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# **Public Authorities in New York State**



## **FOREWORD**

Founded in 1932, the Citizens Budget Commission (CBC) is a nonprofit, nonpartisan civic organization devoted to influencing constructive change in the finances and services of New York State and New York City. During 2003 the role of public authorities in providing state and local services became a controversial issue, in part due to studies and investigations completed by the State and City Comptrollers and by legislative oversight committees. While these studies were useful CBC was concerned that the attention was focused too narrowly on what might be atypical abuses rather than the more significant long-run issues and broader perspectives, including a recognition that public authorities with appropriate controls have and continue to serve important public objectives. The leadership of the CBC therefore decided early in 2004 to initiate a study of this important topic. At the invitation of the Commission's chairman, H. Dale Hemmerdinger, we agreed to lead the ad hoc Trustee committee that would oversee this effort. The following Trustees volunteered to join this research committee: Paul Alter, Paul Bader, Paul Balsler, Stephen Berger, Kenneth Bond, Lawrence Bittenwieser, Herman Charbonneau, Stephen DeGroat, Douglas Durst, Roger Einiger, Bud Gibbs, Kenneth Gibbs, James Haddon, John Hallacy, Walter Harris, Fred Hochberg, Deborah Jackson, David Jones, Jerome Katz, Eugene Keilin, Walter Kicinski, Peter Kiernan, Bill Lambert, Andrew Lynn, Robinson Markel, Steven Polan (Co-chair), Hector Prud'homme, Alfredo Quintero, John Rhodes, Edward Sadowsky, Deborah Sale, Richard Sigal, Emanuel Stern (Co-chair), Kevin Willens, and Nancy Winkler.

The Committee met eight times. The sessions were devoted primarily to reviewing materials developed by the CBC staff, but also included a meeting with State Comptroller Alan Hevesi and his staff and an informal conversation with several chairs of authority boards who agreed to share their perspectives with us. It is important to note that many of the Trustees involved in this effort have considerable expertise in the topic developed through extensive experience with public authorities including serving in leadership roles and working with them on financial transactions. This report was approved by the Committee at its final meeting.

Shortly after the CBC created our committee, Governor George Pataki appointed the New York State Commission on Public Authority Reform with Ira Millstein as its chairman. Mr. Millstein, who also is a Trustee of the CBC, had already been active in helping the Governor with governance issues related to public authorities. He did not participate in this Committee's deliberations; however, the CBC President, Diana Fortuna, serves as a member of the Millstein Commission, and the CBC Committee benefited greatly from shared information and analysis. On behalf of the CBC, we thank Mr. Millstein for his cooperation and congratulate his Commission for its work, which is expected to result in a report later this year that is likely to provide additional valuable recommendations for making better use of public authorities in New York.

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## TABLE OF CONTENTS

<b>INTRODUCTION.....</b>	<b>1</b>
<b>OVERVIEW OF AUTHORITIES IN NEW YORK.....</b>	<b>3</b>
Accountability.....	4
Purpose.....	7
Scale.....	9
<b>PROBLEM ONE: Misuse of the power to incur debt .....</b>	<b>10</b>
Background .....	10
New York State and its Authorities .....	12
New York City and its Authorities .....	16
Other Local Governments and Their Authorities .....	19
Authorities with Mixed Accountability and a Summary .....	22
<b>PROBLEM TWO – Insufficient Oversight and Coordination of Project Revenue</b>	
<b>Backed and Private Conduit Borrowing.....</b>	<b>24</b>
Inadequate Advance Review.....	24
Limited Coordination with State Capital Planning.....	25
Limited Guidelines for and Coordination of Conduit Debt.....	26
<b>PROBLEM THREE – Insufficient reporting to support accountability.....</b>	<b>28</b>
What Should We Know?.....	28
Current Reporting Requirements .....	30
Current Reporting Practices .....	35
Summary of Significant Reporting Problems .....	38
<b>PROBLEM FOUR – Insufficient Independence in Governance.....</b>	<b>38</b>
<b>HOW TO SOLVE THE PROBLEMS .....</b>	<b>41</b>
New Constitutional Limits on Debt .....	41
Improved Oversight of Authority Project Debt and Conduit Debt.....	42
More Effective Allocation of Private Conduit Debt.....	44
Improved Accountability with Better Reporting .....	45
Better Governance through Greater Independence and Professionalism among Board Members .....	46
<b>APPENDIX A .....</b>	<b>49</b>
Debt Affordability Analysis for New York City, 2004 .....	49
<b>APPENDIX B .....</b>	<b>53</b>
Debt Of Local Governments And Related Authorities: Case Studies .....	53

## EXECUTIVE SUMMARY

### Background

Public authorities play a major role in delivering public services. They supplement direct government agencies in three ways:

- Provide a business-like organizational structure for public services that are financed primarily by user fees and whose capital investments are self-financed through bonds supported by user fees.
- Provide a stewardship for major capital assets and make long-run investment decisions with some isolation from pressures of the electoral cycle.
- Provide a mechanism for taking advantage of federal tax benefits for economic development and other purposes that otherwise would be treated as private activities.

Authorities are intended to strike a balance between political accountability and political independence. Unlike heads of direct government agencies, governing boards of authorities are expected to be more independent of those who appoint them, to make difficult and unpopular decisions outside the arena of elected politics, and to be accountable to the public indirectly through reporting, transparency in decision-making and long-run performance.

New York State makes extensive use of public authorities. It has created 583 authorities, and they have created subsidiaries that bring the total number of entities to 740. They assist in a variety of important public services including, providing electric power, creating and maintaining bridges and highways, running mass transit systems, building and operating housing, financing higher education, and providing medical care. State officials, typically the Governor, appoint the majority of board members to 104 authorities. Local government officials appoint the boards of 474 authorities, including 17 accountable to the City of New York. Five authorities have boards whose members are appointed by officials of more than one government.

### The Problems Associated with New York's Authorities

New York State's extensive reliance on authorities has given rise to four significant problems:

- *Misuse of the power to incur debt*
- *Insufficient oversight and coordination of project revenue backed and private conduit borrowing*
- *Insufficient reporting to support accountability*
- *Insufficient independence in governance*

Each problem is explained more fully in the report, but can be summarized as follows.

### ***1. Misuse of the power to incur debt***

Debt of state and local governments can be divided into three types depending on the type of revenues pledged to repay the debt— government supported debt, project revenue backed debt, and private conduit debt. Government supported debt is repaid with the state or local government’s general revenues (primarily taxes). Project revenue debt is repaid with the revenues generated by the project that is financed with the borrowed capital; examples include toll bridges and airports. Private conduit debt is issued by a government agency on behalf of a private individual or firm in order to take advantage of federal tax exemptions (often for economic development or for private housing); the debt is repaid by the private entity’s revenues and is not legally an obligation of the government.

In New York, state and local governments and their authorities have borrowed an estimated \$227 billion. Of this total, about \$40 billion is private conduit debt, about \$56 billion is project revenue backed, and \$131 billion is government supported. The latter amount is composed of \$45 billion supported by the State and \$86 billion by local governments including \$52 billion by the City of New York.

A problem arises because authorities have been used to issue more State-supported debt than can reasonably be judged as affordable. The New York State constitution limits the debt of the State. This limit is procedural; general obligation debt of the State must be approved by the voters in a referendum on a bond issue for a specific amount and purpose. The rejection of some proposed borrowings by the voters has led elected officials to seek ways to borrow outside the limit, a practice referred to as “backdoor” borrowing that involves authorities.

The significance of backdoor borrowing is evident in the form of currently outstanding State-supported debt. Of the total of \$45 billion of this debt, only \$4 billion followed the constitutional procedure requiring approval of the voters; the remaining \$41 billion is backdoor debt issued by authorities on behalf of the State.

The combination of creative financing mechanisms and multiple authorities available to use them means that there is no effective legal limit on State-funded debt. As a result, New York has too much State-funded debt. This determination is based on a method originally suggested by the Citizens Budget Commission in 2000. It defines “affordable” debt as debt which can be issued without requiring tax increases or service cuts that place the jurisdiction far out-of-line with its competitors. Based on this assessment, New York State was one of eight states having debt levels in the danger zone, with its debt ratio the third highest in the nation. State-supported debt in 2003 exceeded the State’s danger-zone threshold by nearly \$10 billion.

The State Constitution also sets limits on local government debt. These limits are not procedural, but are amounts set by formulas relating permissible debt to real estate values in the community. However, with the exception of New York City, local governments do not use authorities to circumvent their constitutional limits.

Like the State, New York City uses authorities to exceed its constitutional debt limit. At the end of fiscal year 2004, the applicable constitutional limit was \$43.1 billion. Actual City funded debt totaled nearly \$52.2 billion. The situation was legal because only \$33.9 billion was subject to the limit; the other \$13.2 billion of authority debt was excluded. Unlike State debt, however, the analysis by CBC showed City debt to be within the affordable range, suggesting the constitutional limit may be unreasonable.

## ***2. Insufficient oversight and coordination of project revenue backed and private conduit borrowing***

Although authorities are misused to borrow on behalf on the State in order to avoid debt limits, it is desirable for authorities to borrow for other reasons. In New York, authorities have borrowed about \$166 billion, and about \$96 billion of that total is in the form of project revenue backed debt (\$56 billion) or private conduit debt (\$40 billion). These are generally appropriate forms of authority borrowing.

While appropriate and desirable, these types of authority borrowing raise three important issues. First, neither type of borrowing is subject to sufficient advance review to protect the State or relevant local general government from an authority taking on a project that might not be financially viable. The existing Public Authority Control Board, established in 1975 to review and approve some State authority borrowing, suffers from three limitations – much authority borrowing is exempt from PACB review, the review of covered borrowings is not sufficiently rigorous or transparent, and 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.

Second, projects financed by both types of 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. State legislation requires that the MTA prepare a five-year (not rolling) 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 multi-year 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, resulting in no oversight or coordination these projects.

Finally, 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 this private conduit borrowing and, for some

purposes, limit the amount that can be issued. The State Legislature determines the broad allocation of the state's cap annually. The less than optimal use of conduit debt is evident for borrowing subject to the cap and not subject to the cap. In the latter case, the benefits have been widely used, primarily by health care and higher education institutions, with little strategic guidance from state officials. One result, evident in the hospital sector, is a surplus of facilities that is now being addressed by a gubernatorial commission that is seeking to identify hospitals that can be closed, with some of the candidates having financed projects with conduit borrowing by the Dormitory Authority. New subsidies are being considered to retire that debt with the expectation that future operating savings will justify the needed additional subsidy.

### ***3. Insufficient reporting to support accountability***

Authorities differ from direct public agencies in the way in which they are held accountable. While elections are the primary mechanism of accountability for direct government, authority boards are intended to be somewhat independent of the elected officials who control direct agencies. Nevertheless, the authorities are expected to be accountable to the public. The primary mechanism for achieving this accountability is periodic reporting on their activities and status.

At the minimum, authorities should regularly share with the public four types of information:

- *Financial condition and recent financial results* – this is the information traditionally presented in balance sheets and financial statements.
- *Financial plans* – this is typically information presented in an annual operating budget and in a multi-year financial plan.
- *Capital assets* – this includes information relating to the current condition of these assets, recent changes in their condition, recent and planned expenditures for maintenance and enhancements, and how these maintenance expenditures and capital investments will alter the condition of the assets.
- *Activities and accomplishments* – sometimes characterized as “performance measurement,” this type of information should tell the public what services the entity has provided, how efficiently this has been done, and what the impact on customers has been.

Three important qualities of the information are that it be *timely*, *accessible*, and *subject to audit or review*.

Authorities' reporting practices have fallen far short of meeting the recommended standards. Among the four content areas, only one (financial condition and results) is in substantial compliance – and these reports are often not easily accessible. The remaining shortcomings are substantial:

- Major classes of information that ought to be publicly available are not. Typically there is little or no information reported on future financial plans, conditions of capital assets, and service efforts and accomplishments.

- No entity provides a “big picture” perspective on the finances and performance of the multiple state and local authorities. There is no one place to find information on all authorities.
- The information currently available, relating primarily to financial condition and results, is sometimes not easily accessible and suffers from inconsistencies among reporting entities. Notable inconsistencies include differences in the time horizon used for multi-year financial plans, differences in the designation of the fiscal year, and differences in the method of disclosure for conduit debt.

New legislation and regulations effective in 2006 have the potential to improve the situation, and these new standards should be implemented effectively.

#### ***4. Insufficient independence in governance***

The structure of authorities is designed to strike a balance between political accountability and independence. When the mix of accountability and independence becomes unbalanced, the potential benefits of an authority structure are eroded. Accountability can be diminished if sufficient information is not made available to the public. An equally important risk in the authority structure is that the board does not function with sufficient independence. Insufficient independence can lead to three types of deficiencies in authority performance – patronage-like decisions, erosion of professionalism among senior staff, and inappropriate time frames for strategic decisions.

### **Solving the Problems**

The problems identified in this report can be solved. The five strategies presented below would better enable authorities to realize their potential contribution to more effective and efficient services for New Yorkers.

- (1) Eliminate the misuse of authorities’ debt powers by setting comprehensive constitutional limits on the amount of State-supported and City-supported debt that can be issued by the State of New York and by the City of New York.** The current constitutional debt limits should be replaced with an approach based on the concept of affordability developed by the CBC. Instead of having a procedural limit requiring voter approval, an independent board should conduct periodic analyses to arrive at a debt limit based on a comparative approach to affordability. Their charge would be to set rolling, multiyear limits for debt based on analysis that takes into account trends in the resources of the City and State and in the patterns of debt issuance by other competitive jurisdictions.
- (2) Improve the oversight of non-State-funded authority debt by eliminating the PACB review process and replacing it with more comprehensive capital planning and project feasibility studies subject to professional, transparent review.** The primary responsibility for assessing the merits of specific project borrowing should remain with the authority boards. However, two requirements

should be subject to external enforcement. First, authority borrowing backed by the entity's project revenues should be limited to projects that are part of a long-run, capital plan reviewed and approved by the relevant elected officials. For state authorities, their capital investments should be integrated with the State's capital plan developed by the Governor and approved by the Legislature. For local authorities, integration with local government's capital planning should follow a model similar to that in place in New York City. The authorities' proposed capital investments should be considered as part of the general government's capital budget process, and approval of the relevant chief executive should be required before the project is initiated. Most private purpose conduit borrowing need not be subject to a public capital planning process.

Second, both project-revenue backed and private conduit borrowings should be subject to professional review of a feasibility study in order to avoid undue risks. It should be the responsibility of the authority board to prepare (or have prepared) a feasibility study. For State authorities this study should be subject to review by the Division of the Budget. For local authorities, the review should be conducted by the local government's chief financial officer or the newly created State Authority Budget Office. In all cases the initial study and the reviewers' comments should be part of an easily accessible, public record.

**(3) Improve the effective use of tax-exempt conduit debt by requiring more explicit advance allocation of its purposes and more competition among private entities for its benefits.** Allocations of private-purpose debt should be based on elected officials' political judgments about the relative importance of the permissible function, and decisions should be based on evidence submitted by the issuing agency. The appropriate legislative committee should conduct public hearings and prepare an annual report based on reliable data and sound evaluation methods to support a recommended allocation. At the next stage, the authorities given an allocation of tax-exempt debt should select among entities seeking the benefit based on criteria established in advance and in response to competitive proposals.

**(4) Make authorities more accountable through more complete and accessible reporting of financial and other information.** Four strategies should be pursued:

- The new, more comprehensive standards for the content of publicly reported information promulgated in 2006 should be implemented effectively by individual authorities with strict oversight by the State Comptroller and the Authority Budget Office.
- One or more public officials should be given responsibility for providing the Legislature and the public with a "big picture" perspective on the activities of authorities.
- The accessibility of mandated reports should be improved by having the individual authorities, the new Authority Budget Office and the State Comptroller make them available on the Internet.

- Inconsistencies in current financial reporting practices should be addressed through guidelines established by the State Comptroller and, as necessary, by statutory standards.

**(5) Enhance the governance of authorities through greater independence and professionalism among board members.** Currently, the greatest threat to the desired governance arrangements for authorities is that many elected officials and their appointees to authority boards share an expectation that the appointees will defer to the judgment of the person who appointed them on important board decisions including staff hiring. This culture should be changed to one in which board members consult the officials who appointed them and other elected leaders, but their final decisions should be based on their own judgments about how to best promote the agency’s mission. While appropriate deference might be given to the views of elected officials, the final judgment should be that of the board member and not the appointing official.

Measures that are likely to bring progress towards this goal include:

- *Screening.* There should be a standard screening process for proposed board appointees, which discloses information about their qualifications and potential conflicts of interest.
- *Formal Orientation.* New appointees should be required to participate in brief sessions which provide information about the organization and its procedures, and familiarize the member with issues involved in striking an appropriate balance between political accountability and independence.
- *Staggered Terms.* It is appropriate for a board chair to serve a term that coincides with that of the appointing official, promoting an appropriate degree of political accountability. However, other board members should serve staggered terms to help ensure continuity for organizational policy and facilitate independence among board members.
- *End “Hold Over” Appointments.* Currently board members may continue to serve when their fixed term expires, effectively making them subject to dismissal by the appointing official like an individual serving at the pleasure of that appointing official. Such “hold over” appointments should be eliminated by obliging board members to leave office shortly (perhaps 30 days) after their term expires if they are not re-appointed to a fixed term.

## INTRODUCTION

Authorities, sometimes known as public benefit corporations, play a major role in delivering public services. They are used at all levels of government – federal, state and local – and play a vital role in a wide range of activities including delivering mail, providing electric power, creating and maintaining bridges and highways, running railroads and mass transit systems, building and operating housing, financing higher education, and providing medical care.

The current extensive reliance on authorities has a long history. Some trace the concept back to the entities chartered by the King of England to conduct trade and settle America – the East India, Hudson Bay and Plymouth Companies.<sup>1</sup> The British first used the term “authority” in creating the Port of London Authority in 1908, with the distinguishing characteristics of the contemporary entities – a government appointed board, a dedicated revenue stream, and a specialized purpose. The American version of the authority was “invented” in 1921 with the Port of New York Authority, a bi-state organization created to enhance port facilities in the region by the States of New York and New Jersey and chartered by Congress.<sup>2</sup>

In the 1930s and 1940s the concept became more widespread in New York, as Robert Moses used it to finance a variety of transportation projects through what became the Triborough Bridge and Tunnel Authority and other combined highway and recreation projects through multiple “parkway” authorities,<sup>3</sup> and as the leadership of the Port Authority extended its mission into other arenas.<sup>4</sup> In the post-WWII period, additional authorities were created including the Thruway Authority to build toll roads, the Dormitory Authority to build higher education facilities, and multiple local entities to build parking facilities, water systems and bridges.<sup>5</sup> In 1956 a State Commission reported that 56 authorities had been created in New York and that 33 remained active.

Under Governor Nelson Rockefeller, the use of authorities expanded further at both the state and local levels. The most notable feature of this expansion was the development of legal instruments and concepts that enabled authorities to issue debt on behalf of the State for purposes that previously could be pursued only by direct State agencies and financed by borrowing only through general obligation bonds approved by the voters in a general election. By the mid-1970s, authorities were aggressively aiding the State’s political

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<sup>1</sup> See Jerry Mitchell, *The American Experiment with Government Corporation* (Armonk, NY: M.E. Sharpe, 1999).

<sup>2</sup> Mitchell notes that the Port Authority was preceded in 1903 by the federal takeover of the Panama Railroad Company, a forerunner of the authority in the sense that it was a private company run by a federally appointed board, earning its own revenues, and having its finances overseen by Congress.

<sup>3</sup> Robert A. Caro, *The Power Broker: Robert Moses and the Fall of New York* (New York: Random House, 1975).

<sup>4</sup> Jameson W. Doig, *Empire on the Hudson: Entrepreneurial Vision and Political Power at the Port of New York Authority* (New York: Columbia University Press, 2001).

<sup>5</sup> A summary of the history of authorities in New York State is presented in State of New York, Office of the State Comptroller, *Public Authority Reform: Reining in New York’s Secret Government*, February 2004.

leaders in financing housing, urban renewal, universities and medical facilities as well as more traditional transportation projects.

