The Commonwealth of Massachusetts
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DRAWING ON PUBLIC AUTHORITIES’ RESOURCES
TO REDUCE A BUDGET GAP:
Learning from New York
S. 1500

Senate Committee
on Post Audit and Oversight

Senate Post Audit and Oversight Bureau
Commonwealth of Massachusetts

MASSACHUSETTS SENATE

The Honorable William M. Bulger
President of the Senate

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A Report of the
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EXECUTIVE SUMMARY

This report by the Senate Committee on Post Audit and Oversight documents how the state of New York retrieved $250 million from its public authorities to reduce its $2 billion budget gap in fiscal year 1990. New York drew upon the resources of the public authorities without affecting its bond ratings. In part, New York's success resulted from the oversight relationship between the Legislative and Executive branches and the public authorities. The New York case brings insight to the debate in Massachusetts about the role public authorities can play in helping reduce the state's budget gap. The highlights of the study are summarized below:

The Legislature and Executive in New York have much greater oversight and control over public authorities than in Massachusetts:

- New York has a Public Authorities Control Board (PACB) that is responsible for control and oversight of public authorities in New York. The Board includes Executive and Legislative representation, and has the mandate to approve capital projects and financing undertaken by the state's major authorities.
  - The PACB has been bipartisan, and is made up of five members: the voting members of the Board have been the Director of the Budget, the Chairs of the Senate Finance Committee and the Assembly Ways and Means Committee. The non-voting members have been the ranking minority members of the Finance and Ways and Means Committees.

- Massachusetts has no equivalent to the PACB. The Massachusetts Finance Advisory Board is limited to advising on debt patterns, bond issuance timing, and the type and quantity of debt financing for the state and some of the authorities.
New York used a variety of methods to draw $250 million in fiscal year 1989/90 from its public authorities to reduce its budget gap:

- Charging authorities for services provided by the state: $17.5 million annually
  - Public authorities are charged for the costs incurred by the state for project review by the PACB, for the costs associated with budget and legislation development, and for rent on space used by the authorities in state-owned buildings.

- Instituting a new bond issuance fee: $20 million annually
  - Each new bond issuance by a public authority in New York is subject to a sliding scale fee based on the total amount of the bond issuance.

- Refinancing debt: $300 million over two years
  - New York negotiated with the Dormitory Authority to refinance its existing debt with debt that had a lower reserve requirement, freeing up $175 million for the state's General Fund in the first fiscal year and $125 million in the following fiscal year.

- Negotiating the capture of "excess" reserves: $15 million
  - The New York Division of the Budget identified $15 million in a special reserve fund at the Dormitory Authority that was transferred to the state's General Fund. This reserve had been held for general bad debt and was not tied by bond covenant to a particular bond issue.

- Transferring some expenditures to public authorities' budgets: $18 million
  - New York successfully negotiated with some of its public authorities to fund certain capital expenditures previously supported by the state's General Fund. For example, the Dormitory Authority agreed to finance $18 million in minor rehabilitation projects at a state university.

New York's actions in drawing on its public authorities for funds had no impact on the state's or authorities' bond ratings.

New York's experience illustrates that Massachusetts could draw on public authorities to help address the state's fiscal crisis:

- Although separation of powers in the Massachusetts State Constitution may prevent Massachusetts from creating an entity completely identical to the New York Public Authorities Control Board, the Commonwealth could develop a similar entity to oversee the state's bond financing and the public authorities.

- Massachusetts could also expand the role of its Finance Advisory Board to ensure the participation of the public authorities.

- Massachusetts could expand fees for state services, looking particularly to recurring sources of revenue and avoiding retroactive charges. These techniques, like those used in New York, are less likely to have a negative effect on bond ratings.
I. INTRODUCTION

During the late fall of 1989, calls for fiscal accountability and the need for added revenues to balance Massachusetts' $12 billion budget led to legislative attempts to increase oversight and draw money from the state's public authorities. Massachusetts did not increase oversight, but did generate close to $20 million from public authorities to reduce the state's gap that at that time was $800 million. New York State -- which has a $47 billion state budget -- this year faced a $2 billion deficit, and successfully reclaimed approximately $250 million from public authorities.

This report by the Senate Committee on Post Audit and Oversight examines New York State's successful reclamation of revenue from its public authorities. Unlike Massachusetts, New York was able to take advantage of an existing system of oversight and control of the state's public authorities and implement several substantial revenue-raising measures without hurting the state's bond ratings.

There are differences that complicate a comparison between New York and Massachusetts. The role of public authorities in New York is greater than in Massachusetts, and the constitutional relationships between the Executive and Legislative branches are somewhat different. Furthermore, the methods used in New York for drawing funds differed from the methods proposed in Massachusetts. Nevertheless, the comparison is useful in that the financial status of the Commonwealth's public authorities and oversight of the authorities will continue to be sources of controversy as Massachusetts searches for a solution to its fiscal crisis.

A "public authority" is typically established by statute to perform a specified public purpose. Authorities are headed by appointed boards and are independent of the state's budget process. They traditionally have the power to raise revenues and issue bonds
to fund their own projects.

Compared to those in Massachusetts, public authorities in New York play a more significant role in the financial operations of state government. Under its constitution, New York State can only issue general obligation debt for projects that have passed a public referendum. To circumvent this referendum requirement, New York uses the public authorities to issue revenue bonds to finance most capital projects. The state’s administration is, therefore, closely allied to and dependent on the functioning of the authorities for the state’s finances.

II. OVERSIGHT OF PUBLIC AUTHORITIES

A. Creation of the New York Public Authorities Control Board

Until 1975, apart from the Executive’s appointing powers and the limitations of each authority’s enabling legislation, New York’s public authorities operated with minimal state oversight. Significantly, the state had no formal control over the amount of debt issued by the authorities.

In 1975, the Urban Development Corporation (UDC), a public authority, was unable to make payments on its short term debt. Although the UDC notes were not backed by the "general obligation" of the state (the legal obligation to pay back the bonds), they were backed with the state’s "moral obligation" (the non-legally binding promise to back the note payments). The UDC went into default, contributing to a loss of confidence.

1 See the New York State Constitution, Article VII, Section 11: "... no debt shall be hereafter contracted by or in behalf of the state ... until it shall, at a general election, have been submitted to the people, and have received a majority of all the votes cast for and against it at such election ... ."
in bonds and notes issued by New York State. Consequently, the state determined that it would honor the debt payments owed by the Urban Development Corporation to minimize this loss of confidence.

After the UDC fiscal crisis, both the state’s Legislature and Executive determined that there should be more oversight and control of the state’s public authorities. The expectation was that additional oversight and control would help anticipate and prevent the payment problems experienced by the UDC.

In 1976, the Legislature created the Public Authorities Control Board (PACB). Under the current PACB statute (see Appendix A), all five members of the Board are appointed by the Governor. The President of the State Senate, the Speaker of the State Assembly (the lower chamber), the Minority Leader of the Senate, and the Minority Leader of the Assembly each recommend one of the five members. The two members appointed on the recommendation of the minority leaders of the Legislature may participate in the PACB hearing, although they are non-voting members.

