



- *Accountability*
- *Transparency*
- *Integrity*

Operational Review

**Nelson A. Rockefeller Empire State
Plaza Performing Arts Center
Operating Corporation**

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Executive Summary

Purpose and Authority:

The Authorities Budget Office (ABO) is authorized by Title 2 of the Public Authorities Law to review and analyze the operations, practices and reports of public authorities, to assess compliance with various provisions of Public Authorities Law and other relevant State statutes, and to make recommendations concerning the reformation and structure of public authorities. This includes rendering conclusions and opinions regarding the performance of public authorities and assisting these authorities improve management practices and the procedures by which their activities and financial practices are disclosed to the public. Our operational review of the Nelson A. Rockefeller Empire State Plaza Performing Arts Center Operation Corporation was performed between September and November 2012 and was conducted in accordance with our statutory authority and compliance review protocols which are based on generally accepted professional standards. The purpose of this review was to assess whether the public authority model is the best form of governance for the Empire State Performing Arts Center, commonly known as the Egg, or if the Egg would be better served under a different management or operating model. This review also evaluated the management and operating practices of the Authority.

Background Information:

The Nelson A. Rockefeller Empire State Plaza Performing Arts Center Operating Corporation (the Authority) was established in 1979 to manage the performing arts facility, known as the Egg, at the Nelson A. Rockefeller Empire State Plaza. The Authority is governed by an 18 member board of directors appointed by various State and local government officials. The day to day operations of the Authority are managed by an Executive Director. The Egg is owned by the State of New York and leased to the Authority. Maintenance for the Egg is the responsibility of the New York State Office of General Services (OGS). The Authority is to be billed for a portion of these costs pursuant to the terms of a Memorandum of Understanding (MOU). OGS billed the Authority \$95,000 for 2011-12, and \$97,850 for 2012-13.

The Egg's performing arts facilities consist of two theaters and adjacent lounge space that are available throughout the year to host public performances and private events. The Authority

generates revenue from ticket sales, rental income, State funding, grants, and private and corporate contributions. During the fiscal year ending March 31, 2012, the Authority held 142 events at the Egg and reported \$1.53 million in total revenue. State appropriations accounted for 14 percent of this total. Operating costs of the Authority were \$1.67 million. The Authority has incurred annual operating losses since 2008-09. As a result, the Authority has relied on an accumulated fund balance from prior years and withheld payments to OGS for its billed share of the Egg's operating costs to sustain operations.

Results:

While the Authority has a number of longstanding dedicated board members, its current management structure is not working. Its financial position is weak. Its board of directors exercises limited financial oversight and governance due to consistent absenteeism and prolonged delays with filling vacancies. Its administrative costs are consuming an increasing portion of the budget, despite the adoption of cost cutting measures. The Authority has been unable to compensate for the loss of state funding and ticket sales with increased revenues from outside sources. The Authority is currently unable to reimburse the state for even a reduced share of costs absorbed by the Office of General Services (OGS) to maintain the Egg as a viable facility.

We also found the Authority exercises an informal approach to management, resulting in poor controls over certain financial operations and lack of compliance with the Authority's enabling statute and established policies. Further, we found that the Authority is taking on activities unrelated to management of the Egg.

Given these issues, we believe that the state should consider whether the Egg would be better served by being managed by OGS. OGS currently manages the Empire Plaza Convention Center and other facilities adjacent to the Egg, and provides maintenance and custodial support to the Egg. Since OGS also sponsors a variety of publicly attended activities throughout the Empire State Plaza, it has the management expertise and staff necessary to assume this responsibility. Furthermore, transferring control of the Egg to OGS would address the apparent difficulty being experienced with naming new directors or filling vacancies. Accordingly, it may be more efficient and cost-effective to have a single organization coordinate, market, host, and manage all events at the Plaza.

Introduction and Background

The Nelson A. Rockefeller Empire State Plaza Performing Arts Center Operating Corporation (the Authority) was established in 1979. Its statutory purpose is to manage the performing arts facility, known as the Egg, at the Nelson A. Rockefeller Empire State Plaza. According to its mission, the Authority is to select, schedule, promote and conduct events, as well as establish ticket and rental prices, adopt rules and regulations for the use of the facility, arrange for ticket sales, and provide other support functions necessary to hold events. The Egg is to be used for civic, governmental, artistic and other cultural and public events. The Egg was initially intended to be the permanent residence of the Empire State Youth Theater Institute, but this relationship ended in 1992.

The Authority is governed by an 18 member board, comprised of the following appointees: nine members appointed by the governor, one of which is the Chair; two members each appointed by the Temporary President of the Senate and the Speaker of the Assembly; one member each appointed by the Minority Leader of the Senate, the Minority Leader of the Assembly, the Mayor of Albany, and the Albany County Executive; and the Commissioner of the New York State Office of General Services. Board members do not serve fixed terms of office, but serve at the pleasure of their appointing authority, until such time as their successors have been appointed. The Authority exists until all its liabilities have been met or discharged and until its existence is terminated by law. Upon termination all of its rights and property pass to the State.

