

# **New York State Assembly**







Committee on Corporations, Authorities and Commissions

James F. Brennan Chairman





JAMES F. BRENNAN

**44TH ASSEMBLY DISTRICT** 

KINGS COUNTY

# THE ASSEMBLY STATE OF NEW YORK

CHAIR COMMITTEE ON CORPORATIONS, AUTHORITIES, AND COMMISSIONS

Committees Codes Education Real Property Taxation

ALBANY

December 15, 2013

The Honorable Sheldon Silver Speaker of the Assembly State Capitol, Room 349 Albany, New York 12248

Dear Speaker Silver:

As Chairman of the Assembly Standing Committee on Corporations, Authorities and Commissions, I am pleased to submit the Committee's 2013 Annual Report.

During the 2013 session, among other significant pieces of legislation, the Committee partnered with Attorney General Eric Schneiderman to pass legislation that will comprehensively reform New York's Not-For-Profit Corporation Law. This effort responds to the needs of the non-profit community by creating modern statutes that eliminate unnecessary, burdensome, and costly requirements in the law. It will also enhance governance and oversight requirements to prevent fraud and improve the public's trust of New York's non-profits.

In the 2013-14 state budget, the Committee supported legislation that increased oversight and penalties for investor-owned electric and gas utilities. This new law is designed to improve the response of the state's utilities to widespread outages in order to prevent the length and duration of such outages as occurred due to Hurricane Sandy. It requires utilities to create a comprehensive Emergency Response Plan that will be vetted and approved by the Public Service Commission. In addition, utilities that fail to properly respond to widespread outages will face additional scrutiny and increased penalties.

It has been a privilege to serve as Chairman of the Corporations, Authorities and Commissions Committee. With your continued leadership we look forward to a productive session in the year to come.

Sincerely,

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James F. Brennan, Chairman Assembly Standing Committee on Corporations, Authorities and Commissions

# 2013 Annual Report

New York State Assembly Standing Committee On Corporations, Authorities and Commissions

James F. Brennan, Chairman

# **Committee Members**

#### **Majority**

Catherine T. Nolan Vivian E. Cook Sandra R. Galef William Scarborough Carl E. Heastie Linda B. Rosenthal Brian Kavanagh Addie J. Russell Vanessa L. Gibson Robert J. Rodriguez Thomas J. Abinanti Daniel Quart Phillip Goldfeder Shelley Mayer Ron Kim Walter T. Mosley Steven Otis Nily Rozic

### **Minority**

Jane L. Corwin James N. Tedisco Michael A. Montesano Kenneth D. Blankenbush Nicole Malliotakis Phillip A. Palmesano Christopher S. Friend

#### **Staff**

Christian Malanga, Assistant Secretary for Program and Policy Michael Raymond Hernandez, Associate Counsel Robert L. Franchini, Legislative Analyst Lorrie Smith, Legislative Director Fong Chan, Legislative Counsel Lisa Forkas, Committee Clerk Jeannine Barcher, Program and Counsel Executive Secretary

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# I. INTRODUCTION

The Committee on Corporations, Authorities and Commissions has jurisdiction over the laws concerning private, not-for-profit and public corporations in New York State. Much of the Committee's focus is on the organizational framework and activities of the State's public corporations, largely referred to as public authorities. Public authorities are created in state law, operate at the state and local government level, and provide services such as mass transit, infrastructure building, power generation, and construction services. While these entities perform vital public services, it is imperative that they act with transparency and are held accountable through public oversight. Consequently, the Committee devotes significant time to considering legislation that ensures public authorities accountability and holding public oversight hearings.

During the annual budget process, the Committee reviews funding for transportation authorities and works to ensure that funds are appropriated wisely. New York has a mass transit system in nearly every major population center around the state and each system is run by a public authority. The Committee has a particular interest in the Metropolitan Transportation Authority (MTA), which is the largest mass transit system in the state and has extensive capital requirements.

In addition, the Committee monitors the operations and policies of the New York State Public Service Commission (PSC) as its actions are governed by Public Service Law. The Commission's five Commissioners and the Department of Public Service are required by law to ensure that customers of investor-owned electric, gas, telephone and water utilities in the state provide adequate service at reasonable rates. The Committee takes an active role in protecting consumers by considering important legislation that modernizes and amends Public Service Law.