The risks and limitations of the new financing strategies became evident in 1975, when the Urban Development Corporation (UDC) could not meet its obligations. The UDC had been created in 1968 as an authority to finance housing and other projects; its bonds were supposed to be paid with revenues from those projects, but in 1975 it did not have sufficient revenues to cover its debt payments. Not only were the UDC bondholders in jeopardy, but also the State's credit was placed at risk, and the UDC default contributed to the City of New York's 1975 fiscal crisis as it was denied access to credit markets. It became clear that although authorities might be legally "independent" of general government, their finances could not, in practice, be kept entirely separate and creditors would hold the State accountable (at least politically) for obligations of authorities and localities.

In the wake of the 1975 UDC crisis some steps were taken to improve the authorities' financial practices. Legislation in 1976 put limits on the amount of some forms of authority debt and established the Public Authority Control Board (PACB) to review the viability of projects for which some authorities proposed to borrow. Legislation in 2000 put additional limits on the amount of State-supported debt, and therefore on the amount of debt that the State can issue through public authorities. The Public Authorities Accountability Act passed in 2005 set some new standards for authorities' governance and reporting that became effective in 2006.

For more than three decades since the UDC crisis, authorities have continued to play a major and growing role in serving New Yorkers. Additional entities have been created and the scope of their activities, financial and other, has expanded. The strong reliance on authorities in the activities of modern government has a sound logic. The organizational design is well suited to some purposes. Notably, authorities can supplement state and local governments in pursuing these goals:

- Provide a business-like organizational structure for public services that are financed primarily by user fees and whose capital investments are self-financed through bonds supported by user fees.
- Provide a stewardship for major capital assets and make long-run investment decisions with some isolation from pressures of the electoral cycle.
- Provide a mechanism for taking advantage of federal tax benefits for economic development and other purposes that otherwise would be treated as private activities.<sup>6</sup>

While the case for continuing to use authorities is strong, they also create important risks. Specifically, in New York the reliance on authorities has engendered four problems:

1. Authorities have been misused as a mechanism to circumvent State constitutional limits on tax-supported debt; as a result, the State has taken on more debt than is reasonably affordable.

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<sup>6</sup> This role for authorities is discussed more fully below.

2. There is insufficient oversight and coordination of authority debt backed by the entities' project revenues and by revenues of conduit borrowers;<sup>7</sup> as a result, the State's capital planning is fragmented, it may face unrecognized credit risks, and federal tax-exempt borrowing capacity is used inefficiently.
3. Authorities do not report to the public all the information that is essential for meaningful public accountability.
4. The boards governing authorities do not operate with sufficient professionalism and independence; as a result, critical investment and other decisions are subject to short-term political pressures, and senior staff is sometimes hired based on factors other than the highest relevant professional qualifications.

These are serious problems that should be addressed in order for New Yorkers to enjoy the full potential benefits of authorities. The remainder of this report is devoted to explaining the issues more fully and presenting recommendations for improvement. The next section provides background information helpful for understanding the diverse nature of authorities in New York. The following four sections each explain more fully one of the four problems identified above. The final section presents recommendations for addressing each of the problems.

## **OVERVIEW OF AUTHORITIES IN NEW YORK**

As the introduction suggests, authorities in New York are numerous and diverse. Consequently, generalizations are difficult; each problem is likely to be more serious for some type of authorities than others, and recommended solutions are likely to be more needed and applicable to some types of authorities than others.

In distinguishing among authorities, three characteristics are most useful – level of accountability, purpose, and scale. Applying these distinctions creates subsets of authorities whose activities can be analyzed more meaningfully than the group as a whole.

The State Comptroller has identified 740 authorities.<sup>8</sup> This count includes each subsidiary of an authority as a separate authority. However, the subsidiaries are typically serving a similar purpose to the parent organization and are ultimately accountable to the same parent board.<sup>9</sup> Excluding subsidiaries and reducing the count to parent entities brings the total to 583. This group is analyzed below in terms of their accountability, purpose, and scale.

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<sup>7</sup> “Conduit” borrowing refers to an authority borrowing on behalf of another party, with that other party pledging to provide revenue to meet the debt service payments on the borrowing.

<sup>8</sup> The most recent count from the Office of the State Comptroller is available on their website, <<http://www.osc.state.ny.us/pubauth/byclass.htm>>. Also see State of New York, Office of the State Comptroller, *Public Authorities in New York State: Accelerating Momentum to Achieve Reform*, <<http://www.osc.state.ny.us/reports/pubauth/pubauthoritiesreform.pdf>> (February 17, 2005).

<sup>9</sup> For example, the Empire State Development Corporation has 108 subsidiaries.

## **Accountability**

Authorities are intended to be “public” in the sense that they are ultimately accountable to some electorate and “independent” in the sense that their governing boards are not directly elected and can make decisions at a distance from electoral pressures. This balance is generally struck by having authorities governed by board members who are appointed by elected officials, and boards can be accountable to State elected officials, officials of a specific local government, or some mix of officials from multiple jurisdictions.

The best indicator of the source of accountability for authority boards is the nature of the elected officials who appoint the board members.<sup>10</sup> However, additional factors are relevant, including control of the office of board chair, and the reliance on a specific government for operating or capital subsidies.

### **State authorities**

State officials, typically the Governor and sometimes legislative leaders, appoint the majority of board members to 104 public authorities. (See Table 1.) Nine major authorities comprise 95 percent of the combined assets and 86 percent of the combined revenues of authorities accountable to the State.<sup>11</sup> These nine are the Power Authority of the State of New York, the Housing Finance Agency, the Thruway Authority, the Metropolitan Transportation Authority, the Dormitory Authority, the Long Island Power Authority, the Urban Development Corporation, the State of New York Mortgage Agency, and the Environmental Facilities Corporation.

Some authorities have boards appointed mostly by State officials, and are accountable to the State in that sense, but are actually a financial responsibility of a local government in the sense that the authority’s financial obligations are supported by local rather than State revenues. Examples, discussed more fully below, are the Municipal Assistance Corporation of the City of New York and other fiscal stability authorities in Nassau, Erie,

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<sup>10</sup> This set of classifications is slightly different from that proposed by the State Comptroller and that defined by the Public Authorities Accountability Act. The State Comptroller in recent reports classified authorities into four groups based on how the board is appointed and extent of jurisdiction. Class A and Class B are authorities with a majority of board members appointed by state officials. Class A includes those with statewide or regional significance, and Class B, those with more limited jurisdiction. Class C authorities have a majority of board members appointed by local government officials. Class D authorities are entities with interstate or international jurisdiction.

The Public Authorities Accountability Act defines three classes of authorities. An “interstate or international authority” is an authority created pursuant to agreement or compact with another state or with a foreign power, or an affiliate or subsidiary of such an authority. “State authorities” are authorities with at least one board member appointed by the Governor or serving by virtue of holding a particular state office. “Local authorities” are authorities with no board members appointed by the Governor or serving by virtue of holding a particular state office.

<sup>11</sup> For a similar calculation (for the State’s 10 largest component units), see State of New York, Office of the State Comptroller, *Comprehensive Annual Financial Report for Fiscal Year Ended March 31, 2005*, August 10, 2005, Note 13, “Component Units – Public Benefit Corporations,” page 79. One of the State’s 10 largest component units, the State Insurance Fund, is not a public authority.

Buffalo and Troy; and authorities managing public hospitals in Erie, Nassau and Westchester counties.

**Table 1**  
**Public Authorities in New York State, By Purpose and Accountability, 2005**

Purpose	Accountability			
	State	Local	Mixed	Total
Economic Development	3	168	2	173
Industrial Development		116		116
Other (a)	3	52	2	57
Transportation	10	41	3	54
Highways and Bridges	2	2	2	6
Regional Transportation (b)	5	3		8
Parking		34		34
Port Development	3	2	1	6
Education Foundations and Auxiliaries	44			44
Energy	3	2		5
Facilities Financing, Construction & Operation (c)	9	3		12
Fiscal Stability (d)	6	2		8
Health	9	3		12
Housing		192		192
Parks, Culture, Recreation (e)	14	15		29
Water and Sewer (f)	1	28		29
Solid Waste		18		18
Other	5	2		7
<b>TOTAL</b>	<b>104</b>	<b>474</b>	<b>5</b>	<b>583</b>

Source: CBC staff categorization of authorities classified by OSC, adjusted to show the "mixed" accountability of the UNDC and the Development Authority of the North Country. For OSC list see <<http://www.osc.state.ny.us/pubauth/byclass.htm>>.

(a) Includes most urban renewal corporations, community development corporations, and local development corporations. Also includes the UNDC.

(b) Some regional transportation authorities have subsidiaries that serve other purposes.

(c) Includes: the Dormitory Authority, HFA, SONYMA, MBBA, the Project Finance Authority, Battery Park City Authority and Roosevelt Island Operating Corporation, the State and City University Construction Funds, NYC's Educational Construction Fund and School Construction Authority, and the Suffolk County Judicial Facilities Agency.

(d) Includes LGAC; the Buffalo, Erie, and Nassau fiscal stability authorities; the MACs for the cities of New York and Troy; and NYC's TFA and TSASC.

(e) Includes the OTBs and authorities related to horse racing.

(f) Includes the EFC.

### Local authorities

New York, like many states, has multiple types of local governments led by locally elected officials. One important distinction is between "general purpose" governments that provide a variety of services (such as police, refuse collection and parks) and "special purpose" governments that provide a single service. The latter group includes school districts, fire districts and others. These single purpose entities are governments rather than authorities because they are governed by elected officials and/or they have authority to levy a tax.

General purpose governments are the units of local government that (with the State) create authorities. The general purpose governments are counties (of which there are 57), cities (including the City of New York and 61 others), towns (930), and villages (554).<sup>12</sup> These governments have some discretion in the means they choose for providing some services. For example, they may choose to provide water services through a governmental department or enterprise fund, a water district with taxing powers, or a public authority.

The State controls the formation of public authorities at the local level in two ways. In some cases the State Legislature has adopted a general law authorizing the creation of a certain class of authorities by a type of local government; in others, the Legislature adopts a specific law creating a specific local authority. Examples of the first situation are State laws authorizing several types of local governments to create industrial development authorities (IDAs) and housing authorities. Examples of the second situation are the State laws creating the Transitional Finance Authority for New York City, the Westchester Community Health Corporation for Westchester County, and Municipal Assistance Corporation of the City of New York, and the Nassau County Interim Finance Authority.<sup>13</sup>

Of the total of 583 authorities, 474 have boards appointed mostly by local officials. These are clearly accountable to a local government. There are 17 authorities accountable to the City of New York.<sup>14</sup>

### **Mixed accountability**

Five major authorities have boards whose members are appointed by officials of more than one government, and no single general government controls a majority of the board. The Port Authority of New York and New Jersey has board members appointed by the governors of those two states. The Niagara Falls Bridge Commission and the Buffalo and Fort Erie Public Bridge Authority each operate facilities joining New York and Canada and have boards with local and Canadian members. The Development Authority of the North Country spans Jefferson, Lewis and St. Lawrence counties and has board members from those counties and the City of Watertown. The United Nations Development Corporation, which develops commercial property for the United Nations, has a 15-member board; although the Governor appoints a majority of eight members, he shares authority with the Mayor of New York who appoints the others and names the chair. The State Comptroller has determined that none of these authorities is financially accountable to the State.

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<sup>12</sup> Data from State of New York, Department of State, *State of New York Local Government Handbook*, 5<sup>th</sup> Edition, January 2000.

<sup>13</sup> Except for the Transitional Finance Authority (which is clearly a local authority) these authorities are dominated by State-appointed members. However, for various reasons they are considered component units of their respective local governments and hence should be considered local authorities. Similar considerations pertain to the Municipal Assistance Corporation for the City of Troy, the Buffalo and Erie fiscal stability authorities and the county hospital public benefit corporations in Erie and Nassau counties.

<sup>14</sup> City of New York, The New York City Office of the Comptroller, *Comprehensive Annual Financial Report of the Comptroller for the Fiscal Year ended June 30, 2004*. These entities are described on pages 52-56.

In this paper the term “authority” is used to refer to all three types of entities, unless it is qualified with appropriate “mixed accountability,” “state” or “local” modifier.

## **Purpose**

Part of the rationale for authorities is that they have a specialized purpose. Their boards are given a specific mission and are entrusted to focus on that activity. However, the purposes for which authorities have been created vary widely.

Historically, authorities began by providing transportation services and this is still prominent among authority missions. The Port Authority of New York started with a mission to develop port facilities, then built toll bridges and tunnels for autos, and eventually developed and operated airports and rapid transit facilities. The State’s largest authority, the Metropolitan Transportation Authority, operates multiple transportation facilities in the downstate region, and other State authorities include the Capital District Transportation Authority, the New York State Bridge Authority, the Thruway Authority, the Ogdensburg Bridge and Port Authority, and the Port of Oswego Authority. At the local level, 34 municipalities have created authorities to build and operate parking facilities.<sup>15</sup> As shown in Table 1, currently 54 authorities have transportation related missions.

Housing is another prominent authority mission. Fully 192 local governments have created housing authorities to finance and operate housing for low income residents, typically with federal subsidies.<sup>16</sup> The largest of these is the New York City Housing Authority, which owns and operates 181,581 housing units.<sup>17</sup> The State also has created multiple authorities to promote housing. For example, the Battery Park City Authority was established to develop housing on landfill in lower Manhattan, and the Roosevelt Island Operating Corporation builds and operates housing on that island. In addition, the New York State Housing Finance Agency finances subsidized housing projects, and the New York State Mortgage Agency makes mortgages available to first-time home buyers.

State authorities play a critical role in providing public utilities, including energy. The Power Authority dates from 1939 and is a major supplier of electric power with large plants in upstate New York. The Long Island Power Authority was created by the State in 1986 to seek ways to reduce electric rates for Long Island, which were the highest in the nation; in 1998, LIPA acquired the Long Island Lighting Company and now provides electricity to 1.1 million customers in Nassau and Suffolk counties. The State’s Energy

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<sup>15</sup> New York State, Office of the State Comptroller, *Public Authorities in New York State, Accelerating Momentum to Achieve Reform*, February 2005, Appendix A.

<sup>16</sup> New York State, Office of the State Comptroller, *Public Authorities in New York State, Accelerating Momentum to Achieve Reform*, February 2005, Appendix A.

<sup>17</sup> New York City Housing Authority website, <<http://www.ci.nyc.ny.us/html/nycha/pdf/factsheet.pdf>> (accessed November 22, 2005), data as of July 20, 2005.

Research and Development Authority, formed in 1975, funds research into energy supply and efficiency.

Another critical area of public service enhanced by authorities is environmental protection. Water and sewer authorities operate a range of services including water delivery systems, sewage treatment plants and pollution relief.<sup>18</sup> The Buffalo Sewer Authority is an example of such an authority. Founded in 1935 to help combat pollution in the Niagara River, today it helps implement mandates by the State Department of Health and contends with storm water overflows in the region. The State Comptroller identifies 29 different water and sewer authorities in New York. Another aspect of environmental protection is solid waste disposal, and 18 local governments have established authorities for this purpose. (See Table 1.)

Authorities also are important in health care and higher education. The public hospitals owned by the City of New York and the counties of Westchester, Nassau and Erie are each operated by a local authority, and the State operates a specialized facility through its Roswell Park Cancer Institute. The State created a Medical Care Facilities Finance Authority in 1973 to help finance private hospital development; this entity was merged with the Dormitory Authority in 1995, and that authority is now a major source of capital for private facilities. In addition, the State has two authorities that since the early 1950s have funded research in health care and mental health, respectively. Higher education in New York, private as well as public, is also supported by authorities. Several foundations have been established in relation to the State University and City University for construction, for research, and to manage the funds of faculty and student organizations. In addition, the Dormitory Authority has served as the conduit borrower for the State University, the City University and dozens of private institutions.

Economic development is another major arena for authorities. Fully 116 localities have created industrial development authorities (IDAs), which finance and support otherwise private projects intended to bring jobs to an area. (See Table 1.) Separate authorities have been created by localities to implement specific projects, such as New York City's Jay Street Development Corporation and its Brooklyn Navy Yard Development Corporation. The State uses authorities to promote economic development through its Job Development Authority and the Urban Development Corporation (UDC). Other activities related to economic development taken on by State and local authorities include the development and operation of convention centers and sports facilities. In addition to the IDAs, 57 other authorities have missions related to economic development.

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<sup>18</sup> As discussed above, local governments have choices in deciding how to provide such services. One alternative to the authority structure is the creation of special water districts organized under New York State Town Law. These districts have separately elected boards, and although they operate independently, the primary government is liable for their bonded debt. For example, water services for the Town of Hempstead are controlled by the Franklin Square Water District, the Cathedral Gardens Water District, the West Hempstead-Hempstead Water District, and the West Greater Atlantic Beach Water Reclamation District. Another alternative for organizing water and sewer delivery is the incorporation of these services into an enterprise fund of the primary government, as seen in the City of Rochester, or a Special Revenue Fund, as seen in the City of Yonkers.

Authorities also are relied upon to help finance the operation of general governments. Perhaps the most dramatic case is the creation of the Municipal Assistance Corporation (MAC) to help meet the City of New York's financial obligations during its 1975 fiscal crisis. MAC's function was to issue debt, the proceeds of which helped finance the City's operations. In 1990 the State took a similar approach to meet its own cash needs by creating the Local Government Assistance Corporation, whose function was to issue bonds to fund aid payments to school districts and localities that previously were financed with short-term borrowing. In 1997 the State created the Transitional Finance Authority to enable the City of New York to finance its capital budget with funds raised outside the State Constitution's limit on the City's general obligation debt. In 2000 the State created the Nassau County Interim Finance Authority to help that county finance its accumulated deficit, and in 2003 it created the Buffalo Fiscal Stability Authority to help finance that city's operations. Additional authorities have been created to enable the State, the City of New York and several other local jurisdictions to securitize their future revenues from a national court settlement with tobacco companies.

## **Scale**

The diversity of authorities is evident in the scale of their operations as well as their multiple purposes. Among the dozens of authorities accountable to the State, by far the largest is the Metropolitan Transportation Authority, which, including its six major subsidiaries, has annual operating expenses of nearly \$8.5 billion. The State's two major power authorities each have expenditures of more than \$2 billion, and the Dormitory Authority and the Urban Development Corporation each spend more than \$1 billion annually. In contrast, also among the State authorities is the Industrial Exhibit Authority (IEA), which puts on the State Fair each year; its annual operating expenses are \$4.5 million.<sup>19</sup> The Local Government Assistance Corporation, which provides services only to the State, has no staff of its own and is run jointly by the State Division of the Budget and the Office of the State Comptroller.

The authorities accountable to the City of New York show a similar range in scale. The two largest entities, the Health and Hospitals Corporation and the Housing Authority have annual operating expenses of about \$4.8 billion and \$2.7 billion, respectively; in contrast, the City's Marketing Development Corporation has expenses of \$6.5 million.<sup>20</sup> Two of the City's financing entities, the Transitional Finance Authority and the Sales Tax Asset Receivable Corporation, have substantial debt service expenses, but their operations are very small with no direct staff and offices co-located with the Office of Management and Budget.

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<sup>19</sup> Figures for operating expenditures are from the Office of the State Comptroller website, Data on Individual Public Authorities, <<http://www.osc.state.ny.us/finance/pubauth/page5.htm>> (accessed November 23, 2005). Data is from fiscal years ending in 2004 except for the MTA and the power authorities, for which the data is from fiscal years ending in 2003.

<sup>20</sup> City of New York, Office of the Comptroller, *Comprehensive Annual Financial Report of the Comptroller for the Fiscal Year ended June 30, 2005*, pp. 48, 130.

The authorities established by other local governments also vary widely in scale. Among the largest are the entities operating the public hospitals in Westchester and Nassau counties, with annual operating expenses of \$563 million and \$476 million, respectively.<sup>21</sup> The Buffalo and Rochester housing authorities each have annual expenses exceeding \$50 million. Smaller entities include numerous local parking authorities; the Yonkers Parking Authority spends less than \$4 million annually and smaller villages have parking authorities with even smaller annual budgets.

The ‘mixed’ accountability authorities are also diverse in scale. By far the largest is the Port Authority of New York and New Jersey with about \$2.8 billion in annual operating expenses. The others have annual expenses ranging between \$14 million and \$22 million.

### **PROBLEM ONE: Misuse of the power to incur debt**

Some authorities have been misused by elected officials in order to circumvent State constitutional limits on debt and to take on more debt than is reasonably affordable by taxpayers. In order to understand the nature of this problem, it is instructive to begin with some background information about debt limits and the nature of public debt in New York.