The Egg is owned by the State of New York and leased to the Authority by the New York State Office of General Services (OGS), under the terms of a memorandum of understanding (MOU). According to the MOU, the Authority manages the facility, but OGS provides maintenance, utility and custodial services, as it would at any other state owned building. The Authority is required by statute to pay OGS a portion of its overhead costs. For 2011-12, OGS agreed to bill the Authority \$95,000, although its total cost for maintaining the facility exceeded \$570,000. Similarly, OGS billed the Authority \$97,850 for 2012-13.

The Egg includes two theaters: the Kitty Carlisle Hart Theater which seats nearly 980 and the Lewis A. Swyer Theater which seats 445. Each theater offers an adjoining lounge area, storage space, backstage dressing rooms and ancillary space. In addition to the theaters, the Egg has two studios, three classrooms, two offices, and additional storage areas. These areas are not fully utilized by the Authority but are rented as needed to other arts organizations.

The Authority has developed programs for a variety of audiences and artists, including dance, family and educational shows, music, and theatre. In addition, it has taken on special initiatives and projects highlighting various New York State performing artists. The Authority is also working with the New York State Council

on the Arts to develop a database for New York State presenters and performing artists and provide touring and funding opportunities.

The Authority has six full-time staff: an Executive Director, a Business Manager, a Box Office Manager, an Operation and Production Manager, a Production Coordinator, and an Operations Assistant. It also employs one part time Administrative Assistant and approximately 38 part-time event-specific staff. They include an assistant event manager, elevator operators, stage hands, and electrical, audio or carpentry staff.

The Authority receives revenue from ticket sales, rental income, concessions, state assistance, private contributions, and other sources. For the fiscal year ending March 31, 2012, the Authority held or hosted 142 events. It had income of \$1,535,937. Operating expenses totaled \$1,674,959. The Authority received \$220,000 in State appropriations for 2012-13; down almost 60 percent since 2009-10.

Compliance Review Objectives

The Authorities Budget Office (ABO) is authorized by Title 2 of the Public Authorities Law to review and analyze the operations, practices and reports of public authorities, assess compliance with various provisions of Public Authorities Law and other relevant State statutes, and make recommendations concerning the reformation and structure of public authorities. This review focused on whether a public authority is the most effective corporate governance model for the Egg, or whether the state should consider other management options. It also assessed the effectiveness of the Authority's current governance structure.

Compliance Review Scope and Methodology

Our compliance review was conducted between September 2012 and November 2012, and covered authority operations since April 2011. To perform our review we relied on the following documentation and data sources:

- Financial records of revenues and expenditures
- Independent financial audits and other reports
- Payments made to vendors
- Information relative to events held at the Egg
- Contractual agreements
- Board meeting minutes
- Policies and procedures indicative of good governance practices
- Financial information for select local performing arts facilities

Staff, management and board members were interviewed; the ABO attended an Authority board meeting; toured Authority facilities; interviewed officials of other local performing arts facilities and performed other testing we considered necessary to achieve our objectives. Our report contains recommendations to

improve the management structure of the Egg facility. The results and recommendations of our review were discussed with appropriate officials, and these responses are reflected in this report where appropriate.

Review Results

The Authority currently operates at a deficit. While the Authority has taken significant steps to reduce costs, these actions have not kept pace with declining revenues. Moreover, as revenue from non-state sources declines, administrative and management costs consume an increasingly higher percentage of total expenses. For the past two years, the Authority has been unable to reimburse the state for its billed share of the cost of operating the Egg, as required by law.

We are also concerned that the Authority appears to suffer from a lack of cohesion, exhibited by a high degree of absenteeism at board meetings, persistent vacancies on the board, and an inability to develop and adopt a coherent plan to address the Authority's financial situation.

In addition, we found that the current board's limited fundraising has been inadequate to offset the loss of state support and other revenues. We also found the Authority's management approach to be informal, resulting in poor controls over certain financial operations and a lack of compliance with established policies and procedures. We found too that, despite its financial position, the Authority is taking on activities that are not within the scope of its statutory responsibility.

For these reasons, we believe it is in the interest of the state and the future success of the Egg to evaluate alternative management and governance structures. Other government owned performing arts venues are managed by outside, private firms or not-for-profit entities that do not rely on government subsidies to maintain operations.

Activity at the Egg

During 2011-12, the Authority sponsored or hosted 142 events at its two theaters and adjacent lounges. The most common were its 93 public performances. These events were open to the general public and generated revenue through ticket sales, concessions, and merchandise sales. Sixty-three (63) of those performances were sponsored by the Authority, which assumed all financial risk for the event. If revenues do not cover the costs of the performance, the Authority incurs the loss.

