March 11, 1994

Daly hears testimony on NY's public authorities
Authority heads and state comptroller testify

The operations of New York's Public Authorities and Public Benefit Corporations were to be examined today in the second of a series of public hearings to be conducted by the Senate Committee on Corporations, Authorities and Commissions, Senator Daly, Chairman of the committee said today.

"It is essential that we ensure that these authorities are operating in the public's best interests. Unfortunately, this does not always seem to be the case, and it is not always clear to whom these agencies are accountable for their actions," Daly said.

Among the issues to be discussed at the hearing are to whom these public benefit agencies are accountable, the method by which program and financial decisions are made, and whether they have adequate oversight.

"There have been an increasing number of reports regarding hiring practices, excessive benefits and other activities which may not be in the public interest occurring at New York's public authorities. These hearings will provide important insight to help improve the operation and increase the accountability of these public benefit agencies," Senator Daly said.

Among those scheduled to appear and give testimony at today's hearing were:

The Honorable H. Carl McCall, New York State Comptroller;
Peter J. Powers, Deputy Mayor for Operations, City of New York;
Peter Stangl, Chairman/CEO Metropolitan Transportation Authority;
The Honorable Peter Valone, Speaker, New York City Council; and
Stanley Brezenoff, Executive Director, The Port Authority of New York and New Jersey.

An additional public hearing will be held in Albany on April 18th to further investigate New York's public authorities and public benefit corporations.

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TESTIMONY
OF
H. CARL MCCALL
COMPTROLLER OF THE STATE OF NEW YORK
BEFORE THE
NEW YORK STATE SENATE STANDING COMMITTEE ON
CORPORATIONS, AUTHORITIES AND COMMISSIONS
ON
"PUBLIC AUTHORITY AND PUBLIC BENEFIT CORPORATION
REFORM"
FRIDAY, MARCH 11, 1994
Good Morning. Thank you, Chairman Daly and members of the New York State Senate Committee on Corporations, Authorities and Commissions, for the opportunity to talk with you about public authority accountability.

We are here today to discuss a problem that goes beyond occasional scandals that surface in the media about public authority mismanagement. We must address the growing public perception that government spending is out-of-control and service quality is inadequate. We have to realize that public authorities are government and are accountable to the State’s citizens and their elected representatives! Citizens should not be expected to appreciate the legal distinction between public authorities and State agencies. Doesn’t the Transit Authority employee who sells me a subway token work for the taxpayers just like the Department of Motor Vehicles employee who renews my driver’s license? Shouldn’t we expect the same level of accountability from the Transit Authority as we do from the Department of Motor Vehicles?

Public authorities were created by State lawmakers to serve the public interest and to capture the efficiencies of private corporations in the performance of public functions. Financing bridges, tunnels and roads with debt secured by toll revenues justified the creation of public benefit corporations that could expedite these projects away from the constraints of government bureaucracy. As we all know, however, authorities expanded, almost exponentially, as did their functions. And unlike private corporations they were modelled on, authorities have not downsized to meet the economic challenges of the 90’s. They haven’t had to because they are generally entities with captive customers - the citizens of the State of New York.

This is not to say that all public authorities are mismanaged or that all boards of directors flagrantly abuse the public trust. I want to acknowledge that public authorities do, in a strict sense, provide financial accountability. They carry out their fiduciary responsibilities to bondholders, as demonstrated by the confidence of the bond market in authority bonds. They also issue annual audited financial statements and file a number of additional related reports required by law. But there is a growing public sense that a monster has been created: a perception that we get too little service for too much money; that there is too much debt and too little oversight by the elected officials who are directly accountable to the public. The taxpayers of this State have a right to expect public authorities to preserve the public trust in carrying out governmental functions, many of which are paid for, directly or indirectly, by millions of taxpayer dollars.

The point I want to make is that strict financial accountability alone is not enough for public benefit corporations because of the inherent differences in their missions and the missions of private sector, for-profit corporations. In the private sector, financial accountability is sufficient because the corporation’s primary mission is to increase the value of its shareholders’ investment, and shareholders can hold corporate boards
accountable for the corporation's financial performance. There is no such financial bottom line for public authorities. Instead, authorities were created to serve specific public interests that are not readily measured by bottom line financial results alone. We need to restore public confidence by increasing the responsiveness of authorities to the public interests they were created to serve.

What I believe we need is a new type of "performance accountability" which is results-based and focuses on accomplishment of a public authority's goals and objectives. This week, I proposed legislation that would require authorities and State agencies to develop strategic plans and performance measurement systems, to identify specific long-term and near-term performance goals, and to report their actual results against annual performance plans. This approach to public accountability would promote a new emphasis on results. It should also improve legislative decision-making by providing better information on the relative effectiveness and efficiency of programs and spending. Finally, it will increase public confidence in government, by holding agency and authority managers accountable for achieving program results.

Over the years, my Office has made audit recommendations, which if implemented, would have saved taxpayers tens of millions of dollars. For example, an audit of the Metropolitan Transportation Authority found controls were needed to prevent the misuse of free transit authority passes by employees of MTA affiliates. Our auditors identified the need to reduce the New York Power Authority's reliance on no-bid contracts and cut its travel costs by selling its six-seater private airplane and limiting the number of leased cars for its executive staff members. A Thruway Authority Audit found that overstaffing at toll collection stations cost millions of dollars, and an audit of the Olympic Regional Development Authority uncovered costly, noncompetitive procurement practices. But authorities are not obliged to change their future practices in accordance with our recommendations and audits can't change the results of past performance. The bully pulpit is useful because calling attention to a problem sometimes creates an impetus for change. But we need stronger methods to remind authorities that they exist to serve the public and to keep them accountable to that public.

Public authority deficiencies revealed by our audits suggest that they could improve - and we could better evaluate their performance - if they developed performance goals. Our auditors have found, generally, that the lack of both measurable performance goals and adequate systems for monitoring and tracking performance results undermines the process and inhibits our ability to assess an authority's overall performance. In other words, authorities should tell us exactly what they intend to achieve over a given period and then report publicly on their actual accomplishments.

My proposal places the onus for strategic planning on the management of public authorities because there are benefits in preserving the flexibility of public authorities to do their own planning. We should not lose sight of the enormous positive contributions that public authorities have made in New York State. We also should not micromanage our public corporations, but we should make sure they manage themselves responsibly and that they have appropriate oversight. If authorities demonstrate that they cannot serve the public interest effectively and efficiently, they invite public and legislative outrage and compromise their ability to be independent and flexible.
To reach an appropriate balance between flexibility and oversight, I suggest that the Legislature conduct annual oversight hearings on the largest public authorities. (Perhaps the smaller authorities could be handled on a rotating basis.) The Legislature’s annual budget hearings could serve as a model for joint, cooperative review of authority operations by the Senate and Assembly. This mode of oversight would be a useful supplement to the annual performance report that my proposed legislation requires, and they would provide a regular forum for legislators to follow up on issues identified in my Office’s audit reports. Hearings are an appropriate forum for holding authorities publicly accountable for their actual progress in achieving their articulated goals.

I urge the Legislature and the Governor to enter into a partnership with my Office. Enactment of my performance accountability proposal would provide the tools to enhance audit effectiveness by moving authorities to a results-oriented mode of accountability. Annual performance reports, in conjunction with oversight hearings and my Office’s continued auditing, would comprise the cornerstone of accountability: measurement of results against goals and an opportunity to examine the persons responsible for those results.

In addition, new direction must come from the Legislature and the Executive in controlling the continued existence of specific authorities and better defining the missions and roles of the State’s public authorities. Multiple and sometimes duplicative functions assigned to authorities like the State University Construction Fund and the Dormitory Authority should be revisited. In fact, to assure periodic review of authority functions and powers, it may be advisable for any law creating a new authority, or a new authority function, to contain a sunset clause, unless a sunset would be precluded by bond covenants.

Another avenue to improved accountability is corporate governance. There is wide disparity in the size of authority boards (ranging from three to thirty three members), and the length of board members’ terms (ranging from one year to indefinite, many with terms of five years or greater). Typically, there are no criteria or minimum qualifications for service and no clear guidance provided concerning responsibilities, expectations and standards to which the member is to be held accountable.

The history of public authorities in the State has demonstrated that their boards have not viewed accountability to the public as a priority. In the private sector, shareholders can force boards to be responsive to economic realities by voting their shares to elect board members. In the public sector, boards should think of taxpayers and their elected representatives as their shareholders. They cannot be accountable only to the officials responsible for their appointments. Moreover, board members should not view their responsibility to bondholders as their sole or primary form of accountability. Clearly, the rights of bondholders must not be impaired by board action, but bond covenants do not preclude our model of performance based public accountability. I urge the Legislature to consider enacting laws that clearly define the responsibilities board members undertake upon their acceptance of public service.

Boards of directors appoint and oversee management personnel who are responsible for the day-to-day operation of the authority and they should be actively involved in management oversight. Boards will only be effective oversight and
governance mechanisms, however, if they are independent from their appointing authorities and accountable to the public. I recommend that you consider the role of board structure in accountability. In particular, you might reexamine term lengths and the role of the Senate in the confirmation of appointees.

