

GENERAL REFORM LEGISLATION FOR NOT-FOR-PROFIT CORPORATIONS AND CERTAIN GOVERNMENTAL ENTITIES

Nonprofit Revitalization Act

On December 18, 2013, Senate Bill No. 5845 of the year 2013, commonly known as the “Nonprofit Revitalization Act of 2013,” was signed into law as Chapter 549 of the 2013 Laws of the State of New York (the “Nonprofit Revitalization Act”).

The Nonprofit Revitalization Act made the first significant changes to the Not-for-Profit Corporation Law (the “NPCL”) in more than forty years. It included reforms that reduce burdens to nonprofits and enhance governance and oversight of nonprofits. The Nonprofit Revitalization Act amended the NPCL, in addition to Article 7-A of the New York Executive Law (the “Executive Law”) and the Estates, Powers and Trusts Law, among others, as each pertains to any nonprofit organization that is incorporated in New York or otherwise solicits charitable contributions in New York.

A main feature of the Nonprofit Revitalization Act involved the reform of nonprofit governance and oversight to prevent fraud and improve public trust. The reforms targeted the following areas: (A) financial management; (B) conflicts of interest; (C) government oversight; (D) board independence; and (E) good governance.

Public Authority Accountability Act

On January 13, 2006, Senate Bill No. 5927 of the year 2005, commonly known as the “Public Authorities Accountability Act of 2005,” was signed into law as Chapter 766 of the 2005 Laws of the State of New York (the “2005 Act”). The 2005 Act generally made various amendments to the Public Authorities Law of the State of New York (the “PAL”) designed to help improve oversight, accountability, and transparency at the various public authorities created by the State of New York (the “State”). In addition to applying to Authorities, the 2005 Act applied these provisions to (A) industrial development agencies created under the General Municipal Law (the “GML”), as well as (B) not-for-profit corporations affiliated with, sponsored by, or created by a county, city, town or village government.

On December 11, 2009, Assembly Bill No. 40012 of the year 2009 was signed into law as Chapter 506 of the 2009 Laws of the State of New York (the “2009 Act,” and collectively with the 2005 Act, the “PAAA”). The 2009 Act became effective on March 1, 2010, and amended the PAL. The 2009 Act (A) established enhanced reporting requirements for state and local authorities; (B) imposed a requirement that Board members of an authority apply independent judgment in the best interest of the authority, and empowered the appointing authority to remove any Board member who breaches his or her fiduciary duty; (D) required that any state or local authority that issues debt must establish a finance committee to review proposals for the issuance of debt and make recommendations regarding same; (E) removed a provision of the 2005 Act that prohibited an authority Board member from serving as CEO, CFO or other equivalent position of the authority while also serving on the Board; and (F) created the Authorities Budget Office (the “ABO”) as an independent entity within the NYS Department of State.

Summary and Comparison

The following chart categorizes the major governance and oversight provisions of the Nonprofit Revitalization Act and the similar provisions of the PAAA into the 5 areas of reform of the Nonprofit Revitalization Act. For simplicity, the majority of the provisions of the PAAA in the chart pertain to local authorities, but similar or identical provisions apply to state authorities.

A. DEFINITIONS

Issue	Nonprofit Revitalization Act Provision	PAAA Provision
Charitable Corporation	Any corporation formed or deemed to be formed for one or more of the following purposes: charitable, educational, religious, scientific, literary, cultural or for the prevention of cruelty to children or animals. NPCL §102(a)(3-a)	No provision.
Non-Charitable Corporation	Any corporation formed under the NPCL, other than a charitable corporation, including but not limited to one formed for any one or more of the following non-pecuniary purposes: civic, patriotic, political, social, fraternal, athletic, agricultural, horticultural, or animal husbandry, or for the purpose of operating a professional, commercial, industrial, trade or service association. NPCL §102(a)(9-a)	No provision.
Local Authority	No provision.	The term “local authority” includes the following: (1) any public benefit corporation whose members do not hold a civil office of the State, are not appointed by the Governor or are appointed by the Governor specifically upon the recommendation of a local government; (2) a not-for-profit corporation affiliated with, sponsored by, or created by a county, city, town or village government; (3) a local industrial development agency or authority or other local public benefit corporation; and (4) an affiliate of such local authority. PAL§2(2)
State Authority	No provision.	The term “state authority” is defined to include the following: any public authority or public benefit corporation created by or existing under this chapter or any other law of the state of New York, with one or more of its members appointed by the governor or who serve as members by virtue of holding a civil office of the state, other than an interstate or international authority or public benefit corporation, including subsidiaries of such public authority or public benefit corporation. PAL§2(1)