#### **Background**

Debt is an important tool in public finance, most valuable as a way to finance large capital projects that have a long lifespan. Borrowing long-term to pay for such projects makes good sense; multiple generations of taxpayers who enjoy the benefits of an investment such as building a sewer system or a road network should also share the burden of paying for it. Common guidelines for public borrowing related to the concept of “intergenerational equity” specify that the duration of the bond correspond to the useful life of the project and that the annual debt service be spread over that period commensurate with the flow of benefits (usually evenly, for “level debt service”).

But debt is also a great temptation for elected officials. They can spend in the short-run on projects for which they get credit from the electorate, while passing most of the costs on to future taxpayers who have no say in the decision. In order to strike a balance between debt as a temptation and debt as a useful instrument, constitutional drafters often seek to place some limit on the amount of debt that a government can assume. This is the case with the New York State Constitution.

The State constitution sets limits on the debt of the State and its localities. The limit for State government is procedural; general obligation debt of the State must be approved by the voters in a referendum on a bond issue that is for a specific amount and a designated

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<sup>21</sup> Audited financial statements of the Westchester County Health Care Corporation and the Nassau County Health Care Corporation for the fiscal years ending December 31, 2004.

purpose.<sup>22</sup> Since 1946 the voters have been asked to approve 34 different bond proposals; 22 passed and 12 failed. Of the six considered since 1990, four have failed. (See Table 2.)

**Table 2**  
**General Obligation Bond Proposals in New York State, 1946-2005**  
*(dollars in millions)*

Year	Title	Amount	Percent in favor	Outcome
1946	State subsidies for Public Housing Increase from \$6.25 million to \$9 million	\$3	64.8%	Pass
1947	Slum Clearance and Public Housing	\$135	70.5%	Pass
1949	Loans to Localities for Slum Clearance Low-Rent Housing	\$300	60.8%	Pass
1954	Construction of Facilities in Mental Hygiene, Social Welfare, Correction	\$350	83.1%	Pass
1954	Slum Clearance and Low-Rent Housing	\$200	61.4%	Pass
1956	Construction, reconstruction of State Highways, Parkways, Arterials	\$500	69.1%	Pass
1958	Slum Clearance and Low-Rent Housing	\$100	51.0%	Pass
1958	For Loans to Limited Profit Housing Companies	\$100	50.5%	Pass
1960	Acquire More Open Lands for Recreation and Conservation	\$75	72.9%	Pass
1960	Increase State Subsidies for Low-Rent Housing and Urban Renewal	\$5	52.9%	Pass
1962	Purchase Open Land for Parks, Conservation and Recreation	\$25	66.7%	Pass
1965	Combat Water Pollution by Construction of Sewage Treatment Facilities	\$1,000	80.9%	Pass
1965	Increase Periodic Subsidies, Bonds for Slum Clearance & Low-Rent Housing	\$209	36.7%	Fail
1965	Increase State Subsidies for Low-Rent Housing, Urban Renewal	\$14	34.9%	Fail
1966	Acquire and Develop Lands for Outdoor Recreation	\$200	59.1%	Pass
1967	Acquisition, Construction, Improvement of Highways, Mass Transit, Airport, Aviation	\$2,500	58.2%	Pass
1970	Increase state subsidies for Low-Rent housing and Urban Renewal	\$20	47.6%	Fail
1971	Acquisition, Construction, Improvement of Highways, Mass Transit	\$2,500	39.0%	Fail
1972	Preservation, Enhancement, Improvement of State's Environment	\$1,150	67.0%	Pass
1973	Maintenance of Transit Fares, Improvement of Transportation Facilities	\$3,500	41.9%	Fail
1974	Preserve and Enhance Commuter, Intercity Rail Passenger and Freight	\$250	64.6%	Pass
1975	Low-Rent Housing	\$250	36.1%	Fail
1977	Economic Development	\$750	38.4%	Fail
1979	Energy Conservation Through Improved Transportation	\$500	55.4%	Pass
1981	Acquire, Equip, Improve Correctional Facilities with Better Security	\$500	49.7%	Fail
1983	Preserve, Enhance, Improve State's Transportation Infrastructure	\$1,250	57.2%	Pass
1986	Preservation, Enhancement, Restoration, Improvement of Environment	\$1,450	67.2%	Pass
1988	Preservation, Enhancement, Restoration, Improvement of Highways and Bridges	\$1,450	55.4%	Pass
1990	Preservation, Enhancement, Restoration, Improvement of Environment	\$1,975	48.4%	Fail
1992	Infrastructure Projects to Retain and Create Jobs (NY, NY Bond Act)	\$800	44.1%	Fail
1996	Clean Water/Clean Air Act of 1996	\$1,750	56.7%	Pass
1997	School Facility Health and Safety Bond Act (school construction)	\$2,400	46.9%	Fail
2000	Transportation Bond Act	\$3,800	47.6%	Fail
2005	Transportation Bond Act	\$3,900	64.5%	Pass

Source: State of New York, State Board of Elections, Public Information Services; unofficial returns as reported by Newsday, November 9, 2005, <<http://www.nynewsday.com/news/local/wire/newyork/ny-bc-ny-amend-s-1-continbu1109nov08,0,3780476.story?coll=ny-region-apnewyork>>.

The limits on local government debt are formulaic rather than procedural. The City of New York can borrow an amount equal to 10 percent of the value of taxable real property; for other large cities the limit is 9 percent. For Nassau County, the limit is 10 percent; for other local general-purpose governments the limit is 7 percent, and for independent city school districts the limit is 5 percent.<sup>23</sup> Debt issued by local governments must be backed with their “full faith and credit,” meaning that taxes and other revenues are pledged to repay the debt.<sup>24</sup>

<sup>22</sup> Constitution of the State of New York, Article VII, Section 11.

<sup>23</sup> These limits are constitutional. There is also a statutory limit of 10 percent on non-city school districts. See State of New York, Office of the State Comptroller, Division of Local Government Services and Economic Development, *2005 Annual Report on Local Governments*, <<http://www.osc.state.ny.us/localgov/annualreport905.pdf>>.

<sup>24</sup> Constitution of the State of New York, Article VIII, Section 2.

The existence of these limits has led elected officials to seek ways to borrow outside the limits, generally by using authorities. Some of this activity is entirely appropriate. Specifically, two types of borrowing by authorities ought to take place outside Constitutional limits on debt backed by general governments' core revenues – “project revenue” debt and “private conduit” debt.

Project revenue debt refers to debt that is repaid with revenue generated by the project for which the borrowing is undertaken. Bridges for which tolls are charged and power plants producing electricity sold by a public utility are clear examples. The debt will be repaid by user fees that the projects generate, and it does not constitute a future tax burden. Limits intended to protect future taxpayers need not apply.

Private conduit debt refers to debt that is issued by a public entity on behalf of a private party. The private party (an individual, a firm or a nonprofit organization) contracts with the public entity to repay the debt. Why should a government want to borrow on behalf of a private party? There are multiple legitimate answers – to help bolster the creditworthiness of nonprofit organizations such as hospitals and universities serving public purposes, to make loans and mortgages more accessible to deserving college students and homebuyers, and to gain federal tax advantages (and hence lower interest rates) for firms promising to locate or expand within a government's borders. If the private party meets its obligations, there is no negative impact on current or future taxpayers, and limits on government debt need not apply.

## **New York State and its Authorities**

Table 3 summarizes the debt issued by the State directly and by authorities accountable to the State in terms of these categories of debt. The combined total at the end of fiscal year 2005 was nearly \$106 billion. Of this total, about \$22 billion is private conduit debt. This includes \$14.7 billion issued by the Dormitory Authority, largely on behalf of private universities and health care institutions. Substantial additional private conduit debt has been taken on by the Energy Research and Development Authority, typically on behalf of private firms engaged in energy conservation projects, and by the State of New York Mortgage Agency, which borrows on behalf of private home buyers.

In addition to private conduit debt, state authorities also issue conduit debt on behalf of local governments including the City of New York. About \$8.6 billion of state authority debt has been issued on behalf of local governments, including about \$5.4 billion on behalf of the City of New York. The local government conduit debt is typically for water and sewer facilities (through the New York State Environmental Facilities Corporation) and for educational facilities (through the Dormitory Authority).

**Table 3**  
**Outstanding Debt: State of New York and State Authorities**  
*(dollars in millions)*

Issuer	Total	NYS funded	NYC funded	Other local funded	Project Revenue backed	Privately funded
<b>New York State Direct (a)</b>	<b>\$3,895</b>					
General Obligation	3,652	3,652				
Lease Obligation	243	243				
<b>Authority Debt (b)</b>	<b>101,878</b>	<b>40,908</b>	<b>5,410</b>	<b>3,148</b>	<b>30,396</b>	<b>22,015</b>
Dormitory Authority of the State of NY (c)	31,173	13,301	1,860	1,318		14,694
Metropolitan Transportation Authority	18,559	2,687			15,872	
NYS Thruway Authority	9,930	8,220			1,709	
Long Island Power Authority	7,146				7,146	
Urban Development Corporation (d)	6,068	5,533	43		492	
NYS Environmental Facilities Corporation (e)	6,007	493	3,366	1,830		318
Local Government Assistance Corporation	4,569	4,569				
Tobacco Settlement Financing Corporation (f)	4,495	4,495				
NYS Energy Research & Development Authority	3,748	43				3,705
State of NY Mortgage Agency	3,298					3,298
Power Authority of the State of New York	2,526				2,526	
Housing Finance Agency (g)	1,708	1,567	141			
Other (h)	1,294				1,294	
Battery Park City Authority	1,162				1,162	
Niagara Frontier Transportation Authority (i)	196				196	
<b>TOTAL</b>	<b>\$105,773</b>	<b>\$44,803</b>	<b>\$5,410</b>	<b>\$3,148</b>	<b>\$30,396</b>	<b>\$22,015</b>

(a) Data from Office of the State Comptroller (OSC), *State of New York Comprehensive Annual Financial Report for the fiscal year ended March 31, 2005*, (CAFR) p. 26, 44-45.

(b) Data from OSC Debt File, <<http://www.osc.state.ny.us/finance/pubauth/page5.htm>> (November 28, 2005). Data are for fiscal years ending in 2004 for the following authorities: Dormitory Authority, Urban Development Corporation, Local Government Assistance Corporation, Tobacco Settlement Financing Corporation, NYS Research & Development Authority, and the Niagara Transportation Authority. Data are for fiscal years ending in 2003 for the following authorities: MTA, Thruway Authority, LIPA, State of NY Mortgage Agency, Power Authority, Housing Finance Agency, and Battery Park City Authority.

(c) Amount is bonds and notes outstanding as of March 31, 2004. OSC Debt File is supplemented by data from *Dormitory Authority of the State of New York Basic Financial Statements, March 31, 2005 and 2004*, pp. 38-48. NYS funded amount includes borrowings on behalf of State agencies, PIT revenue bonds, SUNY debt and the State share of CUNY debt (from OSC's *CAFR 2005*, p. 67).

(d) NYC funded amount is from The City of New York, Office of the Comptroller, *Fiscal Year 2005 Annual Report of the Comptroller on Capital Debt and Obligations*, December 31, 2004, p. 3; project revenue backed amount is total debt net of State guaranteed (OSC data) and City guaranteed (NYC debt report data).

(e) Of the total notes and bonds outstanding, \$5,196 million are special obligation bonds on behalf of municipalities and local water authorities including \$3,666 million for the New York City Municipal Water Finance Authority. See *NYS Environmental Facilities Corporation 2003/2004 Annual Report*, p. 8. The EFC also issues conduit debt on behalf of the State (\$493 million in 2004) and private sector companies (\$318 million); this debt does not appear on the balance sheet but is disclosed in the notes to the financial statements. See *NYS Environmental Facilities Corporation Financial Statements* for 2004 and 2003, pp 2, 24.

(f) Amount is bonds payable. *Tobacco Settlement Financing Corporation Financial Statements for the fiscal year ended October 31, 2004*, p. 14.

(g) New York City debt information from City of New York, Office of the Comptroller, *Fiscal Year 2005 Annual Report of the Comptroller on Capital Debt and Obligations*, December 31, 2004, p. 3. NYS funded amount is from OSC Debt File, Housing Capital Projects (\$1,167), General Housing Loan (\$33), Non-Profit Housing (\$324), Urban Rental Housing (\$3), Housing Project Bonds (\$10), Hospital and Nursing Home (\$29).

(h) Amount is bonds and notes payable of the State's other component units. Data from OSC's *CAFR 2005*, p. 35. This debt is supported in various ways; for this table it is classified as revenue-supported.

(i) Amount is total long-term indebtedness as of March 31, 2005. Data from *Niagara Frontier Transportation Authority Basic Financial Statements and Required Supplementary Information for the years ended March 31, 2005 and 2004*, p. 28.

Another \$30.4 billion of the total is project revenue debt issued by multiple authorities. The largest issuer is the Metropolitan Transportation Authority (\$15.9 billion), which has used its fares and other dedicated revenues from the State to support bonds that finance its capital program.<sup>25</sup> Other major issuers are the two power authorities, which have revenues from their customers, and the Thruway Authority, which uses its tolls to finance its capital projects. Battery Park City Authority has nearly \$1.2 billion in debt backed by rents from its development projects.

Most of the remaining debt – \$44.8 billion – is supported by State tax and related revenues. However, only \$3.7 billion of this amount is general obligation debt issued directly by the State after approval by the voters. Nearly \$41 billion of outstanding debt was issued by authorities on behalf of the State for purposes that otherwise would have required voter approval. Nine different authorities issue State-supported debt (sometimes dubbed “backdoor borrowing”); seven each have more than \$1 billion in such debt. The largest issuer is the Dormitory Authority (DASNY), with \$13.3 billion outstanding that was borrowed on behalf of State agencies including the State University, the State Education Department, the Department of Health, and the Legislature for its Community Enhancement Facilities Assistance Program.<sup>26</sup> The Thruway Authority has outstanding more than \$8.2 billion in State-supported debt to support projects implemented by the State’s Department of Transportation and to make capital grants to localities for their transportation projects.<sup>27</sup> The Urban Development Corporation has borrowed on behalf of the State for correctional facilities, youth facilities, and other state facilities and projects.<sup>28</sup> The Housing Finance Agency has borrowed on behalf of the State for various housing and economic development purposes.<sup>29</sup>

Particularly troubling about “backdoor” debt is that a significant amount has been applied to cover the State’s operating expenses rather than for capital investments. All of the proceeds of the Local Government Assistance Corporation’s debt (now \$4.6 billion) were used to make aid payments to school districts and localities, effectively converting the State’s annual short-term borrowing for these aid payments into long-term debt. The proceeds of the Tobacco Settlement Financing Corporation’s borrowing (\$4.5 billion) were used to help cover deficits in the State’s fiscal year 2003, 2004 and 2005 operating budgets. In addition, some of the borrowing by the Urban Development Corporation was used to “purchase” assets from the State so that the money from the asset sale could be applied to the operating budget; for example, over \$300 million was raised in the early 1990s with the “sale” of Attica prison to UDC, certain roadways to the Thruway Authority, and the parking lot at the Aqueduct Racetrack to the Port Authority.<sup>30</sup>

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<sup>25</sup> The classification of this debt as “project revenue” backed rather than as State-supported is questionable. Much of the dedicated revenue is taxes that are appropriated each year as part of the State budget process.

<sup>26</sup> Dormitory Authority of the State of New York, *2004 Annual Report*, pp. 37-48.

<sup>27</sup> New York State Thruway Authority, *Audited Financial Statements and Supplementary Information, Years ended December 31, 2004 and 2003*, pp. 23-24.

<sup>28</sup> New York State Urban Development Corporation and Subsidiaries, *Consolidated Financial Statements, March 31, 2004*, pp. 25-33.

<sup>29</sup> New York State Housing Finance Agency, *Annual Report 2004*, pp. 61, 70-80.

<sup>30</sup> Citizens Budget Commission, *Political Leadership in the Two New Yorks: Fiscal Policy in the 1990s*, June 1993.

Three financing mechanisms have been used to enable authorities to borrow on behalf of the State – lease purchase agreements, dedicated taxes, and securitization. Under lease purchase agreements, the authority borrows to build a project and the State contracts with the authority to lease, and eventually purchase, the facility. Lease payments from the State are the revenue that backs the authority’s bonds. Funds for the lease are subject to appropriation annually by the Legislature, making the contract not a pledge of the State’s full faith and credit and hence not subject to voter approval.

Dedicated taxes are used to back other authority bonds. The Legislature can “dedicate” all or a part of a tax revenue to an authority, thereby providing it a revenue stream to back an authority bond. As with leases, the revenue, while nominally “dedicated,” is still subject to an annual appropriation and its availability is also subject to statutory changes by the Legislature. The State has dedicated a part of its sales tax revenues to support the Local Government Assistance Corporation, and has dedicated a part of its personal income tax revenue to support bonds issued by five authorities.<sup>31</sup>

Securitization is a mechanism to pledge future revenues for the repayment of bonds. The future revenues may or may not be taxes. The prime example of securitization at the state level is the creation of the Tobacco Settlement Financing Corporation to issue bonds backed by court ordered payments to the State from tobacco companies. In other states, bonds have been issued backed by pledges of future revenues or payments from various sources. In New Jersey, bonds have been issued backed by cigarette taxes and driver license fees; in Pennsylvania, bonds were issued by the state housing finance agency backed by a stream of future expected payments from the federal Department of Housing and Urban Development.

The combination of creative financing mechanisms and multiple authorities available to use them means that there is no effective limit on State-funded debt despite the intentions of the constitutional drafters. As a result, New York has too much State-funded debt.

How does one determine how much debt is “too much” for a state or other jurisdiction? The Citizens Budget Commission suggested a method in 2000 that was subsequently accepted in a peer-reviewed professional journal.<sup>32</sup> It seeks to define an “affordable” level of debt for a jurisdiction based on the criteria that repayment of the debt:

- (1) Should not require tax increases or service cutbacks that make a place less attractive than its competitors;
- (2) Should be gauged according to the level of resources available to repay it; wealthier places can afford to carry more debt than poorer ones.

A six-step method is used to apply this standard to New York and other states.

- (1) Identify the relevant (state-funded) debt outstanding for each state.

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<sup>31</sup> These five are the Urban Development Corporation, Housing Finance Agency, Thruway Authority, Dormitory Authority, and Environmental Facilities Corporation.

<sup>32</sup> Charles Brecher, Kurt Richwerger, and Marcia Van Wagner, “Measuring the Affordability of State Debt,” *Public Budgeting and Finance*, Winter 2003, pp. 65-85.

- (2) Account for pension obligations, another long-term liability for a state.
- (3) Determine the resources (tax base) available to repay debt.
- (4) Adjust available resources to reflect the division of responsibility between a state and its local governments.
- (5) Include a safety margin for an economic downturn; a rapid downturn should not jeopardize debt repayment.
- (6) Compute the ratio of debt to resources for each state; a state far above its competitors (more than one standard deviation above the average) is in the “danger zone” and has a debt level that can be judged as too high.

This method was applied in an analysis using data from fiscal year 1997 and published in 2000.<sup>33</sup> It indicated that New York was one of seven states in the danger zone; its ratio of debt to relevant resources was fifth highest (that is, worst) among the 50 states, and its then-current debt level exceeded the danger zone threshold by \$3.9 billion (actual debt of \$33.1 billion versus a danger zone threshold of \$29.2 billion).

In 2005 the analysis was updated using data from 2003, the most recent comprehensive data available.<sup>34</sup> It indicated that New York was one of eight states in the danger zone;<sup>35</sup> its debt ratio had risen to third highest, and its level of debt (\$49.7 billion) exceeded the danger zone threshold by nearly \$10 billion. In sum, New York has used its authorities to incur too much debt, and the situation appears to be getting worse over time.

## **New York City and its Authorities**

Table 4 summarizes the amounts of debt issued by the City of New York and by authorities accountable to the City. The combined total is nearly \$78.2 billion.

Of the total, \$7.5 billion is private purpose conduit debt. This debt has been issued by the City’s Industrial Development Authority on behalf of private firms and is backed by contracts with these organizations.

Another \$17.2 billion is project revenue backed debt. The largest component is \$13.4 billion issued by the Water Finance Authority and supported by water and sewer fees imposed by a separate Water Board. The Housing Development Corporation is responsible for \$3.8 billion, debt issued to finance mortgages and loans to developers of housing and repaid with payments from those developers.