The remaining 30 public events involved a rental agreement with a promoter or performance group. For these events, the Authority assumes limited financial risk. The renting entity pays a base rent for the use of the Egg, as well as all direct costs incurred by the Authority for the performance. In addition, the Authority receives a portion of the revenue from ticket sales sufficient to cover the support costs associated with the event. The renter relies on ticket and merchandise sales to cover its costs.

These 93 public events were attended by 52,668 people. For events held in the larger Hart Theater, the average attendance was 602 patrons, or about 61 percent of capacity. For the events in the smaller Swyer Theater, the average attendance was 294, or 66 percent of capacity. Overall, the public events averaged 62 percent of capacity.

The remaining 49 events held at the Egg were private events. Private events are rentals of the Egg by various organizations for their own use, such as seminars, conferences, graduations, state government functions, or other occasions. For these events, the organization holding the event pays a base rent for the use of the Egg, as well as fees for other direct costs incurred by the Authority to support the event, such as labor for set up, or equipment rentals.

Unsustainable Financial Position

The Authority has had operating losses since fiscal year 2008-09. As the Table shows, the Egg has experienced both a decline in state funding and a decrease in total revenue during this time. While the Authority has reduced its total expenses by 25 percent, these spending reductions have not fully offset the 27 percent drop in revenue. Moreover, during this period the Authority has seen a growing percentage of its costs going to support its management structure, with fewer dollars devoted to support its programming. In 2008-09, the Authority's budget was about equally divided between program and administrative costs. By 2011-12, expenditures on programming had declined to 43 percent of the Authority's budget, while administrative and management costs had increased to 57 percent of the budget.

Authority officials responded that a combination of cancelled performances and programming adjustments reflect its current financial challenges and lower artist fee commitments caused the shift between programming and administrative costs. They indicated that fiscal year 2011-12 was an extraordinarily poor year, and that they expect 2012-13 to improve. The Authority argues it lowered its financial risk without compromising quality and with minimal reduction in its programming schedule. We acknowledge that the Authority has taken actions to reduce its total costs. It appears, however, that the Authority made a decision to reduce its programming costs by 40 percent (events that generate revenue) while not taking commensurate action to reduce administrative costs (as evidenced in the table). For example, at the March 2012 Board meeting, following a discussion of its failure to identify new revenue sources and cost controls to balance the budget, and disclosure that the accumulated fund balance was nearly depleted, the board approved a two percent salary increase for staff.

	2008-09	Percent of Total	2011-12	Percent of Total	Percent Change
Total Revenues	\$2,110,665		\$1,535,937		-27%
State Appropriation	\$584,000	28%	\$220,000	14%	-62%
Total Expenditures	\$2,233,592		\$1,674,959		-25%
Programming	\$1,213,528	54%	\$722,371	43%	-40%
Management	\$1,022,292	46%	\$952,588	57%	-7%

Despite a reduction in the state's appropriation, the Authority remains dependent on the New York State Office of General Services (OGS) assuming a significant portion of the Egg's operating cost, which exceeds \$570,000 annually. As stipulated in its MOU with OGS, the Authority was only billed \$95,000 for these support services (16 percent of the total costs) for 2011-12. For 2012-13, according to Authority officials this fee increased 3 percent to \$97,850. Even though this reimbursement covers only a small part of the total cost, the Authority has been unable to make this payment. The Authority has found it necessary to withhold payments in order to meet its payroll obligations and administrative costs. As of March 31, 2012 the Authority has a balance owed to OGS of \$189,850. Authority officials responded that this action was taken with the agreement of OGS, and that the balance owed is reflected in the Authority's recent annual deficits.

We do not believe that the poor financial condition of the Authority is caused by the Authority's choice of programming. Revenues are more than sufficient to cover the direct costs of providing those events, such as artist fees, advertising, and onsite day of performance personnel. We reviewed the profit and loss statements for the 63 public performances sponsored by the Authority and found that, in general, these events are profitable. For 2011-12, the total direct expenses for these performances totaled \$738,995. Gross income totaled \$805,400, resulting in an overall profit of \$111,148. Further, public performances sponsored by other entities and private events are profitable for the Authority, since all costs incurred are passed on to the entities sponsoring the events as part of the rental agreements. For 2011-12, the Authority received approximately \$320,000 in rental revenues for such use.

What is apparent is that profits from ticket sales and rental income are insufficient to cover the Authority's administrative and overhead costs, which are consuming an increasing proportion of the Authority's budget. The Authority must, in some combination, increase attendance at its public events, schedule more public and private events each year, or reduce its operating costs.

Lack of Board Cohesion and Participation

The Authority is governed by an 18 member board, nine of whom are appointed by the Governor. State legislative leaders appoint six directors, with one director each appointed by the Albany County Executive and the Mayor of the City of Albany. The final board member is the State Commissioner of General Services or the Commissioner's designee. All directors serve at the pleasure of their appointing authority until such time as their successors are appointed. This statutory construct has created significant continuity and management problems.