B. FINANCIAL MANAGEMENT

Issue	Nonprofit Revitalization Act Provision	PAAA Provision
<p>Annual Reports</p>	<p>Every charitable organization registered or required to be registered pursuant to Article 7-A which shall receive in any fiscal year gross revenue and support:</p> <p>A. in excess of \$500,000 shall prepare an annual written financial report, on forms prescribed by the attorney general (the “Annual Report”), accompanied by audited financial statements. Such Annual Report shall include a statement of any changes in the information required to be contained in the registration form filed on behalf of such organization. Executive Law §172-b(1)</p> <p>B. at least \$250,000 but not more than \$500,000 shall prepare an Annual Report, accompanied by reviewed financial statements. The annual financial statement shall be prepared in conformity with generally accepted accounting principles, including compliance with all pronouncements of the financial accounting standards board and the American Institute of Certified Public Accountants that establish accounting principles relevant to not-for-profit organizations. Such Annual Report shall include a statement of any changes in the information required to be contained in the registration form filed on behalf of such organization. Executive Law §172-b(2)</p> <p>C. not in excess of \$250,000 shall prepare an unaudited financial report on forms prescribed by the attorney general, on or before the 15th day of the 5th calendar month after the close of such fiscal year. Such Annual Report shall include a statement of any changes in the information required to be contained in the registration form filed on behalf of such organization. Executive Law §172-b(2)(a)</p>	<p>Within 90 days after the end of its fiscal year, every local authority must prepare and submit a complete and detailed report or reports (the “Annual Report”) setting forth: (1) its operations and accomplishments; (2) its financial reports, including (i) audited financials in accordance with all applicable regulations and following generally accepted accounting principles as defined in subdivision ten of section two of the state finance law, (ii) grant and subsidy programs, (iii) operating and financial risks, (iv) current ratings, if any, of its bonds issued by recognized municipal bond rating agencies and notice of changes in such ratings, and (v) long-term liabilities, including leases and employee benefit plans; (3) its mission statement and measurements including its most recent measurement report; (4) a schedule of its bonds and notes outstanding at the end of its fiscal year, together with a statement of the amounts redeemed and incurred during such fiscal year as part of a schedule of debt issuance that includes the date of issuance, term, amount, interest rate and means of repayment. Additionally, the debt schedule shall also include all refinancings, calls, refundings, defeasements and interest rate exchange or other such agreements, and for any debt issued during the reporting year, the schedule shall also include a detailed list of costs of issuance for such debt; (5) a compensation schedule, that shall include, by position, title and name of the person holding such position or title, the salary, compensation, allowance and/or benefits provided to any officer, director or employee in a decision making or managerial position of such authority whose salary is in excess of one hundred thousand dollars; (5-a) biographical information, not including confidential personal information, for all directors and officers and employees for whom salary reporting is required under item 5; (6) the projects undertaken by such authority during the past year; (7) a listing and description of all real property of such authority having an estimated fair market value in excess of fifteen thousand dollars that the authority acquires or disposes of during such period. The report shall contain the price received or paid by the authority and the name of the purchaser or seller for all such property</p>

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		<p>sold or bought by the authority during such period; (8) such authority's code of ethics; (9) an assessment of the effectiveness of its internal control structure and procedures; (10) a copy of the legislation that forms the statutory basis of the authority; (11) a description of the authority and its board structure, including (i) names of committees and committee members, (ii) lists of board meetings and attendance, (iii) descriptions of major authority units, subsidiaries, and (iv) number of employees; (12) its charter, if any, and by-laws; (13) a listing of material changes in operations and programs during the reporting year; (14) at a minimum a four-year financial plan, including (i) a current and projected capital budget, and (ii) an operating budget report, including an actual versus estimated budget, with an analysis and measurement of financial and operating performance; (15) its board performance evaluations; provided, however, that such evaluations shall not be subject to disclosure under article six of the Public Officers Law; (16) a description of the total amounts of assets, services or both assets and services bought or sold without competitive bidding, including (i) the nature of those assets and services, (ii) the names of the counterparties, and (iii) where the contract price for assets purchased exceeds fair market value, or where the contract price for assets sold is less than fair market value, a detailed explanation of the justification for making the purchase or sale without competitive bidding, and a certification by the chief executive officer and chief financial officer of the public authority that they have reviewed the terms of such purchase or sale and determined that it complies with applicable law and procurement guidelines; and (17) a description of any material pending litigation in which the authority is involved as a party during the reporting year, except that no hospital need disclose information about pending malpractice claims beyond the existence of such claims. PAL§2800(2)(a)</p>
<p>Certification of Annual Financial Reports</p>	<p>The Annual Report shall be signed by the president or other authorized officer and the chief fiscal officer of the organization who shall certify under penalties for perjury that the statements therein are true and correct to the best of their knowledge. Executive Law §172-b(2)(a)</p>	<p>Every such financial report must be approved by the board of the authority and must be certified in writing by the chief executive officer and the chief financial officer of such authority that based on the officer's knowledge (a) the information provided therein is accurate, correct and does not contain any untrue statement of material fact;</p>