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<sup>33</sup> Citizens Budget Commission, *An Affordable Debt Policy for New York State and New York City*, October 2000.

<sup>34</sup> Citizens Budget Commission, *New York’s Endangered Future: Debt Beyond Our Means*, September 2005.

<sup>35</sup> New York and four other states (Massachusetts, Connecticut, Rhode Island and Hawaii) were in the danger zone in both years studied. Oklahoma and West Virginia were in the danger zone in 1997, but not 2003; South Carolina, Illinois and New Jersey were in the danger zone in 2003, but not in 1997.

**Table 4**  
**Outstanding Debt: City of New York and Its Authorities**  
*(dollars in millions)*

Issuer	Total	NYC funded	Project Revenue backed	Privately funded
<b>New York City Direct</b>	<b>\$34,593</b>			
General Obligation (a)	33,903	33,903		
Capital Lease Obligation	690	690		
<b>Authority Debt</b>	<b>43,606</b>	<b>18,888</b>	<b>17,248</b>	<b>7,471</b>
NYC Water Finance Authority (b)	13,424		13,424	
Transitional Finance Authority	13,364	13,364		
NYC Industrial Development Agency (c)	7,579	108		7,471
NYC Housing Development Corporation (d)	3,806		3,806	
Sales Tax Asset Receivable Corporation (e)	2,551	2,551		
Tobacco Settlement Asset Securitization Corporation	1,256	1,256		
NYC Health and Hospitals Corporation	832	832		
Jay Street Development Corporation (f)	691	691		
NYC Housing Authority (g)	102	86	17	
Brooklyn Navy Yard Development Corporation (h)	1		1	
<b>TOTAL NEW YORK CITY</b>	<b>\$78,199</b>	<b>\$53,481</b>	<b>\$17,248</b>	<b>\$7,471</b>

All amounts reflect total debt outstanding as of June 30, 2004, unless otherwise stated. Data from City of New York, Office of the Comptroller, *Fiscal Year 2005 Annual Report of the Comptroller on Capital Debt and Obligations*, December 2004, pp. 2-4, 21.

(a) Amount is 2005 general obligation debt outstanding. Data from City of New York, Office of the Comptroller, *Comprehensive Annual Financial Report for Fiscal Year ended June 30, 2005*, p. 21.

(b) Debt outstanding of the Water Finance Authority includes debt also reported in Table 2 as debt of the Environmental Facilities Corporation.

(c) Privately funded amount from Office of the State Comptroller, Financial Data for Local Governments,

<<http://www.osc.state.ny.us/localgov/datanstat/findata/2003idas.xls>> (November 28, 2005); NYC funded amount from *New York City Industrial Development Agency Financial Statements for the fiscal years ended June 30, 2004 and 2003*, 2004 Special Revenue Bonds (New York Stock Exchange Project), p. 16.

(d) Amount is net bonds payable, including current and long-term portion. Data from *New York City Housing Development Corporation, 2004 Financial Review for the fiscal year ended October 31, 2004*, p. 35.

(e) Amount is total bonds payable. Data from *Sales Tax Asset Receivable Corporation, Offering Circular: Sales Tax Asset Revenue Bonds, Fiscal 2005 Series B (Taxable)*, October 28, 2004.

(f) Amount is long-term bonds payable. Data from *Jay Street Development Corporation, 2004 Annual Report for the year ended June 30, 2004*, p. 5.

(g) Amount is total outstanding debt, including current and long-term portion. *New York City Housing Authority Comprehensive Annual Financial Report for the year ended December 31, 2004*, pp. 17-18. NYC funded amount comes from City Guaranteed Bonds payable (City Program) and includes \$79 million of NYS funded debt (NYS funded debt reflects amounts from State Guaranteed Certificates of Indebtedness Outstanding, \$18 and \$61 million).

(h) Amount is noncurrent liabilities, both due within one year and in more than one year. Data from City of New York, Office of the Comptroller, *Comprehensive Annual Financial Report for Fiscal Year ended June 30, 2004*, p. 123.

Virtually all the remaining \$53.5 billion is backed by tax and other revenues of the City of New York.<sup>36</sup> Of this sum, \$33.9 billion or 63 percent is general obligation debt. The remaining \$19.6 billion takes other forms, related to authority borrowing, and is outside the City's constitutional debt limit.

Of the total debt outside the constitutional limit, the smallest category, comprising about \$690 million, is general lease obligations. These are rental leases for buildings and similar obligations that accountants define as long-term debt because they are multi-year

<sup>36</sup> The exception is \$79 million of debt issued by the Housing Authority and backed by State revenues.

obligations, but which are not subject to the debt limit relating to general obligation bonds.

The largest category of City-funded debt that bypasses the constitutional limit is \$43.6 billion of debt issued by authorities accountable to the City. The single largest such issuer is the Transitional Finance Authority, which has outstanding about \$13.4 billion. Most of this has supported the City's capital program, but in October 2001, \$1.0 billion of New York City Recovery Notes were issued for operating purposes in the wake of terrorist attacks on the city on September 11 of that year.<sup>37</sup> The Transitional Finance Authority's debt is backed by earmarking a portion of the City's personal income tax revenues, and if needed, a portion of sales tax revenues, for this debt service.

The Sales Tax Asset Receivable Corporation has borrowed nearly \$2.6 billion, and this is used to support operations. The bonds issued in 2005 paid off bonds issued previously by the Municipal Assistance Corporation, but the new bonds are repaid over a 30-year period rather than the 5-year period of the refunded bonds.<sup>38</sup> As a result, the City had less debt service to pay in current years, but more in future years. The City used the short-term saving to help balance its operating budget. The Corporation's debt is backed by pledges of State aid to the City, funded with a dedicated portion of State sales tax revenues.

The remaining City-funded debt issued by authorities was used to finance capital projects. The \$1.3 billion borrowed by the Tobacco Settlement Asset Securitization Corporation was allocated to the City's general capital program; it is backed by the court-ordered payments to the City from tobacco companies. The Health and Hospitals Corporation has borrowed \$832 million to finance health care facilities that it operates and which the City funds through lease purchase agreements. The Jay Street Development Corporation, created specifically for this purpose, has borrowed \$691 million to develop court facilities in Brooklyn for the City; its bonds are backed by a lease purchase agreement with the City. Finally, the City's Industrial Development Agency has borrowed \$108 million to purchase a building in lower Manhattan originally intended to be developed for the New York Stock Exchange; these bonds are backed by a lease purchase agreement with the City.

Not included in Table 4 is about \$1.1 billion that State authorities have borrowed for the City (and these sums are included in Table 3). This includes \$640 million borrowed by the Dormitory Authority to build City court facilities, \$309 million borrowed by the City University Construction Fund for educational facilities, \$141 million borrowed by the Housing Finance Agency, and \$43 million by the Urban Development Corporation. The City has signed lease purchase or other similar arrangements with these State authorities to enable them to repay the debt; the lease payments are made each year by the City from its general revenue sources, but the contractual agreements are not subject to the constitutional debt limit.

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<sup>37</sup> New York City Transitional Finance Authority, *Annual Report 2001*, p. 1.

<sup>38</sup> Sales Tax Asset Receivable Corporation, *STARC Offering Circular, Sales Tax Revenue Bonds Fiscal 2005 Series B* and Municipal Assistance Corporation for the City of New York, *Annual Report 2004*, p. 18.

Has the City of New York, like the State, misused authorities in order to incur “too much” debt? If the standard is the constitutional limit, then the answer is clearly “yes.” The City Comptroller calculated that at the end of fiscal year 2004, the applicable limit was \$43.1 billion. Actual City funded debt totaled nearly \$52.2 billion.<sup>39</sup> The situation was legal because only \$33.9 billion was subject to the limit; other authority debt was excluded.

If the standard is the concept of affordability applied earlier to State-supported debt, then a different answer is possible. In its 2000 report the CBC applied its suggested methodology to City of New York debt defining the relevant group of competitors as the other nine largest cities in the United States and using data from 1998. The finding was that two of the ten cities (Philadelphia and Detroit) were above the danger zone threshold, but that New York City ranked third in its debt ratio and its debt of \$32.2 billion was about \$2.1 billion below the danger zone threshold.

The CBC staff has updated the New York City analysis using the latest available data, from 2003. (See Appendix A.) While New York City’s debt has grown to more than \$50 billion, its economic base and the debt of other jurisdictions have grown almost as rapidly. As a result New York’s debt remained affordable and well below the danger zone threshold. In contrast, the situation in Philadelphia and Detroit deteriorated, suggesting that their policies of heavy reliance on debt may create a downward spiral due to a lack of competitiveness. The fact that New York City has affordable and competitive debt levels despite its debt being well in excess of the constitutional limit suggests that the problem may be an outdated and currently unrealistic debt limit rather than unjustified circumvention of the limit.

## **Other Local Governments and Their Authorities**

Most of New York’s 583 authorities are creatures of local governments other than the City of New York. What type of borrowing do these entities undertake, and are they used by their parent general-purpose governments to circumvent debt limits?

Data are not available to answer these questions in the aggregate for all local governments. However, the State Comptroller has assembled some data that present a partial answer to the question about the overall amounts and types of borrowing, and more detailed analyses of the larger counties and cities can provide answers relating to those units.

The State Comptroller compiles data from the annual financial statements of local governments and from a survey of those units. The Comptroller’s office maintains a

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<sup>39</sup> City of New York, The New York City Office of the Comptroller, Bureau of Fiscal and Budget Studies, *Fiscal Year 2005 Annual Report of the Comptroller on Capital Debt and Obligations*, December 2004. The total includes \$49,559 million identified as City debt outstanding on June 30, 2004 (excludes MAC debt) plus \$2.6 billion of STARC debt issued in October 2004.

database of selected financial characteristics of these governments, and it includes information about debt. In addition, the industrial development authorities (IDAs) created by local governments must submit relatively detailed annual reports to the State Comptroller, and the Comptroller's Office has a database on IDAs that includes debt data. Table 5 summarizes the available data relating to debt for the most recent available year of 2003.

These entities had total debt of \$39.5 billion. Of the total, about \$9.7 billion or one-quarter was issued by IDAs. This is mostly private conduit debt, not subject to constitutional limits, but also not a mechanism for circumventing limits on units of general government. Another \$13.9 billion or more than one-third of the total is debt of special purpose governments, predominantly school districts. Nearly all of this debt is subject to relevant debt limits of these jurisdictions, and they are unlikely candidates for misuse by general governments. The remaining \$15.9 billion is issued by local units of general government with counties being the largest issuer.

**Table 5**  
**Outstanding Debt of Local Governments and Industrial Development Authorities, 2003**  
*(dollars in millions)*

Issuer	Amount	Percent Subject to Debt Limit
<b>Total</b>	<b>\$39,493.5</b>	
<b>General Government</b>	<b>15,890.8</b>	
Nassau County	2,900.0	0.0%
Other Counties	4,704.2	79.6%
Cities	3,024.4	71.3%
Towns	3,840.8	68.5%
Villages	1,421.4	52.0%
<b>Special Purpose Governments</b>	<b>13,921.2</b>	
School Districts	13,701.0	92.5%
Fire Districts	203.4	97.0%
Special Purpose Units	16.8	NA
<b>Industrial Development Agencies</b>	<b>9,681.5</b>	NA

NA - Not applicable.

This table does not include data from New York City and New York City Industrial Development Agency.

Source: Office of the State Comptroller, Financial Data for Local Governments, <[http://www.osc.state.ny.us/localgov/datanstat/findata/index\\_choice.htm](http://www.osc.state.ny.us/localgov/datanstat/findata/index_choice.htm)> (November 22, 2005). Data have been adjusted to move \$645.4 million of city general obligation debt from school districts (as reported by the Comptroller) to cities (the actual issuer).

The significant unanswered question from the data in Table 5 is the connection between debt of general-purpose local governments and debt issued by authorities. Specific questions are:

1. To what extent does debt of local government take the form of lease purchase or similar arrangements with authorities?
2. To what extent does the debt reported by local governments take the form of bonds issued by an authority, backed by dedicated local revenues, and exempt from constitutional limits?
3. To what extent do local authorities issue debt backed by project revenues that is not subject to local limits and not reflected in the Comptroller's data as local general government debt?

To provide at least a partial answer to these questions, the CBC staff completed case studies of nine jurisdictions – the four largest counties in the state and the five largest cities (other than New York City). Data were collected from the entities' financial statements; additional research identified any authorities not included in these financial statements, and those authorities separate financial statements were analyzed. (See Appendix B.)

Based on these case studies, the following are preliminary answers to the questions raised by the Comptroller's data:

1. Local governments make limited use of lease purchase arrangements with authorities as a borrowing mechanism.<sup>40</sup> For counties, debt is well below constitutional limits, so there is no need for circumvention devices.
2. Local governments use authorities with dedicated revenues in two distinct ways. First, counties have securitized tobacco settlement revenues and raised substantial sums in this manner. Of the four counties examined, three had established entities for this purpose: Nassau raised \$295 million, Erie \$240 million, and Westchester \$134 million.

Second, a small number of jurisdictions rely in a large way on special finance authorities to help provide relief from fiscal stress. Specifically, Nassau uses the Nassau County Interim Finance Authority and Buffalo uses the Buffalo Fiscal Stability Authority. Like New York City's Municipal Assistance Corporation, these entities are created by State law, have boards with a majority appointed by State officials, support their debt primarily with dedicated local sales tax revenues, have their debt excluded from local constitutional limits, and report their debt as debt of the local jurisdiction.

3. There are frequent instances of local authorities that issue project revenue backed debt, and that debt is not reported by the Comptroller as local government debt.

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<sup>40</sup> An exception is the Suffolk County Judicial Facilities Agency, for court facilities, and Suffolk County's Industrial Development Agency, for sewer facilities.

Examples are water authorities in Erie and Suffolk Counties and the sewer authority in Buffalo.

## **Authorities with Mixed Accountability and a Summary**

The five major authorities with mixed accountability each issue debt. The combined total debt outstanding is \$11.3 billion. The Port Authority of New York and New Jersey accounts for the bulk of this; its total debt is nearly \$11 billion, with \$9.6 billion backed by project revenues and \$1.4 billion private conduit debt issued by the Authority on behalf of airlines building terminals at the regional airports. The four other authorities in this category have debt ranging from \$45 million to \$130 million, all of which is backed by project revenues. These authorities have no tax-backed debt and are not mechanisms for avoiding state or local debt limits.<sup>41</sup>

Table 6 presents a summary of the estimates for all types of debt issued by each type of entity. The total is \$227 billion. Of this total, about \$61.5 billion or 27 percent has been issued directly by the state or local governments in accord with the relevant debt limits. Another \$55.8 billion is debt issued by authorities for projects that generate revenue to repay the debt, the appropriate model for authority borrowing. Another \$40.4 billion is private conduit debt issued by authorities, another appropriate use of the authorities. However, the remaining \$69.8 billion or 31 percent of the total is debt issued by authorities and backed by the State's or a locality's general revenues. This type of debt, which represents a potential misuse of authority borrowing capacity, is concentrated among State authorities, who have issued nearly \$41 billion to avoid the requirement for voter approval of State general obligation debt, and among New York City authorities, who have issued about \$17.4 billion outside the City's debt limit. The approximately \$4.2 billion estimated as issued by other authorities on behalf of local governments other than the City of New York is concentrated in Nassau County and Buffalo; however, this number likely is a low estimate because it includes only authorities associated with the nine jurisdictions covered in Appendix B.

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<sup>41</sup> Figures for total debt outstanding are drawn from audited financial statements of the authorities for fiscal years ending in 2004, except for the Development Authority of the North Country, for which the 2005 statement was used.

**Table 6**  
**Estimated Combined Debt of Governments and Authorities in New York State by Type of Issuer**  
*(dollars in millions)*

Issuer	Total	NYS funded	Local funded	Project backed	Private conduit
<b>Government Direct Debt</b>	<b>\$61,484</b>	<b>3,895</b>	<b>57,589</b>		
State of New York	3,895	3,895			
City of New York	34,593		34,593		
Other General Governments (a)	10,191		10,191		
Special Purpose Governments (b)	12,805		12,805		
<b>Authority Debt</b>	<b>165,937</b>	<b>40,987</b>	<b>28,811</b>	<b>55,783</b>	<b>40,356</b>
Mixed Accountability (c)	11,306			9,927	1,379
State Authorities	101,877	40,908	8,558	30,396	22,015
NYC Authorities (d)	38,899	79	17,359	13,882	7,579
Industrial Development Authorities (e)	9,681		298		9,383
Other Local Authorities (f)	4,174		2,596	1,578	
<b>Total</b>	<b>\$227,421</b>	<b>\$44,882</b>	<b>\$86,400</b>	<b>\$55,783</b>	<b>\$40,356</b>
Percent	100.0%	19.5%	37.6%	26.6%	16.2%

Sources: See Tables 3-5 and Appendix B. Conduit debt is attributed to the issuer, not to the conduit borrower.

(a) Data from Office of the State Comptroller (OSC), Financial Data for Local Governments, <[http://www.osc.state.ny.us/localgov/datanstat/findata/index\\_choice.htm](http://www.osc.state.ny.us/localgov/datanstat/findata/index_choice.htm)> (February 16, 2006). Amount has been adjusted to deduct EFC debt totaling \$1,786 million issued for counties (and some local authorities) and Dormitory Authority debt totaling \$1,318 million for municipal facilities; such debt appears in the State Authorities line below.

Amount has also been adjusted to deduct debt totaling \$2,596 million of local authorities that were blended into the financial statements of the local governments studied in Appendix B; this debt appears in Other Local Authorities below. The line includes the debt of local authorities that are blended component units of local governments other than those in Appendix B.

(b) See OSC Financial Data for Local Governments. Note that debt issued by large cities for their dependent school districts is counted in Other General Governments above rather than in this line.

(c) Data are from *Port Authority of New York and New Jersey Financial Statements and Appended Notes for fiscal year ending December 31, 2004*; *Buffalo and Fort Erie Public Bridge Authority Financial Statements for the year ended December 31, 2004*; *Niagara Falls Bridge Commission Financial Statements for the year ending October 31, 2004 and Independent Auditors' Report*; *Development Authority of the North Country Financial Statements for the years ended March 31, 2005 and 2004*; *United Nations Development Corporation Financial Statements for the years ended December 31, 2004 and 2003*.

(d) See Table 3. Amount has been adjusted to deduct EFC debt issued for NYCMWFA and Dormitory Authority debt for municipal facilities and for the City share of CUNY. This debt is counted in the State Authorities totals.

(e) See OSC Financial Data for Local Governments. Locally funded amount is sum of the Suffolk County IDA's borrowing for a sewer district, the Erie County IDA's borrowing for Buffalo Public School, and the City of Albany IDA's borrowing for municipal projects.

(f) See Appendix B. Includes debt of local authorities associated with the case study local governments only. Locally funded portion is that supported by revenues of the local governments. Remainder is classified as project backed debt.

## **PROBLEM TWO – Insufficient Oversight and Coordination of Project Revenue Backed and Private Conduit Borrowing**

The previous section argued that the aggregate borrowing by authorities on behalf of the State and local general governments to avoid debt limits is inappropriate. The discussion suggests that it is, however, appropriate for authorities to borrow for two other purposes: (1) to finance capital projects related to their mission and backed by a revenue stream derived from the services or benefits the entity provides (previously referred to as “project backed” revenues); and (2) to provide the benefit of lower interest rates due to federal tax exemptions for private individuals or organizations using the funds for a purpose deemed worthy (previously referred to as “private conduit” borrowing).

While appropriate and desirable, these types of authority borrowing raise three important issues that should be addressed more effectively in New York:

- Both types of borrowing are not always subject to sufficient advance review to protect the State or the relevant local general government from an authority taking on a project that might not be financially viable and might lead to pressure for the State or local government to “bail out” the project.
- Projects financed by both types of borrowing are not coordinated with the State’s capital plan for its direct agencies; there is no broader capital plan spanning State agencies and authorities, and this can lead to inefficient fragmentation of capital planning.
- 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.