The Authority's web site currently identifies 16 board members. The 2 vacancies are gubernatorial appointments. One of these vacancies has gone unfilled for at least five years. The other has been vacant since the death of a director in June 2012. Moreover, the Chairman submitted his letter of resignation to the Governor in January 2011, but continued to serve in that position until recently,

when an incumbent director was named the acting chairman. This vacancy has not been filled as of the time of this report.

More significantly, one director, who is a gubernatorial appointee first appointed in 1999, did not attend any of the 7 board meetings held during the period of our review. We were also informed that a second director, also a gubernatorial appointee, has not attended a meeting “in at least a decade”. While we can assume that neither of these individuals considers themselves to be current or active directors, both continue to serve officially “at the pleasure of the Governor” since neither has been replaced.

As a practical matter, the Authority’s 18 member board has five vacancies, with 27 percent of its director positions either vacant or filled by individuals who neither attend meetings nor engage in any meaningful governance of the Egg. All of these positions are gubernatorial appointees.

A review of minutes for the seven board meetings held between January 2011 – March 2012 found that 6 other directors missed at least 4 meetings, one member missed 2 of the first 3 meetings after her appointment, and 2 members missed 2 of the 7 meetings. In fact, the September 21, 2011 meeting was conducted despite only 6 directors – less than 50 percent of all appointed directors – being present. During this period the board even experienced the resignation of a board member after attending only one meeting.

This level of disengagement should not be surprising, given that more than one-half of the directors were appointed by prior administrations or former office holders and have not been replaced.

Lack of Activity to Generate Additional Revenue

We compared the Authority’s operations to other performing arts venues in the Capital District. We found that other entities generally are more effective at attracting additional revenue to complement their program income and cover their administrative costs. For example, other contributions, such as grants, membership fees, and corporate sponsorships for these venues range from 11 to 32 percent of total revenue. By comparison, Authority revenue from contributions was 7 percent for 2011-12.

One reason for this may be the limited fundraising conducted by the board. Only one fundraiser was held in 2011-12 and generated \$2,678 in revenues, or less than one-quarter of one percent of the Authority’s total revenues. Generally, fundraising by other area performing arts organizations generates about 2.6 percent of total revenue. Authority officials indicated that it is difficult to solicit funds, since the Authority is perceived as the manager of a governmental facility, and the public and philanthropists are reluctant to donate to a governmental agency. Yet, other public events under the auspices of OGS often are sponsored by local businesses. Moreover, the Authority’s fundraising event raised \$4.97 in contributions for every dollar it spent fundraising. By way of

comparison, for the other entities we reviewed, about \$1.79 was raised, on average, for every dollar spent. Despite this limited success, the board does not appear to be committed to a major fundraising program that is capable of generating additional revenues to help sustain the operations of the Authority. Authority officials stated that in addition to fundraising efforts, it raised over \$100,000 in membership and foundation support in the past fiscal year. They also indicate that new sources of revenues have been discussed and explored, such as providing management services to other organizations, presenting HD opera performances, and using other areas within the Empire State Plaza to host events. However, we note that while the board has discussed these various options, none have been adopted or implemented.

Inadequate and Inappropriate Financial Practices

We found that the Authority appears to take an informal approach to its management and oversight, resulting in poor controls over funds. We believe that a more formal and structured financial management approach is needed. While we did not identify any misuse of Authority funds or inappropriate items being purchased, this informal approach increases the risks of such events occurring and circumvents established financial controls.

Inappropriate Use of Fund Accounts

The Authority's governing statute stipulates that a specific fund be established within the New York State Department of Tax and Finance (Tax Department) and all moneys of the Authority, from whatever source derived, are to be deposited into the fund. Payments from the fund are to be made through checks signed by the Chair of the Authority or another authorized individual. However, we found that the Authority has established three other accounts: one for box office receipts, one for payroll, and another for the New York Presenters Network, which is unaffiliated with the Egg but managed by Authority staff. According to the Authority's current policies and procedures, all ticket sale revenues are to be deposited in the box office account and all other income is to be deposited in the Tax Department account. However, Authority officials indicated that some income is also deposited into the Authority's payroll account. Establishing multiple bank accounts not only violates existing law, but their existence and use by-passes financial controls for the deposit and use of Authority funds.

Petty cash funds are generally established to facilitate the easy purchase of small dollar items. Although there are only six full-time employees, the Authority has established four different petty cash accounts. The accounts are designated for use by box office, finance, and production staff, as well as the Executive Director. Each account is capitalized up to \$200 and to be used for purchases of up to \$50. However, we reviewed 24 reimbursements to the petty cash accounts and identified seven instances where the items purchased exceeded \$50. Further, we found one reimbursement to the production petty cash account for \$212.43, which exceeds the maximum amount that should be available in the account. We question the need for multiple petty cash accounts in such a small

organization and believe that this informal approach increases the potential for misuse of public funds.