Determination of term length should represent a balance between preserving the independence of board members and maintaining the ability to replace ineffective board members. In general, four year staggered terms would allow a Governor the opportunity to replace board members by the end of the Governor's four year term, but prevent a Governor from quickly stacking a board in his or her favor. Perhaps there should also be a requirement for making timely appointments at the expiration of a term so that board members with expired terms do not serve for indefinite periods. Because the Governor appoints the majority of members to authority boards (except for those of regional transportation authorities) and the Senate generally has the power to approve those appointments, the Governor and the Senate can, and should, be held accountable for the quality of board appointments.

Allowing the chief executive of an authority to serve as board chairman is a common problem that gives a single individual undue authority. Both the MTA and Capital District OTB have been criticized for this practice. While this has been common in the private sector, companies are generally moving away from it.

In addition to oversight through mandated performance goals, post-audits and effective boards of directors, public authority debt must be reined in. The enactment of true debt reform will complete our new model of accountability by controlling appropriation backed debt. I have spoken to you in other forums on this issue, so I will just briefly reiterate that authority debt, after meaningful debt reform, could not be used as a means to fund a State budget deficit or to balance an operating budget. Traditional, self-supporting authority revenue bonds would not be affected, but authority appropriation-backed debt would be supported by specific revenues and could only be issued in limited amounts. Voters would regain their voice on debt supported by general tax revenues pursuant to enhanced ballot access provisions.

The proposal I am developing would make the authorities more publicly accountable for their long-term capital plans. It would require that all projects financed by State debt be included within the mandated multi-year capital program and financing plan to ensure that tax supported capital bonding does not occur outside of any plan. And we would require public hearings prior to submission of the multi-year capital program and financing plan.

If a constitutional amendment to reform the State's debt issuance practices is approved, the Legislature should give serious consideration to implementing legislation that would consolidate debt issuance. Currently, the lack of coordination and oversight of authority debt issuance results in unnecessary costs from higher interest rates, duplication of issuance costs and market competition. Further, the disclosure of the State's financial condition is addressed in multiple official statements, adding cost and potential inconsistencies in market disclosure. To consolidate debt issuance effectively, at least one entity should be centrally accountable to the voters for the issuance and monitoring of debt and one entity should be responsible for the coordination and
reporting of information on such debt to the financial community. I have asked my staff to evaluate the feasibility of developing a coordinated disclosure document for all the State's debt, which could be incorporated by reference into all initial offering documents of the State and its public authorities.

In conclusion, let me emphasize that there should be legislative oversight when essential public services and public resources are at stake. Right now, oversight is piecemeal and inadequate. The Public Authorities Control Board has a limited scope of review over certain authority financings, but some authorities, including those that serve New York City, are not even subject to PACB or equivalent approvals. The current patchwork of reporting and policy requirements imposed on authorities does not deliver meaningful accountability, and this is inconsistent with a democratic theory of governance. We need checks and balances that give us the tools to hold our authorities fully accountable. And I should add that, while my focus has been on State authorities, this is equally true for municipal authorities.

I am anxious to work in partnership with you to create the checks and balances that will make authorities more accountable and make them function more like businesses whose customers are the citizens of this State. Passage of my comprehensive performance accountability proposal, in conjunction with annual legislative oversight hearings and clear direction from the Legislature on corporate governance, would provide the foundation for a comprehensive oversight strategy. In addition, capital planning, debt reform and consolidated debt issuance will impose discipline on the State's mushrooming debt and help to return authorities to their intended roles of serving the public interest.

It has been my pleasure to address the Committee today. If you have any questions, I would be pleased to answer them now or to provide any follow up information you may need as you continue your work on this important subject.

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MEMORANDUM

RE

AN ACT

No. 56
S.I. ___________
A.I. ___________

to amend the executive law, in relation to creating the New York state government performance accountability act

PURPOSE:

To add a new Article 3-A to the Executive Law thus establishing a program to plan, measure and report State government performance. Such a program would: initiate program performance accountability requirements with a series of pilot projects in setting program goals, measuring program performance against those goals, and reporting publicly on their progress; improve the confidence of the people in the capability of the state government by systematically holding state agencies and public authorities accountable for achieving program results; improve state program effectiveness and public accountability by promoting a new focus on results, service quality, and customer satisfaction; help state managers improve service delivery, by requiring that they plan for meeting program objectives and by having them provide information about program results and service quality; improve legislative decisionmaking by providing more objective information on achieving statutory objectives, and on the relative effectiveness and efficiency of State programs and spending; and improve internal management of the state government.

SUMMARY OF PROVISIONS:

This bill adds a new Article 3-A to the Executive Law which adds sections 33 through 39 to the Executive Law. Section 33 sets forth the short title of the Act, namely, "New York State Government Performance Accountability Act".
Section 34 is a definitional section. State "agency" is broadly defined to include public authorities and other entities performing a governmental or proprietary function for the state. The term does not include the Legislature and the Judiciary.

Section 35 requires that by no later than September 30, 1996, the head of each agency must submit to the governor and the Legislature, a strategic plan for its program activities, as defined, and sets forth the content requirements for such plans. Strategic plans are to cover a five year period beginning April 1 of the fiscal year following its submission and shall be updated at least every two years. In preparing the plan, an agency must consult with the Legislature and must solicit comments from those entities potentially affected by the plan. Prior to adoption of the plan, an agency must afford an opportunity for public comment and give an assessment of public comment based on written public comment submitted to the agency.

Section 36 requires that by no later than June 30, 1997 each agency prepare an annual performance plan covering each program activity set forth in the agency’s budget. Details of the performance plan are set forth.

Section 37 requires the head of each agency, no later than June 30, 1998 and no later than June 30 of each year thereafter, to prepare and submit to the governor, Legislature and state comptroller, a report on program performance of the previous fiscal year and sets forth the content requirements of the report. In addition, each agency shall annually perform a program evaluation of at least one major program activity. By September 1, 1998 and by September 1 of each year thereafter, the governor must compile the annual agency reports into a statewide report of performance accomplishments of state agencies. The state comptroller may periodically audit and report on the accuracy of the performance data. Any report issued by the state comptroller should comment on the relevance of performance indicators and goals in relation to the general goals and objectives set forth in the agencies' strategic plans. An independent certified public accounting firm, selected by the Legislative Audit Committee, may periodically audit the accuracy of performance data reported and the relevance of the performance indicators established by the Department of Audit and Control.

Section 38 requires the governor to designate at least ten agencies to serve as pilot projects in performance measurement for each of the fiscal years ending March 31, 1995 and March 31, 1996. The pilot projects shall prepare performance plans and program performance reports for at least two of the major program activities or operations of the agency. By December 31, 1996 the governor shall submit a report on the pilot projects to the Legislature and state comptroller.
Section 39 requires the governor to designate not less than five agencies as pilot projects in performance accomplishment budgeting for fiscal years ending March 31, 1998 and March 31, 1999. No later than December 31, 1999, the governor shall report to the Legislature on the performance budgeting pilot projects.

**STATEMENT IN SUPPORT:**

It is important that all New York State citizens have the opportunities and skills necessary to realize their potential, that they are safe and secure, and that they enjoy good health. To achieve these objectives, New York State government has established numerous programs. New York State policy-makers and employees need to recognize that public service is a public trust. New York State government needs to operate efficiently and to spend the public’s money wisely.

In recent years, there has been a public outcry to control public expenditures linked with a call for higher quality services. Performance measurement systems provide a basis for improving the quality of public sector programs, as well as, addressing waste and inefficiency in government programs. Performance measurement systems serve as the foundation for organizational improvement, and they provide all concerned parties – agency staff and managers, the Executive, the Legislature and the public – with information about the efficiency and effectiveness of programs and operations.

In the private sector, the results indicated by the financial accounting and reporting system – i.e., is there a profit or loss – provide the basis for measuring performance. Based on this information, private sector organizations can make changes to improve performance. However, this is a more difficult task in the public sector; many government programs have objectives that are difficult to quantify and are generally not measured by "profitability". It is important that relevant performance measures be developed to ensure that the vision for a program can be achieved through concrete action. Performance measures provide not only information about a program’s success, but can serve as a warning system for potential undesired results.

Because of the level of resources allocated to State programs, New York – the Empire State, should be at the forefront in providing the public with information on the value of programs supported with public funds. However, the ability of New York State government to inform the public on the value of its programs falls woefully short of what the public is entitled to. Generally, when asked for information on the value of a program, the public is often provided with information concerning the amount of money spent on the program, or the number of individuals served by the program. However, the true value of a program is measured by the outcomes achieved. Often this information is not available. Therefore, the true value of the program is unknown.
New York is not keeping pace with the movement to results-oriented government. For example, other states, such as Oregon and Texas, have not only developed the vision for their states, but they have implemented performance measurement programs that translate that vision into the programs so they can provide their citizens with information on the value of their programs. This is also occurring at other levels of government. The Federal Government Performance and Result Act of 1993, on which this proposal is modeled, already requires that Federal agencies by fiscal year 1998 develop strategic plans, prepare annual plans setting performance goals, and report annually on actual performance compared to goals. It is time that New York citizens are provided with complete information on the accomplishments of programs being operated with public funds.