The Governor’s appointments to the PACB have always been the Director of the Division of the Budget, and the Chairpersons and ranking minority members of the Senate Finance Committee and the Assembly Ways and Means Committee. Furthermore, the Committee has been bipartisan because the New York State Assembly has traditionally had a Democratic majority and the Senate has had a Republican majority.

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2 In addition to the UDC’s default, New York City was experiencing its own fiscal crisis which also contributed to a general loss of confidence in all New York bonds and notes.

3 In Massachusetts, these positions are comparable to the Secretary of the Executive Office of Administration and Finance’s position or the Director of the Budget, and the Chairpersons and ranking minority members of the Senate and House Committees on Ways and Means.
The members of the PACB use their agency or committee staffs to assist in the work of the Board. The members of the PACB serve without compensation, receiving reimbursement only for expenses incurred in the performance of their duties.

B. Powers and Duties of the New York Public Authorities Control Board

The Public Authorities Control Board oversees and approves capital projects and financing undertaken by each of the state's ten major public authorities and their subsidiaries. Before a public authority initiates a construction project or issues public debt, the authority must apply to the PACB and receive approval for the project.

A public authority submits a project proposal for formal consideration by the PACB. Each proposal includes details of the financial terms and conditions of the project, an analysis of the financial risks of the project, and a description of the public need for the project.

Before approving individual projects, the PACB submits each proposal to the State Comptroller for review and comment. The Comptroller has seven days to review the proposal, after which the PACB convenes to assess the project. At each PACB hearing, representatives from the public authority present reasons for supporting their project and are available to answer any questions from the PACB members.

The PACB's approval, which must be unanimous, is based primarily on the determination that there are sufficient funds for financing the project. If the PACB

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4 Under the PACB's enabling legislation, only the four state authorities that issued moral obligation bonds were required to submit their project proposals to the PACB. Since its enactment in 1976, the number of authorities required to submit proposals to the PACB has increased to ten. (See Appendix A for a complete list of the authorities reviewed by the PACB.)
approves a project, the authority is authorized to issue bonds and proceed. If, however, the PACB cannot reach unanimous agreement to support a project, the authority must address the reservations of the members of the PACB and submit a new proposal at the next PACB hearing.

C. Impact of the New York Public Authorities Control Board on the Operations of Authorities

The creation of the PACB has strengthened control of public authorities in New York. Prior to the establishment of the PACB, only the Governor had direct control over the authorities through his appointing powers and any statutory membership of executive officers on the governing boards of the authorities. The PACB has given the Legislature and the Executive power to oversee the financial activities of the state's public authorities. It has also given elected officials increased political leverage with which they can negotiate with these authorities.

The PACB functions in a non-partisan manner. As a bipartisan body, it brings together the Legislative and the Executive branches of government, and it functions by consensus. If one Board member were to support an unqualified project to further his or her own political interests, one of the other two voting members of the Board could defeat the resolution.

D. Oversight of Public Authorities in Massachusetts

Massachusetts does not have an oversight body like the PACB, and if it were to create one, the board membership would be different. The constitutional separation between the Executive and Legislative branches is strong in Massachusetts which might limit
the role of the Legislature on such a board. Furthermore, since general obligation bonds in Massachusetts are issued by the state, a Massachusetts oversight entity board should include representation from the state's financial officers.

The Finance Advisory Board (FAB) is the only statutory oversight entity in Massachusetts (see Appendix B). The Massachusetts FAB is made up of the Treasurer and four members appointed by the Governor. The FAB surveys debt requirements, and makes recommendations on overall debt patterns, bond issuance timing, and the type and quantity of debt financing for the state and some of the authorities. Unlike the New York PACB, the FAB is only advisory in nature and has no direct control over public authorities.

In Massachusetts, without a Public Authorities Control Board or similar institution, the Executive and Legislative branches have less control over the state's public authorities than their counterparts in New York. The Governor has the limited ability to oversee public authorities through his appointments to the governing boards of the authorities, and through statutory membership that executive officials may have on particular authorities' governing boards. The Massachusetts Legislature's ability to influence the operations of public authorities is limited to the authority for statutory changes, authorizations, and appropriations.

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5 Part 1, Article XXX of the Constitution of Massachusetts states: "In the government of this commonwealth, the legislative department shall never exercise the executive and judicial powers, or either of them..." According to the General Counsel of the PACB, the issue of whether the PACB violates the constitutional separation of powers in New York has not been addressed through the courts. (Telephone conversation with Steve Somlo, General Counsel to the New York Public Authorities Control Board, January 26, 1990.)

6 New York has an entity called the Securities Coordinating Committee (SCC) which plays the similar role of analyzing and projecting market conditions and coordinating borrowing patterns. The SCC was established by executive order in 1977 and expanded in 1983 to include review of borrowing by municipal authorities. (See Appendix C.)
An unsuccessful attempt was made to increase the Massachusetts Legislature’s oversight of public authorities in the Budget Control and Reform Act of 1989. Under a House proposal, public authorities would have had to submit their budgets to the Committees on Ways and Means for review and receive approval by the Legislature. The Senate proposal only required that public authorities submit their budgets for review to the Legislature. In the version of the Act approved by a legislative conference committee, these proposals were dropped. The final version of the Budget Control and Reform Act, Chapter 653 of the Laws of 1989, did not include any changes to the current status of oversight and control of public authorities in Massachusetts.

III. REDUCING THE STATE’S BUDGET GAP

In the 1989 New York state fiscal year, many legislators believed that the state’s public authorities were enjoying large surplus cash reserves while the state was facing a $2 billion budget gap. This belief was due in part to a June 1988 proposal from the New York State Assembly Ways and Means Committee to the Governor which claimed that total unrestricted reserves of all public authorities could be as high as $500 million.

To partially address the state budget deficit, in April 1989, the New York Legislature passed Chapter 62 of the Laws of 1989 to initiate fees charged to the public authorities. (See Appendix D for full text of relevant sections of Chapter 62). Chapter 62 of the

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7 The Executive branch regularly receives some annual financial reports from the public authorities. Massachusetts public authorities have been required to submit an annual financial report to the Executive Office of Administration and Finance since 1987. This report gives the Executive basic financial information about the bonding activities and operations of the authorities. (See Section 46 of Chapter 199 of the Acts of 1987; Section 32 of Chapter 164 of the Acts of 1988; and Section 38 of Chapter 240 of the Acts of 1989.)

8 The actual amount of the unrestricted reserves, $500 million, was challenged by the public authorities, and the Ways and Means Committee backed off this claim. The Committee’s proposal, however, provided the stimulus for the subsequent revenue reclamation efforts.
Laws of 1989 of New York instituted two fees: a fee to recover the costs of state services provided to public authorities; and a bond issuance fee based on the total amount of each bond issue. The Legislature and the Executive also refinanced certain debt, took a portion of one authority's "excess reserves," and transferred certain capital expenditures from the state's General Fund to the public authorities.