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		(b) does not omit any material fact which, if omitted, would cause the financial statements to be misleading in light of the circumstances under which such statements are made; and (c) fairly presents in all material respects the financial condition and results of operations of the authority as of, and for, the periods presented in the financial statements. PAL§2800(3)
Filing of Annual Report	The Annual Reports must be submitted to the Attorney General on or before the 15th day of the 5th calendar month after the close of such fiscal year. Executive Law §172-b	The Annual Reports must be submitted to the chief executive officer, the chief fiscal officer, the chairperson of the legislative body of the local government and the Authority Budget Office, within 90 days after the end of the local authority's fiscal year. PAL§2800(2)(a)
Audit or Review of Annual Report by Independent Public Accountant	<p>Every charitable organization registered or required to be registered pursuant to the Executive Law which shall receive in any fiscal year gross revenue and support in excess of :</p> <p>A. <u>\$500,000</u> shall include with the Annual Report filed with the attorney general an annual financial statement which includes (1) an independent certified public accountant's audit report containing (2) an opinion that the financial statements are presented fairly in all material respects and in conformity with generally accepted accounting principles, including compliance with all pronouncements of the financial accounting standards board and the American Institute of Certified Public Accountants that establish accounting principles relevant to not-for-profit organizations. The Annual Report shall be accompanied by an opinion signed by an independent public accountant that the financial statement and balance sheet therein present fairly the financial operations and position of the organization. Executive Law §172-b(1)</p> <p>B. <u>at least \$250,000 but not more than \$500,000</u> shall include with the Annual Report filed with the attorney general an annual financial statement which includes an independent certified public accountant's review report in accordance with "statements on standards for accounting and review services" issued by the American Institute of Certified Public Accountants. If upon review of an independent certified public accountant's review report filed pursuant to this subdivision, the attorney general determines that a charitable organization</p>	For fiscal years ending on or after December 31, 2007 and annually thereafter, every local authority shall arrange for the preparation of an annual independent audit report (the "Independent Audit Report"), performed by a certified public accounting firm in accordance with generally accepted auditing standards. PAL§2802(2)

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	<p>should obtain an independent certified public accountant’s audit report, such organization shall obtain and file with the attorney general an audit report that meets the requirements of Executive Law §172-b(1) within one 120 days of the attorney general’s request for such report. Executive Law §172-b(2)</p> <p>C. <u>not in excess of \$250,000</u> – neither an audit report nor a review report is required. Executive Law §172-b(2)(a)</p>	
<p>Filing of Annual Independent Audit, Management Letter and other External Examinations</p>	<p>As indicated above, certain charitable organizations must file certain audited or reviewed financial statements with the Attorney General. Executive Law §172-b</p>	<p>Every local authority shall submit to (a) the chief executive officer and the chief fiscal officer of the authority, (b) the chairperson of the legislative body of the local government or governments and (c) the Authorities Budget Office, together with the Annual Report, a copy of the following: (1) the Annual Independent Audit Report, (2) the management letter and (3) any other external examination of the books and accounts of such authority, other than copies of the reports of any examinations made by the State Comptroller. PAL§2802(2)</p>
<p>Annual Budget</p>	<p>No provision.</p>	<p>For each fiscal year ending on or after December 31, 2007 and annually thereafter, every local authority must prepare budget information (the “Annual Budget”) on operations and capital construction setting forth the estimated receipts and expenditures for the next fiscal year and the current fiscal year, and the actual receipts and expenditures for the last completed fiscal year. PAL§2801(2)</p>
<p>Filing of Annual Budget</p>	<p>No provision.</p>	<p>The Annual Budget, in the form submitted to the authority’s members or trustees, must be submitted to (a) the chief executive officer and the chief fiscal officer of the authority, (b) the chairperson of the legislative body of the local government or governments and (c) the Authority Budget Office, for their information, annually not more than 90 days and not less than 60 days before the commencement of its fiscal year. If any state or local authority has provided the information required by PAL§2801 as part of the Annual Report required by PAL§2800, such authority may comply with the provisions of PAL§2801 by reference to such information with any necessary updates. PAL§2801(2), (3)</p>

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Audit Oversight	The board, or a designated audit committee of the board comprised solely of independent directors, of any corporation required to file an independent certified public accountant’s audit report with the attorney general pursuant to Executive Law Article 7-A (i.e., revenues over \$500,000) shall oversee the accounting and financial reporting processes of the corporation and the audit of the corporation’s financial statements. Only independent directors may participate in the audit committee. NPCL §712-a(a), (c)-(f)	<u>Audit Committee:</u> Board members of each local authority shall establish an audit committee to be comprised of not less than three independent members, who shall constitute a majority on the committee, and who shall possess the necessary skills to understand the duties and functions of the audit committee; provided, however, that in the event that a board has less than three independent members, the board may appoint non-independent members to the audit committee, provided that the independent members must constitute a majority of the members of the audit committee. PAL§2824(4)
Qualifications of Audit Committee	No provision.	Members of the audit committee shall be familiar with corporate financial and accounting practices. PAL§2824(6)
Duties of Audit Committee	<p>A. The board or designated audit committee shall annually retain or renew the retention of an independent auditor to conduct the audit and, upon completion thereof, review the results of the audit and any related management letter with the independent auditor.</p> <p>B. The board or designated audit committee of the board shall oversee the adoption, implementation of, and compliance with any conflict of interest policy or whistleblower policy adopted by the corporation if this function is not otherwise performed by another committee of the board comprised solely of independent directors.</p> <p>C. If the corporation controls a group of corporations, the board or designated audit committee of the board of the controlling corporation may perform the duties required by this section for one or more of the controlled corporations.</p> <p>D. Only independent directors may participate in any board or committee deliberations or voting relating to matters set forth in this section.</p> <p>E. Any corporation that is a state authority or a local authority as defined in Section 2 of the PAL and that has complied substantially with Sections 2802 and 2824 of the PAL shall be deemed in compliance with these requirement. NPCL §712-a(a), (c)-(f)</p>	The audit committee shall recommend to the board the hiring of a certified independent public accounting firm for the authority, establish the compensation to be paid to the accounting firm, and provide direct oversight of the performance of the independent audit performed by the accounting firm hired for such purpose. PAL§2824(4)