The state-of-the-art in financial reporting appears to be headed in the direction of incorporating performance measurements into its accounting standards. For example, the Governmental Accounting Standards Board ("GASB") has done a number of studies and circulated for comment various reports dealing with performance measurement and showing that it is an important tool for assessing the accomplishments of specific governmental programs. Recently the GASB issued an exposure draft for comments on concepts related to reporting of performance measures.

This legislation provides the basis for New York policy-makers and managers to report to the public on their stewardship of public funds. It requires the agencies to develop strategic plans for their programs and activities, to establish relevant performance goals for those programs and activities and to periodically report on accomplishments in achieving those goals. Furthermore, the legislation provides a pilot project for utilizing performance as an integral part of the budgetary process.

**FISCAL IMPACT:**

By establishing a performance measurement program, New York State agency managers will be able to make better decisions about how to improve both the efficiency and effectiveness of the programs they operate. Such a system serves to reduce waste and inefficiency in government programs, and to provide a basis for maximizing program outcomes with available public funds.

**EFFECTIVE DATE:**

Immediately except that sections 38 and 39 of the Executive Law shall remain in effect until January 1, 2000 at which time such sections shall be deemed repealed.

February, 1994
AN ACT to amend the executive law, in relation to creating the New York state government performance accountability act

The People of the State of New York, being represented in Senate and Assembly, do enact as follows:

Section 1. Legislative findings. The legislature hereby finds that

(1) waste and inefficiency in state programs undermine taxpayers' confidence in the government and reduce the state government's ability to address vital public needs;

(2) state managers are seriously disadvantaged in their efforts to improve program efficiency and effectiveness, because of insufficient articulation of program goals and inadequate information on program performance;

(3) legislative policymaking, spending decisions and program oversight are seriously handicapped by insufficient attention to program performance and results; and

(4) in order to sustain economic prosperity while enhancing the state's quality of life, the desired results of agency programs must be articulated in a manner that the results are clearly defined and measurable and state agencies be accountable for those results.

Whereas the legislature further finds the need to

(5) initiate program performance reform with a series of pilot projects in setting program goals, measuring
program performance against those goals, and reporting publicly on their progress;
(6) improve the confidence of the people in the capability of the state government by systematically holding state agencies accountable for achieving program results;
(7) improve state program effectiveness and public accountability by promoting a new focus on results, service quality, and customer satisfaction;
(8) help state managers improve service delivery by requiring that they plan for meeting program objectives and by requiring that they provide information about program results and service quality;
(9) improve legislative decisionmaking by obtaining more objective information on achieving statutory objectives, and on the relative effectiveness and efficiency of State programs and spending; and
(10) improve internal management of the state government.

§ 2. The executive law is amended by adding a new article 3-A to read as follows:

ARTICLE 3-A

NEW YORK STATE GOVERNMENT PERFORMANCE ACCOUNTABILITY ACT

Section 33. Short title.
34. Definitions.
35. Strategic plans.
36. Performance plans.
37. Program performance reports.
38. Pilot projects for performance measurement.


Section 33. Short title. This act shall be known and may be cited as the "New York state government performance accountability act".

Section 34. Definitions.

For purposes of this article the following terms have the following meanings:

1) "agency" means any state department, board, bureau, division, commission, committee, public authority, public corporation, council, office or other governmental entity performing a governmental or proprietary function for the state. This term shall not include the judiciary and the legislature.

2) "effectiveness indicator" means a measure which provides a cost relationship between outcomes and the resources expended to achieve them.

3) "efficiency indicator" means a measure which provides a cost relationship between outputs produced and resources expended to produce them.

4) "outcome measure" means an assessment of the results of a program activity compared to its intended purpose.

5) "output measure" means the tabulation, calculation, or recording of activity or effort expressed in a quantitative manner.
(6) "performance accomplishment budgeting" means the process of estimating varying levels of performance for the major functions and operations of an agency, including outcome-related performance, which would result from different budgeted amounts.

(7) "performance goal" means a target level of performance expressed as a tangible, measurable objective, against which actual achievement can be compared, including a goal expressed as a quantitative standard, value, or rate.

(8) "performance indicator" means a particular value or characteristic used to measure output or outcome.

(9) "performance measurement" means the process in which an agency develops: (a) a strategic plan which identifies the overall mission, goals and objectives of the agency and its program activities; and (b) an annual performance plan which defines the expected levels of performance to be achieved for the program activities of the agency. The performance measurement process also includes the preparation of an annual performance report which indicates the actual performance achieved compared to the performance goals and objectives set forth in the performance plan.

(10) "program activity" means a specific activity or project as listed in the program and financing schedules of the annual budget of the state government.
(11) "program evaluation" means an assessment, through objective measurement and systematic analysis, of the manner and extent to which state programs achieve intended objectives.

Section 35. Strategic plans.

(1) No later than September thirtieth, nineteen hundred ninety-six, the head of each agency shall submit to the governor and to the legislature a strategic plan for its program activities.

Such plan shall contain--

(a) a comprehensive mission statement covering the major functions and operations of the agency;

(b) the general goals and objectives, including outcome-related goals and objectives, for the major functions and operations of the agency;

(c) a description of how the goals and objectives are to be achieved, including a description of the operational processes, skills and technology, and the human, capital, information, and other resources required to meet those goals and objectives in the strategic plan;

(d) a description of how the performance goals included in the annual performance plan required by section 36 shall be related to the general goals and objectives in the strategic plan;

(e) an identification of those key factors external to the agency and beyond its control that
could significantly affect the achievement of the general goals and objectives; and
(f) a description of the program evaluations used in establishing or revising general goals and objectives, with a schedule for future program evaluations.
(g) identification of service populations, including priority segments, for each program activity; and whether those populations are expected to change during the period covered by the strategic plan.

(2) The strategic plan shall cover a period of five years forward from the first day of April of the fiscal year following its submission, and shall be updated at least every two years.

(3) When developing a strategic plan, the agency shall consult with the legislature, and shall solicit and consider the views and suggestions of those entities potentially affected by or interested in such a plan.

(4) Prior to adoption of the strategic plan, the agency shall afford the public the opportunity to submit comments on the proposed plan. Each agency shall make available to the public an assessment of public comment based on written public comments submitted to the agency.

Section 36. Annual performance plans.
(1) The governor shall require that, on June thirtieth, nineteen hundred ninety-seven and on June thirtieth of
each year thereafter, the head of each agency shall prepare an annual performance plan for the current fiscal year covering each program activity set forth in the budget of such agency. Such plan shall—

(a) establish performance goals to define the level of performance expected to be achieved by a program activity;
(b) express such goals in an objective, quantifiable, and measurable form;
(c) briefly describe the operational processes, skills and technology, and the human, capital, information, or other resources required to meet the performance goals;
(d) establish performance indicators, output measures, and outcome measures to be used in determining the relevant outputs, service levels, and outcomes of each program activity;
(e) provide a basis for comparing actual program results with the established performance goals; and
(f) describe the program evaluation means to be used to verify and validate measured values.

(2) For the purpose of complying with this section, an agency may aggregate, disaggregate, or consolidate program activities, except that any aggregation or consolidation may not omit or minimize the significance of any program activity constituting a major function or operation for the agency.
(3) The performance plan required by this section shall be consistent with the agency's strategic plan.

Section 37. Program performance reports.
(1) No later than June thirtieth, nineteen hundred ninety-eight, and no later than the thirtieth day of June of each year thereafter, the head of each agency shall prepare and submit to the governor, the legislature and the state comptroller, a report on the performance of all programs for the previous fiscal year.

(a) Each program performance report shall set forth the performance indicators established in the agency performance plan under section 36, along with the actual program performance achieved compared with the performance goals expressed in the plan for that fiscal year.

(b) The report for subsequent fiscal years shall also include the performance goals and actual results for up to four preceding fiscal years for comparative purposes.

(c) Each report shall--

(i) indicate the success of achieving the performance goals for each program activity including data on efficiency and effectiveness indicators for the fiscal year;
(ii) explain and describe, where a performance goal has not been met (including when a program activity's performance is determined
not to have met the criteria of a successful program activity under section 36)—

(A) why the goal was not met;

(B) those plans and schedules for achieving the established performance goal; and

(C) if the performance goal is impractical or infeasible, why that is the case and what action is recommended;

(iii) evaluate, and where warranted, revise the performance plan for the current fiscal year relative to the performance achieved in the fiscal year covered by the report;

(iv) highlight all revisions in the current performance plan.

(2) Each agency shall annually perform a program evaluation of at least one major program activity. At a minimum, the program evaluation should verify the accuracy of the reported performance data relative to the program activity. The results of the program evaluation shall be included in the annual program performance report.

(3) By September first, nineteen hundred ninety-eight and no later than the first day of September, of each year thereafter, the governor shall compile the annual agency reports into a statewide report of performance accomplishments of New York state agencies.
(4) Except as set forth in subdivision (5), the state comptroller may, in the discretion of the state comptroller, periodically audit and report on the accuracy of the performance data reported to the governor by the state agencies. Any such report issued by the state comptroller should also comment on the relevance of the performance indicators and goals in relation to the general goals and objectives set forth in the agencies’ strategic plans.