The Committee also examines legislation affecting the governance of for-profit and not-for-profit corporations in the State. The cemetery corporation, a type of not-for-profit corporation in the state, is under the purview of the Committee and performs a vital public good for the state. Through legislation, the Committee ensures laws affecting corporations remain up-to-date and provide for adequate public oversight.

# **II. COMMITTEE LEGISLATION OF 2013**

# A. <u>Public Authorities</u>

# The following bills were signed into law:

#### A.4844 (Weisenberg)

#### Chapter 26

This chapter extends NYSARC's (formerly known as the New York State Association for Retarded Children) ability to contract with the Dormitory Authority of the State of New York (DASNY) for construction management and financial services until December 31, 2018.

#### A.7072-A (Magee)

#### Chapter 254

This chapter requires the Thruway Authority to transfer a parcel of land located in Madison County to the Madison County Industrial Development Agency (IDA). Within 180 days, the Madison County IDA is required to transfer the land to the International Boxing Hall of Fame under the terms and conditions decided by the IDA. The transferred land is required to be used for the operation of a boxing hall of fame and would revert back to the Thruway Authority if it is not developed within 5 years or ceases to be used for the operation of a boxing hall of fame.

#### A.7246 (Gunther)

Chapter 278

This chapter extends for five years the current authorization that allows the New York State Rehabilitation Association to apply to the Dormitory Authority for financing a construction project.

#### A.7334 (Brennan)

#### Chapter 289

This chapter repeals the authorization for, which in effect dissolves, the Sleepy Hollow Parking Authority and the Western Finger Lakes Solid Waste Management Authority. The chapter also transfers any assets or records (if any) to the municipality where the authority was intended to operate.

### A.7412 (Farrell)

#### Chapter 294

This chapter extends the authorization of Educational Housing Services to seek financing from the Dormitory Authority on dormitory projects located in New York City or Westchester County to December 31, 2018.

#### A.7753 (Rodriguez)

#### Chapter 297

This chapter extends the authorization of Terence Cardinal Cooke Health Care Center to seek financing from the Dormitory Authority to December 31, 2018.

#### A.7924-A (Magnarelli)

#### Chapter 160

This chapter authorizes the Canal Corporation to transfer 3.6 acres of land, known as terminal lands, located in Syracuse's inner harbor to the Office of General Services (OGS). OGS is then authorized to sell the lands at fair market value at a public or private sale.

#### A.7179 (Sweeney)

Chapter 351

This chapter amends the enabling statute of the Judicial Facilities Agency (JFA), a local Suffolk County authority, to include the H. Lee Dennison Building and the North County Complex located in Hauppauge and currently owned by Suffolk County. It would allow the JFA to issue bonds for the purpose of acquiring both buildings from Suffolk County and enter into a lease with the County. The JFA's bonding for this purpose would be subject to state comptroller review prior to approval.

#### A.7993 (Hooper)

Chapter 458

This chapter authorizes the Nassau Health Care Corporation (NHCC) to enter into agreements for the creation and operation of a health care delivery system network. The chapter also grants private entities and/or individuals that NHCC collaborates with immunity from liability under federal and state antitrust laws. NHCC is required to file an annual report with the state Department of Health, in regards to the impact of the collaborations.

#### A.7522-A (Ryan)

Chapter 552

This bill would require the New York Power Authority (NYPA) to complete an audit of the beneficiaries who received either a power allocation or cash payment as part of the federal relicensing agreement pursuant to the Niagara Power Project by June 1, 2014. A report on the results of the completed audit would be required to be posted on NYPA's website and copies would be delivered to the governor and legislature.

### The following bills passed the Assembly:

#### A.3630 (Brennan)

This bill would amend a chapter known as the Public Authority Reform Act of 2009. The bill would by-and-large make changes to Public Authorities Law to clarify many existing provisions such as changing references of "public authority" to "state and local authority" and technical

changes such as including the comptroller or the Authorities Budget Office (ABO) in many existing reporting requirements. It also changes many reporting deadlines to make them more conducive to the different fiscal years that authorities may have.