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<p>Additional Audit Oversight for Charitable Corporations with Annual Revenue in Excess of \$1 Million</p>	<p>(b) The board, or a designated audit committee of the board of a Charitable Corporation that in the prior fiscal year had or in the current fiscal year reasonably expects to have annual revenue in excess of \$1,000,000 shall, in addition to those duties set forth above must:</p> <p>(1) review with the independent auditor the scope and planning of the audit prior to the audit’s commencement;</p> <p>(2) upon completion of the audit, review and discuss with the independent auditor: (A) any material risks and weaknesses in internal controls identified by the auditor; (B) any restrictions on the scope of the auditor’s activities or access to requested information; (C) any significant disagreements between the auditor and management; and (D) the adequacy of the corporation’s accounting and financial reporting processes;</p> <p>(3) annually consider the performance and independence of the independent auditor; and</p> <p>(4) if the duties required by this section are performed by an audit committee, report on the committee’s activities to the board. NPCL §712-a(b)</p>	<p>No provision.</p>
<p>Reporting by Accounting Firm</p>	<p>No provision.</p>	<p>Each certified independent public accounting firm that performs for any local authority an audit required by the PAL shall timely report to the audit committee of such authority:</p> <p>(1) all critical accounting policies and practices to be used; (2) all alternative treatments of financial information within generally accepted accounting principles that have been discussed with management officials of such authority, ramifications of the use of such alternative disclosures and treatments, and the treatment preferred by the certified independent public accounting firm; and (3) other material written communications between the certified independent public accounting firm and the management of such authority, such as the management letter along with management’s response or plan of corrective action, material corrections identified or schedule of unadjusted differences, where applicable. PAL §2802(3)</p>

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Lead and Review Audit Partners of Accounting Firm Must Be Periodically Replaced	No provision.	The certified independent public accounting firm providing an annual independent audit for a local authority will be prohibited in providing audit services to such authority if the lead (or coordinating) audit partner (having primary responsibility for the audit), or the audit partner responsible for reviewing the audit, has performed audit services for such authority in each of the five previous fiscal years of such authority. PAL§2802(4)
Provision of Additional Services by Accounting Firm	No provision.	The certified independent public accounting firm providing an annual independent audit for a local authority shall be prohibited from performing any non-audit services to such authority contemporaneously with the audit, unless receiving previous written approval by the audit committee of such authority, including: (1) bookkeeping or other services related to the accounting records or financial statements of such authority; (2) financial information systems design and implementation; (3) appraisal or valuation services, fairness opinions, or contribution-in-kind reports; (4) actuarial services; (5) internal audit outsourcing services; (6) management functions, (7) broker or dealer, investment advisor, or investment banking services; and (8) legal services and expert services unrelated to the audit. PAL§2802(5)
Disqualification of Accounting Firm	No provision.	A certified independent public accounting firm will be prohibited from providing audit services to a local authority if the chief executive officer, comptroller, chief financial officer, chief accounting officer, or any other person serving in an equivalent position for such authority, was employed by that certified independent public accounting firm and participated in any capacity in the audit of such authority during the one year period preceding the date of the initiation of the audit. PAL§2802(6)

C. CONFLICTS OF INTEREST

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Disclosure of Conflicts	Any director, officer or key employee who has an interest in a related party transaction shall disclose in good faith to the board, or an authorized committee thereof, the material facts concerning such interest. NPCL §715(a)	Board members, officers and employees of a local public authority shall file annual financial disclosure statements with the county board of ethics for the county in which the local authority has its primary office pursuant to Article 18 of the GML. PAL§2825(3)
Prohibition on Insider Loans	No provision.	No board of a local authority shall, directly or indirectly, including through a subsidiary, extend or maintain credit, arrange for the extension of credit, or renew an extension of credit, in the form of a personal loan to or for any officer, board member or employee (or equivalent thereof) of the authority. PAL§2824(5)
Related Party Transaction Rules (All Not-for-Profits)	<p>A. No corporation shall enter into any related party transaction unless the transaction is determined by the board to be fair, reasonable and in the corporation’s best interest at the time of such determination.</p> <p>B. The certificate of incorporation, by-laws or any policy adopted by the board may contain additional restrictions on related party transactions and additional procedures necessary for the review and approval of such transactions, or provide that any transaction in violation of such restrictions shall be void or voidable.</p> <p>C. No related party may participate in deliberations or voting relating to matters set forth in this section; provided that nothing in this section shall prohibit the board or authorized committee from requesting that a related party present information concerning a related party transaction at a board or committee meeting prior to the commencement of deliberations or voting relating thereto. NPCL §715(a), (c), (g)</p>	No provision.