### **Inadequate Advance Review**

In the wake of the Urban Development Corporation’s 1975 default, it was widely recognized that authorities posed a financial risk to the State and that more extensive review of their borrowing for project activities would be worthwhile. The response was to require several State authorities to obtain approval from a Public Authorities Control Board (PACB) for the financing of any project.<sup>42</sup>

The PACB is composed of five members appointed by the Governor to one-year terms. One member represents the Governor and serves as chair; this is usually the State Budget Director. The Governor appoints the four remaining members based upon the recommendations of the majority and minority leaders of each house the Legislature. Only three members, those representing the Governor and the two majority leaders, are

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<sup>42</sup> The covered authorities are the NYS Environmental Facilities Corporation, NYS Housing Finance Agency, NYS Medical Care Facilities Finance Agency, Dormitory Authority, NYS Urban Development Agency, Job Development Authority/Empire State Development Corporation, Battery Park City Authority, NYS Project Finance Agency, State of New York Mortgage Agency, NYS Energy Research and Development Authority, and Long Island Power Authority. See <<http://www.osc.state.ny.us/pubauth/whatisboard.htm>>.

entitled to vote. The members representing the minority leaders only may comment on a project. Projects must pass with a unanimous decision among the three voting members. The criterion upon which the decision is supposed to be made is whether sufficient funds are being made available to ensure completion of the project.<sup>43</sup>

The current practices of the PACB suffer from three limitations – much authority borrowing is exempt from PACB review, the review of covered borrowings is not sufficiently rigorous or transparent, and 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. Most of the State’s authorities, including large borrowers such as the New York State Power Authority, the Metropolitan Transportation Authority, and the Thruway Authority, are exempt from PACB review. In addition, all the local authorities are exempt. Most local governments do not have an entity equivalent to the PACB to review the borrowings of their local authorities, so virtually all local authority borrowings, including large transactions by some entities, are not reviewed formally by anyone other than the authority’s board.<sup>44</sup>

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 a long-run financial viability. No standard formats have been developed for the presentation of such analyses to the PACB members and the public. The bases for members’ votes are not transparent, and some projects may have been rejected for reasons other than insufficient financing sources or financial viability.

The timing of the PACB review can also be problematic. Authorities typically seek needed PACB review after a project is well developed and as a final measure before taking a transaction to market. Delays can occur that limit the authorities’ flexibility in taking advantage of market conditions to secure low cost borrowings.

## **Limited Coordination with State Capital Planning**

Each year the Governor prepares, and the Legislature reviews and authorizes, a rolling, five-year capital plan. The plan specifies anticipated commitments and outlays for programmatic categories of capital spending by each State agency. The proposed plan

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<sup>43</sup> Borrowing not underwritten on a competitive basis, that is the negotiated and private sales of bonds, is subject to a separate review by the State Comptroller based on the criterion of “ensuring that the total cost of borrowing to the issuer is reasonable and appropriate.” See <<http://www.osc.state.ny.us/pension/debtapprovals.htm>>.

<sup>44</sup> A notable exception is a negotiated or private sale of bonds by some local authorities, which are subject to review by the State Comptroller based on the criterion noted above.

covering fiscal years 2006-07 thru 2010-11 includes \$34.8 billion in investments with about 55 percent for transportation, 12 percent for education (mostly higher education), 10 percent for mental health facilities and public protection, 8 percent for parks and the environment, and the remainder for a variety of purposes. The financing sources for these projects are identified, including borrowings undertaken by authorities on behalf of State agencies as described in the previous section.

State legislation requires that the MTA prepare a five-year (not rolling) capital plan, and that the plan be subject to approval by a Capital Program Review Board comprised of a representative appointed by the Governor, the Mayor of the City of New York, and the majority leaders of the State Senate and Assembly. The latest MTA plan covers the period 2005 thru 2009 and totals about \$21.1 billion. The State's capital plan and the MTA's plan are linked in the sense that funds provided to the MTA by the State are included in both plans.

Prior to 2006, authorities other than the MTA were not required to prepare multi-year capital plans. 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. Those same authorities as well as the Battery Park City Authority typically have annual capital investments well in excess of \$100 million, and other state authorities have annual capital outlays over \$50 million annually.

In contrast, the City of New York requires greater integration of the capital plans of authorities for which it is accountable with the capital plan for its direct agencies. The City prepares biannually a ten-year capital strategy, a rolling four-year capital commitment plan, and an annual capital budget. The plans include investments to be made by the major local authorities including the Health and Hospitals Corporation, the Water Finance Authority, and the Housing Authority.

## **Limited Guidelines for and Coordination of 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.

Federal laws set the rules for what types of projects are eligible for this private conduit borrowing and, for some purposes, limit the amount that can be issued. There are no

aggregate dollar limits on the amounts that can be borrowed on behalf of most nonprofit entities, including hospitals and universities. Borrowing for other private purposes including loans for students, residential mortgages, and investments in commercial and other economic development projects is subject to a cap set by Congress annually for each state. Each state's cap is the larger of \$225 million or \$75 per capita, with those figures indexed for inflation after 2003. In recent years, New York State's quota has been about \$1.5 billion annually.<sup>45</sup>

The State Legislature determines the broad allocation of the state's cap annually.<sup>46</sup> Its goal is to "maximize the public benefit through the issuance of private activity bonds for the purposes of, among other things, allocating a fair share of the bond volume ceiling to local agencies and for needs identified by local governments; providing housing and promoting economic development; job creation; an economical energy supply; and resource recovery." Generally, the way the Legislature has pursued this goal is to divide the statewide cap into thirds.

One-third is allocated to local governments, according to their percentage of the statewide population.<sup>47</sup> The New York State Department of Economic Development administers these allocations. Most goes to local industrial development agencies.

Another one-third is allocated to state agencies, including state authorities. The State Division of Budget (DOB) administers these allocations. The Urban Development Corporation, the State Mortgage Agency, and the State Housing Finance Agency are major beneficiaries.

The last one-third is set aside for a "statewide reserve" and is jointly administered by the Department of Economic Development and DOB. If a local agency is considering a project that would put it over its allocation, it can apply to the Commissioner of the Department of Economic Development for an allocation from the reserve; applications are assessed based on equity of distribution and recommendations from appropriate state officials. Similarly, the Director of the Division of Budget can allocate from the reserve to a state agency or authority.

The less than optimal use of conduit debt is evident, both for borrowing subject to the cap and not subject to the cap. In the latter case, the benefits have been widely used, primarily by health care and higher education institutions, with little strategic guidance from state officials. One result, evident in the hospital sector, is a surplus of facilities that is now being addressed by a gubernatorial commission that is seeking to identify hospitals that can be closed, with some of the candidates having financed projects with conduit borrowing by the Dormitory Authority. New subsidies are being considered to retire that

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<sup>45</sup> Government Finance Officers Association, *Issue Brief: Private Activity Bond Volume Caps*, June 2002, <<http://www.gfoa.org/flc/briefs/062702/volcaps.06.02.pdf>> (February 16, 2006).

<sup>46</sup> See for example S.2781/A.3981 of 2005.

<sup>47</sup> When a county agency and a town agency overlap, the allocation for that area is split equally between them. When a village agency is located within a town with its own agency, the town is granted an allocation based on its population without the village population.

debt with the expectation that future operating savings will justify the needed additional subsidy.

The primary criticism of debt subject to the cap is that IDAs have not used the subsidies wisely. The selection of projects by local authorities is often done with limited transparency in closed negotiations, is poorly documented, and is sometimes vulnerable to political favoritism. In some cases, firms have failed to produce the promised number of retained or added jobs, and audits and penalties to enforce IDA agreements are rare. Local IDAs sometimes compete with each other for firms, unnecessarily increasing the size of the subsidy offered by the winning jurisdiction.

An audit of five IDAs released by the State Comptroller in May 2004 illustrates some of these problems.<sup>48</sup> Four did not have formal project evaluation criteria, and none maintained documentation of how an applicant's claims were verified or used in the decision-making process. A comparison of three specific projects approved by the Village of Green Island IDA found that a \$15 million residential development was supported by a cost-benefit analysis, while two other projects requiring about \$5 million were approved without similar documentation.

### **PROBLEM THREE – Insufficient reporting to support accountability**

Authorities differ from public agencies that are direct parts of government in the way in which they are held accountable. While elections are the primary mechanism of accountability for direct government, authority boards are intended to be independent of the elected officials who control direct agencies. Nevertheless, the authorities are expected to be accountable to the public. The primary mechanism for achieving this accountability is periodic reporting on their activities and status. Past reporting practices fell far short of what is needed to promote adequate accountability, but reforms put in place in 2006 have the potential to improve the situation.

### **What Should We Know?**

An extensive literature and common sense identify the information that authorities should report to the public. The information has three dimensions – content, quality and perspective.

#### **Content of the Information**

Authorities should regularly share with the public four types of information. The first relates to the entity's *financial condition and recent financial results*. This is the information traditionally presented in balance sheets and financial statements.

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<sup>48</sup> State of New York, Office of the New York State Comptroller, Division of Local Government Services and Economic Development, *Industrial Development Agencies' Project Evaluation Criteria and Monitoring Efforts*, 2004-MR-3, May 31, 2004, <<http://web3.osc.state.ny.us/localgov/audits/swr/2004mr3.pdf>> (February 16, 2006).

A second type of information relates to the organization's *financial plans*. This is typically information presented in an annual operating budget and in a multi-year financial plan.

The third type of information relates to the organization's *capital assets*. Some authorities have a mission to maintain and enhance important public infrastructure such as mass transit, highways and bridges, convention centers, and water systems. Accordingly, the entities should report information relating to capital assets beyond the relatively simple statement of value required in balance sheets. The public should be given information relating to the current condition of these assets, recent changes in this condition, recent and planned expenditures for maintenance and enhancements, and how these maintenance expenditures and capital investments will alter the condition of the assets.

The fourth type of information relates to the organization's *activities and accomplishments*. Sometimes characterized as "performance measurement," this type of information should tell the public what services the entity has provided, how efficiently this has been done, and what the impact on customers has been. The authority should present goals for the future year or multi-year period and report periodically on recent activities and accomplishments.

### **Quality of the Information**

Three important qualities of the information are that it be *timely, accessible, and subject to audit or review*. Timeliness suggests that reports be prepared with regular frequency and be made public within a reasonable time frame. Reports on past years should be available within a few months of the end of the year, budgets should be available before the relevant period begins, and multi-year capital plans should be revised on a "rolling" basis to reflect changes and continued planning efforts.

The criterion of accessibility requires that information not only be maintained by the authority, but that it be easily available to the public. Printed reports should be available on request, and the Internet should be used to make information available in electronic form.

The reliability of information should be promoted by requiring that authority reports be either audited or subject to outside review. Financial statements should be independently audited. Other plans and reports should include full disclosure of the underlying assumptions and methods so that they can be reviewed by outside parties.

### **Perspective of the Information**

The existence of both multiple and overlapping local governments within the state and numerous specialized authorities that are independent or accountable to different state and local governments suggests a need for reporting that transcends provision of information by individual entities. The public deserves and requires a "big picture" perspective that combines information from multiple governments and authorities.

Such “big picture” reporting is relevant for each type of information. Financial conditions and results should reflect the interrelations among governments and authorities and include, for example, overlapping liabilities in form of bonds issued by authorities and backed by contracts with general governments. Combined budgets are necessary to inform the public about how the plans of authorities and general government are intertwined and conditioned on each other’s behavior. Assessment of and planning for capital assets also may benefit from a larger perspective, since more than one entity may be responsible for major classes of infrastructure assets. For example, transportation facilities in the New York metropolitan region are divided among the MTA, Port Authority and Thruway Authority as well as numerous local governments. Similarly, with respect to performance reports, the public is interested in the joint effort of multiple agencies responsible for complementary (or sometimes duplicative) services intended to produce related outcomes for customers. To illustrate, the public is concerned with the accessibility of regional airports – an outcome that involves the activities of multiple authorities and governments.

## **Current Reporting Requirements**

The legal framework for authority reporting is established in federal laws and regulations, New York State law and regulations, and local laws. The scope and nature of each of these sources of reporting requirements vary in important ways. Moreover, in 2006 a new state law became effective and new regulations were promulgated by the State Comptroller.

### **Federal Standards**

The federal government does not directly regulate reporting by state and local governments and authorities. However, federal law intersects with these reporting requirements in many ways. For example, jurisdictions receiving federal grants are subject to audit by federal agencies and may be required to keep financial records in accord with generally accepted accounting principles (known as GAAP and discussed more fully below). In the context of authorities in New York, the most relevant federal role derives from federal regulation of securities markets.

In addition to GAAP, the federal acronyms include these relevant organizations:

SEC – the Securities Exchange Commission – regulates the securities industry. Its rules affect state and local governments and authorities indirectly. The SEC does not directly regulate these entities, but it regulates the firms that underwrite and trade their bonds and notes.<sup>49</sup> The SEC requires these firms to make information available to potential investors, and the firms require the authorities and governments to give them the information in order to conduct transactions for them.

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<sup>49</sup> The relevant regulation is SEC Rule 15c2-12, <<http://www.sec.gov/rules/final/adpt6.txt>> (March 23, 2006).

MSRB – the Municipal Securities Rulemaking Board – established in 1975 as an independent entity under the SEC to make rules for the sale of state and local securities. It regulates how transactions may be conducted, but also establishes rules for disclosure of information about the entities issuing securities. The MSRB’s disclosure requirements include the preparation of “official statements” before a bond is issued that provide potential investors with all information deemed relevant. Its trading regulations also require that traders (and hence issuers) make public information about changes in the entities’ financial condition and outlook after the security is issued.

NRMSIRs – Nationally Recognized Municipal Securities Information Repositories – organizations recognized by the SEC as official receivers of the information required by the MSRB. They receive “official statements” relating to the issuance of new securities, “material event notices” that alert investors to changes in an issuer’s financial condition or outlook, and statements of annual financial information that issuers must provide. There are four designated NRMSIRs, and they make available to the public (at a price) the information they receive. Documents are available from NRMSIRs through the Internet.

GASB – the Governmental Accounting Standards Board – established as an independent, non-governmental body in 1984 and recognized by the American Institute of Certified Public Accountants as the body to define GAAP for state and local governments. The information specified in federal regulations is not directly required to follow GAAP, but it is generally presented in that manner. For this reason, the GASB is important to federal reporting requirements.

How do the federal reporting requirements established by this network of bodies relate to the recommended normative standards? First, the federal rules apply only to authorities that issue publicly traded securities; some authorities may be outside the federal rules.

With respect to *financial condition and results*, the federal requirements fully address the suggested standards. Entities are required to submit balance sheet and related financial statements that provide the relevant information. The financial markets prefer bonds from entities with statements conforming to GAAP; nearly all the New York State entities follow GAAP and are audited.<sup>50</sup>

With respect to *financial plans*, the federal requirements do not fully address the suggested standards. Generally, a summary for the current year budget is included in the “official statement.” However, there are no requirements for multi-year planning and the standards for the format of the current year budget are not well developed. Entities may use a format that does not follow GAAP.

With respect to *capital assets*, the federal requirements also fall short of the suggested standards. To the extent that the federal requirements embrace GAAP, some standards were established by GASB Standard 34, which were promulgated in 1999 and are being

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<sup>50</sup> Exceptions, according to the Office of the State Comptroller, are the Village of Corinth and the Industrial Exhibit Authority.

phased in for governments of different types. GASB 34 requires reporting the value of capital assets and their depreciation. Entities may opt not to report depreciation but instead report on desired conditions of infrastructure assets, the maintenance expenditures required to achieve this condition, and the actual amounts of maintenance expenditures. The goal is to let the public know whether assets have been adequately maintained in the period covered by the reports. However, even these new standards, which are a marked improvement, fall short of the recommended standards relating to more complete reporting of capital asset conditions and multi-year capital investment plans. None of that type of information is now required.

With respect to *activities and accomplishments*, there are virtually no federal reporting requirements. GAAP do not now require such information. However, the GASB is moving in the direction of establishing some standards. In 2003 they published suggested criteria for composing reports on activities and accomplishments, and in 2005 they published a “user’s guide” explaining to the public what to look for in a government report on services and accomplishments.<sup>51</sup>

With respect to the qualitative criteria, the limited information subject to federal requirements appears to meet the standards of being timely and subject to audit. The NRMSIRs are an important contribution to making the required information accessible, at least in principle.<sup>52</sup>

Federal requirements address the “big picture” perspective indirectly through the incorporation of GAAP as a standard for some required information. Rules issued by GASB in 1991 (Standard 14) and in 2002 (Standard 39) require general governments to, in effect, take a “big picture” perspective in their financial statements. A general government must include in its financial statements a legally separate organization such as an authority if:

- Its officials appoint a voting majority of the board, and
- Either the primary government is able to impose its will on the organization or there is a potential for the organization to provide specific financial benefits to, or impose specific financial burdens on, the primary government.

When such conditions exist, the separate organization must be reported as a “component unit” of the primary government. It may be a “blended component unit” and not reported on separately if its board is essentially the same as that of the primary government and/or it provides services exclusively to the primary government. It may be a “discretely presented component unit” and have its financial condition reported separately (but still within the primary government’s comprehensive financial report) if these conditions do

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<sup>51</sup> Paul Epstein, et al., *Government Service Efforts and Accomplishments Performance Reports: A Guide to Understanding*, Governmental Accounting Standards Board, July 2005; also, GASB’s *Reporting Performance Information: Suggested Criteria for Effective Communication*, August 2003.

<sup>52</sup> The experience of the CBC staff with obtaining information from a NRMSIR suggests that this is not always the case in practice. Some of the required documents did not appear actually to be available, and some requests for submitted documents yielded the wrong document in response.

not apply. However, these reporting requirements apply only to limited types of financial information and not to the other types of recommended information.

### **State Laws and Reporting Requirements**

State and mixed accountability authorities are created by State law, and local authorities must be authorized by State law. The relevant State laws generally define the mission of the organizations, specify the composition of its board, and in some cases set limits on the amount of debt they may issue. Some additional constraints may be specified in an authorizing statute, but authorities frequently are exempt from other State laws that set rules for the operation of direct State agencies. That is, the use of authorities to escape some of the constraints of conventional State bureaucracies often means they are subject to fewer legal restrictions or requirements than are the “regular” State agencies.

In addition to individual authorizing statutes, Public Authorities Law (PAL) contains several broadly applicable provisions. Section 2800 requires that public authorities annually make a “complete and detailed report setting forth: (1) its operations and accomplishments; (2) its receipts and disbursements, or revenues and expenses, during such fiscal year in accordance with the categories or classifications established by such authority or commission for its own operating and capital outlay purposes; (3) its assets and liabilities at the end of its fiscal year including the status of reserve, depreciation, special or other funds and including the receipts and payments of these funds; and (4) a schedule of its bonds and notes outstanding at the end of its fiscal year, together with a statement of the amounts redeemed and incurred during such fiscal year.”

Section 2801 of the Public Authorities Law requires that state authorities submit, to the Governor and fiscal committees, budget information on operations and capital construction, setting forth the estimated receipts and expenditures for the next fiscal year and the current fiscal year, and the actual receipts and expenditures for the last completed fiscal year. Section 2802 provides that these officials and the State Comptroller must receive a copy of any external examination of a state authority’s books.

While these and other sections of Public Authorities Law seem to touch on each of the kinds of information identified above as necessary for good reporting, two considerations limited their positive impact in the past. First, OSC reporting regulations for public authorities applied to only 50 authorities. Second, although a phrase such as “detailed report setting forth ... accomplishments” could be optimistically interpreted as calling for a full-fledged report of measurable progress toward service goals, the laws are generally interpreted as requiring only high-level, summary information. In an effort to overcome those shortcomings, the State Comptroller issued new regulations, effective in March 2006, that extend the scope of reporting requirements to nearly all state authorities and that specify in greater detail the types of information to be reported by them.

Another set of state laws, the State Finance Law (SFL), has provisions relevant to state authorities. SFL gives the Comptroller the responsibility of accounting for and auditing the State’s activities, and requires the Comptroller to produce several reports including an annual presentation of the State’s basic financial statements prepared according to

GAAP.<sup>53</sup> The effect of requiring that the State's statements conform to GAAP is that some information about some authorities – those closely related to the State – is included in those statements.

General Municipal Law (GML) has a similar effect for some local authorities. GML empowers the State Comptroller to prescribe information to be included in the annual financial reports of local governments, and to prescribe a uniform system of accounts for local governments.<sup>54</sup> For nearly 30 years, the OSC has worked to assure that this uniform system conforms to GAAP. Unfortunately, this information need not be detailed or of a standard format, and judgments about which authorities are “related” to a primary government can and do vary.

