REFORM REPORT 3 (May 17, 2006).
4. AUTH. BUDGET OFFICE, ANNUAL REPORT ON PUBLIC AUTHORITIES IN NEW YORK STATE 2 (July 1, 2009).
5. [Http://www.osc.state.ny.us/pubauth/byclass.htm](http://www.osc.state.ny.us/pubauth/byclass.htm) (N.Y. State Office of the Comptroller website, as of November 25, 2009). It isn’t precisely clear why there is such a discrepancy, though the difference probably is the result of how one defines “public authority” and/or whether subsidiaries are included in the total.
6. PUBLIC AUTH. REFORM REPORT, *supra* note 3, at 3.
7. See, e.g., N.Y. STATE OFFICE OF THE COMPTROLLER, PUBLIC AUTHORITY REFORM—REINING IN NEW YORK’S SECRET GOVERNMENT, 7-10 (Feb. 2004).
8. Sarbanes-Oxley Act, Pub. L. No. 107-204, 116 Stat. 745 (2002).
9. See, e.g., N.Y. STATE OFFICE OF THE COMPTROLLER, PUBLIC AUTHORITIES IN NEW YORK STATE—ACCELERATING MOMENTUM TO ACHIEVE REFORM, 15-24, 32-33 (Feb. 2005).
10. S.7301, 227th Sess. (N.Y. 2004).
11. This committee was reconstituted as the New York State Commission on Public Authority Reform in February 2005 pursuant to Executive Order 135 (the “Millstein Commission”).
12. N.Y. STATE PUB. AUTH. GOVERNANCE ADVISORY COMM., DRAFT INTERIM REPORT 7-11 (June 22, 2004).
13. A shorter version of the bill (Governor’s Program Bill #69-S.5642) had been introduced a few weeks earlier. This version of the bill was expanded during legislative negotiations to include entire sections relating to property dispositions, the Authority Budget Office and the Office of the State Inspector General.
14. As of the date this article was completed, a bill that would substantially amend the PAA Act has passed the Assembly. See A.40012, 232nd Sess. (N.Y. 2009) (hereinafter “A.40012”). Preliminary indications are that the Senate will pass a parallel version of the bill and that the Governor will sign the bill into law. Although A.40012 contains drafting ambiguities similar to those contained in the original PAA Act, and likely creates additional interpretation problems similar to the ones addressed herein, the bill’s provisions would not directly impact on the specific issues discussed in this article. Accordingly, this article does not discuss this bill in detail. However, those instances where A.40012 touches upon the issues discussed herein are noted.
15. See Memorandum, Sen. Leibell, in Support of S.5927, 228th Sess. (N.Y. 2005).
16. See, e.g., Senate Debate Transcripts for ch. 766 L. 2005, 228th Sess. (N.Y. 2005); Assembly Debate Transcripts for A.5626, 228th Sess. (N.Y. 2005); Assembly Debate Transcripts for A.9010/A.9010C, 227th Sess. (N.Y. 2004).
17. The PAA Act did not charge an administrative entity with interpreting the act or enforcing any of its provisions, and failed to include any civil or criminal enforcement mechanisms, which meant that there would be little chance that PAA Act issues would be resolved by means of administrative or judicial guidance (other than non-binding Attorney General opinions addressing state authority matters). A.40012 would give the newly created Authorities Budget Office, which in effect would be an enhanced version of the Authority Budget Office created by the PAA Act, the power to promulgate regulations to effectuate the purposes of sections 1-7 and 2800-2932 of the Public Authorities Law that relate to its statutory responsibilities. See A.40012 § 5 (proposed new Public Authorities Law § 6(1)(h)). However, A.40012 stops short of granting the agency any civil enforcement authority greater than compelling compliance with its subpoena power. As previously noted, there is no case law addressing the PAA Act, and the two reported Attorney General opinions discussing the act have dealt with fairly narrow property disposition issues. See 2007 Op. Att’y Gen. F2; 2006 Op. Att’y Gen. F4. In addition, there is a surprising lack of helpful articles and other secondary sources.