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Additional Related Party Transaction Rules (Charitable Corporations)	<p>With respect to any related party transaction involving a charitable corporation and in which a related party has a substantial financial interest, the board of such corporation, or an authorized committee thereof, shall:</p> <ol style="list-style-type: none"> 1. Prior to entering into the transaction, consider alternative transactions to the extent available; 2. Approve the transaction by not less than a majority vote of the directors or committee members present at the meeting; and 3. Contemporaneously document in writing the basis for the board or authorized committee's approval, including its consideration of any alternative transactions. <p>NPCL §715(b)</p>	No provision.
Related Party Transaction Defined	<p>Any transaction, agreement or any other arrangement in which a related party has a financial interest and in which the corporation or any affiliate of the corporation is a participant. NPCL §102(a)(24)</p>	No provision.
Related Party Defined	<p>(1) any director, officer or key employee of the corporation or any affiliate of the corporation; (2) any relative of any director, officer or key employee of the corporation or any affiliate of the corporation; or (3) any entity in which any individual described in clauses (1) and (2) above has a thirty-five percent or greater ownership or beneficial interest or, in the case of a partnership or professional corporation, a direct or indirect ownership interest in excess of five percent. NPCL §102(a)(23)</p>	No provision.
Key Employee Defined	<p>Any person who is in a position to exercise substantial influence over the affairs of the corporation, as referenced in § 4958(f)(1)(A) of the Internal Revenue Code of 1986 and further specified in § 53.4958-3(c), (d) and (e) of the Treasury Regulations, or succeeding provisions. NPCL §102(a)(25)</p>	No provision.

D. GOVERNMENT OVERSIGHT

Issue	Nonprofit Revitalization Act Provision	PAAA Provision
State Oversight	Attorney General. Not provided for in the Nonprofit Revitalization Act, but contained in NPCL §112.	The Authorities Budget Office, an independent entity within the department of state, shall have and exercise the powers and duties provided by the PAAA. PAL§4
Duties of State Overseer	No provision.	The Authorities Budget Office shall, among other things: (1) conduct reviews and analysis of the operations, practices and reports of state and local authorities to assess compliance with the provisions of the PAAA and other applicable provisions of law; (2) maintain a comprehensive inventory of state and local authorities and subsidiaries and the annual reports of such state and local authorities; (3) verify the existence of all authorities listed in state law; (4) review the potential for consolidation or name change of certain authorities; (5) assist state and local authorities in improving management practices and the procedures by which the activities and financial practices of state and local authorities are disclosed to the public; (6) make recommendations to the governor, the temporary president of the senate, the speaker of the assembly and the chairs and ranking minority members of the following committees: the senate finance committee, the assembly ways and means committee, the senate committee on corporations, authorities and commissions and the assembly committee on corporations, authorities and commissions and authority board members concerning opportunities to improve the performance, reporting, reformation, structure and oversight of state and local authorities; (7) provide such additional information and analysis as may be reasonably requested by the legislature and state comptroller; (8) promulgate regulations to effectuate the purposes of the PAAA; (9) develop and issue, after consultation with the office of the attorney general, a written acknowledgement that a board member must execute at the time that the member takes and subscribes their oath of office, or within sixty days after the effective date of this paragraph if the member has already taken and subscribed his or her oath of office; (10) develop a comprehensive definition of public authorities including a consolidated listing by class and name; (11) standardize content and format of state and local authority annual reports; (12) assess individual authorities and based upon their ability and

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		resources, set a date by which changes made pursuant to this title shall be implemented; (13) issue recommendations to the legislature and governor on setting debt limitations for authorities without statutorily required debt limits; (14) make recommendations to the legislature and governor with respect to options for, and whether there should be, compensation for boards of directors; and (15) review the potential for and make recommendations to the legislature and governor regarding change in the terms of office of public authorities board members. PAL§6(1)
State Overseer Powers	<p>The attorney general may bring an action to enjoin, void or rescind any related party transaction or proposed related party transaction that violates any provision of this chapter or was otherwise not reasonable or in the best interests of the corporation at the time the transaction was approved, or to seek restitution, and the removal of directors or officers, or seek to require any person or entity to:</p> <ol style="list-style-type: none"> 1. Account for any profits made from such transaction, and pay them to the corporation; 2. Pay the corporation the value of the use of any of its property or other assets used in such transaction; 3. Return or replace any property or other assets lost to the corporation as a result of such transaction, together with any income or appreciation lost to the corporation by reason of such transaction, or account for any proceeds of sale of such property, and pay the proceeds to the corporation together with interest at the legal rate; and 4. Pay, in the case of willful and intentional conduct, an amount up to double the amount of any benefit improperly obtained. NPCL §715(f) 	<p>The Authorities Budget Office shall have the authority to: (1) request and receive from any state or local authority, agency, department or division of the state or political subdivision such assistance, personnel, information, books, records, other documentation and cooperation as may be necessary to perform its duties; (2) enter into cooperative agreements with other government offices to efficiently carry out its work and not duplicate resources; (3) receive and act upon complaints or recommendations from the public or other persons or entities regarding any authority covered by this title; (4) initiate formal investigations in response to complaints or appearances of non-compliance by an authority; (5) issue subpoenas pertaining to investigations which such office is authorized to conduct under this title, for the purposes of effectuating the powers and duties of this title; (6) publicly warn and censure authorities for non-compliance with this title, and to establish guidelines for such actions; (7) recommend to the entity that appointed the officer or director suspension or dismissal of officers or directors, based on information that is, or is made, available to the public under law; (8) report suspected criminal activities to the attorney general and other prosecutorial agencies; (9) compel any authority which is deemed to be in non-compliance with the PAAA to submit to the authorities budget office a detailed explanation of such failure to comply; and (10) commence a special proceeding in supreme court, when it does not receive from a state or local authority upon request information, books, records or other documentation necessary to perform its duties, seeking an order directing the production of the same. PAL§6(2)</p>