In general, State laws and regulations do not add to the reporting requirements described in the previous section under federal standards. One notable instance in which State law does set a standard significantly higher than federal law is the capital asset reporting requirements established for the MTA. State law requires the MTA to prepare a five-year capital plan, and that plan includes the types of information recommended by the CBC staff relating to capital assets. The MTA assesses the condition of its facilities, indicates the ways in which the condition of those facilities will be improved and the amounts it expects to spend toward those ends as part of its five-year plan. However, none of the other authorities with large capital assets appear to be subject to similar multi-year capital planning requirements.

An important recent development in State law is passage of the Public Authorities Accountability Act, effective in 2006. It closes a major gap in content of available information by requiring that local authorities disclose to local officials the same information that state authorities must disclose to state officials. It also strengthens and standardizes the disclosure requirements with respect to real estate holdings and transactions. The law also addresses some of the previous qualitative shortcomings by enhancing audit standards for financial reports, establishing new requirements for making certain information available on the Internet, and creating a new Authority Budget Office to receive, and make publicly available, information about local authorities.

### **Local Laws and Reporting Requirements**

Local authorities must be authorized by State law, but a specific local law is generally also required in order to create the entity. For example, a general state law authorizes certain local governments to create a housing authority or an industrial development authority (IDA), but the relevant local legislature must take action to establish its local housing authority or IDA.

In theory, the local laws creating a local authority can serve as a mechanism to establish enhanced reporting requirements. However, this does not appear to be the case. The CBC

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<sup>53</sup> New York State Finance Law, Article 3, Sections 22 and 22-C.

<sup>54</sup> State of New York, Office of the State Comptroller, Division of Local Government Services and Economic Development, *Accounting and Reporting Manual*, January 2005. GML pertains directly to some authorities as well, including urban renewal agencies and industrial development agencies.

staff has not completed a thorough review of the relevant local laws, but very few instances of local reporting mandates have come to our attention.

The exceptions are reporting requirements relating to New York City and some of its authorities. One example is the City Council's efforts to require the New York City IDA and Economic Development Corporation to provide information about its transactions with private firms. Local Law 69 requires annual reporting on the terms of relevant transactions covering a five-year period. However, the local law has proven relatively unsuccessful because the full value of many transactions spans longer time periods, and the specific format of the reporting has made some information hard to interpret.<sup>55</sup>

New York City has been more successful in establishing a commendable method of reporting regularly on capital assets. The City Charter requires a ten-year capital strategy that is revised every two years, a four year capital commitment plan that is updated annually, an annual capital budget, and annual reporting on the maintenance needs and actual maintenance expenditures for facilities owned by each municipal agency. As previously noted, the plans prepared by the City cover its major local authorities.

New York City has also established reporting requirements for activities and accomplishments that extend far beyond the almost non-existent requirements in State law. The City Charter requires an annual *Mayor's Management Report* that includes information on the activities of each major municipal agency and the goals established for the agency in the coming year. The scope of the report covers the City's major local authorities including the Health and Hospitals Corporation, the Economic Development Corporation and the Housing Authority. While this report is not a perfect example of performance reporting, it is well beyond what is typically reported for State agencies and authorities.

Nassau County uses performance measures for selected services and (alone among New York local governments) participates in the International City/County Management Association's Center for Performance Measurement. The Center provides participating governments with comparative data and benchmarks for the services for which it collects performance measures.

## **Current Reporting Practices**

The two previous sections show that prior to 2006 there was a substantial gap between desirable reporting practices and what is required of authorities by State and local laws. It also is worth exploring the extent to which reporting practices matched the legal requirements. It is possible that actual practice may fall short of even the minimal legal requirements, and it also is possible that actual practices may exceed legal requirements and come closer to desired practices.

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<sup>62</sup> New York City Independent Budget Office, *Full Disclosure? Assessing City Reporting on Business Retention Deals*, June 2001.

### **Potential Deficiencies**

In general, the State, its localities and their numerous authorities appear to conform to existing reporting requirements. While the CBC staff has not completed an exhaustive examination, our review of many documents and web sites suggests the entities prepare and make available the required information, notably annual financial reports. However, in some cases gaining access to them may require considerable effort by consumers.

One deficiency (or at least inconsistency) in the current reporting practices is notable. Some local general governments interpret GAAP in a way that leads them to omit some significant local authorities from their annual financial reports. For example, Buffalo's Municipal Water Finance Authority is a blended component unit of the City of Buffalo, and in New York City and the City of Albany, the respective water finance authorities are discretely presented component units. In contrast, the Buffalo Sewer Authority, Erie County Water Authority, and Suffolk County Water Authority are not component units of their corresponding local governments.

### **Practices that Exceed Legal Requirements**

The State, localities and authorities are, of course, free to exceed legal requirements in terms of the information they share with the public. These non-mandatory practices may bring the entities closer to the recommended reporting standards. Three noteworthy examples of such non-mandated practices are efforts by the State Comptroller, by the State Division of the Budget (DOB), and by the Metropolitan Transportation Authority (MTA).

#### ***Office of the State Comptroller (OSC)***

Under State law, the Comptroller is responsible for preparing the State's Comprehensive Annual Financial Report (CAFR),<sup>56</sup> which includes information on the State's authorities – two blended component units and more than 40 discretely presented component units. The Comptroller also is legally responsible for overseeing and auditing the financial practices of local governments and their authorities.

The OSC supplements the legally required documents by making available additional information on the finances of local governments and the discrete authorities. The OSC makes available data on individual authorities in the "Public Authorities" section of its website.<sup>57</sup> These data are drawn primarily from surveys, but in the case of the information presented under "Debt" for each authority, certain adjustments are made to make the data more comparable among authorities.

The OSC also presents summary information on the Internet for every local government in the State – counties, cities, towns, villages, school districts, fire districts, IDAs – including information on total indebtedness. Summary information is also included for special purpose units classified as soil and water conservation districts, water and waste management districts, libraries, consolidated health districts and regional OTBs. These

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<sup>56</sup> See State of New York, Office of the State Comptroller, *Comprehensive Annual Financial Report for Fiscal Year ended March 31, 2005*, <<http://www.osc.state.ny.us/finance/finreports/cafr05.pdf>>.

<sup>57</sup> See "data on individual Public Authorities," <<http://www.osc.state.ny.us/pubauth/index.htm>>.

data are assembled from local governments' submissions. This electronic database goes beyond the requirements of law and serves as a model for addressing "big picture" concerns. However, it still has important limits. The data do not reflect the activities of most local authorities; only those that are blended components units of a primary government are included.

### ***Division of the Budget (DOB)***

The State DOB is responsible for preparing and administering the State's operating and capital budgets. It prepares and makes public the Executive Budget, a 5-year capital plan, a report on the enacted budget, and quarterly updates to its financial plan.

Perhaps the most significant additional report prepared by the DOB is the State's Annual Information Statement (AIS).<sup>58</sup> The AIS is the State's principal means for disclosing financial information to meet its obligations under federal securities law. However, the AIS contains abundant information that probably extends beyond federally required minimums. The DOB publishes the AIS annually, generally within 30 days of the adoption of a budget by the Legislature. The AIS is updated quarterly and may be supplemented for significant events or developments that occur between updates.

The AIS contains information on the following: (i) the Enacted Budget Financial Plan; (ii) actual operating results for the prior three fiscal years; (iii) economic and demographic data, including DOB's current economic forecast; (iv) debt and other capital financing information; (v) state government organization, workforce, pension systems, and financial procedures, (vi) certain public authorities and localities for which the State has a significant oversight or financial role; and (vii) material litigation against the State. Updates to the AIS contains information on: (i) revisions to the Financial Plan that have occurred during the most recently completed quarter; (ii) actual operating results through the most recently completed quarter; and (iii) any material changes to information reported in earlier updates or in the AIS.

### ***The Metropolitan Transportation Authority (MTA)***

The MTA is an authority that, without a comprehensive legal mandate, prepares and releases much of the recommended information. In 2003 the agency board was criticized by the State Comptroller and others for raising fares while failing to disclose accurate descriptions of its financial condition and projections. The State Comptroller subsequently issued new regulations for MTA financial reporting, and the MTA Board in 2004 adopted a set of comprehensive reforms in its financial reporting practices. It followed the model established for the City of New York under the Emergency Financial Control Act and adopted a practice of having four-year financial plans that are modified quarterly and disclose the key assumptions in the plan. Together with other documents previously prepared by the MTA, including the five-year capital plan with supporting material and statistical reports on its operations, these new reports represent substantial compliance with the CBC staff recommendations concerning disclosure of financial information.

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<sup>58</sup> See State of New York, Division of the Budget, *Annual Information Statement*, May 4, 2005, <<http://www.budget.state.ny.us/investor/ais/ais0506.pdf>>.

## **Summary of Significant Reporting Problems**

State and local authorities (and to a significant extent the State itself) have fallen far short of meeting the recommended reporting standards. New requirements established by law and regulation and effective beginning in 2006 have the potential to improve the situation. However, in the past, among the four content areas of information considered, only one (financial condition and results) was in substantial compliance – and these reports are often not easily accessible.

The remaining shortcomings have been substantial:

- (1) Major classes of information that ought to be publicly available are not. Typically little or no information on future financial plans, conditions of capital assets, and service efforts and accomplishments have been reported.*
- (2) No entity provides a “big picture” perspective on the finances and performance of the multiple state and local authorities. There is no one place to find information on all authorities.*
- (3) The information currently available, relating primarily to financial condition and results, is sometimes not easily accessible and suffers from inconsistencies among reporting entities. Notable inconsistencies include differences in the time horizon used for multi-year financial plans, differences in the designation of the fiscal year, and differences in the method of disclosure for conduit debt.*

### **PROBLEM FOUR – Insufficient Independence in Governance**

Authorities, rather than agencies that are a part of direct government, are chosen to perform certain public services because the authority is intended to function with a different mix of accountability and independence than is the case for a public agency. That is, public agencies, typically run by a commissioner who serves at the pleasure of an elected chief executive (governor, mayor or county executive) are expected to be highly accountable to that elected official and to have limited independence in their policy decisions. In contrast, the governing boards of authorities are expected to be more independent of those who appoint them (usually to some fixed term), to make often difficult and unpopular decisions (such as raising tolls and fares or closing facilities that are no longer economically viable) with a degree of separation from the arena of elected politics, and to be accountable to the public indirectly through reporting, transparency in decision-making and long-run performance.

It should be stressed that the issue is one of balance, not absolutes. Authority board members should not be completely independent of influence from elected officials. They

typically require legislative authority for specific missions, borrowing capacities, and/or appropriations; like the heads of direct state agencies, authority board members should be subject to the priorities of the legislature and governor or other chief executive in seeking such authority and funding. Similarly, board members are not directly accountable to the public through elections; the elected officials who appoint them should be consulted, particularly on the most important and strategic decisions, as a way to promote greater popular accountability.

Nonetheless, the potential benefits of an authority structure can be eroded if the appropriate mix of accountability and independence is not achieved. As discussed in the previous section, accountability can be diminished if sufficient information is not made available to the public; the result is likely to be undesirable secretiveness and arrogance in entities' governance.

An equally important risk in the authority structure is that the board does not function with sufficient independence. This situation arises when the appointing officials and the board members have inappropriate expectations about the board members' role. The official making the appointment may seek more direct accountability than is appropriate and may give undue weight to personal or partisan loyalty as a criterion in making the selection; at the same time, the person selected may believe it is his or her obligation to reflect the preferences of the appointing official rather than to exercise independent judgment.

Insufficient independence can lead to three types of deficiencies in authority performance – patronage-like decisions, erosion of professionalism among senior staff, and inappropriate time frames for strategic decisions. The 2004 report by the State Comptroller, *Public Authority Reform: Reining in New York's Secret Government*, gave great attention to the issue of corrupt behavior within authorities, and the media have followed suit. Examples include procurement decisions that were subject to successful lobbying by politically influential figures, the awarding of development rights along the Erie Canal to a political contributor without a competitive process, and the commissioning of political polls by an authority board.<sup>59</sup>

Such abuses are important, and measures should be taken to curb them. However, it is not overly cynical to observe that some unethical behavior is likely in all forms of government and private activity. The public authority structure, if properly implemented, should serve to reduce the frequency of such behavior, but there is no systematic evidence to determine if this is or is not the case.

When effective checks are put on corruption, the more important implications of insufficient board independence are declining professionalism and poor long-term decisions. With respect to professionalism, the quality of senior staff is hard to quantify, and trend data are not available, so a widely credible assessment of this phenomenon is not possible. However, there is a concern among some knowledgeable observers that in

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<sup>59</sup> State of New York, Office of the State Comptroller, *Public Authority Reform, Reining In New York's Secret Government*, February 2004.

some authorities the increased concern for political accountability among board members has led to the departure of some highly competent staff and their replacement with individuals with less impressive and relevant credentials. Some board members of state and local authorities acknowledge informally that senior staff appointments are expected to be cleared with elected officials appointing the board members.

Perhaps the most harmful consequences of insufficient independence flow from the poor policy decisions it can produce. If authorities are intended to help insulate long-run decisions from shorter-term political pressures, then this benefit will be lost by undermining the board's independence. Whether it is the amount and timing of a mass transit fare increase, the location of a power plant or transmission line, or the value of a subsidy necessary to retain or recruit a large employer, the decision should be separated from the electoral cycle and based on longer-run considerations than the impact on voter decisions in the next election.

Recently, some important steps have been taken to increase board independence. Based on the advice of a widely respected expert on corporate governance, Ira Millstein, the Secretary to the Governor, John Cahill, in February 2004 released a set of model corporate governance principles. Included in the principles was a requirement for training of board members in their legal, fiduciary and ethical responsibilities; a requirement that the board committee structure include a governance committee and an audit committee; and separation of the oversight function performed by the board from the management function performed by a separate chief executive who serves at the pleasure of the board. The Secretary sent the principles to the boards of 31 State authorities and asked them to report on their compliance.

Also in February 2004, the Governor appointed Ira Millstein to chair a Public Authority Governance Advisory Committee with five additional members. Based on responses to the Cahill memo, that group developed modifications to the initial model code and recommended areas that required further inquiry.<sup>60</sup>

In February 2005, the Governor appointed Millstein to chair a new Public Authorities Reform Commission with members appointed by the Comptroller, Attorney General and legislative leaders as well as by the Governor. The Commission was given a budget of \$1 million. Part of the budget is being used to establish a training program for board members, and the Commission is making an important contribution by developing recommendations for improving the governance of authorities.

The Public Authorities Accountability Act, signed into law January 2006, creates new reporting requirements for authorities and puts into statute some of the Millstein Commission's model governance principles. It requires separating the Board chair and chief executive roles in several authorities where this is not the case, specifies the role and responsibilities of board members, requires training for board members, and require boards to have audit and governance committees. The standards apply both to state authorities (that is, authorities for which at least one board member is appointed by the

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<sup>60</sup> *Draft Interim Report of the Public Authorities Governance Advisory Committee*, June 22, 2004.

Governor), which are required to make comprehensive reports to the State Comptroller, and to local authorities, which are required to make comprehensive reports to the new Authority Budget Office. Subsidiaries and affiliates of local authorities are covered, as are subsidiaries of state authorities. Not-for-profit corporations affiliated with, sponsored by or created by local governments are considered local authorities for the purposes of the act, although no such provision applies to not-for-profits related to the State. Interstate and international authorities are not covered.

The Millstein Commission is expected to release a final report in the spring of 2006. In addition to the contributions already made by the Commission in shaping the 2005 legislation, the final report likely will have additional recommendations for improving authority governance and accountability.

## **HOW TO SOLVE THE PROBLEMS**

The problems identified in this report can be solved. The five strategies presented below would better enable authorities to realize their potential contribution to more effective and efficient services for New Yorkers.

In summary, these measures are:

- (1) Eliminate the misuse of authorities' debt powers by setting comprehensive constitutional limits on the amount of State-supported and City-supported debt that can be issued by the State of New York and by the City of New York.
- (2) Improve the oversight of non-State-funded authority debt by eliminating the PACB review process and replacing it with more comprehensive capital planning and project feasibility studies subject to professional, transparent review.
- (3) Improve the effective use of tax-exempt conduit debt by requiring more explicit advance allocation of its purposes and more competition among private entities for its benefits.
- (4) Make authorities more accountable by effectively implementing new laws and regulations seeking to make available more complete and accessible financial and other information.
- (5) Enhance the governance of authorities by making their board members more independent of short-term political pressures.

### **New Constitutional Limits on Debt**

The existing Constitutional limits on State and City debt are neither effective nor sensible. The limits have been circumvented through the creation of public authorities and the use of appropriation-backed debt and of debt backed by earmarked taxes in place of general obligation debt. The limits are of questionable merit because, in the case of the City, real estate values are not the best measure of ability to repay, and, in the case of the State, voter approval can be a serious obstacle to raising capital for unpopular purposes.

New limits should be made effective by having them apply to all forms of debt which draw upon tax and other general governmental revenues. In the case of the State, the limit should apply to all forms of State-funded debt; in the case of the City, the limit should apply to all forms of debt supported by local revenues including those of the TFA and STARC. Debt supported by independent, user fees revenues such as the Water Authority's fees and the Thruway Authority's tolls should not be subject to the limit.

The new limits should be made more sensible by replacing the existing constraints with an approach based on the concept of affordability developed by the CBC in its previous reports. The City should no longer be subject to a numerical limit related to property values, and the State should not have a procedural limit that requires debt to go before the voters. Instead, for each entity there should be a periodic analysis following the affordability approach. The analysis should be conducted by an independent board, which would arrive at a debt limit for each entity based on a comparative approach to affordability. Their charge would be to set rolling, multiyear limits for debt based on analysis that takes into account trends in the resources of the City and State and in the patterns of debt issuance by other competitive jurisdictions. These limits should be binding on the City and the State.

The sole safety valve or exception to the limit set by an independent board based on analysis of affordability should be the will of the electorate. If the voters opt to approve debt for a specific purpose, then such debt should be permitted above the limit set by the independent board. The will of the voters should be supreme, but it should be guided by information on the affordability of debt. The voters should be empowered to go beyond that limit, when and if they are convinced it serves an important public purpose.

### **Improved Oversight of Authority Project Debt and Conduit Debt**

If the previous recommendation were adopted, then State and City general obligation debt could be used in place of much of the authority debt that is now supported by lease purchase agreements with the State or by dedicated City taxes. Future authority borrowing could be limited to the legitimate purposes of financing projects that generate sufficient revenue to make them self-supporting and financing projects on behalf of private conduit borrowers.

The primary responsibility for assessing the merits of such borrowing should remain with the authority boards. However, two requirements should be subject to external enforcement. First, authority borrowing backed by the entity's project revenues should be limited to projects that are part of a long-run, capital plan reviewed and approved by the relevant state or local elected officials. Second, both project-revenue backed and private conduit borrowings should be subject to professional review of a feasibility study in order to avoid undue risks.

For State authorities, their capital investments should be integrated with the State's capital plan developed by the Governor and approved by the Legislature. The DOB, which prepares and administers the capital portion of the Executive Budget, should work with authorities to develop compatible capital planning timetables and formats. The new more comprehensive capital budget should indicate the purposes for which authorities are planning investments and their general nature. Authority investments should be coordinated with State agency plans to assure that high priority projects are undertaken by one of the relevant agencies, and to assure that projects of agencies and authorities are not duplicative. Before an authority undertakes to borrow for a major capital investment, the DOB should be required to review the planned investment to determine its conformity with the current State capital plan.

For local authorities, integration with local government's capital planning should follow a model similar to that in place in New York City. The authorities' proposed capital investments should be considered as part of the general government's capital budget process, and approval of the relevant chief executive should be required before the project is initiated.

Most private purpose conduit borrowing need not be subject to a public capital planning process. Competitive markets, rather than government planning, are the relevant check on the merits of these projects. However, an important exception is conduit borrowing for non-profit health care facilities. Health care is still not a truly competitive market, and much of the demand is underwritten with public funds spent on behalf of the elderly and indigent. Therefore, authority conduit borrowing for private health care projects should be subject to some publicly accountable planning process. This need not be the State's capital budget, but could be an improved "certificate of need" review implemented by the State Health Department. The State's Commission on Health Care Facilities in the 21<sup>st</sup> Century is considering these and related issues, and its report due in late 2006 may present guidelines for such a process in the future.