# A.3643 (Brennan)

This bill would require the Department of Public Service (DPS) to conduct regular management and operations audits of the New York Power Authority (NYPA). Each audit would include a review of NYPA's operations, capital program, debt service obligations, fuel purchases, annual budgeting, compliance with debt covenants, and other core functions. The initial audit would commence with the effective date of this bill and the second audit would start on or before December 15, 2017 and after that repeat at least once every five years. This bill would also require NYPA to hold public hearings to receive comments from the public on the results of the audit in each of the State's four judicial departments. Each audit would also be posted on NYPA's website.

## A.3944 (Brennan)

This bill would apply many of the reforms of the Public Authority Accountability Act of 2005 and Public Authority Reform Act of 2009 to the Port Authority of New York and New Jersey. The bill would require greater oversight by the authority board and increase transparency of the authority's operations.

Specifically, the bill would:

- require the commissioners to create an audit, finance, and governance committee to perform oversight in each of their respective areas of jurisdiction;
- create an inspector general position, appointed by the board of commissioners, with the power of subpoena to investigate complaints or allegations of wrongdoing;
- codify that a commissioner is appointed to a six year term and shall:
  - o perform direct oversight of the chief executive officer;
  - understand, review, and monitor the implementation of the authority's finances, management controls, and operations;
  - o adopt a code of ethics applicable to each officer, director, and employee; and
  - participate in training approved by the inspector general regarding their legal, fiduciary, financial and ethical responsibilities as directors of the Authority;
- require comprehensive guidelines relating to disposal of real property that would be approved by the board of commissioners and available on the authority's website;
- require an annual report on the authority's operations, accomplishments, and finances, including an audited financial report approved by the board;
- require posting an annual report on its web site along with other documents that pertain to its operation and mission;
- require an annual independent audit performed by a certified public accounting firm in accordance with generally accepted auditing standards; and
- create a whistleblower protection system for individuals who report acts of wrongdoing by employees or board members.

### A.4017 (Gabryszak)

This bill would require the New York Power Authority (NYPA) to file an annual report with the governor, the comptroller, legislature, and Authorities Budget Office that conform in the exact manner that is applicable to electric companies under subdivision six of section 66 of Public Service Law. The bill would also require NYPA to conform to the uniformed system of accounts as prescribed by subdivision six of section 66 of Public Service Law. The first annual report would be due March 31, 2016, and annually thereafter.

## A.5410 (Weprin)

This bill would change the composition of the NYC Water Board. It would keep the existing seven member configuration, but appointments to the board would be as follows:

- four members appointed by the mayor;
- one member appointed by the speaker of the NYC city council;
- one member appointed by the comptroller of NYC; and
- one member appointed by the public advocate of NYC.

Current law allows the mayor to make all seven appointments to the water board. In addition, the chairman of the board would be elected by board members instead of being selected by the mayor and each appointee would be confirmed by the city council.

### A.5587 (Brennan)

This bill would limit employee compensation paid by public authorities to salaries and benefits that are comparable to those of civil service employees and, if applicable, reimbursement of expenses. Public authorities would be prohibited from providing bonuses to any employee unless it is performance based and ratified by a public authority's board of directors. All bonuses of any nature to an authority board member would be prohibited.

# **B.** Mass Transit Operations and Finance

## The following bills were signed into law:

### A.1457 (Thiele)

Chapter 182

This law includes police officers employed by the towns in Suffolk County in the current fare exemption program run by the Long Island Rail Road (LIRR). The current statute includes police officers employed by the City of New York, the county, cities, and villages of Nassau County, the county and villages of Suffolk County, and the State Police in the fare exemption program.

## The following bills passed the Assembly:

#### A.25-B (Farrell)

This bill would require the MTA to establish rules and regulations that require at least one cash toll booth at any of its highways, bridges, tunnels or thoroughfares in New York City with an electronic toll system.

#### A.280-B (Kim)

This bill would require the Metropolitan Transit Authority (MTA) to create, adopt, and post publicly a "Pledge to Customers." The pledge would contain the authority's contact information and an explanation of its service standards to the Authority's customers.

#### A.945 (Kellner)

This bill would create the MTA Riders' Council for People with Disabilities to study, investigate, monitor and make recommendations on accommodating the needs and convenience of riders with disabilities. The council would consist of fifteen members who regularly use the transportation services of the MTA and have a disability as defined by any applicable state or federal law.