18. Even though the two Attorney General opinions discussing the PAA Act, see note 17, *supra*, may not constitute significant persuasive authority beyond the circumstances presented and may be flawed in certain respects, these opinions are notable for their adoption of an interpretative view of the PAA Act that seeks to reconcile the language of the act with its overall purpose, while at the same time taking into consideration the programmatic needs and realities of authorities.
19. *Consedine v. Portville Cent. Sch. Dist.*, 12 N.Y.3d 286, 290 (2009); *Riley v. County of Broome*, 95 N.Y.2d 455, 463-64 (2000).
20. *Ryder v. City of New York*, 32 A.D.3d 836, 837 (2d Dep’t 2006) (quoting *Long v. Adirondack Park Agency*, 76 N.Y.2d 416, 420 (1990)), *appeal dismissed*, 8 N.Y.3d 896 (2007).
21. *Id.* (quoting *People v. Santi*, 3 N.Y.3d 234, 244 (2004) (internal quotation marks omitted)).
22. *Khrapunskiy v. Doar*, 49 A.D.3d 201, 204 (1st Dep’t) (citing McKinney’s Statutes § 111 (1971)), *appeal dismissed*, 10 N.Y.3d 926 (2008).
23. N.Y. PUB. AUTH. LAW § 2(2).
24. Though not discussed in detail here, whether an entity is an affiliate of a local authority because such authority has “substantially the same ownership and control” over the entity could create additional interpretation issues, as well.
25. DRAFT INTERIM REPORT, *supra* note 12, at 1.
26. See, e.g., PUBLIC AUTHORITY REFORM REPORT, *supra* note 7, at 3.
27. Leibell Memorandum, *supra* note 15. Moreover, in reports issued after the passage of PAA Act, both the Millstein Commission and the Authority Budget Office indicated their view that the scope of the act with respect to local not-for-profits extended no further than to local development corporations. See PUBLIC AUTHORITY REFORM REPORT, *supra* note 3, at 24-25, app. K; ANNUAL REPORT ON PUBLIC AUTHORITIES, *supra* note 4, at 2.
28. N.Y. PUB. AUTH. LAW § 2(4).
29. See, e.g., *DeGraziano v. Verizon Commc’ns, Inc.*, 325 F.Supp.2d 238, 245-46 (E.D.N.Y. 2004).
30. The “ownership” element of Public Authorities Law § 2(4) seems out of place in the context of public authorities, since local governments don’t control public authorities via the type of shareholder interest one would see in the private sector.
31. American Heritage Dictionary of the English Language 1679 (4th ed. 2006).

32. See McKinney's Statutes § 234 (1971).
33. See *supra* notes 25–27, and accompanying text.
34. An example of such an entity is a housing fund development corporation created with the assistance of the New York City Department of Housing Preservation and Development pursuant to article 11 of the Private Housing Finance Law.
35. An example of such an entity is the Public Health Research Institute, which was created by Mayor LaGuardia in 1941. See, e.g., http://www.phri.org/overview/over_over.asp (Pub. Health Research Institute website, as of November 25, 2009). The institute, which may even have been “affiliated with” and “sponsored by” New York City, see *City to Support Health Research*, N.Y. Times, July 5, 1942, no longer has any connection with the City.
36. A.40012 would give the new Authorities Budget Office the authority to “develop a comprehensive definition of *public authorities* including a consolidated listing by class and name.” A.40012 § 5 (proposed new Public Authorities Law § 6(1)(j)). It is likely (though not certain) that the drafters of A.40012 intended to give the new Authorities Budget Office the authority to develop comprehensive definitions of “state authority,” “local authority” and/or “interstate or international authority” rather than “public authorities.” See “Scope of Local Authority Compliance,” *infra*. If that is the case and A.40012 becomes law, it is recommended that the new Authorities Budget Office keep in mind the principles discussed in this section when developing those definitions.
