

EXECUTIVE ORDERS

Executive Order No. 135: Establishing the New York State Commission on Public Authority Reform.

WHEREAS, public authorities have made valuable contributions to New York State by financing, constructing and operating capital improvements that benefit the public and by working with public and private sector partners to spur economic development and meet public needs;

WHEREAS, New Yorkers support the activities of public authorities in areas such as transportation, education, economic development, health care, energy, housing and the environment through rates, tolls, fares, and user fees;

WHEREAS, building on sweeping reforms, innovations and improvements that have been made since 1995 to enhance services for New Yorkers and increase the effectiveness, accountability and openness of state government and public authorities, I established the Public Authority Governance Advisory Committee last year to work with the State's public authorities to improve oversight, accountability and transparency;

WHEREAS, while the Public Authority Governance Advisory Committee, chaired by renowned corporate governance expert Ira Millstein, has made tremendous progress in working with the State's public authorities to improve oversight and promote accountability and openness, more can be done in this area; and

WHEREAS, while state law has established hundreds of public authorities, there has been no systematic review by the State to determine whether there is duplication or the unnecessary provision of services;

NOW, THEREFORE, I, George E. Pataki, Governor of the State of New York, by virtue of the authority vested in me by the Constitution and Laws of the State of New York, do hereby order as follows:

I. DEFINITIONS

1. "Public authority" shall mean: (a) any public authority, public benefit corporation or commission created by or existing pursuant to the Public Authorities Law; (b) a public authority or public benefit corporation, at least one of whose members is appointed by the Governor or who serves as a member by virtue of holding a civil office of the State; (c) a local industrial development agency or other local public benefit corporation; or (d) a subsidiary or affiliate of such a public authority.

2. "Public authority board" shall mean the governing body of a public authority.

II. NEW YORK STATE COMMISSION ON PUBLIC AUTHORITY REFORM

1. There is hereby established the New York State Commission on Public Authority Reform ("Commission"), which shall consist of

thirteen members appointed by the Governor, including: (i) one member who shall be appointed upon the recommendation of the Temporary President of the Senate; (ii) one member who shall be appointed upon the recommendation of the Speaker of the Assembly; (iii) one member who shall be appointed upon the recommendation of the Minority Leader of the Senate; (iv) one member who shall be appointed upon the recommendation of the Minority Leader of the Assembly; (v) one member who shall be appointed upon the recommendation of the State Comptroller; and (vi) one member who shall be appointed upon the recommendation of the Attorney General. The members of the Commission shall have experience and expertise in the fields of public administration, management, finance or other relevant disciplines. No member shall be a public officer or employee. The Governor shall designate the Chair from among the members.

2. A majority of the members on the Commission shall constitute a quorum and a majority of the members present shall be necessary to approve any action of the Commission.

3. The members of the Commission shall receive no compensation for their services, but shall be allowed their actual and necessary expenses incurred in the performance of their duties pursuant to this Order.

4. The Chair shall retain, and at his or her pleasure, remove an Executive Director and such other personnel as he or she may deem necessary for the performance of the Commission's duties pursuant to this Order and shall fix their compensation within amounts made available therefor. The Chair may contract with outside experts and organizations as he or she may deem necessary, within amounts made available therefor.

III. FUNCTIONS, POWERS AND DUTIES OF THE COMMISSION

1. General Provisions. The Commission shall have the power to study, review and evaluate the operations and practices of public authorities and advise and assist public authority boards in developing and adopting model governance principles to strengthen external oversight, management accountability, internal operations and public disclosure practices.

2. Elimination, dissolution, consolidation or merger of public authorities. The Commission shall be authorized to review the statutory intent, public purpose and mission of any public authority and recommend and report to the Governor and the Legislature regarding: (a) the elimination or dissolution of any public authority; (b) the discontinuance of any program, operation or activity of any public authority; (c) the consolidation or merger of one or more public authorities; (d) the realignment of any function of any public authority by transferring such function to a State agency or other public authority; and (e) the modification of the purpose and mission of any public authority.

3. Governance. The Commission shall develop model principles for the effective governance of public authorities, which shall, at a

minimum, address: (a) formal training of public authority board members and senior management on their legal, fiduciary, ethical and personal responsibilities; (b) the separation of oversight and executive functions; (c) guidelines governing the independence of public authority board members; (d) the organization and structure of the public authority board and its committees, including the establishment of audit and management committees; (e) methods of attracting highly qualified individuals to serve on public authority boards; (f) the establishment of codes of conduct governing honest and ethical conduct by public authority directors, officers and employees; (g) policies regarding the procurement of goods and services, the acquisition of real property and the disposition of real and personal property; and (h) the internal control, management and operational roles of public authority board members and executive staff.

4. Salary and compensation for public authority management. The Commission shall review the salary and other compensation provided to senior managers of authorities, and the policies and procedures by which the authority determines and modifies the salary and compensation of such managers. The Commission shall also review the salary and other compensation, if any, provided to members of authority boards, and the policies and procedures by which the authority determines and modifies the salary and compensation of such managers. In carrying out these responsibilities, the Commission shall consider the level of salary and other compensation offered in comparable positions.

5. Public disclosure of financial information. The Commission shall recommend policies governing the process by which public authorities are to make financial information public, including recommendations for adoption of a standard reporting format and level of detail for disclosing such information. The Commission may also recommend policies governing the circumstances under which the chairpersons and members of public authority boards, as well as the chief executive officers and chief financial officers of public authorities, must attest to the accuracy and completeness of such information and reports.

6. Audit requirements. The Commission shall recommend policies governing the responsibilities and reporting practices of internal auditors at public authorities, which may include requiring internal auditors to direct authority-wide internal audit functions and report directly to the audit committee. In addition, the Commission shall develop guidelines governing the conduct of annual independent financial audits of public authorities, including the requirements for independence of such auditors and responsibilities of the independent auditor for testing the adequacy on a public authority's internal control structure. The Commission may also provide guidance on the feasibility of requiring public authorities to establish audit committees, the structure and composition of such a committee and its relationship with the independent auditor.

7. Compliance with model governance principles. The Commission is authorized to review the operations and practices of public authorities and monitor the compliance of public authorities with established principles of model governance.

8. Reports. The Commission shall issue a final report to the Governor and the Legislature on its findings and recommendations as soon as practicable and may issue interim or supplemental reports in its discretion. In issuing its reports, the Commission shall consider, and may recommend, legislation to effectuate its findings or recommendations.

9. Assistance from other state entities. The Commission may request and shall receive from any public authority or department, division, board, bureau, commission or agency of the state or any

political subdivision thereof such assistance, data and cooperation as is necessary to enable the Commission to carry out the powers and duties described herein.

(L.S.)

GIVEN under my hand and the Privy Seal of the State in the City of Albany, this third day of February in the year two thousand five.

BY THE GOVERNOR
/s/ George E. Pataki
/s/ John C. Cahill
Secretary to the Governor