A. Charging New Fees to Public Authorities

The New York Legislature approved a fee that reimbursed the state for the costs of project review by the Public Authorities Control Board, and for the development of budget and legislation by the Division of the Budget. The state estimates that these fees will generate $17.5 million for the New York State General Fund in the current fiscal year. Chapter 62 authorized the New York State Director of the Budget to charge public authorities a fee for the direct costs of project review and budget and legislative development services provided by state personnel; the indirect costs of fringe benefits; the costs of maintenance and operation of state equipment and facilities; rent on space occupied in state leased facilities or the fair market rental value of space occupied in state-owned facilities; and the costs of contractual services.

To determine the assessment on each authority for services provided by the state, the New York Director of the Budget first determined the total cost to the state for the services provided to all authorities. Each authority was then assessed a prorated fee based on their share of all public authorities' total outstanding debt.

The New York Legislature recognized that in some cases charging a fee to a public authority that is subsidized by state funds could simply result in increasing the authority's need for a subsidy. The New York State Government Cost Recovery System
created by Chapter 62 therefore contains language allowing the Director of Budget to waive or reduce fees when the added charges to the authorities would not produce added revenue for the state.  

B. Charging Bond Issuance Fees

Chapter 62 of the Laws of 1989 of New York also created a new fee for bond issuances charged to public authorities based on the total amount of each bond issue. This fee, estimated to generate $20 million in the current fiscal year, is based on the following sliding fee schedule:

- 5 basis points (.05%) for bond issues up to $1,000,000
- 10 basis points (.10%) for bond issues of $1,000,001 - $5,000,000
- 15 basis points (.15%) for bond issues of $5,000,001 - $10,000,000
- 20 basis points (.20%) for bond issues over $10,000,000

Bonds issued for single family housing mortgages are exempted from the sliding fee charge; they are instead charged a flat fee of five basis points (.05%) applicable to the principal amount of single family mortgage revenue bonds.  

C. Refinancing Debt to Reduce Reserve Requirements

New York also entered into an agreement with the Dormitory Authority, one of the state’s largest authorities, to refinance some of its debt. The New York State Dormitory Authority, a public authority with an outstanding debt of over $5.8 billion in 1989, finances capital construction projects for both public and private colleges and

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9 See Paragraph 4, Section 67 of Chapter 62 of the Laws of 1989 (see Appendix D).

10 The New York Metropolitan Transit Authority withheld the payment of its bond issuance fee arguing that this fee is unconstitutional. New York’s Attorney General, in an opinion dated December 8, 1989, determined that the new bond issuance fees are not in violation of the state constitution (see Appendix E). Most authorities have begun payment, and the revenue projection is based on fees already paid to the state.
The Dormitory Authority refinanced a portion of its debt with new debt that had a lower reserve requirement in its bond covenant than the old debt — the requirement was reduced from one year's worth of debt service to six months' worth of debt service. The state estimates that the reserves freed up through this debt refinancing will enable the Dormitory Authority to contribute over $300 million over the next two years — $175 million in the first year and $125 million in the second year — to the New York State General Fund.\textsuperscript{11}

**D. Negotiated Captures of "Excess Reserves"**

In 1989, the New York Division of the Budget identified over $45 million in "excess reserves" held by the Dormitory Authority. The Authority had built up this reserve by charging the colleges and universities a special closing fee for arranging the sale of bonds to finance their capital projects. This money is held as a reserve against general bad debt and is not dedicated by bond covenant to a particular bond issue. After negotiating with the Division of the Budget, the Authority agreed to keep the portion of the reserve that had been collected from private colleges and universities, and to contribute the $15 million collected from the state-supported public colleges and universities to the state's General Fund.\textsuperscript{12}

\textsuperscript{11} It is important to note that the funds freed up through this refinancing are a short-term capital injection to the General Fund with an increase in long-term cost. The refinanced debt may have a greater net present value than the original bonds that were retired.

\textsuperscript{12} This negotiated agreement was then codified into law by Section 7 of Chapter 7 of the laws of 1989 which stated in part: "the dormitory authority of the state of New York . . . [is] hereby authorized and directed to pay over . . . for deposit in the general fund of the state fifteen million dollars ($15,000,000) from assets not pledged to the holders of any bonds or other obligations of the authority."
E. Transferring Capital Expenditures

New York was also able to reduce its budget deficit by shifting the burden of some of its expenditures from the state's General Fund to the budgets of particular public authorities. For example, the state transferred $18 million worth of costs for minor rehabilitation projects at the State University of New York. The New York Dormitory Authority financed this construction project which in previous years had been paid for by the state's General Fund.

F. Reducing the State Budget Gap in Massachusetts

In fiscal years 1989 and 1990, Massachusetts turned to the public authorities with a variety of techniques to reduce the state's budget gap. Massachusetts charged fees to some of its authorities, sped up debt payment and renegotiated certain contracts. In total, Massachusetts reclaimed almost $9 million in fiscal year 1989, and almost $20 million in fiscal year 1990.

Like New York, Massachusetts has instituted prorated fees for services provided by the state for the authorities. Unlike New York, however, this technique has been used to a much lesser degree. Section 46 of Chapter 199 of the Acts of 1987 required all public authorities in Massachusetts to prepare a report to the Commissioner of Administration summarizing authorized debt for the previous and current years, and estimates for the coming year. The authorities also had to report on all sources of revenue used to finance their bonds. In every year since 1987, Massachusetts has charged a total of $200,000 annually to all the public authorities for the costs associated with processing the authorities' reports.\(^{13}\)

The Massachusetts Legislature also attempted to retrieve debt from the public authorities by changing the nature of standing agreements with the authorities. The Budget Control and Reform Act of 1989 proposed allowing the state to collect old debt from the Massachusetts Port Authority that the state had previously forgiven.¹⁴ This provision would have reduced the budget gap in Massachusetts by over $30 million. The Governor vetoed this section because he felt it violated contracts or understandings entered into by the Authority and its bondholders, and he was concerned that this provision would have a negative impact on the Authority's bond ratings. In fact, the Standard & Poor's credit rating agency had placed the Massachusetts Port Authority on "CreditWatch" prior to the Governor's veto.

At the same time, the Massachusetts Legislature agreed to speed up the repayment of debt from one of the state's public authorities. A provision was included in the Budget Control and Reform Act of 1989 that required the Massachusetts Water Resources Authority during fiscal year 1989 to repay $15.6 million in debt that had originally been scheduled to be paid back over ten years.¹⁵

In the 1989 fiscal year, the Massachusetts Executive Office of Administration and Finance negotiated an agreement with the Massachusetts Government Land Bank to pay $6 million in debt service costs out of its own funds, rather than out of the state's General Fund.¹⁶ Furthermore, in the state's fiscal year 1990 budget, the Governor let stand a $3.8 million reduction in the appropriation for the Massachusetts Housing Finance Agency (MHFA) for the Section 13A interest subsidy program. The effect of


this reduction was to require the MHFA to pay for a portion of its debt service out of its own funds.\textsuperscript{17}

Massachusetts also reduced expenditures by changing its commitment to the Community Development Finance Corporation (CDFC). In 1987, the Commonwealth entered into a stock purchase agreement to recapitalize the CDFC by purchasing $2.5 million in corporate stock in both 1988 and 1989. The state purchased $2.5 million in stock from the CDFC in 1988, but refused to purchase the remaining $2.5 million in stock in 1989. This effectively reduced state expenditures by $2.5 million in 1989, and reduced the working capital of the CDFC.