(5) The accuracy of the performance data reported and the relevance of the performance indicators established for the office of the state comptroller may be audited periodically by an independent certified public accounting firm selected by the legislative audit committee.

Section 38. Pilot projects for performance measurement.

(1) The governor, after consultation with the head of each agency, shall designate at least ten agencies to serve as pilot projects in performance measurement for each of the fiscal years ended March thirty-first, nineteen hundred ninety-five, and March thirty-first, nineteen hundred ninety-six. The selected agencies shall reflect a representative range of governmental functions and capabilities in measuring and reporting program performance.

(2) The designated agencies shall undertake the preparation of annual performance plans under section 36.
and program performance reports under section 37, for not less than two of the major program activities or operations of the agency. A strategic plan shall be used when preparing agency performance plans during the pilot period.

(3) No later than December thirty-first, nineteen hundred ninety-six, the governor shall submit a report to the legislature and the state comptroller which shall--

(a) include a cost/benefit analysis and assess the usefulness of the performance plans and reports prepared by the pilot agencies in meeting the purposes of this article;

(b) identify any significant difficulties experienced by the pilot agencies in preparing plans and reports; and

(c) set forth any recommended changes in the requirements of the provisions of this article.

Section 39. Pilot projects for performance accomplishment budgeting.

(1) The governor, after consultation with the head of each agency, shall designate not less than five agencies to serve as pilot projects in performance accomplishment budgeting for fiscal years ended March thirty-first, nineteen hundred ninety-eight and March thirty-first, nineteen hundred ninety-nine. At least three of the agencies shall be selected from those designated as pilot projects under section 38, and shall also reflect a
representative range of government functions and capabilities in measuring and reporting program performance.

(2) Pilot projects in the designated agencies shall cover the preparation of performance accomplishment budgets. Such budgets shall present, for one or more of the major functions and operations of the agency, the varying levels of performance, including outcome-related performance, that would result from different budgeted amounts.

(3) The governor shall submit at the same time as the budget submitted in accordance with article seven of the state constitution for the fiscal year ended March thirty-first, nineteen hundred ninety-nine, the performance budget information of the designated agencies for this fiscal year.

(4) No later than December thirty-first, nineteen hundred ninety-nine, the governor shall transmit a report to the legislature on the performance accomplishment budgeting pilot projects which shall--

(a) assess the feasibility and advisability of including a performance accomplishment budget as part of the annual budget submitted in accordance with article seven of the state constitution,

(b) describe any difficulties encountered by the pilot agencies in preparing a performance accomplishment budget;
(c) recommend whether legislation requiring performance accomplishment budgets should be proposed and the general provisions of any legislation; and
(d) set forth any recommended changes in the other requirements of this article.

(5) After receipt of the report required under subdivision (4), the legislature may specify that a performance accomplishment budget be submitted as part of the annual budget submitted in accordance with article seven of the state constitution.

§ 3. This act shall take effect immediately provided, however, that sections 38 and 39 of the executive law, as added by section two of this act shall remain in effect until January 1, 2000 when such sections shall be deemed repealed.
Sen. Daly - Based on benefit survey, looking at possibility of standardizing benefits, e.g., for pub. authorities.

Sen. DiCals - Shall all debt be sold competitively? Compt. McCall: No. There is room for negotiated debt. Objective is lowest cost. Sometimes negotiation is the best route. I cannot say whether debt shall
be competitive or negotiated. This can't be remedied if there were single issuer of all debt in N.Y. State. Then you could have uniform standards.

Sen. Daly asks Compt to look into question whether authorities have responsibilities for which there is only implicit power, contrary to rule that pub. auth. does not have those powers explicitly conferred by the laws.

N.B.

Sen. Daly: Do you oversee Big MAC?
Compt. Not really. I do have a representative on their board.

Sen. Daly: I'm very interested in how they use their surplus. [Relate this to issue of powers.]
Compt: So am I.

Where that gives Compt to approve pub. funds, Sen. Daly encourages a to expand review beyond
prizes & interest rates.

Sen. Patern: Says he's concerned about
BoA being filled w/ holdover appointees, which gives Gov. too much power over them.
Area 1 concern to Sen Dale: involvement of Executive Branch in regular operations of authorities: e.g. directives from G.O. to make certain appointments to executive positions (beyond statutory appointments to boards); practice of authorities in submitting proposed legislation first to Governor’s office before sending it over to legislature.
TESTIMONY OF BARRY M. SHULMAN, COUNSEL TO THE
CENTRAL NEW YORK REGIONAL TRANSPORTATION AUTHORITY

Presented before the New York State Senate Standing Committee on Corporations, Authorities & Commissions at Public Hearing

Friday, March 11, 1994
New York State Office Building
270 Broadway (corner of Chambers Street)
24th Floor
New York, New York 10007

Members of the New York State Senate Standing Committee on Corporations, Authorities & Commissions. My name is Barry Shulman. I wrote the enabling legislation for and am general counsel to the Central New York Regional Transportation Authority as well as its subsidiary corporations, CNY Centro, Inc. providing mass transportation service in Onondaga County, Centro of Cayuga, Inc. providing service in Cayuga County and Centro of Oswego, Inc. providing service in Oswego County.

It is probably classifiable as ancient history but in the late 1960's and early 1970's I was a counsel to Senator John H.
Hughes and the New York State Senate Judiciary Committee at a
time when Senator Tarky Lombardi, Jr., then the junior senator
from Central New York was chairman of this Committee. Your
offices shared a garret on the fifth floor of the State Capitol
Building next door to Louis Russo's Senate print shop and that
era was the birth period for New York State authorities,
especially those providing mass transportation services.
Authorities carried hope for the future, which I believe we in
Central New York have fulfilled.

In 1970, legislation creating the Central New York Regional
Transportation Authority was adopted. The concept then was to
rescue private sector mass transportation providers and their
employees, and to preserve the urban commercial core. Private
carriers were going into bankruptcy and the authority format
provided a setting whereby Board members, selected through a
political process involving local and state governments, could
bear the brunt of political decisions. Elected officials would
be cushioned from unpopular actions regarding the pricing of
fares and the setting of service levels, of great concern to
the riding public. The transit scene at that time was to
prevent MTA fares from increasing beyond a quarter and to allow
Upstate New York authorities, which were then being created, to
maintain mass transportation services to viable downtown
shopping areas. Mass transportation's employees were likewise to be protected. Syracuse at or near that time had five major department stores operating in its downtown area and mass transit was the heart of transport for mid and upper range socioeconomic individuals as well as the poor.

How have things changed since then and how have they remained the same? How does this historical perspective fit with today's hearing?

One identical feature then and now is the fact that our Board Members again serve for no compensation. Then as now they are public citizens working for no reward and often in the face of adverse media coverage while delivering a valued, cost-effective service to the public.

What are the differences? To begin with, the five department stores and their middle to high end furniture and clothing store neighbors no longer exist downtown. Our Authority's ridership which has always been a blend of demographic types now acts as the primary mass transportation service for the transit dependent -- the old, the young, the disabled (and because of an accommodation years ago to Governor Cuomo these groups ride at half fare in Central New York, 24
hours every day); along with all of those individuals utilizing our carriage to move to and from the work place and other destinations.

In the early 1970's our Authority was among the first in the United States and the first in New York State, to implement a demand responsive service for the disabled. We named it Call-A-Bus. We were the first to spend our own money on developing a lift called the Syracuse lift which, while being manufactured by the Lift-U Corporation provides safe, reliable lift service in our inclement, highly "road-chemical" winter season. We now operate the highest proportionate use demand responsive and regular route service for the elderly and disabled in New York State and we are the first public authority in the Northeast to achieve approval of our ADA plan. We carry between 1,700-1,800 wheelchair regular route service, and carry approximately 6,000 ambulatory, elderly and disabled on demand responsive service per month. These are a part of our more than 1,500,000 monthly ridership. The American Public Transit Association members voted us the best mid size transit agency in North America and we have won awards from the Urban League to the Fay's Drug Quiz Show. We are a community citizen participating in major charitable and civic drives. We are guided by the national slogan developed in
Syracuse that "Transit Means Business." Many of our staff have moved on to assume leadership positions in larger authorities throughout the United States, and Syracuse University has utilized us as an industry proving ground for its transportation major graduates.

When the Central New York Regional Transportation Authority was first created the then mayor of the City of Syracuse, Lee Alexander, was concerned that it not encroach beyond certain mass transportation service without the consent of affected localities. Curbs were introduced into our legislation which require amendments to an Action Plan if we undertake other activities, for example our parking service which operates parking lots below Route 81 under lease from the State of New York and the parking garage at the Upstate Health Science Center on behalf of the Dormitory Authority.

In terms of legal constraints, when the Central New York Regional Transportation Authority was first created there was nothing in its enabling legislation requiring competitive bidding. We immediately adopted our own guidelines patterned after those in the General Municipal Law. Today we are required to bid competitively by State and Federal funding agencies and by New York State statute. The procurement
guidelines now required by more recent New York State statutory law differ little from those we originally adopted.

When the Central New York Regional Transportation Authority was first created there was no requirement for how its monies were to be invested. We adopted our own guidelines, always competitively bid investment services and found very little different when the State promulgated statutory rules regarding investment guidelines.