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Personnel Reports	No provision.	Every state and local authority and public benefit corporation shall submit to the comptroller, the director of the budget, the chairpersons of the legislative fiscal committees and the Authorities Budget Office, for their information, annually, on or before the fifteenth day of January of each calendar year, personnel information setting forth personal service schedules by subsidiary, division and unit which indicate position, grade, salary and title for each employee and in summary form. If any state or local authority has provided the information required by this provision in the Annual Report required under PAL§2800, such authority may comply with the provisions of this provision by references to such information with any necessary updates. PAL§2806
Mission Statement and Measurement Report	No provision.	Each local authority shall submit to the Authorities Budget Office on or before march thirty-first, two thousand eleven, a proposed authority mission statement and proposed measurements which the Authorities Budget Office shall post on its website. The proposed authority mission statement and proposed measurements shall have the following components: a brief mission statement expressing the purpose and goals of the authority, a description of the stakeholders of the authority and their reasonable expectations from the authority, and a list of measurements by which performance of the authority and the achievement of its goals may be evaluated. Each authority shall reexamine its mission statement and measurements on an annual basis, and publish a self-evaluation based on the stated measurements; provided, however, such reexamination may be waived pursuant to a determination by the director of the Authorities Budget Office that such undertaking is unnecessary for an individual authority. PAL§2824-a
Statement of Intent Regarding Debt	No provision.	On or before a date fixed by the Authorities Budget Office, every authority not subject to a statutory limit on bonds, notes, or other debt obligations it may issue, shall submit to the Authorities Budget Office a statement of intent to guide the authority's issuance and overall amount of bonds, notes, or other debt obligations it may issue. PAL§2856

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Disposition of Property	<p>A. A sale, lease, exchange or other disposition of all, or substantially all, of the assets of a not-for-profit corporation may be made upon such terms and conditions and for such consideration, which may consist in whole or in part of cash or other property, real or personal, including shares, bonds or other securities of any other domestic or foreign corporation or corporations of any kind, as may be authorized in accordance with the following procedure:</p> <p>B. If the corporation is, or would be if formed under the NPCL, classified as a charitable corporation such sale, lease, exchange or other disposition shall in addition require approval of (i) the attorney general or (ii) the supreme court in the judicial district or of the county court of the county in which the corporation has its office or principal place of carrying out the purposes for which it was formed. NPCL §510(a)(3)</p>	A public authority may dispose of property for an amount not less than the fair market value of such property, in cash, credit or other property, upon such terms as the Contracting Officer deems proper. PAL§2897(3)
Court Approval for Disposition of Property	(a) To obtain court approval to sell, lease, exchange or otherwise dispose of all or substantially all of its assets, a corporation shall present a verified petition to the supreme court of the judicial district, or the county court of the county, wherein the corporation has its office or principal place of carrying out the purposes for which it was formed. The petition shall set forth the items in Section 511(a) of the NPCL. NPCL §511(a)	No provision.
Attorney General Approval for Disposition of Property	<p>(a) In lieu of obtaining court approval to sell, lease, exchange or otherwise dispose of all or substantially all of its assets, the corporation may alternatively seek approval of the attorney general by verified petition, except in the following circumstances: (1) the corporation is insolvent, or would become insolvent as a result of the transaction, and must proceed on notice to creditors; or (2) the attorney general, in his or her discretion, concludes that a court should review the petition and make a determination thereon.</p> <p>(b) The verified petition to the attorney general shall set forth (1) all of the information required to be included in a verified petition to obtain court approval; (2) a statement that the corporation is not insolvent and will not become insolvent as a result of the transaction; and (3) a statement as to whether any persons have raised, or have a reasonable basis to raise, objections to the</p>	No provision.

Issue	Nonprofit Revitalization Act Provision	PAAA Provision
	sale, lease, exchange or other disposition that is the subject of the petition, including a statement setting forth the names and addresses of such persons, the nature of their interest, and a description of their objections. The attorney general, in his or her discretion, may direct the corporation to provide notice of such petition to any interested person, and the corporation shall provide the attorney general with a certification that such notice has been provided. NPCL §511-a	
Non-Substantial Real Estate Transactions	No corporation shall purchase or sell, mortgage, lease, exchange or otherwise dispose of real property [constituting less than all or substantially all of the corporations real property] unless authorized by the vote of a majority of directors of the board or of a majority of a committee authorized by the board. NPCL §509	No provision.
Less than Fair Market Price for Disposition of Property	No provision.	A public authority may dispose of property for an amount less than the fair market value of such property, if the requirements of PAL Section 2897(7)(a) are met. PAL§2897(7)(a)
Disposition of Property by Bid	No provision.	Generally, property of the public authority shall be sold through public bidding. PAL§2897(6)(a)
Method of Bidding	No provision.	The advertisement for bids shall be made at such time, through such methods and on such terms and conditions as shall permit full and free competition consistent with the nature and value of the property. All bids shall be publicly disclosed at the time and place stated in the bid. The award will be made with reasonable promptness, or all bids rejected. PAL§2897(6)(b)
Alternate Method of Disposition of Property	No provision.	Property may be sold by negotiation or auction without public bidding if any of the following apply: (1) it is personal property has qualities separate from the utilitarian purpose of such property, such as artistic quality, antiquity, historical significance, rarity, or other quality of similar effect, that would tend to increase its value, or if the personal property is to be sold in such quantity that, if it were disposed of by bid, would adversely affect the state or local market for such property, and the estimated fair market value of such property and other satisfactory terms of disposal can be obtained by negotiation; (2) the fair market value of the property does not exceed \$15,000; (3) bid prices after advertising therefore are not reasonable, either as to all or some part of the property, or have not been independently arrived at in open competition; (4) the disposal will be to the