Massachusetts also attempted to shift expenditures from the state's General Fund to the budgets of the authorities through the Budget Reform and Control Act of 1989. The Act proposed requiring the Massachusetts Turnpike Authority to fund state snow removal.\textsuperscript{18} The Governor vetoed this section of the Act, however, because he felt that this added responsibility would go beyond the purposes of the Authority and place its bond ratings at risk.

\textsuperscript{17} See Chapter 653 of the Acts of 1989. In an August 7, 1989 letter from Standard & Poors to Marvin Siflinger, the Director of the Massachusetts Housing Finance Agency, Standard & Poor's expressed concern about the state's failure at that time to maintain its obligations to fund the Section 13A interest subsidy program. This concern was reiterated after the passage of the Budget Control and Reform Act of 1989 in the January 15, 1990 edition of Standard & Poor's Creditweek (p. 38).

IV. THE IMPACT OF REVENUE RECLAMATION EFFORTS ON BOND RATINGS

Unlike Massachusetts' actions which had implications for the Commonwealth's bond ratings, New York's various efforts to reclaim revenues from the state's public authorities have had no effect on their bond ratings. According to the managing director of the Standard & Poor's municipal bond rating agency, the cost recovery fees instituted by New York on the public authorities were a "legitimate cost of doing business." Standard & Poor's also indicated that the fees, the bond refinancing, and the transferring of reserves from public authorities to the state General Fund did not affect the bond rating of New York's public authorities.

Similarly, the managing director of state ratings at Moody's Investors Service, another bond rating agency, indicated that New York's cost recovery measures have not, to date, had an impact on its bond ratings. However, he indicated that the use of one-time ("non-recurring") revenue measures such as the transferring of "unpledged" reserves to balance the state's budget can weaken the state's credit, since such measures delay the decision about re-establishing balance between recurring revenues and recurring spending. The Moody's Investors Service ratings for New York State's general obligation bonds and for the limited obligation bonds of the state through the public authorities also remained unchanged.

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20 Telephone conversation with Richard Marino, Vice President, Standard & Poor's, December 15, 1989.


22 Communication from George Leung, Managing Director of State Ratings, Moody's Investors Service, Inc., February 6, 1990.
V. CONCLUSION

New York's retrieval of funds from public authorities to reduce the state's budget gap is notable for the methods used and for their success. New York reclaimed millions of dollars from its authorities over the course of a few years. New York State charged its public authorities new fees, refinanced debt, negotiated to retrieve excess cash reserves, and shifted expenditures from the General Fund to the public authorities' budgets. Furthermore, much of this revenue will continue to be generated for the state's General Fund in subsequent years.

New York was successful in part because of the state's approach to the problem. New York addressed the challenge of drawing revenue from the public authorities in a comprehensive manner. The state determined that certain policy changes would be necessary to redefine aspects of the financial relationships between the state and the authorities. The changes were not applied retroactively and were the results of changes negotiated among the Executive, the Legislature, and the authorities.

New York's efforts avoided violating bond covenants or affecting the state's or authorities' bond ratings. The authorities were charged fees for future activities, not for activities that had already occurred, and the capital expenditure transfers were recognized as legitimate under the authorities' enabling legislation. In addition, the bond issuance fees and the fee for state-provided services are "recurring revenues" which will provide the New York General Fund with a continuous revenue stream.

New York State seemed better able to manage these negotiations and implement the revenue reclamation measures because of the state's oversight and control of the public authorities through the New York Public Authorities Control Board. The Public Authorities Control Board -- a bipartisan group designed to create consensus among the
Executive, the Legislature and the authorities -- provided the mechanism for these efforts. The Board has been a forum for consensus-building and for developing comprehensive financial strategies that encompass the public authorities.

Massachusetts, on the other hand, has approached revenue reclamation from its public authorities in an uncoordinated manner -- authority by authority, retrieving relatively small amounts of money at a time, and retroactively changing decisions made by the Commonwealth. None of the Commonwealth's methods has brought in a significant amount of "recurring" revenue, and the state's and authorities' bond rating services have viewed some of them negatively.

Massachusetts could learn from certain aspects of New York's experience. Massachusetts would benefit from a board that could oversee and control the state's and authorities' bond financing. An entity like the Public Authorities Control Board in New York would provide the means by which the Executive and the Legislature could work toward consensus for changes in public finance. Compared to Massachusetts, the strength and flexibility of the system of oversight in New York has brought the public authorities more closely into the financial operations of the state.

The Commonwealth should also further expand and formalize the purview of the Massachusetts Finance Advisory Board. This Board currently plays an important role, but its capacity is limited by the incomplete participation of some public authorities that have an important role in the state's bond financing. The coordination role of the Board would be more comprehensive with the participation of all of the state's public financial players.

As the Massachusetts fiscal crisis continues, the Commonwealth should also re-examine the contribution of public authorities. Like New York, Massachusetts could identify
recurring sources of revenue and, if appropriate, implement them in a manner that would be less likely to affect bond ratings.

Consensus-building is an important function of state government. New York's ability to draw revenues from its public authorities is partly due to its ability to create consensus among the Executive branch, the Legislative branch, and the state's public authorities. New York's success can also be attributed in part to the careful development of strategies that did not affect bond ratings. In a time of fiscal crisis, Massachusetts should look to New York in designing efforts to draw funds from public authorities.
§50. New York state public authorities control board; creation; procedure

1. The New York state public authorities control board is hereby created to have and exercise the powers, duties and prerogatives provided by the provisions of this chapter and any other provision of law.

2. The membership of the board shall consist of five persons appointed by the governor, of which one shall be upon the recommendation of the temporary president of the senate, one upon the recommendation of the speaker of the assembly, one upon the recommendation of the minority leader of the senate and one upon the recommendation of the minority leader of the assembly. The members appointed by the governor upon the recommendation of the minority leader of the senate and the minority leader of the assembly shall be non-voting members whose comments shall be entered upon any official record of board proceedings in the same manner as voting members' comments, unless objection is raised by any of the voting members in which case, notwithstanding any provision of law to the contrary, such comments by non-voting members shall not be so entered. The term of the members first appointed shall continue until January thirty-first, nineteen hundred seventy-seven, except that the term of the members first appointed upon the recommendations of the minority leader of the senate and minority leader of the assembly shall continue until January thirty-first, nineteen hundred eighty-four, and thereafter their successors shall serve for a term of one year ending on January thirty-first in each year. Upon recommendation of the nominating party the governor may replace any member in accordance with the provision contained herein for the appointment of members. The governor shall designate one of the members to serve as chairman. The board shall act by unanimous vote of the voting members of the board. Any determination of the board shall be evidenced by a certification thereof executed by all the voting members. Each member of the board shall be entitled to designate a representative to attend meetings of the board in his place, and to vote or otherwise act on his behalf in his absence. Notice of such designation shall be furnished in writing to the board by the designating member. A representative shall serve at the pleasure of the designating member during the member's term of office. A representative shall not be authorized to delegate any of his duties or functions to any other person.