Members would be appointed by the governor for a term of two years and upon recommendation by the Mayor of New York City, the New York City Council President, the New York State Comptroller, and by each of the five borough presidents. Outside of the New York City metropolitan area, the governor would receive a recommendation from each county executive of Nassau, Suffolk, Westchester, Rockland, Putnam, Dutchess, and Orange Counties. Members would not be compensated, but would be reimbursed for actual and necessary expenses incurred in the performance of their duties. If funding was available, the Council may expend resources as necessary for support services and the council may request assistance or data from State entities.

The bill would also add an additional non-voting member to the MTA board appointed by the governor upon the recommendation of the council.

#### A.2347 (Rozic)

This bill would require the MTA to submit annual reports beginning July 1, 2014 on assaults, including sexual assaults, attacks, injuries or deaths reported to or otherwise known to it in connection with its facilities and premises. The bill would also require a separate report on incidents of injury or death related to physical infrastructure, safety, conditions, security, and other health hazards and recommendations to reduce incidents.

# C. Corporations Law

# The following bills were signed into law:

## A.7245-A (Ryan)

Chapter 372

This chapter increases the number of potential board members for a state approved land bank from 11 to 15. It also makes a technical correction to allow a land bank to purchase a foreclosed property that is being auctioned pursuant to a sale authorized through county charter, city charter, administrative code, or special law.

#### A.8072 (Brennan)

Chapter 549

This bill is an Attorney General program bill and would amend the Not-for-Profit Corporation Law (N-PCL), the Estates Powers and Trusts Law (EPTL), and Article 7-A of the Executive Law, with the goal of reducing unnecessary and outdated burdens on non-profits and enhancing not-for-profit governance and oversight. Provisions in the bill also seek to reduce fraud and improve public trust of not-for-profits providing services to New Yorkers.

# The following bills passed the Assembly:

#### A.4946 (Kavanagh)

This bill would allow a corporation's board of directors to authorize electronic participation at a shareholders' meeting of the corporation. It would also allow shareholders to cast a vote or proxy on matters before the shareholders via electronic communication.

# D. Telecommunications and Utilities

# The following bills were signed into law:

#### A.5466-A (Morelle)

#### Chapter 389

This chapter allows a telephone corporation to post its landline rates related to non-basic retail service on its website rather than submitting them to the Public Service Commission (PSC) as a tariff. If a telephone corporation posts its rates on its web site, it would be exempt from all the provisions and requirements of section 92 of the Public Service Law (PSL). It also allows a telephone corporation to withdraw currently submitted rates from the PSC and post its rates on its website. A customer would have 30 days to opt out of a non-basic service before the new rate goes into effect.

The chapter also requires a telephone corporation to submit a customer service guide to the commission annually. The customer service guide will have a listing and description of all non-basic retail services and the commission may order additional requirements. The customer service guide will be made available to any requesting customer.

#### A.6381-A (Crespo) Chapter 202

This chapter requires providers of telephone service to provide a new telephone number to victims of domestic violence at no cost to the customer.

#### A.4086-A (Paulin)

#### Chapter 433

This chapter authorizes a city, town or village located in the county of Westchester to apply to the Public Service Commission to have the costs for fire hydrant access and maintenance charged to all water customers across all customer classes provided that it is in the public interest and a public hearing is held.

#### A.5556 (Buchwald)

#### Chapter 521

This chapter amends the Public Service Law to clarify that the Public Service Commission (PSC) shall consider complaints regarding the duration of outages when the PSC is being petitioned to open an investigation. It also requires the PSC to post an online form to its website with instructions to request an investigation under section 71 of the Public Service Law.

# The following bills passed the Assembly:

#### A.145-A (Nolan)

This bill would increase the current penalties associated with causing damage or doing harm during excavation or demolition in an underground facility. Currently, those found in violation are fined \$2,500 and \$10,000 for each subsequent violation. The new fines would be \$5,000 and \$15,000 respectively.