We also found that the Authority issues checks payable to its employees with the expectation that the checks will be used to pay artists in cash the night of a performance. For each instance, we verified that the payment of cash was a provision of the artist's contract. This practice is inappropriate, and a more formal practice for making and verifying accurate cash payments to artists should be implemented.

Poor Controls over Concessions

The Authority contracts for concession services at its public performances. For 2011-12, the Authority received \$9,459.14 in concession revenue from its 93 public events. During this time the Authority had two different concession vendors; one vendor was under contract prior to January 2012 and a new vendor was under contract beginning in 2012. We reviewed the contracts for both vendors and found that the first vendor contract did not specify how the Authority's commission was to be determined. The Executive Director indicated that the commission payable to the Authority was 10 percent of gross sales but was not able to provide documentation to support this. We sampled the concession records for events that used this vendor and found that the percentage paid to the Authority was 10 percent of the reported sales. Moreover, the vendor reduced the Authority's share of concession income beginning in October 2011. The Executive Director indicated that this reduction was to offset the cost of coffee provided to event volunteers. The reductions ranged from \$15 to \$25 depending on the event. Although the Executive Director indicated that the reduction was in response to a verbal agreement with the concessionaire, we found no record of any agreement permitting this change. The new vendor contract stipulates that the Authority receives 15 percent of net sales with no similar reductions for costs incurred on behalf of volunteers.

We also found that neither contract required the vendor to provide sales receipts to the Authority. This makes it difficult to verify total concession sales or the share of sales revenue owed to the Authority. Instead, the contract provisions state that the vendor is to provide a report of daily sales and pay a percentage of receipts to the Authority on a monthly basis. We reviewed the monthly statements and found that the Authority receives only summary information from the vendor. The Authority has limited ability to reconcile potential discrepancies or questions in the concession sales. For example, one event was attended by 143 patrons, and generated a commission to the Authority of \$36.31. Under the terms of the contract with the initial vendor, this would assume total net concession sales were \$363, or \$2.50 per attendee. Another similar event, with 426 attendees, resulted in a \$39.28 sales commission to the Authority, or concession sales of less than \$1 per attendee. In the absence of the Authority receiving and verifying sales receipts from these two events, it has no way to confirm that these commissions were correct. One could assume that the considerable difference in attendance figures would have resulted in much

different concession commissions than were reported. To strengthen controls over concession income the Authority should be provided with sales receipts from the event for verification.

Controls over Rental Fees

For public performances, it is common for the Authority to set aside a block of complimentary tickets to be used for promotions, artist requests, or other various reasons. For the 93 public performances in 2011-12, there was at least one complimentary ticket provided for every event. These complimentary tickets had a face value totaling approximately \$200,000. We found that the Authority does not charge its ticket handling fee for complimentary tickets provided to renters. As a result, the Authority forfeited over \$7,000 in potential revenue by not charging this fee. While Authority officials indicated that this is a common industry practice, other venues we contacted indicated that handling fees are charged for complimentary tickets. Given the Authority's fiscal condition, we believe that it should assess its ticket handling fee on all complimentary tickets it provides.

Authority Mission Creep

The Authority's enabling statute states that it was created to manage the performing arts center facilities. However, we also found that the Authority has taken on projects that appear to be beyond the scope of the Authority's statutory mission. For example, the Authority is currently administering grant funds awarded to Proctors Theater in Schenectady for the New York State Presenters Network. The organization was established to develop performance opportunities for New York State-based performing artists and facilitate collaboration and booking throughout the state using grant funding from the New York State Council of the Arts. The grant program is used to match funding for NY based performing artists with participating performing arts centers throughout the State through a grant application process. In addition, the organization holds workshops throughout the State to support presenters. Although there is an advisory committee that oversees the organization, Authority staff are responsible for the management and administration of the grant. Authority officials indicated that there is no reimbursement to the Authority for the time spent by its staff on this project.

We do not believe that this is the best use of Authority resources, given its mission is to focus on events at the Egg, and the current financial condition of the Authority. Authority officials responded that the time spent on these activities is minimal, that the Egg's financial position is not negatively impacted and that the services provided are core to its mission. Officials argue these activities position the Egg as a center for the arts not only at the state capital but for all of the State of New York, without any cost to the organization. In addition, they indicate that the 2013-14 New York State Executive Budget recognizes the Authority's role in providing services to other organizations, since it received a sub-allocation of \$100,000 through the NYS Council on the Arts. However, we note that this sub-allocation may be used to support the Authority's programs or made available to

other organizations. We disagree that the time spent on these activities does not negatively impact the Authority, since these activities divert staff from focusing on the Authority's finances, operations and programs.