Additionally, while the Authority remains with some degree of latitude in the manner of choosing consultants, personal services guidelines adopted a few years ago coupled with Federal requirements and those of the New York State Department of Audit and Control regarding RFP procedures have added certain reporting controls requiring all authorities to justify their consultant selection as well as its process.

The Central New York Regional Transportation Authority has very few administrative employees. Overall in its three counties it employs approximately 500 individuals. By far the greater share of these are drivers, mechanics and on-the-street supervisors. Our Authority has consistently cut back and combined job tasks. At the same time it is proud that it has
never needed to lay off any employee or force an early retirement. Recently the New York State Inspector General echoing comments of N.Y.S.D.O.T. said of the Central New York Regional Transportation Authority:

"Warren Frank was the Authority’s Executive Director and a Board Member from 1971 until he retired on December 29, 1991. During those years Frank developed the Authority into an effective integrated mass transportation system. National transit peers elected and reelected him Chairman of the America Public Transit Association (APTA), Washington, D.C. where he previously served as a Vice President of Marketing and as a Board Member. The Authority under his leadership received a Presidential Recognition Award in 1983 and 1984 for community service and private sector initiatives.

The Authority under the direction of Warren Frank as the Executive Director has consistently kept operating cost growth well below the national and New York regional consumer price index rates. The consumer price index during the last five years ended March 31, 1992 increased 24.3%; however, the Authority’s consolidated operating expenses increased only 15.6%. The Authority’s cost growth has been the lowest of the Upstate authorities and 4% below the national rate of inflation.

Fare increases for the Authority have been kept below the 1975 levels after adjusting for inflation. For the state fiscal year ended March 31, 1991 the Authority satisfied the 40% fare/cost ratio objective of the New York State Transportation Department. New York State operating assistance appropriations to the Authority have decreased $404,000 or 7.7% from 1987 to 1992. Total federal, state and county operating aid has increased only 2.5%.

We have recently hired a replacement Executive Director, Joseph Calabrese, the second at our Authority in 24 years.
Last year on July 28, 1993 Governor Cuomo promulgated an Executive Order referred to as Public Authorities Accountability. It added to the multiple level of reporting requirements imposed on our and other authorities in and by the State of New York. Currently, reports of information similar to those required in the Governor's Executive Order are filed with the New York State Division of the Budget, the New York State Department of Transportation, various planning agencies, our local metropolitan planning organization without whose consent both in one and five year projections no project may be undertaken and with federal repositories as well. These reporting requirements continue to cause authorities to employ additional people often merely to comply.

One anticipated problem yet to be fully understood is a provision in the Governor's Executive Order requiring the Authority to consult with the Office of Employee Relations regarding current and anticipated collective negotiations with the Authority's employee representatives. This is ostensibly so that executed agreements are consistent or where inconsistent so that the inconsistent provisions can be documented and their cost defined. The Central New York Regional Transportation Authority enjoying relative labor peace over the 24 years of its existence is currently under a three year collective bargaining agreement.
While this provision in the Governor’s executive order remains to be utilized in Central New York, it presents concerns to me both from the standpoint of timing and the balancing of needs. Our compensation increases have always been well within the state range and those paid by other authorities. We have introduced many negotiating concepts later adopted elsewhere in New York State. I do not know what complying with this requirement will mean in regard to the timing and orderly procedure of labor negotiations. It could to some extent place them in the political arena. If the Executive Chamber is either pro-labor or pro-management, the balance of negotiating power so carefully sculpted by the Taylor Law could be shifted. My belief is that I would rather have the Office of Employee Relations as an advisory group than as an active participant in our negotiations. The format of their role is yet to evolve.

I have recently learned that Governor Cuomo is proposing legislation to shorten the term of Board members to four years. I would be opposed to this change. In the first case, it sometimes takes a year or two to see names move through the appointment process and appointments are by law made only for the remainder of an existing term. Secondly, the longer seven
year term was originally designed so that it would span gubernatorial election periods removing appointments even more out of the political arena. Thirdly, there is a learning curve for Board members which may take a year or two. They need to be fully acquainted with current transit issues including health insurance and workers compensation costs, applicable Federal rules, regulations, grant categories, and legal necessities as well as the other many requirements relating to mass transit including ADA, environmental requirements, driver and mechanic personnel issues, funding matters and the like. Each of you knows what it is like to assume a public position and how much time it takes to understand it fully on the best behalf of the public. Ground rules constantly change. Authorities are, after all business enterprises needing careful staff and board management as well as vision into the future. Our Board members have always believed in educating themselves but it often takes a year or two to become an effective Board member, and how to apply correct facilities to future issues becomes the requisite of a knowledgeable, informed Board member.

At authorities such as ours we tend to rotate our Board chairmanship. For there to be four year terms could mean that our Board would be precluded from continuing its rotating chairmanship process whereby Board members are nurtured,
educated and serve in other officerships before being elected Chairman.

When I commenced this presentation I said that Board members in the early 1970's as now are unpaid. This is true. But there is a difference. Now, our Board members, even though unpaid, have very high level reporting requirements of all their personal assets and income and those of their family. This is a major disincentive to a private citizen who would like to serve but feels that his or her financial affairs should be kept even from state reporting repositories.

Apropos the questions specifically raised, you can see from this presentation that I believe the current oversight of New York State public benefit corporations and public authorities is adequate. I believe that additional oversight and additional reporting requirements will be duplicative and require additional staffing at the authority level.

I do not believe that New York State public benefit corporations or public authorities are independent. Certainly their Board members can make decisions independent of the political process but they are bound by their statutory requirements to, after considering all sources of revenue,
operate each authority on a self-sustaining basis. Misdemeanor statutes built into our own legislation as well as Public Officers Law provisions regarding ethics requirements act as real constraints on Board members. All financial aspects of our authority are controlled either by New York State statutorily imposed and locally adopted investment guidelines, personal services guidelines, procurement guidelines and pre-conditions of federal and New York State grants. Federal grants for example require disadvantaged business enterprise and buy-America compliance, ADA compliance, protection under 13(c) of labor union rights, protection of private bus companies and school bus companies plus several other competitive bidding and environmental compliance requirements. Hearings are required for fare increases and service diminishment and our authority also holds town meetings for public input.

Public authorities should be fully accountable. Ours is. Our Authority is not only audited every year by Coopers & Lybrand, its current independent auditing firm but also every year or so by the New York State Department of Audit and Control and every three years by the Federal Transit Administration. At the same time our Board members should be free to make the independent decisions which may be politically
unpopular regarding the adequacy of fare and service levels and the provision of service on the street.

Insofar as constitutional debt reform and our Authority is concerned, I do not believe that if the constitution is amended by the referred to proposal, our Authority will be directly affected.

The enabling legislation of the Central New York Regional Transportation Authority specifically provides in Section 1335(8) that the State shall not be liable on notes or bonds of the Authority nor are such notes and bonds a debt of the State. Such notes and bonds shall contain on the face thereof a statement to this effect. The State is not required to maintain reserve funds under Section 1336 and the only obligation of the State is that it will not limit or alter any right vested in the Authority to fulfill the terms of any bond agreement. The Central New York Regional Transportation Authority has never issued any bonds. We do receive monies from the Transportation Bond Issue and to the extent these remain restricted to transit use, the more able will be transit to meet the economic needs of revitalizing the sagging economy of so many Central New York communities.
I appreciate the opportunity given me today to testify before your Committee. I and others in our field welcome your concern. If you have any questions, I would be pleased to respond.
Testimony of  
Peter E. Stangl  
Chairman and Chief Executive Officer  
The Metropolitan Transportation Authority of New York  
before the  
New York State Senate Standing Committee on Corporations, Authorities, and Commissions  
Friday, March 11, 1994

Senator Daly, Members of the Committee, I am pleased to be here this morning to talk about accountability and decision-making in public authorities, specifically the MTA. These are important issues that I want to address directly. First, though, I think it would be helpful to cut through the usual legal and technical language. We need to realize that the gist of what we're really trying to do is figure out what kind of oversight is the right kind of oversight.

This is a good question, and one I would like to begin to answer with an analogy. What if instead of asking that question about oversight we asked it about taxes? What kind of tax is the right kind of tax? "None," is the answer that immediately comes to mind. But then if we think about it we realize that our taxes buy important things...schools, teachers, police, and, of course, transit service. So we need taxes. But the wrong kind of taxes -- taxes that place too much of a burden on business or an unfair burden on the middle class, or taxes that fail to account for the particular needs of single parents or the working poor -- can strangle the system. Such poorly designed taxes can kill the profit incentive, overburden taxpayers, and stall the economy.

This goes right to the heart of what is appropriate oversight. To provide what is needed, oversight must be imposed in the right mix and the right amounts. Since I am here as Chairman of the Metropolitan Transportation
Authority. I am going to discuss our oversight structure and how I think it is working.

First, though, let me tell you a little about our organization. The Metropolitan Transportation Authority is the largest transportation provider in the Western Hemisphere and one of America's largest customer-service organizations. We serve 14.2 million people in a 4,000-square-mile, 14-county region. If the MTA were ranked among the "Fortune 50" transportation companies, it would be first in assets and fourth in number of employees.