3. Notwithstanding any inconsistent provisions of law, general, special or local, no officer or employee of the state, of any political subdivision of the state, of any governmental entity operating any public school or college or of any other public agency or instrumentality of unit of government which exercises governmental powers under the laws of the state, shall forfeit such office or employment by reason of acceptance or appointment as a member, representative, officer, employee or agent of the board nor shall service as such member, representative, officer, employee or agent of the board be deemed incompatible or in conflict with such office or employment. The members, their representatives, officers and staff to the board shall be deemed employees within the meaning of section seventeen of the public officers law.

4. The members of the board shall serve without salary of per diem allowance but shall be entitled to reimbursement for actual and necessary expenses incurred in the performance of official duties pursuant to this section or other provision of law, provided however that such members and representatives are not, at the time such expenses are incurred, public employees otherwise entitled to such reimbursement.

*Added L.1976, c. 38, § 15; Amended L.1976, c. 649, § 1.*
§51. Powers, functions and duties of the New York state public authorities control board; limitations

1. The New York state public authorities control board shall have the power and it shall be its duty to receive applications for approval of the financing and construction of any project proposed by any of the following state public benefit corporations:
   a. New York state environmental facilities corporations
   b. New York state housing finance agency
   c. New York state medical care facilities finance agency
   d. Dormitory authority
   e. New York state urban development corporation
   f. Job development authority
   g. Battery park city authority
   h. New York state project finance agency
   i. State of New York mortgage agency
   j. New York state energy research and development authority

Any application made concerning a project shall include the terms, conditions and dates of the repayment of state appropriations authorized by law pursuant to a repayment agreement. Any subsidiary of, or corporation with the same members or directors as, a public benefit corporation subject to the provisions of this section shall also be subject to the provisions of this section. All applications and submissions to the board required to be made by a subsidiary shall be made on behalf of such subsidiary by the public benefit corporation with created the subsidiary. No public benefit corporation subject to the provisions of this section shall make any commitment, enter into any agreement or incur any indebtedness for the purpose of acquiring, constructing, or financing any project unless prior approval has been received from the board by such public benefit corporation as provided herein.

2. The board may require as part of such application such information as it deems necessary and shall act upon such application within a reasonable time. The board shall furnish the state comptroller with a copy of each such application within three days following receipt thereof by the board. The board shall not approve any such application prior to the earlier of (a) seven days following the receipt by the state comptroller of such application or (b) the receipt by the board of the state comptroller's comments on the application or his consent to an earlier determination by the board. Reference to the state comptroller in this subdivision shall include any authorized representative of the state comptroller.

3. The board may approve applications only upon its determination that, with relation to any proposed project, there are commitments of funds sufficient to finance the acquisition and construction of such project. In determining the sufficiency of commitments of funds, the board may consider commitments of funds, projections of fees or other revenues and security, which may, in the discretion of the board, include collateral security sufficient to retire a proposed indebtedness or protect or indemnify against potential liabilities proposed to be undertaken. A copy of such determination shall be submitted to the chief executive officer of the appropriate public benefit corporation and the state comptroller.

4. Notwithstanding any other provisions of this section, the requirements of subdivisions one, two and three of this section shall not apply with regard to any project of the New York state environmental facilities corporation, the New York state housing finance agency, the New York state medical care facilities finance agency or the dormitory authority in progress on the first day of April, nineteen hundred seventy-six, with regard to any project of the New York state project finance agency or the New York state urban development corporation in progress on the first day of April, nineteen hundred seventy-eight, with regard to any project of the job development authority or the battery park city authority in progress on the first day of July, nineteen hundred eighty, and with regard to a project of any other public
benefit corporation subject to the provisions of this section in progress on the first day of July, nineteen hundred eighty-three, as determined by the New York state public authorities control board whose affirmative determination shall be conclusive as to all matters of law and fact for the purpose of the limitations of this section.

5. Nothing contained in subdivision one, two and three of this section shall limit the right or obligation of any public benefit corporation subject to the provisions of this section to comply with the provisions of any existing contract, including any existing contract with or for the benefit of the holders of any obligations of any public benefit corporation.

APPENDIX B: MASSACHUSETTS FINANCE ADVISORY BOARD

FINANCE ADVISORY BOARD

§97. Finance advisory board; members; appointment, qualifications, etc.

There shall be a board, to be known as the finance advisory board, in this section and in section ninety-eight, called the board, to consist of the state treasurer and four members appointed by the governor, with the advice and consent of the council. Said members appointed by the governor shall be designated in their original appointments to serve for one, two, three and four years, respectively. Upon the expiration of the term of a member, his successor shall be appointed for a term of four years. At least two members appointed by the governor shall be persons with expert knowledge of the field of investment of funds. The governor shall, from time to time, designate one of the members as chairman. The members shall serve without compensation but shall receive their necessary expenses incurred in the discharge of their official duties. The commission on administration and finance shall provide the board with such clerical and other assistance as the board may deem necessary from time to time.

*Added by St. 1956, c. 708, § 2.*

§98. Duties of board

It shall be the duty of the board (a) to survey the direct and contingent debt requirements of the commonwealth in all its phases at least quarterly; (b) to furnish the governor and council, the state treasurer, and the general court, through its committees on ways and means, with its recommendations on the following phases of the commonwealth’s financial structure: - (1) the over-all debt pattern with respect to present and future maturity schedules and interest requirements; (2) times and methods for marketing prospective short and long-term bond and note issues, including rates of interest, maturities and other terms; (3) methods of refinancing maturing obligations; (4) volume of short-term debt; (5) size of present and prospective debt in relation to the marketability of the securities of the commonwealth; (6) the financing of self-liquidating projects; and (7) whether proposed expenditures should be financed from the sale of bonds.

*Added by St.1956, c. 708, § 2. Amended by St.1975, c. 786, § 1.*
APPENDIX C: NEW YORK SECURITIES COORDINATING COMMITTEE

No. 11

EXECUTIVE ORDER
EXPANDING THE MEMBERSHIP AND POWERS
OF THE SECURITIES COORDINATING COMMITTEE

WHEREAS, there has been created in the State of New York a number of public authorities and public benefit corporations organized and empowered to undertake a wide variety of activities in furtherance of one or more public purposes and to incur indebtedness through the issuance of notes and bonds to the public to support such activities; and

WHEREAS, a New York State Securities Coordinating Committee (the "Committee") was established by executive order in nineteen hundred seventy-seven to analyze and project market conditions and harmonize the borrowing patterns of the State, its authorities and public benefit corporations; and

WHEREAS, since the establishment of the Committee, it has become apparent that the Committee's usefulness could be enhanced by expanding its membership to include other municipal issuers and by strengthening its role as a forum for the exchange of ideas and information on the public credit markets;

NOW, THEREFORE, I, Mario M. Cuomo, Governor of the State of New York by virtue of the authority vested in me by the Constitution and law of the State of New York, do hereby establish a New York State Securities Coordinating Committee.

I. Definitions

As used in this Order the Following terms shall have the following meanings:

1. "Committee" shall mean the committee created pursuant to paragraph II hereof.