Alternative Management Structures

The Egg is one of several buildings at the Nelson A. Rockefeller Empire State Plaza that is maintained by OGS. OGS is also responsible for a convention center, the State Museum, various meeting rooms, five state office buildings, an outdoor plaza and other public spaces. OGS indicates that approximately 1,500 public and private events are held at these facilities each year. Similar to the Egg, these events are either sponsored by OGS or by another entity that rents the facilities through OGS. These events range from concerts and festivals to government and corporate conferences, weddings and graduations.

OGS has its own staff to market, promote, contract, and run events at the Plaza. This staff performs similar duties as staff of the Authority so a transition to OGS should be seamless. Continuing to support a management structure for the Egg that is separate from the management of other buildings and facilities comprising the Empire State Plaza may no longer make sense. It would appear to be artificial, redundant and inefficient. Moreover, the Authority has no outstanding indebtedness or liabilities that would bar its dissolution. As a matter of law, its assets would revert to the state, further facilitating a transfer of management control to OGS.

Alternatively, OGS could contract with a corporate entity to manage the Egg. Such an arrangement would be similar to those involving other performing arts facilities owned by governmental entities. For example, Albany County owns the Times Union Center and has a contract with a private company to operate and manage the Center. This contract has been in place since 1990. Pursuant to the agreement, the County is guaranteed a certain level of income and the company is guaranteed its negotiated management fee. The County receives 70 percent of any additional revenue above these amounts and the management company receives 30 percent. The County also has approval over the hiring of the General Manager of the Center. For 2011, Albany County reported \$531,147 in net operating profits from this arrangement.

As a second example, the City of Albany owns the Palace Theater and contracts with a not-for-profit organization. The City is responsible for major capital improvements. The not-for-profit is responsible for general maintenance and repairs and reinvests all additional revenues into the overall operation and management of the theater.

Authority officials indicated that any transfer of management control first be thoroughly reviewed and studied prior to implementation to preserve the public benefits provided by the Egg. Authority officials stated that if the Authority were dissolved, some of its sources of income, such as state appropriations, Council on the Arts support, individual contributions, and arts foundation grants may no

longer be readily available. We do not believe that state appropriations would be affected simply because of a change in the management structure of the Egg, and the Authority does not receive any direct funding from the Council on the Arts. Authority officials also state that the elimination of 'arts events' in favor of events that are more economically viable will likely decrease the number and variety of events staged at the Egg. However, our report makes no recommendation regarding the types of events that should be staged at the Egg. Rather, our report notes that the choice of programming is not the cause of the Authority's poor financial condition, and that the current programming mix generates sufficient revenues to cover its cost.

The ABO believes that a vibrant arts culture enhances the state's quality of life and strengthens communities. This report does not question the role of the public sector in supporting and promoting the arts. Rather, this report concludes that relying on a public authority to manage a performing arts center is no longer the most optimal approach to take.

Recommendations

Transfer management control of the Egg to the State Office of General Services (OGS) and legislatively dissolve the Authority. This recommendation gives OGS the option of running the Egg directly, or contracting with a private company or not-for-profit corporation with experience managing similar performance and cultural venues.

Pending the implementation of this recommendation, the Authority should:

1. Increase efforts to generate additional revenues through fund raising activities.
2. Reduce the number of bank accounts used to only those authorized by the Authority's enabling legislation.
3. Reduce the number of petty cash accounts in use.
4. Ensure that petty cash funds are used and managed in accordance with established policies and procedures.
5. Discontinue the practice of issuing checks to employees for the purpose of making cash payments to performers. Establish appropriate procedures for making these cash payments, when necessary.
6. Improve controls over concessions by requiring all provisions be included in written contracts, adhering to contract provisions, and requiring vendors to submit actual sales receipts to substantiate concession sales.
7. Establish and follow a policy to apply ticket handling fees to complimentary tickets for renters.
8. Discontinue the practice of engaging in projects and activities that are not within the Authority's statutory mission.

**NELSON A. ROCKEFELLER EMPIRE STATE PLAZA
PERFORMING ARTS CENTER CORPORATION**

**RESPONSE TO AUTHORITIES BUDGET OFFICE OPERATIONAL
REVIEW – DRAFT REPORT OF FEBRUARY 2012**

Thank you for the opportunity to respond to the Draft Report of the Operational Review of the Nelson A. Rockefeller Empire State Performing Arts Center Corporation (“The Egg”). We respectfully submit the following in comment to the Draft Report and request these responses be included in the final report.

OVERALL SUMMARY:

The Operational Report only provides a financial and organizational snapshot of The Egg for its most recently completed year. There are virtually no references to the organization’s programming and services to the public, performing artists and the field of New York State arts presenters.

Further there is no context provided to demonstrate The Egg’s depth of programming, the financial challenges which have ensued since 2008 due to the \$410,000 cut in funding, and the ability for The Egg to continue to support its mission within these limited resources.