Today, the MTA has five transportation operating agencies: the New York City Transit Authority -- the largest transit system in the nation, whose 3.5 million customers alone could constitute the third largest city in the country; the Long Island Railroad, the largest commuter railroad in America; Metro-North, the second largest commuter railroad in America; the Metropolitan Suburban Bus Authority, serving Nassau, Suffolk, and Queens counties; and the Triborough Bridge and Tunnel Authority, which operates seven bridges and two tunnels and provides the MTA with more than $650 million in annual revenues from toll collection.

Last year, the MTA added a sixth agency to its family: the MTA Card Company. This agency will be responsible for running MetroCard operations for the entire MTA family. As I hope many of you know, MetroCard is presently being introduced in the New York City subway system. Perhaps those of you came down through Penn Station this morning just purchased and used your first MetroCards.
In addition to our six agencies, the MTA family also includes three wholly owned subsidiaries: the Manhattan Bronx Surface Transportation Operating Authority, the Staten Island Rapid Transit Operating Authority, and the South Brooklyn Railway. The MTA has 10 pension plans, 70 union-authorized bargaining units, and more than 63,000 employees. In short, we are huge, complicated, and complex, and we have enormous responsibilities that do call for oversight.

Because we think holding public authorities publicly accountable is appropriate, and because being entirely accountable gives us credibility with the bond holders who afford us the opportunity to raise needed funds, the legislators who design our funding packages, and the customers who we serve every day -- we are quite willing -- even anxious -- be overseen.

Today, the MTA is subject to three layers of oversight: MTA-specific, state, and federal. These layers sometimes overlap one another in interest and function.

At the MTA-specific level, there are five entities: the MTA Board; the MTA Independent Engineer, the MTA Permanent Citizens Advisory Committee, the MTA auditors, and the MTA Inspector General. Members of these entities come from a variety of occupational, geographic, and political backgrounds.

The MTA Board is composed of seventeen members. Six are recommended by the Governor, seven are recommended by suburban county executives, and four are recommended by the New York City Mayor. All are appointed by the Governor and all must be confirmed by you, the State Senate.
The Board Members have a variety of backgrounds -- corporate, transit, finance, and public service among them.

In addition to monthly Board meetings, Board Members attend frequent committee meetings and hearings on every conceivable aspect of MTA management and operations. A majority of the Board must approve the financial plans and annual budgets for all of the MTA's operating agencies. A super-majority is required for the approval of many procurements.

Within the Board, there are 10 committees. They oversee specific agency operations, as well as MTA-wide planning, finance and audit issues. While they all have oversight responsibilities, I'd like to talk about just one them today -- the Capital Program Oversight Committee or CPOC, which is the only Board Committee I chair. CPOC was mandated by the State Legislature in 1987 to review the progress of the capital program. In order to ensure that the committee receives clear, unbiased information, it hires an independent engineer.

The MTA's current Independent Engineer is O'Brien-Kreitzberg -- a large, nationally recognized construction management firm. Its oversight has literally saved the MTA millions of dollars. It was, for example, O'Brien-Kreitzberg that recommended conducting a test to see how our customers would react to MetroCard as well as Passenger Orientation Periods to discover any flaws prior to formally opening the system. And it was O'Brien-Kreitzberg that recommended consolidating the TA's station rehabilitation program's management. All of these recommendations were heeded. And, as I said, they all proved beneficial to the Authority.
The MTA Board created the next oversight entity I will discuss, the Permanent Citizens Advisory Committee, in 1977. PCAC was designed to give MTA customers an effective voice in MTA policy and planning as well as input on matters of service, finance, intergovernmental relations, and management. Today, PCAC is our in-house critic; it always gives us our customers' point-of-view. The Governor appoints PCAC members on the advice of local officials. The PCAC's staff of five is provided office space at MTA headquarters, and their salaries are paid out of the MTA's budget. Though they are located at the MTA and are paid by the MTA, they don't work for the MTA....they work for our 5.3 million customers -- full-time.

Keeping an eye on our financial situation is the responsibility of our auditors. Public Authorities Law requires the MTA to issue an annual report, including a full accounting of our financial situation. The MTA has hired two big six firms and one minority firm to do this work for us. Price Waterhouse audits MTA headquarters and the commuter railroads, Ernst and Young audits the Transit Authority and the Triborough Bridge and Tunnel Authority, and Mitchell Titus audits SIRTOA. In performing these audits, the accounting firms provide the MTA Board with recommendations to strengthen each operating agency's internal controls. This processes helps ensure that taxpayer dollars are being utilized in a cost effective manner.

The Office of the MTA Inspector General, the final MTA-specific oversight entity I will discuss, was created by the State Legislature to review the operations of the MTA and its constituent agencies. The Inspector General's office is an independent state agency. The IG is nominated by the Governor and confirmed by the State Senate. His responsibilities include investigating
complaints of fraud, abuse, and waste throughout the MTA. He is vested with the authority to issue subpoenas and take testimony under oath regarding suspected criminal activities, deficiencies, and wrongdoing.

At the state and regional level, there are three entities charged with MTA oversight responsibilities: the Capital Program Review Board, the State Department of Transportation, and the Public Transportation Safety Board. Again, members of these groups come from a variety of occupational, geographic, and political backgrounds.

The Capital Program Review Board has four voting members who represent each of the following: the Governor, the City of New York, the State Senate, and the State Assembly. Together they are responsible for approving our capital plan, bond resolutions, and periodic amendments to the capital plan. As you know, Senator Levy is the Senate representative on the CPRB, and he takes his oversight role very seriously.

The State Department of Transportation also plays an important role in oversight. All of our state funding is routed through the DOT, and DOT provides the staff for the Review Board. And under the auspices of the DOT is another entity with oversight responsibilities, the Public Transportation Safety Board. The PTSB is responsible for issues of passenger safety.

In addition to these three state entities, the MTA also answers directly to the state legislature. Not only do we respond to members' concerns in forums like this one, but the MTA -- which regularly needs legislation as well as
money...a lot of money for our capital and operating plans -- also answers to the entire legislative body.

Last year, as you know, we were beating the halls for a share of the dedicated PBT fund to allow us to fund our 1992 to 1996 capital plan. But our funding effort does not end. In 1996, for example, we will ask you to pass another MTA capital program legislative package. And like the other times we've shown up in Albany with our hand out, we expect to answer your queries about our record and how we plan to spend what we are given.

Above the state layer of oversight, the MTA is subject to federal review. For example, the Federal Transit Administration provides us with hundreds of millions of dollars in federal aid and, along with the Federal Railroad Administration, conducts safety audits and monitors our progress in meeting the requirements of the Americans with Disabilities Act. Additionally, the MTA answers to the National Transportation Safety Board, which, among other things, investigates rail accidents. At this level, oversight tends to be long-term and issue-specific.

There is one more kind of oversight I would like to mention, and it comes from all three layers of MTA overseers. It's the reams of reports that the MTA is required to publish. Over there is just one month of the MTA's output for public consumption. On top is our Capital Program, which could be considered our "best seller" -- except, of course, that it's free. Beneath that is our five-year Strategic Business Plan that Public Authorities' law compels us to publish annually. And below that are reports on everything from procurement status to noise abatement.
As I hope I have adequately illustrated, the MTA is subject to a great deal of oversight and a host of overseers. I hope it is also evident that the question of whether or not our oversight is the right kind of oversight could probably be the subject of a doctoral dissertation.

I will, however, do my best to answer this question -- briefly.

With a few caveats that I'll mention momentarily, I'm comfortable saying I believe that overall the MTA's present oversight situation is serving the MTA and its customers pretty well. As I have pointed out, MTA oversight is the responsibility of many separate and completely unrelated entities -- private, public, customer, city, county, regional, state, and federal groups. This network acts as a system of checks and balances. It makes sure that the MTA is doing its job. It makes sure that the MTA is not doing anyone's bidding. And I think this system is what makes MTA oversight by-and-large successful. It is the very thing that allows us to operate independently enough, while being subject to adequate controls.

In addition to the advantages of the actual oversight structure, there are even a few particular oversight situations -- such as the MTA's relationship with its legislatively mandated Independent Engineer -- that are proving extraordinarily beneficial to the Authority and its customers.

Besides, it is evident that something is working right. Since 1982, the MTA has been a consistent bright spot among New York public authorities. Over the past twelve years, the MTA has been engaged in a dynamic rebuilding
effort -- one that constitutes the largest public works program in the United States. During this period, we have consistently improved our network, our infrastructure, and our service. And, except for the 1989 to 1992 recession, we have also consistently increased ridership. In 1993, when the economy began to recover, ridership bounced back and grew by 1.85 percent, or almost 100,000 daily customers.

Furthermore, in 1992 we launched Fare Deal, a program that continues these improvements and gets us obsessed with pleasing our customers. Today, we are delivering on Fare Deal, offering our customers ever better service and in some cases, even better prices. With all of these successes, it's obvious the oversight we're subjected to isn't strangling us. It does, however, sometimes slow us down.