With respect to the second externally enforced constraint, it should be the responsibility of the authority board to prepare (or have prepared) a financial feasibility study for each project for which revenue-backed or conduit borrowing is proposed. This is already a de facto requirement for many bonds issued in public credit markets. However, for State authorities this study should be subject to review by the DOB, which should be asked to report its assessment of the project's financial viability and whether it is subject to significant risk of default. For local authorities, the review should be conducted by the local government's chief financial officer or the newly created ABO. In all cases, the initial study and the reviewers' comments should be part of an easily accessible, public record in order to promote greater fiscal accountability. The required review should also be subject to relatively prompt time constraints (perhaps 90 days from the request) so that outside review does not become a mechanism for delay or obstruction.

It should be noted that both the proposed external reviews need not wait until the final stage of project development, as is now the typical case with PACB review. The relevant agency can certify that the project is fiscally feasible and part of a public capital budget

well in advance of the actual issuance of bonds. This would provide authorities with greater flexibility in timing their borrowings to take advantage of credit market conditions.

If these new standards and procedures were adopted, then the current PACB review would no longer be necessary. The PACB could be eliminated.

## **More Effective Allocation of Private Conduit Debt**

If the previous recommendation were followed, private conduit debt issued by authorities (for non-health purposes) would not be subject to public capital planning, but would require a financial feasibility study. This would help promote the selection of viable projects, but it alone would not ensure the most productive use of the tax exemption benefits. Additional measures should be taken to improve the way conduit debt subject to the federal cap is allocated.

Private-purpose debt subject to the federal cap should be allocated annually by statute among the authorities permitted to issue such debt and among the general purposes for which it is permitted. The allocation should be based on:

- (a) Elected officials' political judgments about the relative importance of the permissible functions. The allocation among housing, economic development, higher education, and other activities is appropriately based on political judgments made by elected officials.
- (b) Evidence submitted by the issuing agencies that the supported projects are serving the intended public purposes. The appropriate legislative committee should conduct public hearings and prepare an annual report based on reliable data and sound evaluation methods to support a recommended allocation.

At the next stage, the authorities given an allocation of tax-exempt debt should select among entities seeking the benefit based on criteria established in advance and in response to competitive proposals. Local IDAs, in particular, should select projects based on a competitive process with standardized criteria for evaluation; the selection of economic development and housing development projects by the relevant State authorities should be based on a similar competitive process.

## **Improved Accountability with Better Reporting**

The reporting practices of most state and local authorities have fallen far short of desirable standards. New regulations and laws effective in 2006 have the potential to improve the situation, but to realize these gains four basic strategies should be pursued:

- (1) *The new, more comprehensive standards for publicly reported information should be implemented effectively by individual authorities with strict oversight by the State Comptroller and the Authority Budget Office.* Entities should report regularly on their budgets and financial plans, the condition of and plans for capital assets under their control, and their service efforts and accomplishments. The Comptroller and ABO should set high standards for such reports based on the best practices of organizations already engaged in such reporting (including some exemplar public agencies in New York), and they should enforce the requirements vigorously.
- (2) *One or more public officials should be given responsibility for providing the Legislature and the public with a “big picture” perspective on the activities of authorities.* With the exception of some financial information included in the CAFR prepared by the State Comptroller, there is no comprehensive source of integrated information on how the activities of state and local authorities relate to the lives of New Yorkers. The Public Authorities Accountability Act of 2005 splits information about authorities between two offices (the Office of the State Comptroller and the Authority Budget Office) with neither given the responsibility for presenting information for all authorities in a way that facilitates comparison and aggregation.

Given the current division of responsibilities between the Office of the State Comptroller and the Authority Budget Office, preparation of a “big picture” perspective on all authorities will require that the two organizations cooperate. Each has access to the reports submitted to the other by authorities, and the responsible officials have indicated a willingness to cooperate. A mechanism for cooperation should be formalized with either or both offices responsible for preparing the “big picture” report to the public.

If cooperation between the two offices does not prove effective in providing the public with the necessary information, then a new structure may be required with one entity covering all authorities. There are at least three options for assigning this responsibility – the State Comptroller, the Governor (primarily through his DOB or the new ABO), or a new “independent” entity. Each has pros and cons. The Comptroller is already engaged in some of this reporting and could expand those responsibilities, but the office has less expertise in budgeting and in performance reporting than in financial reporting. The DOB has more expertise in budgeting and already monitors financial activities of many State authorities, but

the Comptroller would and should retain audit responsibilities. An independent entity has the attraction of being devoted exclusively to this mission and bringing new perspectives (especially relating to performance measurement), but likely would have to rely on the DOB, ABO and OSC for much financial information.

- (3) *The accessibility of mandated reports should be improved by requiring the individual authorities, and a new “big picture” entity, to make them available on the Internet.* Information can and should be made more easily and widely available by requiring it to be placed on websites maintained by the reporting entity and the recommended new agency with responsibility for integrating the perspectives of the separate authorities.
- (4) *Inconsistencies in current financial reporting practices should be addressed through guidelines established by the State Comptroller and, as necessary, by statutory standards.* The Comptroller should issue guidelines for the interpretation of GAAP with respect to the identification of component units by local governments and their reporting of conduit debt. The OSC and the DOB should work together to develop standards for quarterly reporting that overcome problems created by the use of different fiscal years by different entities; if necessary, the Legislature should require more uniform fiscal years for the multiple authorities. In working together to provide a “big picture” perspective, the OSC and the ABO should develop standards for more uniform time-horizons for multi-year financial planning and capital planning.

### **Better Governance through Greater Independence and Professionalism among Board Members**

As previously discussed, desirable governance of authorities requires a different balance of political accountability and independence than is expected for direct government agencies. Authority board members are not, and should not be, free of any ties to elected officials, but they are expected to be more independent than are commissioners or heads of agencies serving “at the pleasure” of a single elected chief executive.

Currently, the greatest threat to the desired governance arrangements for authorities is that many elected officials and their appointees to authority boards share an expectation that the appointees will defer to the judgment of the person who appointed them on important board decisions including staff hiring. This culture should be changed to one in which the mutual expectation is that, once appointed, board members will rely primarily on their own good judgment to make decisions that reflect the long-run interests and mission of the organization on whose board they serve. Board members should consult the officials who appointed them and other elected leaders, but their final decisions should be based on their own judgments about how to best promote the agency’s mission.

Achieving the appropriate balance in authority governance will require board members with a high level of professionalism. They should have expertise relevant to the organization's operations. They also should be sensitive to the need for consultation with multiple elected leaders, but willing and able to exercise independent judgment.

No single rule or statute will bring about such a cultural change. However, several measures are likely to promote progress toward that goal.

- *Screening.* There should be a standard screening process for proposed board appointees, which discloses information about their qualifications and potential conflicts of interest.
- *Formal Orientation.* The recent Public Authority Accountability Act requires the training of board members, and the Millstein Commission has helped establish a new and innovative program to meet this need. However, in the long-run it is important to avoid routinization of this training and the danger that inappropriate requirements defer some individuals from board service. For the long-run, greater emphasis should be given to formal orientations for new board members. New appointees should be required to participate in brief, but carefully prepared, orientation sessions. The sessions should provide information about the organization and its procedures, and should familiarize the member with the issues involved in striking an appropriate balance between political accountability and independence.
- *Staggered Terms.* It is appropriate for a board chair to serve a term that coincides with that of the appointing official. This promotes an appropriate degree of political accountability for the organization. However, other board members should serve staggered terms that overlap the term of the appointing official or officials. This will help ensure continuity for organizational policy and facilitate independence among board members.
- *End "hold over" Appointments.* Currently many board members remain in office after their fixed term expires, because the appointing official neither re-appoints them nor appoints another individual. Allowing board members to continue to serve under these circumstances undermines their independence, because the appointing official can replace the individual with a new appointee when he or she sees fit. In effect, such "hold over" appointees serve at the pleasure of the appointing official rather than for a fixed term. Such hold over appointments can be eliminated by obliging board members to leave office after a brief period (perhaps 30 days) from the time their fixed term expires. This practice would put responsibility on appointing officials to take action in a timely way and would promote greater independence among board members.

A final point should be made about compensation for authority board members. Currently, these positions are not compensated, and this should remain the case. This contrasts with the practice among private corporations, where board members are paid. The goal is to encourage them to take the role seriously and allocate sufficient time. In contrast, in private non-profit (or "voluntary") organizations, it is considered inappropriate to compensate board members; they are expected to donate to or help raise

funds for the organization and to serve based on commitment to the agency's mission. The latter model should apply to public authorities; their board members should serve voluntarily out of commitment to an organization's mission, and compensation should not be created in part to avoid the temptation to convert these positions to a form of patronage by the appointing officials.

## APPENDIX A

### Debt Affordability Analysis for New York City, 2004

This appendix describes the sources and methods used in calculating the affordability limit for the ten largest cities in the United States. The Citizens Budget Commission devised the affordability approach described below for the report issued in 2000, *An Affordable Debt Policy for New York State and New York City*. This approach consists of the following six steps:

#### **Step 1. Identify the amount of relevant long-term debt.**

Net Direct and Overlapping Debt is the measure that represents the total tax-supported burden on a city's residents from all overlapping jurisdictions, such as independent school districts, separate counties, and fire districts. For New York City there is no overlapping debt, because it has a consolidated local government. The New York City measure of debt includes General Obligation Bonds, Revenue Bonds, Municipal Assistance Corporation Debt, Transitional Finance Authority Debt, Samurai Finance Corporation Debt, Industrial Development Agency Bonds, and Capital Leases Obligations. Data was extracted from the following sources: City of Chicago, *Comprehensive Annual Financial Report for the Year Ended December 31, 2004*, "Computation of Direct and Overlapping Debt," p. 127; City of Los Angeles, *Comprehensive Annual Financial Report for the Year Ended June 30, 2004*, "Ratio of Net General Bonded Debt to Assessed Value and per Capita," p. 296, and "Computation of Overlapping Debt," p. 298; City of Dallas, Texas, *Comprehensive Annual Financial Report for the Fiscal Year Ended September 30, 2004*, Table 14, "Direct and Overlapping Debt (Unaudited)," p. 124; City of Detroit, *Comprehensive Annual Financial Report for the Year Ended June 30, 2004*, Table 10, "Computation of Direct and Overlapping Debt" p. 139; City of Houston, Texas, *Annual Financial Report for the Fiscal Year Ended June 30, 2004*, "Computation of Direct and Overlapping Debt," p. 190; City of New York, Office of the Comptroller, *Comprehensive Annual Financial Report of the Comptroller for the Fiscal Year Ended June 30, 2004*, "Ratios of Outstanding Debt by Type," p. 286; City Of Philadelphia, *Comprehensive Annual Financial Report for the Fiscal Year Ended June 30, 2004*, Table 6, "City and School District Net Tax Supported Debt and Debt Service Ratios," p. 143; City of Phoenix, *Comprehensive Annual Financial Report for the Fiscal Year Ended June 30, 2004*, Table 18, "Direct and Overlapping Bonded Debt," p. 210; City of San Antonio, *Annual Financial Report for the Fiscal Year Ended September 30, 2004*, "Computation of Direct and Overlapping Debt," p.175; Data for the City of San Diego provided by Larry Tomanek, Assistant City Auditor & Comptroller, of the City of San Diego Office of the City Auditor & Comptroller.

**Step 2. Adjust long-term debt to include unfunded pension liabilities.**

Unfunded pension liability data is available in the “required supplementary information” sections of the cities’ annual financial reports. Cities are required to include a schedule of funding progress for all their pension systems by the Governmental Accounting Standards Board (GASB) Statement 27. Consistent with the method used for the states, city unfunded pension liability was adjusted to reflect only the share assigned to employer contributions. The Adjusted Unfunded Pension Liability is shown in column two. Data for calculating contribution splits is also available in the “required supplementary information” sections of annual financial reports. Data for the City of San Diego provided by Larry Tomanek, Assistant City Auditor & Comptroller.

**Step 3. Identify the resources available in the city to repay debt.**

Gross City Product (GCP) is used as a proxy measure of revenue capacity. However, GCP is generally not available for cities other than New York, where it is regularly estimated by the City Comptroller and the Mayor’s Office of Management and Budget. In the 2000 report, *An Affordable Debt Policy for New York State and New York City*, the Citizens Budget Commission used the GCP estimates available in a report of the New York City Independent Budget Office, *Taxing Metropolis: Tax Effort and Tax Capacity in Large U.S. Cities*. These estimates were for calendar year 1997 and are the most recent estimates available. Thus, we calculated the ratio of the 1997 GCP to the 1997 Gross State Product (GSP) for each of the ten largest cities and their respective states and applied it to the 2004 estimates of GSP. This “implied GCP” is shown in column four of Table A-1. Detroit has been replaced by San Jose as the tenth largest city in the last Census of Governments, but we were unable to account for this change in our analysis due to lack of GCP estimates for the latter. The U.S. Bureau of Economic Analysis (BEA) develops estimates of GSP for all 50 states. See U.S. Department of Commerce, Bureau of Economic Analysis, *Regional Economic Accounts*, “Gross State Product,” <<http://www.bea.gov/bea/regional/gsp.htm>> (December 2, 2005).

**Step 4. Adjust the available resources for the division of responsibility between the state and its localities.**

The Index of Local Fiscal Responsibility shown in column five is the inverse of each state’s share of total state and local revenue. The implied GCP in column four is weighted by the Index to take into account that some states place more responsibility on their localities than do others. The adjusted GCP is shown in column six. State and local revenue data are from the U.S. Census Bureau, *State & Local Government Finances, State & Local Summary Tables by Level of Government*, <<http://www.census.gov/govs/www/estimate02.html>> (March 17, 2005).

### Step 5. Examine the distribution of ratios of debt to resources in order to identify a danger zone.

For each of the ten cities the ratio of combined Debt and Adjusted Unfunded Pension Liability (column three) to Adjusted GCP (column six) is shown in column seven. A danger zone can be defined as a debt ratio more than one standard deviation from the mean ratio for all large cities. For a standard deviation to be used, however, the distribution of city observations should follow a normal distribution. Two indicators of normality are a distribution's "skewness" and "kurtosis." Based on these indicators the ratios do not fall in a pattern that closely resembles a normal distribution. Expressing the ratios in logarithmic form makes the distribution more closely follow a normal distribution, and these log measures are shown in column eight. Based on the distribution of logs, the danger zone threshold can be defined as more than one standard deviation above the mean. This is the equivalent of 15.25 percent of adjusted gross city product. Of the ten cities, Detroit and Philadelphia had a ratio above the threshold. New York City ranked fourth, operating in fiscal year 2004 with a ratio of 8.54 percent.

**Table A-1**  
**City Debt Affordability, The Nine Largest Cities, 2004**  
 Dollars in thousands

City	Net Direct and Overlapping Debt	Adjusted Unfunded Pension Liability	Total City Obligations Outstanding	Implied GCP	Index of Local Fiscal Responsibility	Adjusted GCP	Debt Ratio	Log of Debt Ratio
Detroit	\$6,827,831	\$1,061,564	\$7,889,396	\$30,605,196	0.832	\$25,461,212	30.986	-1.172
Philadelphia	8,265,600	2,141,455	10,407,055	50,022,444	1.009	50,470,377	20.620	-1.579
Chicago	12,543,418	3,951,672	16,495,090	166,625,339	1.098	182,931,228	9.017	-2.406
<b>New York</b>	<b>50,265,000</b>	<b>1,861,459</b>	<b>52,126,459</b>	<b>500,668,722</b>	<b>1.219</b>	<b>610,525,511</b>	<b>8.538</b>	<b>-2.461</b>
San Antonio	3,292,495	292,251	3,584,747	50,009,504	1.221	61,082,258	5.869	-2.836
San Diego	2,326,000	907,253	3,233,253	67,542,269	0.919	62,090,479	5.207	-2.955
Los Angeles	7,706,444	757,373	8,463,816	213,744,716	0.919	196,491,945	4.307	-3.145
Houston	6,447,552	1,486,792	7,934,344	178,319,261	1.221	217,801,462	3.643	-3.312
Phoenix	1,832,698	146,070	1,978,768	62,183,688	1.010	62,785,492	3.152	-3.457
Dallas	2,278,003	945,048	3,223,051	126,066,210	1.221	153,978,907	2.093	-3.866
Mean							9.343	-2.719
Standard Deviation							9.275	0.838
<b>One Standard Deviation above Mean</b>							<b>18.618</b>	<b>-1.881</b>
Skewness							1.832	0.712
Kurtosis							2.796	-0.083

### Step 6. Adjust the available resources to provide a safety margin for an economic downturn.

In the 2002 recession, New York City real personal income declined 2.71 percent from 2001, while in the rest of the country it inched up by 0.28 percent. Therefore, a prudent debt policy for New York City would be to keep debt 2.99 percent below the danger zone threshold calculated above. Reducing the City's Adjusted GCP by 2.99 percent to allow a safety margin for recession reduces it to \$592.3 billion from the \$610.5 million in column six. Applying the 15.25 ratio to this reduced resource base yields a danger zone threshold of \$90.3 billion for combined Debt and Adjusted Unfunded Pension Liability. Since New

York's Adjusted Unfunded Pension Liability was \$1.9 billion, the long-term debt danger zone in 2004 was \$88.5. This is \$38.2 billion above the actual net debt outstanding of \$50.3 billion shown in column one. Personal income data is available from U.S. Department of Commerce, Bureau of Economic Analysis, *Regional Economic Accounts*, <<http://www.bea.gov/bea/regional/reis/action.cfm>> (December 2, 2005). Inflation data is available from U.S. Department of Labor, Bureau of Labor Statistics, "Consumer Price Index – All Urban Consumers," <<http://data.bls.gov/cgi-bin/dsrv>> (December 2, 2005).

## **APPENDIX B**

### **Debt Of Local Governments And Related Authorities: Case Studies**

This Appendix consists of nine case studies of local governments and their related authorities. The nine governments are the four largest counties (Suffolk, Nassau, Erie and Westchester) and the five largest cities other than New York City – Buffalo, Rochester, Yonkers, Syracuse and Albany. The populations of the counties range from Suffolk’s more than 1.4 million to Westchester’s 923,000; the cities’ populations range from Buffalo’s 292,000 to Albany’s 96,000.

The case studies began with an examination of each entity’s Comprehensive Annual Financial Report for the latest available fiscal year, usually the fiscal year ending in 2004. From this report, it is possible to identify the following types of entities:

- Blended component units – These are distinct entities which have a board that is essentially the same as the local government’s governing body or which provides services exclusively to the primary general government. Its finances are integrated with those of the general government in its financial report.
- Discretely presented component units – These are distinct entities which do not meet the criteria for being “blended,” but which are closely related to the general government because it can impose its will on the organization or the organization represents a significant financial burden or benefit to the general government.
- Related organizations – These are distinct entities with boards to which officials of the general government appoint a voting majority, but which do not meet the criteria of component units.
- Joint ventures – These are organizations in which the general government has a financial interest but does not appoint or control a majority of the board.

The Comprehensive Annual Financial Report typically identifies the amount and nature of debt for each type of component unit as well as for the general government itself. In order to identify the amount and nature of debt for related organizations and for joint ventures, the CBC staff obtained the separate financial statements of those organizations.

In addition the CBC staff sought to identify any “unrelated” organizations not identified in the Comprehensive Annual Financial Report, but with a jurisdiction the same as or overlapping with the general government. When such unrelated organizations were identified, the CBC staff attempted to identify the amount and nature of debt for those organizations by obtaining their separate annual financial reports.

In some cases, information from the financial reports was supplemented with telephone interviews with the financial officers of the relevant organizations in order to clarify the nature of the outstanding debt and the links among entities.

## Suffolk County

As of December 31, 2004, Suffolk County had \$702 million of general obligation debt. Suffolk County identified one blended component unit, three discretely presented component units, and two related organizations. These other entities had a total of \$1.9 billion in additional debt, of which \$289 million was supported by the County, \$576 million was supported by water fees raised by a related organization, and \$1.0 billion was private conduit debt.

- The blended component unit is the *Suffolk Judicial Facilities Agency*. It was created as a public benefit corporation in 1999 to acquire and improve the John P. Cohalan Court Complex. The Agency's debt outstanding of December 31, 2004 was \$102.8 million; this debt was supported by capital lease obligations from the County.

The three discretely presented component units are *Suffolk County Community College (SCCC)*, the *Suffolk County Industrial Development Agency (IDA)*, and the *Suffolk Regional Off-Track Betting Corporation (OTB)*.