This response is intended to provide a broader view of the organization, how it has leveraged the support of the State of New York to productively and creatively support its legislated mission and goals. We believe that this context – both financial and programmatic - is critically important and essential in assessing the viability of The Egg. It is our hope that this information will be made available as part of the report. This will give the Executive and state legislators the broad view, which is necessary as they consider whether or not to preserve a public authority that has successfully grown to increasingly serve audiences, artists and the field of performing arts presentation in the State of New York for which it was created.

THE EGG WOULD LIKE TO RESPOND TO THE FOLLOWING COMMENTS AND CONCLUSIONS:

EXECUTIVE SUMMARY

BACKGROUND INFORMATION:

“The Authority has incurred annual operating losses since 2008-09”

These losses should be viewed in the following context:

The deficits referenced in 2008-09 and 2009-10 were not losses at all. Instead, spending in those years were the direct result of a substantial investment in a ground-breaking education project that was developed to expose and engage young people in the history of the performing arts in New York State. Accumulated fund balances were used to fund this initiative.

Further, it should be noted that in the years cited, The Egg was operating with significant funding reductions:

The 2010-11 NYS Appropriation was reduced from \$540,000 to \$245,000

The 2011-12 NYS Appropriation was reduced from \$245,000 to \$220,000

REVIEW RESULTS:

“The Authority operates at a deficit”

This should be viewed in context of NYS appropriation reduction and faltering economy during this time period. It should also be noted that The Egg was able to fund these deficits through an accumulated fund balance which it retained in previous years of operation upon the recommendation of the financial advisors from the firm that audits The Egg on an annual basis.

“Moreover, as revenue from non-state sources declines, administrative and management costs consume an increasingly higher percentage of total expenses...”

A combination of cancelled performances and programming adjustments reflect the current financial challenges and lower artist fee commitments caused this shift. This reflects The Egg’s efforts to respond to the current economic realities by lowering financial risk without compromising quality and with minimal reduction in quantity.

“For the past two years, the Authority has been unable to reimburse the state for its billed share of the cost of operating the Egg, as required by law.”

The reimbursement amount has been accrued but not paid to provide organizational cash flow. It should be noted that this has been done with a mutual agreement between The Egg and OGS.

“..we found that the current board’s limited fundraising has been inadequate to offset the loss of state support and other revenues.”

It should be noted that The Egg raised over \$100,000 in membership and foundation support in the past fiscal year. This type of support would not likely be available if the organization was dismantled and activities managed by a state agency

Further, it should be noted that the Board has explored various avenues to identify new sources of revenue, in addition to staging fund raising events. These avenues included (but are not limited to):

- providing management services to other organizations;
- presenting HD opera performances;
- utilizing unused catering areas within the Empire State Plaza to host pre- and post-performance events.

New initiatives, including the development of tours by performing artists, which have proven to be successful in generating revenue, will continue to be explored and implemented as feasible.

“..the board of directors exercises limited financial oversight and governance...”

The Board of Directors works closely with staff to oversee spending and works to economize to ensure that the organization is managed as efficiently as possible. A comparison with other performing arts presenting organizations will demonstrate the productivity of its relatively small full time staff.

It also should be noted that the organization is audited annually by an outside audit firm and on occasion by the NYS Comptroller’s Office. Any and all financial practices that required correction were addressed immediately.

“We also found the Authority’s management approach to be informal, resulting in poor controls over certain financial operations and a lack of compliance with established policies and procedures.”

It should be noted that while “informal” no improprieties were discovered. Management takes note and will implement all recommendations.

“We found too that, despite its financial position, the Authority is taking on activities that are not within the scope of its statutory responsibility.”

This refers to The Egg’s responsibilities in administering the NYS Presenters Network activities and programs. It should be noted that this does not have a negative impact The Egg’s financial position, and in fact provides services to the field that are core to its mission, and further positions The Egg as a center for the arts that serves not only the state capital but all of the State of New York, all without any cost to the organization.

In fact, the 2013-14 proposed Executive Budget recognizes The Egg’s leadership role in providing services to other NYS presenting organizations and touring artists by the inclusion of funding through the NYS Council on the Arts, to continue and expand this initiative in the upcoming fiscal year. Not only does this recognize the tremendous success of this program, due largely to the leadership role of The Egg, but it reinforces the program’s relevance to the mission of The Egg, while making a significant – and positive – impact on The Egg’s budget.

PROGRAMS AND ACTIVITIES:

With the exception of tallying the number of performances and audience members during a single year period, the report makes no mention of The Egg’s programs and activities that support its enabling legislation and mission statement. We feel as though this is important to consider when evaluating the viability of The Egg as a public authority.