Issue	Nonprofit Revitalization Act Provision	PAAA Provision
		state or any political subdivision, and the estimated fair market value of the property and other satisfactory terms of disposal are obtained by negotiation; (5) it is disposed of in the manner described under the caption "Less than Fair Market Price for Disposition of Property" above; or (6) such action is otherwise authorized by law. PAL§2897(6)(c)
Documentation of Negotiated Dispositions of Property	No provision.	At least 90 days prior to the disposition by negotiation of the property described below, a written explanatory statement of the circumstances of such disposal by negotiation is required to be prepared and filed with the State Comptroller, the Director of the Budget, the Commissioner of General Services, the State Legislature and the Authorities Budget Office: (1) any personal property that has an estimated fair market value in excess of \$15,000; (2) any real property (except real property disposed of by lease or exchange) that has an estimated fair market value in excess of \$100,000; (3) any real property disposed of by lease, if the estimated annual rent over the term of the lease is in excess of \$15,000; or (4) any real property or real and related personal property disposed of by exchange, regardless of value, or any property any part of the consideration for which is real property. In addition, a copy of said report shall be maintained in the records of the authority. PAL§2897(6)(d)

E. BOARD INDEPENDENCE

Issue	Nonprofit Revitalization Act Provision	PAAA Provision
Independent Director Requirements	<p>A. Only independent directors may participate in any board or committee deliberations or voting relating to Audit Oversight discussed above. NPCL §712-a(e)</p> <p>B. The board or designated audit committee of the board shall oversee the adoption, implementation of, and compliance with any <u>conflict of interest policy</u> or <u>whistleblower policy</u> adopted by the corporation if this function is not otherwise performed by another committee of the board comprised solely of independent directors. NPCL §712-a(c)</p>	<p>Except for members who serve as members by virtue of holding a civil office of the state, the majority of the remaining members of a local authority appointed after 1/13/06 shall be independent members. The official or officials having the authority to appoint or remove such remaining members shall take such actions as may be necessary to satisfy this requirement. PAL§2825(2)</p>
Independent Director Defined	<p>A director who: (i) is not, and has not been within the last 3 years, an employee of the corporation or an affiliate of the corporation, and does not have a relative who is, or has been within the last 3 years, a key employee of the corporation or an affiliate of the corporation; (ii) has not received, and does not have a relative who has received, in any of the last 3 fiscal years, more \$10,000 in direct compensation from the corporation or an affiliate of the corporation (other than reimbursement for expenses reasonably incurred as a director or reasonable compensation for service as a director as permitted by Section 202(a) of the NPCL); and (iii) is not a current employee of or does not have a substantial financial interest in, and does not have a relative who is a current officer of or has a substantial financial interest in, any entity that has made payments to, or received payments from, the corporation or an affiliate of the corporation for property or services in an amount which, in any of the last 3 fiscal years, exceeds the lesser of \$25,000 or 2% of such entity's consolidated gross revenues. For purposes of this subparagraph, "payment" does not include charitable contributions. NPCL §102(a)(21)</p>	<p>An independent member is one who: (1) is not, and in the past two years has not been, employed by the authority or an affiliate in an executive capacity; (2) is not, and in the past two years has not been, employed by an entity that received remuneration valued at more than \$15,000 for goods and services provided to the authority or received any other form of financial assistance valued at more than \$15,000 from the authority; (3) is not a relative of an executive officer or employee in an executive position of the authority or an affiliate; and (4) is not, and in the past two years has not been, a lobbyist registered under a state or local law and paid by a client to influence the management decisions, contract awards, rate determinations or any other similar actions of the authority or an affiliate. PAL§2825(2)</p>
Removal of Board Members	<p>Not provided for in the Nonprofit Revitalization Act, but contained in NPCL §706.</p>	<p>Except as otherwise provided in the PAL, every member of every authority or commission heretofore or hereafter continued or created by the PAL, except ex-officio members, that is, members whose membership results by virtue of their incumbency of a public office, shall be removable by the public officer or public body which is empowered by this chapter to appoint</p>