- The SCCC was formed in 1959 by the State University of New York with a board appointed by county officials. As for all New York State community colleges, the State of New York finances a portion of the College's capital costs. The State meets its obligation with bonds issued by the Dormitory Authority of the State of New York. The County has financed its share by issuing general obligation debt; \$47.8 million in outstanding general obligation debt is attributed to SCCC and included in the \$702 million total noted above.<sup>61</sup>
- The Suffolk County IDA is a public benefit corporation created in 1975. It has outstanding \$1,117 million of conduit debt. The bulk of this is for private purposes, though \$112.7 million is on behalf of the Suffolk County Southwest Sewer District and is backed by sewer fees pledged to repay the debt.
- The Suffolk Regional OTB is a public benefit corporation formed in 1974. It remits a percentage of wagers placed at OTB locations and all net operating profits to Suffolk County. The OTB has not issued bonds, but as of December 31, 2004 it had \$4.5 million in purchase money mortgages payable.

The two related organizations are the *Suffolk County Water Authority (SCWA)* and the *Vocational and Educational Extension Board*.

- The SCWA was created to develop a single, integrated public water supply and distribution system. The County's officials appoint a majority of the board of the Authority. Debt of the SCWA consists of \$329.5 million of its own revenue bonds, \$70.5 million of New York State Environmental Facilities Corporation bonds issued on behalf of the SCWA, and \$176.4 million in BANs. As of May 31, 2005, the end of the SCWA's fiscal year, these outstanding bonds and notes totaled \$576.4 million.

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<sup>61</sup> Based on phone conversation with John D'Amico 12/6/05.

- The Vocational and Educational Extension Board, more commonly referred to as the Suffolk County Fire Academy, manages all services associated with the Suffolk County Fire Academy. It is not a public benefit corporation and does not issue bonds or incur debt.

## **Nassau County**

As of December 31, 2004 Nassau County had \$1,095 million of general obligation debt. The County identified three blended component units and four discretely presented component units. The blended component units had about \$2,105 million in debt, which was supported by County revenues. The discretely presented component units had a total of \$899 million in debt, of which \$621 million was private conduit debt and the remainder was supported by those units' independent revenues.

The three blended component units are the *Nassau County Interim Finance Authority* (NIFA), the *Nassau County Tobacco Settlement Corporation* (NCTSC), and the *Nassau County Sewer and Storm Water Finance Authority* (SSWFA).

- The NIFA is a public benefit corporation created by the State legislation in June of 2000. It is authorized to issue bonds and notes to finance capital projects and cash flow needs of the County. Its bonds are supported by County sales tax revenues. As of December 31, 2004 NIFA had \$1.74 billion of total long-term debt.
- The NCTSC is a special purpose local development corporation organized under Not-for-Profit Corporation Law of the State of New York. In 1999, NCTSC acquired the County's share of all Tobacco Settlement Revenues received after November 23, 1999 and paid for this by issuing long-term bonds (Tobacco Settlement Asset-Backed Bonds). As of December 31, 2004 NCTSC had \$275.3 million in debt outstanding.
- The SSWFA is a public benefit corporation created in 2004. It may issue debt up to \$350 million for the purposes of refinancing sewer and storm water debt issued by or on behalf of the County and of financing future County sewer and storm water resource projects. As of December 31, 2004 the SSWFA had issued \$81.6 million in debt, with \$78.2 million used to refund and restructure previously-issued County bonds. The bonds are repaid with revenues collected by the County.

The four discretely presented component units are the *Nassau County Community College* (NCCC), the *Nassau County Health Care Corporation* (NCHCC), the *Nassau Regional Off-Track Betting Corporation* (OTB), and the *Nassau County Industrial Development Agency* (IDA).

- Capital costs of the NCCC are funded together by the County and the State. The State uses the Dormitory Authority borrowing for its share, and the County has \$24.7 million

in general obligation debt issued on behalf of the NCCC. This debt is included in the \$1,095 million general obligation debt total noted above.

- Established in 1997, the NCHCC is a public benefit corporation created for the purpose of acquiring and operating the health facilities of Nassau County. In 1999 the County transferred ownership of its health facilities to the NCHCC. As of December 31, 2004, the NCHCC had \$265.2 million outstanding bonds. The bonds are to be paid with revenues generated by the NCHCC, but the County provides a guarantee of the debt service.
- The Nassau Regional OTB was created in 1975 under State legislation as a public benefit corporation. As of December 31, 2004 OTB has issued \$12.0 million of Bond Anticipation Notes, as well as \$421,000 of other notes, for a total debt outstanding of \$12.4 million. This debt is to be paid with OTB revenues.
- The Nassau County IDA is a public benefit corporation established in 1976. As of December 31, 2004 outstanding debt of the IDA amounted to \$620.7 million. This is private purpose conduit debt and is not a liability of the County. The IDA has no other long-term debt.

## **Erie County**

As of December 31, 2004 Erie County had outstanding general obligation debt totaling \$451.1 million. The County identified two blended component units, two discretely presented component units, two related organizations, one joint venture and one unrelated organization. These entities had a total of \$1,009 million of debt outstanding, of which \$240 million is backed by tobacco revenues, \$390 is private conduit debt, and the remainder is backed by other public revenue streams.

The two blended component units are the *Erie Tobacco Asset Securitization Corporation* (ETASC) and the *Erie Tax Certificate Corporation* (ETCC).

- The ETASC is a special purpose local development corporation organized under the Not-for-Profit Corporation Law of the State. As of December 31, 2004 ETASC had outstanding bonds of \$240.1 million. These bonds are supported by the County's share of a national court settlement with tobacco companies.
- The ETCC also is special purpose local development corporation organized under the Not-for-Profit Corporation Law of the State. It sells tax receivables owed to the County. The ETCC does not have any long-term debt.

The two discretely presented component units are The *Erie County Medical Center Corporation* (ECMCC) and the *Buffalo and Erie County Public Library*.

- The ECMCC was created as a public benefit corporation in 2003 for the purpose of acquiring and operating the health facilities of the County. As of December 31, 2004 the ECMCC has \$101.4 million outstanding in revenue bonds guaranteed by the County.
- The Buffalo and Erie County Public Library is a separate corporation chartered by the Board of Regents in 1953. It operates public libraries in the county and is funded by the County. A portion (about \$830,000) of the County general obligation debt identified above was used for library facilities.

The two related organizations are the *Erie County Water Authority* (ECWA) and the *Buffalo Convention Center Management Corporation*.

- Elected officials of Erie County nominate and confirm the three-member board of the ECWA. The ECWA operates the local water supply system and charges its customers. At the end of 2004 the ECWA had \$86.8 million in water revenue bonds outstanding.
- The Buffalo Convention Center Management Corporation (the Convention Center) also has a board named by Erie County officials. The Convention Center provides supporting services to tourism and hospitality industries in Buffalo and Erie County. Debt of the Convention Center is limited to short-term borrowings which totaled \$50,000 in 2004.
- The joint venture in which Erie County participates is the *Western Regional Off-Track Betting Corporation* (OTB). The OTB is a public benefit corporation established in 1973 and now serving a 15 county region. The County receives a share of the Corporation's net revenues. As of December 31, 2004 the OTB had \$7.2 million of bond anticipation notes outstanding; the funds are for capital investments and are to be repaid with OTB revenues.
- The Erie County Industrial Development Agency (IDA) was created in 1970 and is categorized as an unrelated entity within Erie County. As of December 31, 2003 the IDA had \$573 million in outstanding long-term debt. This was conduit debt issued primarily for private purposes, but includes the \$183 million outstanding for the Buffalo public schools which is backed by the City of Buffalo through school aid payments (an additional \$310 million was borrowed for the Buffalo Public Schools in 2004).

## **Westchester County**

As of December 31, 2004 Westchester County had \$827.6 million in general obligation debt outstanding. The County has no blended component units and four discretely presented component units – the *Westchester County Community College* (WCCC), the *Westchester County Industrial Agency* (IDA), the *County of Westchester Public Utility Service Agency*, and the *Westchester County Health Care Corporation* (WCHCC). The last of these entities has a subsidiary, The *Westchester Tobacco Asset Securitization Corporation* (WTASC). These entities have outstanding an additional \$1.2 billion in debt, of which \$134 million is backed by tobacco settlement revenues, \$669 is private conduit debt, and the remainder is hospital revenue bonds.

- Westchester County sponsored the establishment of the WCCC in 1953. The County provides one-half of the capital costs and approximately one-third of the operating costs for the College. Bonds and notes for WCCC capital projects are issued by the County and are counted as County general obligation debt. Accordingly, WCCC had no separate debt outstanding.
- The Westchester County Industrial IDA is a public benefit corporation created in 1976 by the New York State Legislature. Members of the IDA board are appointed by the County Executive, subject to approval by the Board of Legislators. According to reports filed by the Office of the State Comptroller, the Westchester IDA had \$669 million in outstanding debt as of December 31, 2003; this debt is private purpose conduit debt and is not supported by County revenues.
- The Westchester Public Utility Service Agency was created by a special referendum in March of 1982. The Agency purchases power from the New York Power Authority (NYPA) and resells it to eligible economic development customers in the County. The Agency Commissioners are appointed by the County Executive and approved by the Board of Legislators. The Agency has no outstanding debt.
- The WCHCC is a public benefit corporation established by State legislation in 1997 to assume the function of Westchester County's Department of Hospitals. The WCHCC provides health care services and operates health care facilities for seven counties in the lower Hudson Valley. As of December 31, 2004 WCHCC had \$287 million in outstanding debt; this debt is intended to be repaid with revenues from the WCHCC's service activities. However, the County has guaranteed \$143 million of WCHCC bonds.
- The WTASC is a special purpose subsidiary corporation of the Westchester County Health Care Corporation. As of December 31, 2004, the WTASC had \$134.1 million of bonds payable, backed by the County's share of the tobacco settlement.

## **City of Buffalo**

As of June 30, 2004, the City of Buffalo had \$415.6 million in general obligation debt outstanding. The City identified two blended component units, two discretely presented component units, and two related entities. Blended component units account for an additional \$148.3 million in debt, while the discretely presented component units and related entities combine for a total of \$153.8 million in debt outstanding. Of this debt, \$176.3 million is payable from City revenues, \$86 million in separate sewer revenue bonds, and nearly \$32 million in private conduit debt.

The two blended component units are the *Buffalo Municipal Water Finance Authority* (BMWFA) and the *Buffalo Fiscal Stability Authority* (BFSFA).

- The BMWFA is a public benefit corporation established in 1992 to finance the acquisition of and improvements in the City's water system. A separate Buffalo Water Board charges for water services and uses these revenues to pay the debt service on the BMWFA's revenue bonds. As of June 30, 2004 the Authority had long-term bonded debt outstanding of \$120.5 million, which includes \$7.9 million issued through the State's Environmental Facilities Corporation.
- Created in 2003, the BFSA is a public benefit corporation with the power to monitor and oversee the finances of the City of Buffalo and "covered organizations" including the City of Buffalo School District and the Buffalo Municipal Housing Authority. The BFSA is empowered to issue bonds and notes for various City purposes, the outstanding amount of which cannot exceed \$175 million. As of June 30, 2004 the BFSA had \$27.8 million in bonds payable. The debt service on these bonds is paid with the City's sales tax revenue and its State aid.

The two discretely presented component units are the *Buffalo Urban Renewal Agency* (BURA) and the *Buffalo Board of Education*.

- The BURA is a public benefit corporation formed in 1966. Most of the funding for its programs is obtained from the federal government. As of June 30, 2004, the BURA had \$27.9 million of long-term debt, consisting primarily of loans from the federal government under its Section 108 program. These loans have been used by BURA for selected projects of its own with debt service payments to be made from other federal grant programs (primarily the Community Development Block Grant program) and by BURA to make loans to private individuals or firms who have responsibility for repayment.
- The Buffalo Board of Education is elected independently, but the Board is financially dependent on the City of Buffalo and has no independent tax authority. Its capital needs are financed by City general obligation debt. However, in 2000 the Board settled litigation with Buffalo Teachers Federation, and this required borrowing. The State's Municipal Bond Bank Agency issued revenue bonds on behalf of the Board, and these bonds are paid with the general revenues of the City of Buffalo on behalf of the Board. As of June 30, 2004, the outstanding revenue bonds totaled \$35.8 million.

Two related organizations are the *Buffalo Sewer Authority* and the *Buffalo Municipal Housing Authority* (BMHA).

- The Buffalo Sewer Authority is a public benefit corporation created in 1935. The Mayor of the City of Buffalo appoints the Board of the Sewer Authority. The Sewer Authority provides sewage collection, treatment and disposal services for the City of Buffalo and neighboring communities; the Authority charges fees and issues revenue bonds. As of June 30, 2004 total bonds payable were \$86.3 million.
- The BMHA was created in 1937. The Mayor of Buffalo appoints five of the seven members of the Board of Directors. Most of the Authority's capital activities were funded

with federal grants. It has no long-term bonds outstanding. However, the Authority has received \$3.8 million in loans from the State of New York; these funds have been loaned to private individuals and firms for housing activities and are expected to be repaid by the private sources. The loans are, therefore, counted as private conduit debt by the Authority.

## **City of Rochester**

The City of Rochester has \$269.4 million in general obligation debt. It accounts for several public services via enterprise funds, and identifies only one discretely presented component unit—the *Rochester City School District*. There also is one unrelated entity—the *Rochester Housing Authority*. These entities have no independent debt.

- The Rochester City School District is governed by a separately elected Board of Education, but is financially dependent on the City with no power to issue bonds or to levy taxes. Fully \$133.0 million of the City’s general obligation debt was for public school purposes.
- The Rochester Housing Authority is an unrelated entity. It is considered an unrelated entity because the primary government is legally separate from the Housing Authority, has no oversight responsibility over the Authority, and does not appoint a voting majority of the board. The Housing Authority has \$1.8 million in loans from the New York State Homeless Housing Assistance Corporation, but no interest or payments are due and the loans are forgiven when the housing they finance has been used for up to 25 years.

## **City of Yonkers**

The City of Yonkers has total outstanding general obligation debt of \$302.6 million as of June 30, 2004. The City identifies no blended component units, one discretely presented component unit, and three related entities. These entities have an additional \$222 million in debt; however none of this debt is supported by City revenues and the majority is private conduit debt.

- The discretely presented component unit is the *Yonkers Downtown Waterfront Development Corporation* (YDWDC). YDWDC is a not-for-profit corporation established to develop and rehabilitate properties in the City of Yonkers. Financial support in the form of grants, loans, and property has been provided by the City. The YDWDC has \$4.6 million in loans from the City through its federally funded Community Development Fund. The loans are secured with property owned by YDWDC and are expected to be repaid from revenues earned by the Corporation.

The three related entities are the *Yonkers Industrial Development Agency* (IDA), the *Yonkers Municipal Housing Authority*, and the *Yonkers Parking Authority*.

- The Yonkers IDA is a public benefit corporation created in 1982 under State legislation. The IDA issues conduit debt on behalf of private firms; the outstanding amount as of January 1, 2004 was \$214.9 million.
- The Yonkers Municipal Housing Authority also is a public benefit corporation created under State legislation in 1934. As of June 30, 2004 the Housing Authority had no long-term debt.
- The Yonkers Parking Authority is a public benefit corporation created in 1964 to build and operate the City's parking facilities. The Parking Authority issues revenue bonds, of which \$2.7 million were outstanding as of December 31, 2004.

## **City of Syracuse**

The City of Syracuse had total outstanding general obligation debt of \$269.2 million as of June 30, 2004. The City identified one blended component unit and three discretely presented component units. There is also one unrelated entity. The other entities have additional debt outstanding of \$44 million, of which \$19 million is private conduit debt, \$12 million is federally backed, \$8 million is housing revenue bonds, and \$6 million is locally supported.

- The blended component unit is the *City of Syracuse School District*. Although governed by a separately elected Board of Education, the District is financially dependent on the City with no separate powers to tax or borrow. About \$98 million of the City's general obligation debt is for school purposes.

The three discretely presented component units are the *Syracuse Economic Development Corporation (SEDCO)*, the *Syracuse Industrial Development Agency (IDA)*, and the *Syracuse Urban Renewal Agency (SURA)*.

- The SEDCO is a not-for-profit corporation established in 1979 to foster development ventures in the City. The City is financially accountable for SEDCO, and the Mayor appoints the majority of the governing body. As of June 30, 2004 SEDCO had \$15.3 million in outstanding debt, which included \$3.6 million of locally funded debt, and \$11.7 million of HUD Section-108 loans associated with SEDCO's role as a partner in the acquisition and renovation of the Days Centennial Building in downtown Syracuse.
- The Syracuse IDA is a public benefit corporation founded in 1979. Its debt outstanding as of December 31, 2004 was \$21.3 million, which includes \$19.3 million of privately backed conduit debt and \$2.1 million of debt backed by the City used to construct the Center Armory Garage Facility in downtown Syracuse.
- The Syracuse Urban Renewal Agency (SURA) is used to administer federal and state capital grants for redevelopment of land in the city. The Mayor appoints a voting majority of the Board, and the City is financially accountable for SURA. Since its activities are funded by grants, it has no outstanding long-term debt.

- The *Syracuse Housing Authority* is considered an unrelated entity. As of the end of its fiscal year on June 30, 2005 it had \$7.8 million in revenue bonds outstanding.

## **City of Albany**

As of December 31, 2004 the City of Albany had \$108.9 million of general obligation debt outstanding. The City identified one blended component unit, six discretely presented component units, and two related entities, including an independent school district. Excluding the school district, these entities had \$47.8 million of outstanding debt of which \$351 million was private conduit debt, \$125 million was revenue bonds, and less than \$2 million was backed by City revenues.

- The blended component unit is the *Albany Community Development Agency* (ACDA). It is a public benefit corporation established in 1974 and governed by a board of directors who are City officials. It does not borrow independently, and its capital projects are financed with City general obligation debt. Approximately \$577,000 million of the City's total general obligation debt was devoted to ACDA projects.

The discretely presented component units are the *Albany Water Board* (AWB), the *Albany Municipal Water Finance Authority* (AMWFA), the *Albany Parking Authority* (APA), the *Albany Port District Commission*, the *Albany Industrial Development Agency* (IDA), and the *Albany Local Development Corporation* (ALDC).

- The AWB and the AMWFA are legally separate entities established in 1986, which together operate the City's water and sewage system. The AMWFA is a public benefit corporation established to issue revenue bonds for the purchase and improvement of the system. The Board is a corporate municipal instrumentality with the power to set and collect water and sewer fees sufficient to pay debt service on the bonds of the AMWFA and to provide for the operation and maintenance of the system. As of December 31, 2003 the AMWFA had \$77.5 million of outstanding bonds and notes to be paid with water and sewer fees.
- The APA was established in 1982 to construct and operate areas in the City for the parking or storage of motor vehicles. It can issue bonds, which are paid with parking fees. As of December 31, 2003 the APA had \$27.4 million of revenue bonds and notes payable.
- The Albany Port District Commission is a public corporation established in 1925 with regulatory powers over port development and operational responsibilities for port facilities. As of December 31, 2004 the Commission had \$3.4 million of long-term debt, primarily backed by project revenues.
- The Albany IDA is a public benefit corporation founded in 1983 with the power to issue revenue bonds. As of December 31, 2004 the IDA had \$358.7 million of bonds

outstanding. This is largely private conduit debt, but includes \$7.3 million issued for the ALDC.

- The ALDC was formed in 1979 as a not-for-profit corporation for the purposes of reducing adult unemployment and promoting the training of individuals to improve or develop job opportunities in Albany. It has used IDA bonds to finance two projects for the Port Commission and one for the City's ACDA. These bonds are included in the IDA conduit debt total reported above, but are being repaid through leases with the Port Commission and the City. The total amount of IDA conduit debt undertaken by the ALDC as of December 31, 2004 was \$7.3 million, with about \$5.6 million related to the projects for the Port Commission and \$1.6 million related to the project for the City.

The two related entities are the *Albany Housing Authority* and the *Albany City School District*.

- The Albany Housing Authority is governed by a Board of Commissioners appointed by City officials, but is otherwise financially independent of the City. It collects rents and receives state and federal grants. The Housing Authority had \$10.6 million of total debt outstanding as of June 30, 2004. This includes loans from State housing agencies and \$2.6 million in long-term revenue bonds.
- The Albany City School District is an independent school district with a separately elected board and the powers to levy taxes and borrow money. General obligation and other long-term debt outstanding totaled \$34.8 million at fiscal year-end 2005.

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