37. See McKinney's Statutes § 236 (1971).
38. This uncodified provision would be repealed by A.40012.
39. See *supra* note 13.
40. By its express terms, PAA Act § 28 (codified at N.Y. EXEC. LAW ART. 4-A) does not apply to local authorities.
41. N.Y. PUB. AUTH. LAW § 2896(1) and PAA Act § 27(1) (uncodified).
42. Compare N.Y. PUB. AUTH. LAW § 2800(2) with § 2896(3) and PAA Act § 27(1) (uncodified).
43. A.40012 also includes such inconsistent terminology. See, e.g., *supra* note 36.
44. An argument that “local authority heretofore or hereafter continued or created by this chapter or any other chapter of the laws of the state of New York” was intended to mean something different than “local authority” certainly would not be without merit. For example, it could be argued that the phrase was intended to exclude not-for-profit corporations, since such corporations technically are created *pursuant to* the Not-for-Profit Corporation Law.
45. See, e.g., N.Y. PUB. AUTH. LAW § 2800(2).
46. Compare N.Y. PUB. AUTH. LAW § 2800(2)(a)(8) with § 2824(1)(d).
47. Leibell Memorandum, *supra* note 15.
48. A cursory review of the Public Authorities Law to determine which provisions would be subject to local authorities were they to be automatically classified as public authorities under the Public Authorities Law reveals that most (if not all) of the potentially problematic provisions are contained in article 9 of the Public Authorities Law.
49. These committees include an audit committee and a governance committee. See N.Y. PUB. AUTH. LAW § 2824(4), (7). A.40012 would add a finance committee requirement for authorities that issue debt. See A.40012 § 11 (proposed new Public Authorities Law § 2824(8)). With an exception for boards with fewer than three independent members, A.40012 would require such committees to be comprised of a minimum of three independent members, which members would have to constitute a majority of the committee. A.40012 §§ 10-11 (proposed new Public Authorities Law § 2824(4), (7) and (8)).
50. N.Y. PUB. AUTH. LAW § 2825(2).
51. *Id.*
52. N.Y. PUB. AUTH. LAW § 2(4).
53. See N.Y. PUB. AUTH. LAW § 2(1)-(2).
54. Public Authorities Law § 2825(2)(c)-(d) could create similar construction problems, but these probably are not as pressing for local governments and local authorities as those presented by § 2825(2)(a)-(b).
55. See N.Y. PUB. AUTH. LAW § 2(4). An earlier version of A.40012 would have helped clarify this aspect of the PAA Act by changing Public Authorities Law § 2825(2)(a) to read: “an independent member is one who: (a) is not, and in the past two years has not been, employed by *the public authority or a related authority or public benefit corporation* in an executive capacity.” S.1537-C/A.2209-C, 232nd Sess. (N.Y. 2009) (emphasis added). It is not clear why this change was dropped from A.40012.
56. DRAFT INTERIM REPORT, *supra* note 12, at 10. In its “Frequently Asked Questions,” the Authority Budget Office essentially agreed with the Millstein Committee, but oddly added that the appointment of a government employee to an authority board “is not a recommended practice.” See <http://www.abo.state.ny.us/frequentquestions/faq.html#boardmemberindependence> (Authority Budget office website, as of November 25, 2009).
57. DRAFT INTERIM REPORT, *supra* note 12, at 10. The Millstein Committee's report further notes that it would hurt an authority's ability to attract qualified candidates if state and local officials potentially were disqualified on independence grounds. *Id.*
58. These efforts, including A.40012, arguably have not sufficiently addressed special concerns presented by locally controlled state authorities. These authorities are frequently subjected to the specter of state-level regulation along with state controlled authorities, even though they can have as few as one state board member. See N.Y. PUB. AUTH. LAW § 2(1). An example of such regulation is the provision in A.40012 that would subject all state authorities to State Comptroller contract approval regardless of board composition. See A.40012 § 14 (proposed new Public Authorities Law § 2879-a).
59. DRAFT INTERIM REPORT, *supra* note 12, at 7. The Millstein Committee sought to address differences among state and local authorities through the use of a waiver mechanism that could serve to exclude authorities from any inappropriate requirements. *Id.* at 11. That waiver mechanism was not included in the PAA Act, and A.40012 would only include a waiver option for annual reporting requirements. See A.40012 § 6-a (proposed new Public Authorities Law § 2800(4)).

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