#### A.860 (Weprin)

This bill would prohibit a utility corporation or municipality from penalizing a customer with a late fee if the payment was made to an authorized payment center (i.e., a third party customer service desk) on or before the due date provided by the utility corporation or municipality. In addition, the bill would prohibit any party representing twenty or more residential units from acting as a payment agent without a written agreement with an electric corporation. The bill specifically exempts a family member, volunteer caregiver, or personal business manager from the written agreement requirement and would continue to be authorized to pay a utility bill on behalf of a customer. The bill would also require that electric corporations get prior approval from the Public Service Commission on contracts with an authorized payment agent where the payment agent will hold \$50,000 or more at any one time in payments that are due to be remitted to an electric corporation.

#### A.6524-B (Mayer)

This bill would require the Public Service Commission (PSC) to conduct annual regional public hearings in the six major service areas of New York's electric corporations. Prior to each hearing, the PSC would be required to issue a report on the electric corporation's performance and notify the general public and elected officials. The purpose of the hearing would be to solicit public comment on the quality of service along with other issues related to the performance of the local electric corporation.

#### A.6567 (Brennan)

This bill would allow the Public Service Commission to send an order by email or other electronic means to a person or corporation. Hand delivered paper orders would still be available upon request.

#### **A.7167-D** (Paulin)

This bill would allow a telephone corporation to apply to the Public Service Commission (PSC) for consent to receive a federal loan to expand broadband services. The PSC would have 60 days to make this determination or the application would be deemed approved. The bill would also grant a telephone corporation explicit permission to receive proceeds from a federal loan for the expansion of broadband services.

#### A.7635-A (Brennan)

This bill would extend and add requirements to a current Public Service Commission order (13-C-0197) which allowed the copper based telephone line system on Fire Island to be replaced with a wireless telephone system. It would suspend the practice of using a wireless telephone system to replace a landline system for an additional six months unless the telephone corporation has a customer's consent or an order from the PSC. The bill would also require an additional report by the commission to the legislature on the performance of the wireless telephone system which would be due April 1, 2014.

# E. <u>Vetoes</u>

## A.3182-A (Brennan)

### Veto Memo 207

This bill would have placed the State Cemetery Vandalism Restoration Fund under the sole jurisdiction of the State Cemetery Board. It also would have required the money in the fund to be spent solely for the purposes of vandalism repair at not-for-profit cemeteries. The Comptroller would have received an annual report from the State Cemetery Board on the fund and the applications it approved.

#### A.31 (Rosenthal)

#### Veto Memo 239

This bill would have required the MTA to hold hearings only once per calendar day in each of the counties affected by fare or major service change. The hearing requirement would not apply for standard seasonal or holiday adjustments in service.

### A.6249 (Brennan)

#### Veto Memo 238

The bill would have directed the New York City Transit Authority and the Metropolitan Transportation Authority to report to the governor and the legislature on all transportation service reductions and eliminations that have occurred since January 1, 2008. The report would have detailed actual revenue savings as compared to anticipated savings for each route; the cost to fully restore each such change; a detailed plan for full restoration or a detailed plan for equitable restoration of subways, buses and commuter rail that substantially mitigate the impacts of the cuts and eliminations and fairly restores services through all neighborhoods and regions. The report would have been due December 31, 2013.

#### A.7697 (Titus) Veto Memo 248

This bill would have required the Port Authority of New York and New Jersey to conduct a noise and land use compatibility study on its land surrounding its airport terminals and hold public hearings on the study.

#### A.5443 (Brennan) Voto Momo 261

# Veto Memo 261

This bill is related to filing a claim against the NYC School Construction Authority (SCA) and would clarify that in the case of an action or special proceeding for monies due arising out of contract, accrual of such claim shall be deemed to have occurred as of the day payment for the amount claimed was denied upon written notice by the SCA on the party to the contract.

# A.7367-A (Ryan)

# Veto Memo 282

This bill would have amended the enacting statute of the Buffalo and Fort Erie Public Bridge Authority regarding the Peace Bridge to have an expiration date to July 1, 1992. If the authority were to have outstanding bonds, it would remain active and functioning until those bonds were paid off.

# **III. PUBLIC HEARINGS OF 2013**

Public Hearing 1: Obtaining information regarding the future policies, planning and finances of the MTA January 11, 2013 10:30 a.m. New York City

In January 2013, the Corporations, Authorities and Commissions Committee held a hearing to solicit information and public testimony from the Metropolitan Transportation Authority (MTA) on its operations and finances. This hearing also served as an opportunity to discuss the impact of Hurricane Sandy on the MTA and examine the MTA's current policies and future plans with transit advocates.