Last year, for example, the Capital Program Review Board held up approval of our capital program for nine months. The issue the CPRB got stuck on, freight operations, constituted less than five-hundredth of one percent of our capital program and is not even remotely related to our core services. In fact, it was the first time that freight was ever included in our capital program. Senator Levy, a member of the CPRB, did suggest that interim bonding be allowed to keep the MTA from losing money while the CPRB debated. But, in the end, the MTA just had to wait. Construction start ups were delayed, and we were kept out of the bond market at a time when interest rates were at an historic low. This cost us and ultimately cost the taxpayers.

A more common problem with MTA oversight is the fact that sometimes things that should be left up to the Board's discretion are legislated instead. For
example, state statute requires TBTA revenues to be arbitrarily split 50/50
between the city and suburbs. Right now, this division keeps our commuter
operations running surpluses and our transit system running a deficit. But at
some future date, the situation could conceivably be reversed. In any case, an
arbitrary funding split makes no sense. The MTA Board -- which is nominated by
the Governor and confirmed by the State Senate -- should be able to apply
resources where they are most needed.

Another thing that should be rethought is the amount of required
paperwork. Some of the reports I showed you earlier provide useful information
to interested parties. Others, however, were designed to meet specific needs at
a specific time. In some cases, those needs and times have come and gone and
only the report -- and the hours and hours of staff time required to compile it
remains. It seems to me that reports should have a sunset date or be subjected
to periodic revenue to determine their continued relevance.

Having said all that and given my experience, it is my opinion that public
authority oversight should maintain the delicate balance between appropriate
accountability and political independence. It is also my opinion that the current
MTA oversight system maintains this balance pretty well. And, before any further
oversight is imposed or a change in the current structure is made, it is my hope
that considerable thought will be given to the possible consequences.
I thank Chairman John B. Daly, and all the members of the Committee, for this opportunity to speak to you today about the agency I am privileged to lead, the Port Authority of New York and New Jersey.

We have the distinction of being New York’s first public authority. As the agency that successfully pioneered the concept, the Port Authority is a prime example of the enormous good that can be done by public authorities. I’m pleased to share some of our experiences with you today. Let me begin by discussing governance and accountability, two main areas of concern of these hearings.

The Port Authority of New York and New Jersey is a self-supporting corporate agency. Functioning without any tax dollars, it was created as The Port of New York Authority in 1921 by compact between the two States. Its scope was to plan, develop, and operate terminals, transportation, and other facilities of commerce; to improve and protect the commerce of the bistate Port; and to undertake port and regional improvements not likely to be financed by private enterprise or by either state alone. On July 1, 1972, the Authority’s name was changed to identify more accurately its status as a bistate agency of New York and New Jersey.
We have five primary businesses: aviation, interstate transportation, world trade, port, and regional development. We are responsible for six interstate tunnels and bridges, the PATH interstate rail transport system, the Hoboken Ferry, a regional system of four airports and two heliports, three industrial parks in New York and New Jersey, the Essex County Resource Recovery Facility, the Newark Legal Center, the Staten Island Teleport, the World Trade Center, ten marine terminals in New York and New Jersey, a bus terminal, and a bus station. In addition, the Port Authority is developing a mixed-use waterfront project in Hunters Point, New York.

Port Authority Commissioners, six from each State, are appointed by the Governors of New Jersey and New York, with the advice and consent of the respective State Senate. Commissioners serve without pay for overlapping terms of six years. Their meetings are open to the public in accordance with policies adopted by the Commissioners. Most important for the purposes of this hearing, the actions that Commissioners take at Port Authority meetings are subject to gubernatorial review and may be vetoed by the Governors of the respective States — a right that the governors have exercised over the years. In this unique system of governance, the lines of responsibility are unambiguous. We are directly accountable to the elected chief executives of New York and New Jersey, who are in turn directly accountable to the people of both states.

Not long ago, in mid-1992, we undertook a re-evaluation of
the way our agency makes and implements decisions on major
capital projects and in general management. We concluded, among
other things, that certain measures to enhance oversight would be
of benefit to the Port Authority. The recommendations we
submitted to the two Governors, and implemented, included:

• increased use of Value Planning and Value Engineering
  Panels, a key aspect of which is the use of outside experts
  to challenge basic assumptions and provide more objectivity;

• enhanced internal review, including risk analysis,
  oversight, and auditing of capital projects;

• the opening up of Committee Meetings and Policy Review
  Meetings of our Board of Commissioners; and

• the expansion of the States’ review of the Port Authority’s
  Capital Program and Annual Budget, including new
  requirements for multi-year financing plans.

As the members of this Committee are well aware, it is not
the Governors alone to whom we are accountable — we also answer
to the members of both State Legislatures. Actions relating to
industrial development projects or facilities are required to be
delivered to the leaders of the legislatures of the two States
ten calendar days prior to being submitted to the Governors for
review.

And as the Port Authority’s mission has grown over the years
since its inception, the State Legislatures have helped us shape
our mission. Over time, the State Legislatures have enacted
legislation to authorize the construction or operation of
specific kinds of transportation and terminal facilities, as well
as commercial and economic development activities. The totality
of these authorizations constitute the Port Authority’s mission.
Indeed, the balance we have struck between independence and accountability in our relationship with the Governors and State Legislatures has not only been successful -- it is a model for other public authorities.

Among the trade and transportation projects envisioned at our founding were modern piers for our shared harbor, as well as tunnel and bridge connections between the two states. Let me state right here that I believe the broad definition of our mission has been a boon to us -- with the support of our State Legislatures, we have had the flexibility to undertake related objectives not contemplated when the Port Authority was created. Indeed, our two greatest revenue streams today flow from our airports and the World Trade Center -- developments that were not exactly anticipated in 1921.

As you know, our relationship with the New York State Senate has been open, ongoing, and characterized by mutual respect and support. Just last March 22nd, in the aftermath of the terrorist bombing of the World Trade Center, I came before the Committee on Investigations, Tax, and Government Operations to advise the members of the Senate of our progress in getting the Twin Towers back on line.

You will be pleased to know that since that meeting, we have made many more safety and security enhancements at the Trade Center, like emergency lighting at every floor landing, decentralized and redundant fire alarm and communications systems, and increased presence throughout the towers of security
and fire safety personnel. Our occupancy rate is now 90 percent; not only is this up from 88 percent before the blast, but it is also substantially better than the surrounding real estate. In other words, one year after what has been called the worst terrorist attack on American soil, we are now almost completely recovered.

As a message to terrorists alone, this is a significant achievement. But our recovery from the bombing has another, more immediate significance, because the World Trade Center is an economic powerhouse for the Port Authority and the metropolitan region. In addition to the direct and indirect employment and business activity attributable to the complex and its tenants, the World Trade Center during 1992 provided nearly 40 percent of the Port Authority’s net income, and a $38 million payment in lieu of property taxes to the City of New York. The revenue stream from the Trade Center enables us to do more to help the economy on both sides of the Hudson, which is a central part of our mission.

By any standard, we are a major player in the economy of the metropolitan area. People in the region benefit — directly and indirectly — from the services of the Port Authority every day.

We employ a career staff of some 8,000 people. Our rail subsidiary, PATH, has over 1,100 employees. Overall, we estimate that our facilities and services support more than 400,000 jobs in the New York/New Jersey region.

We are also one of the region’s prime investors. Together,
the Port Authority and PATH facilities represent a capital investment of more than $9.5 billion. And our stake continues to grow. Our 1994 budget includes $1.58 billion in operating expenses and $728 million for capital improvements. Our Capital Plan for 1994-1998 calls for a total of $3.8 billion over the next five years. We are making significant improvements at Kennedy, Newark, and LaGuardia airports. We are rehabilitating the Lincoln Tunnel, George Washington Bridge, Outerbridge Crossing, PATH, and other facilities in the interstate transportation network. Restoration and refurbishment of the World Trade Center remains a critical task. We are also planning rail links to the three airports, using revenue from the federally approved Passenger Facility Charge program.

Our expenditures on the projects will in turn leverage other funding. The PA's direct capital investment will be augmented by a projected $3 billion in additional private investment by business partners and tenants at agency facilities. All told, this investment program will support 95,000 permanent and construction jobs across the region, and generate $10.6 billion in sales, $3.6 billion in wages, and $350 million in state and local tax revenues.

It's evident from all I've said that the Port Authority is committed to the prosperity of our region. That commitment includes a constituency about which the members of this Committee are also concerned — the subcontractors who help prime contractors complete our ambitious program of capital
construction.

The economy of the last few years has been especially hard on builders. But what is a cash flow problem for them can be a matter of life and death for their subcontractors. That's why, on major contracts (over $500,000.), we now demand payment and performance bonds from any contractor with a history of problems in paying subs.

It has been our longstanding policy to require such bonds on a selective basis, for two reasons: to include people, and to save money.

This Committee is aware of our commitment to inclusion; in September of 1991 I came before you to discuss that commitment, and I'm pleased to tell you that we have made significant progress since then. As you know, it is an important policy goal for us -- and, we feel, very important for the region -- to permit small businesses and minority- and women-owned enterprises to participate in our capital programs.

That's why even though we are not bound by Article 15-A of the Executive Law, we have exceeded its requirements with our own Minority- and Women-Owned Business Program. Following the decision of the United States Supreme Court in the Croson v. Richmond case, the Port Authority and State and local government agencies throughout America were forced to suspend race- and gender-conscious programs until discrimination by the agency was documented.