In considering the enabling legislation, which gave the Authority this mandate:

The performing arts center, located at the capital should symbolize the preeminence of the performing arts in New York State and be a visible commitment of the state to pioneering and supporting the maintenance and development of the arts while making programs more accessible to the general public,

and the Mission Statement of The Egg:

The Nelson A. Rockefeller Empire State Plaza Performing Arts Center Corporation at “The Egg” will present quality performances, accessible to all citizens of New York State, highlighting the unique and extraordinary artists from New York State, across the country and around the globe. Through partnerships and collaborations, the Corporation will present quality performances, spotlight emerging artists, foster relationships with resident companies, enhance activities in cultural and arts education, while remaining accountable to its public funds investment....

the Board of Directors has developed a number of ongoing programs that serve the audiences and artists of New York State:

Performing Arts Presentation Series:

Dance: The Egg remains one of the very few performing arts centers outside of metropolitan New York that continues to present contemporary dance. Three different series - **Dance New York, Dance – The World, Family Dance** – are supplemented by activities by its resident dance company.

Family and Educational Shows: The Egg's *Family Wonders* series offers quality, affordable theatrical, music and dance performances for young people and their families.

Music: The Egg's *American Roots & Branches* and *Rhythm International* concert series offers a variety of folk, jazz, country, blues, rock and world music from the very traditional to the utmost contemporary.

Theatre: Offerings of classic and modern drama and musicals are presented.

Special Initiatives:

“New Work, NY”: This program includes the commissioning, supporting and/or presenting of new or recently created works by New York State performing artists. Projects have ranged from new works in celebration of the Hudson River Quadricentennial to new holiday music for young people.

“Living Legacy” project : Celebrating the work of legendary New York State performing artists through performances and community outreach activities. Projects have included the exploration of the work of George Gershwin, Leonard Bernstein and Paul Taylor to the New York's contributions to jazz dance and the 5-string banjo.

Special Projects:

“State of the Arts” education project: An educational performance that will demonstrate the importance of the performing arts in the history of New York State was commissioned and presented to school groups, free of charge, in April, 2008 and 2009.

New York State Presenters Network: A collaborative effort with the New York State Council on the Arts to develop a data base as well as touring and funding opportunities for New York State presenters and performing artists.

MOHU Arts Festival: The Egg has assumed a leadership role in regional MOHU (Mohawk-Hudson) arts initiative, representing the arts organizations of Albany County and providing administrative services.

CONCLUSION:

The ABO's recommendation to dissolve the public authority is based on one year of observations of financial operation during the authority's most challenging year. The Draft Report fails to take into account any of the organization's activities that support its mission, nor does it give a broad view of the organization's history and past achievements that have significantly elevated the stature of the performing arts in the state's capital city.

Further, it ignores the services The Egg has provided and continues to provide to the audiences, artists and performing arts presenters in New York State. Even further, there are no references made whatsoever to the long term impact The Egg's programs and activities have had, and continue to have on the immediate Capital Region, across the state of New York and beyond.

The board and staff of Nelson A. Rockefeller Empire State Plaza Performing Art Center Corporation firmly believe that the recommendation to dissolve the Authority may impact the quality and depth of activities at The Egg and reduce opportunities and services currently provided to audiences, artists and presenters across the State of New York.

The Egg respectfully requests that the following points be presented to members of the NYS Legislature as they consider the ABO's recommendation to dissolve the public authority and its enabling legislation:

- If the public authority and 501-C-3 is dissolved, the following sources of income may not be readily available:
 - NYS appropriation
 - NYS Council on the Arts support
 - Individual Contributions
 - Arts Foundation Grants
- The elimination of the “arts events” in favor of events that are more economically viable at the box office will likely decrease the number and variety of events staged at the center. A number of for-profit promoters (Live Nation, Bowery Presents, Outback Concerts, SLP Concerts, StepUp Presents, Kirschner Concerts etc.) use the center regularly, and have been able to stage the maximum number of events that they feel will be profitable, so it is unlikely that this type of activity will increase;
- The idea of leasing the facility to either a for-profit or not-for-profit entity should be explored to see if there are any organizations that would be willing to submit a proposal for a long-term arrangement. Typically, theatres of the size provided by The Egg make the profit margins relatively slim compared to larger venues such as The Palace Theatre and Times Union Center (both referenced as potential models for the future);
- The conversion of staff from employees of the public benefit/not-for-profit corporation into NYS State employees may not be cost effective due to variances in overtime costs, and other restrictions for state employees;

While The Egg has not fully developed the resources to make up for the reduction in NYS funding, it has made strides in that direction, and in time will prove to remain a viable organizational structure, capable of managing the facility with an ability to grow and increase the number and variety of events.

Instead of immediate dissolution as recommended, The Egg suggests that a plan be developed in collaboration with representatives of the Office of General Services with a clearly defined timetable to reach organizational, programmatic and budgetary goals that would ensure the future viability and vitality of activities, events and services that will effectively serve the audiences, artists and arts organizations of the Capital Region and the entire State of New York in keeping with the intent and vision upon the creation of a Center for the Performing Arts at the Empire State Plaza.