2. "Issuer" shall mean the State, any Member Agency, any Non-Member Agency or any other entity participating in the activities of the Committee which issues Obligations.

3. "Member Agency" shall mean an authority or public benefit corporation of the State, the chairman or chief executive or operating officer of which serves as a member of the Committee.

4. "Non-Member Agency" shall mean an authority or public benefit corporation other than a Member Agency which has the power to incur indebtedness through the issuance of Obligations, a majority of the members of which consist of persons either appointed by the Governor or who serve as members by virtue of holding a civil office of the State, or a combination thereof.

5. "Obligations" shall mean notes or bonds issued or to be issued by the State, a Member Agency, a Non-Member Agency or any other participating entity to finance or fund one or more activities, programs or projects, including Obligations issued in anticipation of taxes, income or revenues derived from any source or to redeem or refinance outstanding Obligations.
6. "State" shall mean the State of New York and where this Order refers to any act to be undertaken by the State it shall mean by or through the State Comptroller of State Director or the Budget, as appropriate.

II. The New York State Securities Coordinating Committee; Membership

There is hereby created within the Executive Department a committee to be known as the New York State Securities Coordinating Committee. The Committee shall consist of the State Comptroller, who shall serve as Chairman, the State Director of the Budget, who shall serve as Secretary, and the Chairman, or if there is no Chairman, the chief executive or operating officer, of the Battery Park City Authority, the New York State Environmental Facilities Corporation, the New York State Energy Research and Development Authority, the Dormitory Authority, the New York State Housing Finance Agency, the New York State Medical Care Facilities Finance Agency, the New York State Municipal Bond Bank Agency, the Job Development Authority, the Metropolitan Transportation Authority (which shall also represent the New York City Transit Authority and the Triborough Bridge and Tunnel Authority), the Municipal Assistance Corporation for the City of New York, the New York State Thruway Authority, the Power Authority of the State of New York, the State of New York Mortgage Agency, the New York State Project Finance Agency, the New York State Urban Development Corporation and such successor authorities as may be created. The Comptroller and the Director of the Budget may each designate an individual to serve in his absence at any meeting of the Committee. The Chairman of a Member Agency may designate the chief executive, operating or financial officer to serve in his place at any or all meetings of the Committee.

III. Powers and Duties of the Committee

a. The Committee shall assist in the coordination of the activities of the State, each Member Agency, each Non-Member Agency and each participating entity relating to the issuance of Obligations through either competitive or negotiated sales. In coordinating these activities the Committee shall consider the demand for Obligations of the types to be issued, the availability of funds for the purchase of Obligations, the needs of the Issuer and such other factors as the Committee deems appropriate. Based upon such factors, the Committee shall develop a borrowing schedule which shall include the timing, quantity and type of obligations to be issued by each Issuer. The borrowing schedule shall relate to Obligations to be issued over such period of time, but not less than three months, as the Committee may determine, and may be revised by the Committee from time to time as it deems appropriate or upon the request of an Issuer.

b. To assist the Committee in the preparation of a borrowing schedule the State, each Member Agency, each Non-Member Agency and each participating entity shall submit to the Committee a projection of the approximate dates on which it proposes to issue Obligations during the next twelve months or such period as the Committee deems appropriate. Each Issuer shall furnish to the Committee the type of Obligations to be issued on such dates, the activity, program, or project to be financed by each issue, the proposed maturity date or dates of the Obligations, the aggregate face value of each type of Obligation with similar maturities to be issued on each date, and a statement, where appropriate, setting forth the special circumstances or needs of the Issuer which would require all or part of one or more issue to occur at the time or times proposed by the Issuer, and such other information as the Committee may require.

c. The Committee shall encourage discussion and interchange of information relating to common debt financing problems shared by the Issuers. The discussion shall
be designed to provide the latest information and developments regarding the municipal bond market, to analyze methods that can be used to reduce borrowing and issuance costs or to protect investments and to coordinate efforts to represent the Issuers.

d. New York City, the New York City Housing Development Corporation, the Port Authority of New York and New Jersey and other large local governmental units and public benefit corporations that are not Member or Non-member Agencies but which are frequent and large Issuers of debt shall be invited and encouraged to participate in Committee activities and discussions and in the development of a borrowing schedule.

IV. Meetings

The Committee shall meet no less than four times a year. These meetings, to the extent possible, shall take place in the month preceding each calendar quarter.

V. Salaries; Staff

The Members of the Committee shall serve without salary or other compensation whatsoever other than compensation or other reimbursement received as a public officer of the State or as the chairman or chief executive or operating officer of a Member or Non-Member Agency. Each Member Agency shall make available to the Committee, as required by the Chairman, such employees and services as may be necessary to enable it to perform its duties. The Committee may retain a financial consultant who is not a public officer or a member or employee of a Member or Non-Member Agency.

VI. Procedures of the Committee

The Committee shall adopt such bylaws as it deems necessary and appropriate to regulate the manner in which actions shall be taken by it and to establish procedures for the exercise of its powers and for the submission of such information and data as may be required by it to perform its duties.

VII. Cooperation of State Agencies

All departments, agencies, divisions, and boards of the State, and public corporations shall cooperate with and provide such assistance as the Committee may request.

VIII. Construction

The powers and duties of the Committee and the exercise thereof shall be construed consistently with the powers and duties of the State and the governing body of each Member Agency, Non-Member Agency and participating entity to make findings and decisions, and otherwise to conduct the business of the State and such entity, as prescribed by law, and with the powers and duties of the Public Authorities Control Board and any applicable Financial Control Board to review and approve submissions to it by any Member or Non-Member Agency or participating entity. The failure of the State, a Member Agency, a Non-Member Agency or participating entity to comply with the provisions of this Order, the bylaws of the Committee or the borrowing schedule established by the Committee shall not impair or otherwise affect the validity of any
Obligations issued by the State, a Member Agency, a Non-Member Agency or participating entity or any proceedings authorizing the same.

IX. Revocation of Prior Executive Order and Effective Date

Executive Order No. 61, promulgated on October 24, 1977, is hereby revoked and superseded by this Executive Order as of the date hereof.

GIVEN under my hand and the Privy Seal of the State in the City of Albany this twenty-six day of April in the year nineteen hundred eighty-three
APPENDIX D: NEW YORK STATE
GOVERNMENTAL COST RECOVERY SYSTEM

(Section 67 of Chapter 62 of New York State Laws of 1989)

TITLE 10
GOVERNMENTAL COST RECOVERY SYSTEM

§ 2975. Recovery of stage governmental costs from public authorities and public benefit corporations. 1. Notwithstanding any other provision of law to the contrary, every public authority and every public benefit corporation created by or pursuant to New York state law at least three of whose members are appointed by the governor, whether such authority or corporation is otherwise governed by this chapter (such entities, as so constituted, to be hereafter in this title referred to as "public benefit corporations"), shall reimburse to New York state an allocable share of state governmental costs attributable to the provision of services to public benefit corporations, as determined herein. The payment of such costs by public benefit corporations is a valid and proper purpose for which available authority funds may be applied.