# **IV. OUTLOOK FOR 2014**

In 2014, the Committee on Corporations, Authorities and Commissions plans to hold a public oversight hearing on the Metropolitan Transportation Authority (MTA). The Committee may also do further hearings or investigations of other public authorities in the following year.

The Committee will continue to consider legislation aimed at overseeing the spending and operations of public authorities. While significant progress was made with the enactment of major public authority reform laws in 2005 and 2009, the Committee will continue to report reforms that increase transparency and accountability. The Committee also will continue to spend significant time overseeing the MTA which provides critical transportation services to New Yorkers and faces unique challenges. In overseeing utilities and the telecommunications industry, the Committee will continue to support legislation that modernizes Public Service Law.

# APPENDIX A 2013 SUMMARY SHEET

#### 2013 SUMMARY OF ACTION ON ALL BILLS REFERRED TO THE COMMITTEE ON CORPORATIONS, AUTHORITIES AND COMMISSIONS

Final Disposition of Bills	Assembly	Senate	Total
Bills Reported With or Without Amendment			
To Floor; Not Returning to Committee	7	0	0
To Floor; Recommitted and Died	0	0	0
To Ways and Means	30	0	0
To Codes	12	0	0
To Rules	5	0	0
To Judiciary	0	0	0
Total	54	0	54

## Bills Having Committee Reference Changed

To Energy	1	0	0
To Higher Education	1	0	0
To Local Government	2	0	0
To Ways and Means	1	0	0
Total	5	0	5

#### Senate Bills Substituted or Recalled

Substituted	5	0
Recalled	2	0
Total	7	7

Bills Defeated in Committee	0	0	0
Bills Never Reported, Held in Committee	279	23	302
Bills Never Reported, Died in Committee	0	0	0
Bills Having Enacting Clauses Stricken	7	0	7
Motions Discharge Lost	0	0	0

Total Bills in Committee	344	30	374
Total Number of Committee Meetings Held			8

# APPENDIX B BILLS THAT BECAME LAW

<u>Chapter #</u>	<u>Sponsor</u>	<u>Bill #</u>	Description
26	Weisenberg	A.4844	Extends the authority of the New York State Association for Retarded Children, Inc. to maintain bonds
160	Magnarelli	A.7924-A	Authorizes the New York State Canal Corporation to abandon certain lands and authorizes such Corporation to sell and convey such lands
182	Thiele	A.1457	Authorizes a no-fare program for transportation on the Long Island Rail Road for police officers employed by the towns of Suffolk
202	Crespo	A.6381-A	Relating to providing new telephone numbers without charge for certain victims of domestic violence
254	Magee	A.7072-A	Authorizes the New York state thruway authority to convey certain land located in the village of Canastota, county of Madison
278	Gunther	A.7246	Extends provisions of law relating to the bonding authority by the dormitory authority for the New York State rehabilitation association
289	Brennan	A.7334	Repeals certain provisions of law relating to the Sleepy Hollow parking authority and the Western Finger Lakes solid waste management authority
294	Farrell	A.7412	Relating to the powers of subsidiaries of the Educational Housing Services Inc.
297	Rodriguez	A.7753	Extends, until December 31, 2018, the expiration of chapter 384 of the laws of 1998, relating to the powers of the Terence Cardinal Cooke health care center
351	Sweeney	A.7179	Relates to the construction of the H. Lee Dennison Building
372	Ryan	A.7245-A	Provides that a land bank may tender a bid on sales of property made pursuant to public sale, county charter, city charter, administrative code or special law, when no municipality elects to do so

<u>Chapter #</u>	<u>Sponsor</u>	<u>Bill #</u>	Description
389	Morelle	A.5466-A	Relates to publication of rate schedules by telephone corporations
433	Paulin	A.4086-A	Authorizes the Public Service Commission, upon application by a municipality, to order costs for infrastructure maintenance and access to be charged to all customer classes
458	Hooper	A.7993-A	Authorizes the Nassau Health Care Corporation to enter into contracts and arrangements providing for the creation and operation of a delivery system network