A subsequent detailed analysis of studies conducted by the
Port Authority, the City of New York, and the States of New York and New Jersey established a factual basis for determining discrimination. Specifically, within the available pool of firms, those owned by women and minorities were not awarded contracts in the expected statistical proportion.

Some of the features of our revised M/WBE policy are:

- Prime construction contracting opportunities are being set aside for bid exclusively by either M/WBEs or small business enterprises (SBEs);
- Prime contractors are required to document their good-faith efforts to subcontract specified percentages of their contracts to M/WBEs;
- For designated equipment/supply and service contracts under $500,000, M/WBEs quoting up to ten percent more than the low bid may qualify for the award; and
- Bonding requirements have been eliminated for construction contracts estimated at less than $500,000, and awarded under our program.

These are just a few of the measures we have taken to ensure that everyone receives a fair share of the pie. Under our race-neutral Small Business Enterprise program, prime contracts awarded to M/WBEs totaled roughly $20 million in 1993. Under the revised M/WBE program, we expect to set aside more than $30 million in prime construction contracts in 1994 -- and this is in addition to any Port Authority jobs won by minority- and women-owned firms in the open market.

Selective bonding gives us the freedom to be more inclusive -- but it also saves money for the people of New York and New Jersey, even taking into account the relatively small number of breaches.
A detailed check on the background and references of prospective contractors is at the heart of our contracting process. We feel this is a more efficient system for protecting ourselves and our subcontractors — while achieving a significant savings for the people of New York and New Jersey.

And not only are payment and performance bonds not always a necessary expense, we have seen no proof to date that they solve the problem of primes not paying subs — except in the case of breached contracts, which are anyway few and far between.

To further protect subcontractors:

- our Subcontractor Approval Request Form, executed by both the prime and the sub, reveals to the sub whether the G.C. was required to post a payment and performance bond;

- contract clauses require prompt payment to subs and suppliers;

- our Resident Engineers intervene personally with the G.C. when they receive a complaint of lack of payment from a sub. Prior to making the final contract payment, the R.E. will look for assurance from the general and sub that they have resolved their differences. Some differences, of course, can only be resolved through negotiation or the courts; and

- our Chief Engineer may withhold payments due the contractor to assure satisfaction of just claims by third parties.

Finally, we evaluate a G.C.'s payment practices during contract close-out and record this in the contractor history file. On future jobs over $500,000., a contractor with a poor payment record will be required to furnish a bond; on jobs under $500,000., the contractor may be excluded from participating at all.

Although no system is perfect, the measures I’ve described have been generally successful in ensuring payment of
subcontractors and suppliers on Port Authority contracts. We feel we've come up with a system that balances our commitment to subcontractors with our commitment to contractors, to small and minority- and women-owned businesses, and to the people of New York and New Jersey, who benefit when the funds we save are reinvested in regional infrastructure or development.

Mr. Chairman, our approach to this problem is an example of what I have tried to illustrate to the members of this Committee today: Because of our unique blend of independence and accountability, the Port Authority is in touch with — and able to answer to — the priorities and needs of the people of New York and New Jersey. It's what we were created to do — and it's what we do every day. The vision of our founders, and the structure they created, has helped us meet those needs for 73 years now; I have no doubt that they will continue to serve the people of New York and New Jersey well for many years to come.

Thank you very much.

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SENATOR JOHN B. DALY
SENATE STANDING COMMITTEE ON
CORPORATIONS, AUTHORITIES & COMMISSIONS
PUBLIC HEARING ON
PUBLIC AUTHORITY AND PUBLIC BENEFIT CORPORATION REFORM

Friday, March 11, 1994
270 Broadway, 24th Floor
New York, New York 10007
10:00 A.M.

1) Approximate Time: 10:00
   Honorable H. Carl McCall - New York State Comptroller

2) Approximate Time: 10:45
   Peter J. Powers - Deputy Mayor for Operations - City of New York

3) Approximate Time: 11:30
   Peter Stangl - Chairman/CEO - Metropolitan Transportation Authority

4) Approximate Time: 12:00
   Honorable Peter Vallone - Speaker - New York City Council

5) Approximate Time: 12:30
   John Martinez - President/CEO - State of New York Mortgage Agency,
       New York State Housing Finance Agency,
       New York State Affordable Housing Corporation,
       New York State Medical Care Facilities Finance
       Agency and New York State Project Finance
       Agency

6) Approximate Time: 1:00
   David Plotnick, President - Roof Dynamics, Inc.
   Andrew J. Beldy - AC Electrical Supplies, Inc.
   Richard Cappadona - President - Capp Electric Corp.
   Andrew Nowotny - Executive Director - Long Island Chapter - National Electric
       Contractor Association
   Joseph D'Angelo - Executive Director - New York City Chapter - National Electric
       Contractor Association

7) Approximate Time: 1:30
   Peter Lavelli, President, Kryten Iron Works
   Cary David Kessler and Vincent Gerardi, Attorneys representing Kryten Iron
   Works

8) Approximate Time: 1:45
   Stanley, Brezenoff, Executive Director - The Port Authority of New York and
   New Jersey

9) Approximate Time: 2:30
   Barry Schulman - Counsel - Central New York Regional Transportation Authority
SENATE PANEL TO HEAR FROM STATE COMPTROLLER,
DEPUTY MAYOR AND AGENCY HEADS ON NY’S PUBLIC AUTHORITIES
Senate Hearing to be Held in New York City

Senator John B. Daly, Chairman of the Senate Committee on Corporations, Authorities and Commissions, has announced that the Committee will hold a public hearing to examine the operations of New York’s public authorities and Public Benefit Corporations.

THE HEARING WILL BE HELD ON:

DATE: FRIDAY, MARCH 11, 1994
TIME: 10:00 AM
LOCATION: 270 BROADWAY, 24TH FLOOR
NEW YORK, NY 10007

The hearings are being conducted to examine the current operations of New York State Public Authorities and Public Benefit Corporations including to whom they are accountable, the method by which program and financial decisions are made, and whether they have adequate oversight. There has been an increasing number of reports regarding hiring practices, excessive benefits and other activities which may not be in the public interest occurring at New York’s public authorities and corporations, and the hearing will help provide state lawmakers important insight into how these public entities operate and how they make their financial and program decisions.

Among those scheduled to appear and give testimony at Friday’s hearing are:

The Honorable H. Carl McCall, New York State Comptroller;
Peter J. Powers, Deputy Mayor for Operations, City of New York;
Peter Stangl, Chairman/CEO Metropolitan Transportation Authority;
The Honorable Peter Vallone, Speaker, New York City Council; and
Stanley Brezenoff, Executive Director, The Port Authority of New York and New Jersey.

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NEW YORK STATE SENATE STANDING COMMITTEE
ON CORPORATIONS, AUTHORITIES & COMMISSIONS

NOTICE OF PUBLIC HEARINGS

SUBJECT: Public Authority and Public Benefit Corporation Reform

PURPOSE: To examine the current operations of New York State Public Authorities and Public Benefit Corporations including issues of accountability, and decision making processes.

DATE OF HEARING:
- Friday, March 11, 1994
  Time: 10:00 a.m.
  New York State Office Building
  270 Broadway (Corner of Chamber St.) - 24th Floor
  New York, New York 10007

- Monday, April 18, 1994
  Time: 10:00 a.m.
  Legislative Office Building
  Hearing Room A
  Albany, New York 12247

Persons wishing to present testimony are requested to complete and return the attached reply form as soon as possible. Oral Testimony will be limited to ten minutes duration. If Possible, 10 Copies of any prepared testimony should be submitted at the hearing registration desk.

SENATOR JOHN B. DALY, 61ST SENATE DISTRICT
Senate Standing Committee on
Corporations, Authorities & Commissions
Room 415 - State Capitol
Albany, New York 12247
Telephone: (518) 455-2234

ORAL TESTIMONY BY INVITATION ONLY

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PUBLIC HEARING REPLY FORM
(Time is Limited)

Will Testify____ Will Not____

Will Testify____ Will Not____

New York City Hearing

Albany Hearing

RETURN TO: Renea Molineaux, Assistant Director/Committee Clerk
New York State Senate Committee on
Corporations, Authorities & Commissions
Room 415, State Capitol
Albany, New York 12247
Telephone: (518) 455-2234

NAME AND TITLE:

ORGANIZATION:

ADDRESS:

TELEPHONE:

If you have a specific time request, please indicate.
In addition to the general topic of Public Authority and Public Benefit Corporations operations and reform, testimony may address the following:

1) Is the current oversight of New York State Public Benefit Corporations and Public Authorities adequate? If not who should be responsible for increased oversight?

2) Are New York State Public Benefit Corporations and Public Authorities independent? If not, why not?

3) What is the appropriate balance between accountability and independence for Public Authorities and Benefit Corporations?

4) If the proposed constitutional debt reform passes a subsequent legislature and is approved by the voters, how will it affect Public Authorities and Benefit Corporations?

Those speaking on behalf of Authorities and Public Benefit Corporations will also be asked to testify about specific operations at the entities they represent.