2. (a) Annually the director of the division of the budget of the state of New York (such person to be hereafter in this title referred to as the "director of the budget"), in consultation with the state comptroller, shall determine the total amount of expenses incurred or to be incurred during the state's fiscal year in connection with the provision of central governmental services to public benefit corporations. Such expenses, in addition to the direct costs of personal service, shall include indirect costs of employee benefits, maintenance and operation, state equipment and facilities, rental for space occupied in state leased facilities or the fair market rental value of space occupied in state owned facilities, and contractual services, all as attributable to the provision of otherwise unreimbursed services to public benefit corporations by the New York state department of audit and control, department of law, executive chamber, division of the budget, the legislature, and such agencies, boards or commissions as the director of the budget determines provide such services to public benefit corporations.

(b) On or before August first, nineteen hundred eighty-nine and on or before August first each year thereafter, the director of the budget shall prorate the lesser of: (i) the total amount of the annual expenses determined pursuant to paragraph (a) of this subdivision; or (ii) seventeen million five hundred thousand dollars annually. Public benefit corporations shall be assessed such prorated amounts based upon the proportion of the outstanding debt, consisting of bonds, notes and other obligations of each public benefit corporation, to the total of such debt for such public benefit corporations, as determined by the director of the budget. The director of the budget may reduce, in whole or part, the amount of such assessment if the payment thereof would necessitate a state appropriation for the purpose, or would otherwise impose an extraordinary hardship upon the affected public benefit corporation.

3. The state treasurer shall impose and collect such assessments, which shall be paid no later than December thirty-first following the imposition of the assessments, and pay the same into the state treasury to the credit of the general fund.

4. The provisions of subdivisions two and three of this section shall not apply to any public benefit corporation which enters into a contract or agreement with the director of the budget which otherwise provides for cost recovery to the state and includes a provision that, in accordance with this subdivision, subdivisions two and three of this section shall not apply to such public benefit corporation. The circumstances for the entry into such contract or agreement may include, but shall not be limited to, the following:

(a) where such contract or agreement is for an amount which equals or exceeds the amount of the assessment provided by subdivision two of this section; or

(b) where the payment of all or a portion of the assessment provided by subdivision two of this section would necessitate, in the judgment of the director of the budget, an
appropriation therefor by the state.

5. On or before June first, nineteen hundred ninety, and annually on or before June first, the director of the budget shall report to the respective chairpersons of the assembly ways and means committee and senate finance committee the amount of cost recovery obtained pursuant to this title for the state fiscal year ending on the preceding March thirty-first. In addition, within thirty days from the entry into contracts or agreements pursuant to subdivision four of this section, the director of the budget shall send copies thereof to the chairpersons of the senate finance committee and the assembly ways and means committee.

§ 2976. Cost recovery on the issuance of certain bonds. 1. Notwithstanding any other law to the contrary, on or after June first, nineteen hundred eighty-nine, each public benefit corporation which issues bonds, notes or other obligations shall pay to the state a bond issuance charge upon the issuance of such bonds in an amount determined pursuant to subdivision two of this section. Such charge shall be paid to the state department of taxation and finance, upon forms prescribed therefor, no later than fifteen days from the end of the month within which such bonds are issued.

2. The bond issuance charge shall be computed by multiplying the principal amount of bonds issued by the percentage set for the in the schedule below, provided that: (a) in the case of a pooled financing, where bonds are issued for the purpose of making loans to more than one borrower, the charge shall be determined on the basis of the loan amounts to each such borrower, together with the appropriate allocable portion of the total principal amount of the bond issue which exceeds the sum of such individual loans; (b) the charge applicable to the principal amount of single family mortgage revenue bonds shall be five one-hundredths of one percent; (c) the issuance of bonds shall not include the remarketing of bonds; and (d) the issuance of bonds shall not include the current refunding of short term bonds, notes or other obligation for which the bond issuance charge provided by this section has been paid, provided that such current refunding (i) occurs within one year from the issuance of the refunded obligations, or (ii) is part of a program created by a single indenture or bond resolution that provides for the periodic issuance and refunding for short term obligations.

**SCHEDULE**

<table>
<thead>
<tr>
<th>Principal Amount of Bonds Issued</th>
<th>Percentage Charge</th>
</tr>
</thead>
<tbody>
<tr>
<td>a. $1,000,000 or less</td>
<td>.05%</td>
</tr>
<tr>
<td>b. $1,000,001 to $5,000,000</td>
<td>.10%</td>
</tr>
<tr>
<td>c. $5,000,001 to $10,000,000</td>
<td>.15%</td>
</tr>
<tr>
<td>d. More than $10,000,000</td>
<td>.20%</td>
</tr>
</tbody>
</table>

3. The provisions of subdivisions one and two of this section shall not apply to any public benefit corporation which enters into a contract or agreement with the director of the budget which otherwise provides for cost recovery to the state under this section and includes a provision that, in accordance with this subdivision, subdivisions one and two of this section shall not apply to such public benefit corporation. The circumstances for the entry into such contract or agreement may include, but shall not be limited to, those where the amount to be paid thereunder equals or exceeds the amount of the bond issuance charge which would otherwise be applicable pursuant to subdivisions one and two of this section.

§ 2977. Applicability of title. 1. The provisions of this title shall not be construed to, nor shall they be implemented in such a manner as to:

(a) require the application of monies pledged to the security of bonds, notes or other obligations in violation of applicable bond covenants; or

(b) otherwise impair the rights of bondholders of the public benefit corporations affected by this title.

2. To the extent precluded by interstate or international compact which creates any public benefit corporation, the provisions of this title shall not apply to any such public benefit corporation until the passage of legislation, by the other party to such compact, which validates or has the same effect as this title.
APPENDIX E: NEW YORK STATE ATTORNEY GENERAL'S OPINION

NY Const, Art I, § 6; US Const, Art I, § 10; Public Authorities Law, §§ 550, 563, 566-a, 1263(1)(a), 2975, 2976, 2977; L 1989, Ch 62.

Section 2976 of the Public Authorities Law is applicable to the Series P Bonds issued by the Triborough Bridge and Tunnel Authority and does not result in an unconstitutional impairment by the State of its contractual obligations. Accordingly, the Triborough Bridge and Tunnel Authority must pay the bond issuance charge in connection with the issuance of the Series P Bonds.

December 8, 1989

Hon. Robert R. Kiley
Chairman
Metropolitan Transportation Authority
347 Madison Avenue
New York, New York 10017-3706

Dear Chairman Kiley:

You have asked whether section 2976 of the Public Authorities Law, imposing a bond issuance charge upon the issuance of bonds by certain public authorities and public benefit corporations, is applicable to a series of bonds issued by the Triborough Bridge and Tunnel Authority ("TBTAA") on June 21, 1989, and, if such section is applicable, whether such application is an impairment of the contractual rights of the TBTAA's bondholders in violation of Article I, section 10 of the United States Constitution (the "Contract Clause"). Your letter advises that the bond issuance charge resulting from the TBTAA's June 21, 1989 bond issue was $464,450 and that such amount was due on July 15, 1989. Your letter further states that the TBTAA did not pay the bond issuance charge when due because your bond counsel advised that the application of section 2976 of the Public Authorities Law to the TBTAA's June 21, 1989 bond issue might violate statutory covenants made by the State of New York and, therefore, constitute an unconstitutional impairment of the contractual rights of the TBTAA's bondholders. You have provided us with copies of the bond counsel's opinion letter dated June 21, 1989, and a supporting memorandum of your bond counsel dated April 10, 1989.

Chapter 62 of the Laws of 1989 was approved on April 19, 1989 as part of the 1989 New York State budget. Chapter 62 concerned fees and other charges in connection with certain State activities. Section 67 of chapter 62 (the "Cost Recovery Act") enacted a new title 10 of article 9 of the Public Authorities Law, consisting of new sections 2975, 2976 and 2977.

New section 2975 of the Public Authorities Law requires that public authorities and public benefit corporations created by or pursuant to New York State law, at least three of whose members are appointed by the Governor (such entities are referred to as "the Cost Recovery Act as "public benefit corporations"), must reimburse New York State each year for an allocable share of governmental costs attributable to the provision of services by the State to public benefit corporations, calculated pursuant to a formula.

New section 2976 requires that, on or after June 1, 1989, each public benefit corporation that issues bonds, notes or other obligations must pay to the State a bond issuance charge which is equal to a percentage of the principal amount of the bonds issued. The applicable percentage ranges from .05 percent for principal amounts of $1,000,000 or less to .20 percent for principal amounts of more than $10,000,000. Section 2976 permits a public benefit corporation to enter into a contract with the director of the budget providing for the payment of a bond issuance charge in lieu of that required by section 2976. The statute provides that such contract may be entered into when the amount to be paid thereunder exceeds the bond issuance charge that would otherwise be due, but also indicates that other circumstances may allow the execution of such a contract.

New section 2977 provides that new sections 2975 and 2976 shall not be construed to, or implemented in such a manner as to, (a) require the application of monies pledged to the security of bonds, notes or other obligations in violation of applicable bond covenants, or (b) otherwise impair the rights of bondholders of the public benefit corporations subject to the annual assessments and the bond issuance charges. Finally, section 67 of chapter 62 of the Laws of 1989 contains a severability clause applicable to the Cost Recovery Act providing that if any part thereof is adjudged by any court to be invalid, such judgment shall be limited to the part of the Cost Recovery Act directly involved in the controversy giving rise to such judgment and shall not affect the remainder of the Cost Recovery Act.

The TBTAA is a public benefit corporation created pursuant to sections 550-571 of the Public Authorities Law. Pursuant to section 552(1) of the Public Authorities Law, the chairman and members of the TBTAA are the chairman and members of the Metropolitan Transportation Authority ("MTA"). The MTA and the TBTAA each consist of a chairman and sixteen other members appointed by the Governor (Public Authorities Law, § 1263(1)(a)). Thus, the TBTAA is a "public benefit corporation" subject to the Cost Recovery Act.
In section 563(1) of the Public Authorities Law, the State covenanted with the TSTA's bondholders that the State "will not limit or alter" the TSTA's rights to "establish and collect" revenue sufficient to maintain and operate the TSTA's facilities and to "fulfill the terms of any agreements made with the holders of the bonds", or in any way "impair the rights and remedies of the bondholders" until the bonds, together with all interest thereon, are fully met and discharged. In addition, in section 566-a of the Public Authorities Law, the State covenanted with the TSTA's bondholders that the TSTA bonds, income therefrom, and "all moneys, funds, tolls and other revenues pledged to pay or secure the payment of such bonds, shall at all times be free from taxation ..." (emphasis added).

On June 21, 1989, the TSTA issued $222,225,000 aggregate principal amount of its General Purpose Revenue Bonds, Series P (the "Series P Bonds"). The Series P Bonds were issued pursuant to the TSTA's 1980 Revenue Bond Resolution, adopted July 23, 1980, as amended the "Resolution"). According to your bond counsel's opinion letter, the Series P Bonds were issued on a parity as to lien and security and sources for payment with $2,049,250,000 aggregate principal amount of previously issued and outstanding TSTA General Purpose Revenue Bonds.

In your letter, you maintained that, as applied to the Series P Bonds, the bond issuance charge of section 2976 of the Public Authorities Law authorized the State to take revenues pledged to the TSTA's bondholders and secured by the State's promise not to interfere with such revenue stream and divert such revenues to the State treasury to satisfy budget requirements. For such reason, you suggested that the bond issuance charge did not apply to the Series P Bonds by virtue of section 2977 of the Public Authorities Law. You also argued that the application of the bond issuance charge to the Series P Bonds would violate the State's covenants contained in the above-quoted sections of the Public Authorities Law.

Article I, section 10 of the United States Constitution provides, among other things, that "[n]o State shall ... pass any ... law impairing the obligation of contracts*. We assume for purposes of this opinion that sections 563 and 566-a of the Public Authorities Law constitute a contract between the State and the TSTA's bondholders (see, generally, United States Trust Co. v New Jersey, 431 US 1 [1977]).

The United States Supreme Court has concluded that the threshold inquiry in any Contract Clause case is whether the challenged legislation has operated as a substantial impairment of a contractual relationship (Energy Reserves Group, Inc. v Kansas Power & Light Co., 459 US 400, 411 [1983]; Allied Structural Steel Co. v Spannaus, 438 US 234, 244 [1978]). A number of recent cases illustrate what constitutes a substantial impairment of a contractual obligation in the context of state or municipal bonds. In United States Trust Co. v New Jersey, supra, the Supreme Court invalidated the repeal of a statutory covenant that generally precluded the Port Authority of New York and New Jersey (and the states themselves) from applying any Port Authority revenues or reserves pledged to the Port Authority's bondholders for any railroad purposes other than self-supporting railroads whose annual net income exceeded their annual debt service requirements. Because the Port Authority's surplus revenues were pooled in a general reserve fund that was required to be maintained at specified levels and that was pledged as security to the Port Authority's bondholders, the repeal of the statutory covenant created a risk that funds pledged to the bondholders would be applied to finance the deficits of commuter railroad systems to be acquired by the Port Authority. The Supreme Court noted that the outright repeal of the statutory covenant authorized the Port Authority to assume greater deficits and thus diminish revenues and reserves pledged to the bondholders. According to the Supreme Court, repeal of the covenant totally eliminated an important security provision and thus impaired the obligation of the states' contract.

The New York Court of Appeals applied the analysis of United States Trust Co. in Patterson v Carey, 41 NY2d 714 (1977). In that case, the State passed a law rescinding a parkway toll increase imposed by the Jones Beach State Parkway Authority and imposing a new outside review process for the approval of subsequent toll increases. The State had previously covenanted by statute with the Authority's bondholders that the Authority would be empowered to raise tolls, in its sole discretion, if toll revenues became insufficient to meet the Authority's debt service and operating expenses. The State also pledged not to limit or alter the rights vested in the Authority to the detriment of the bondholders. The Court of Appeals held that the statute, by rescinding the tolls and imposing a new outside review procedure for subsequent toll increases, impaired the State's covenants with the bondholders in violation of both the Federal Contract Clause and the Due Process Clause of the New York State Constitution (NY Const, Art I, § 6). The Court noted