Issue	Nonprofit Revitalization Act Provision	PAAA Provision
		such authority or commission member, for inefficiency, breach of fiduciary duty , neglect of duty or misconduct in office, provided, however, that such member shall be given a copy of the charges against him and an opportunity of being heard in person, or by counsel, in his or her defense upon not less than ten days' notice. PAL§2827
Employees as Chair of the Board	No employee of the corporation shall serve as chair of the board or hold any other title with similar responsibilities. NPCL §713(f)	Board members, including the chairperson, may serve as the chief executive officer, executive director, chief financial officer, comptroller, or hold any other equivalent position while also serving as a member of the board. However, no chair who is also the chief executive officer shall participate in determining the level of compensation or reimbursement, or time and attendance rules for the position of chief executive officer. PAL§2824(3)
Compensation	A not-for-profit corporation may pay compensation in a reasonable amount to members, directors, or officers, for services rendered, and may make distributions of cash or property to members upon dissolution or final liquidation as permitted by this chapter. No person who may benefit from such compensation may be present at or otherwise participate in any board or committee deliberation or vote concerning such person's compensation; provided that nothing in this section shall prohibit the board or authorized committee from requesting that a person who may benefit from such compensation present information as background or answer questions at a committee or board meeting prior to the commencement of deliberations or voting relating thereto. NPCL §515(b)	Discussed above in PAL§2824(3) .
Role and Responsibilities of Board Members	Not provided for in the Nonprofit Revitalization Act, but contained in NPCL §717 .	Board members of a local authority shall: (1) execute direct oversight of the authority's chief executive and other management in the effective and ethical management of the authority; (2) understand, review and monitor the implementation of fundamental financial and management controls and operational decisions of the authority, (3) perform each of their duties as board members, including but not limited to those imposed by this section, in good faith and with that degree of diligence, care and skill which an ordinarily prudent person in like position would use under similar circumstances, and may take into consideration the views and policies of any elected official or body, or other person and ultimately apply independent judgment in the best interest of the authority, its mission and

Issue	Nonprofit Revitalization Act Provision	PAAA Provision
		<p>the public; and (4) at the time that each member takes and subscribes his or her oath of office, or within sixty days after the effective date of this paragraph if the member has already taken and subscribed his or her oath of office, execute an acknowledgment, in the form prescribed by the authorities budget office after consultation with the attorney general, in which the board member acknowledges that he or she understands his or her role, and fiduciary responsibilities as set forth in item (3) above, and acknowledges that he or she understands his or her duty of loyalty and care to the organization and commitment to the authority's mission and the public interest. PAL§2824(1)</p>
Board Training	No provision.	<p>Individuals newly appointed to the board of a public authority must participate in state approved training regarding their legal, fiduciary, financial and ethical responsibilities within one year of appointment to such board. Existing board members shall participate in such continuing training as may be required to remain informed of best practices, regulatory and statutory changes relating to the effective oversight of the management and financial activities of public authorities and to adhere to the highest standards of responsible governance. PAL§2824(2)</p>
Eligibility of Public Officers as Board Members	No provision.	<p>Notwithstanding any law to the contrary, a public officer or employee may be appointed as a member of an authority without forfeiture of any other public office or employment. PAL§2825(1)</p>

F. GOOD GOVERNANCE

Issue	Nonprofit Revitalization Act Provision	PAAA Provision
<p>Conflicts of Interest Policy</p>	<p>A. Except as provided in D below, every not-for-profit corporations shall adopt a conflict of interest policy to ensure that its directors, officers and key employees act in the corporation’s best interest and comply with applicable legal requirements.</p> <p>B. The conflict of interest policy shall include, at a minimum, the following provisions:</p> <ol style="list-style-type: none"> 1. a definition of the circumstances that constitute a conflict of interest; 2. procedures for disclosing a conflict of interest to the audit committee or, if there is no audit committee, to the board; 3. a requirement that the person with the conflict of interest not be present at or participate in board or committee deliberation or vote on the matter giving rise to such conflict; 4. a prohibition against any attempt by the person with the conflict to influence improperly the deliberation or voting on the matter giving rise to such conflict; 5. a requirement that the existence and resolution of the conflict be documented in the corporation’s records, including in the minutes of any meeting at which the conflict was discussed or voted upon; and 6. procedures for disclosing, addressing, and documenting related party transactions in accordance with NPCL Section 715e. <p>C. The conflict of interest policy shall require that prior to the initial election of any director, and annually thereafter, such director shall complete, sign and submit to the secretary of the corporation a written statement identifying, to the best of the director’s knowledge, any entity of which such director is an officer, director, trustee, member, owner (either as a sole proprietor or a partner), or employee and with which the corporation has a relationship, and any transaction in which the corporation is a participant and in which the director might have a conflicting interest. The policy shall</p>	<p>Board members shall adopt a code of ethics applicable to each officer, director and employee that, at a minimum, includes the standards established in §74 of the Public Officers Law. PAL§2824(1)(d)</p>

Issue	Nonprofit Revitalization Act Provision	PAAA Provision
	<p>require that each director annually resubmit such written statement. The secretary of the corporation shall provide a copy of all completed statements to the chair of the audit committee or, if there is no audit committee, to the chair of the board.</p> <p>D. A corporation that has adopted and possesses a conflict of interest policy pursuant to federal, state or local laws that is substantially consistent with the provisions of paragraph B above shall be deemed in compliance with provisions of this section. In addition, any corporation that is a state authority or a local authority, and that has complied substantially with Section 2824 and 2825(3) of the PAL, shall be deemed in compliance with this section.</p> <p>E. Nothing in this section shall be interpreted to require a corporation to adopt any specific conflict of interest policy not otherwise required by this section or any other law or rule, or to supersede or limit any requirement or duty governing conflicts of interest required by any other law or rule. NPCL §715-a</p>	
<p>Whistleblower Policy</p>	<p>A. Except as provided in paragraph C below, every not-for-profit corporation that has (i) twenty or more employees and (ii) in the prior fiscal year had annual revenue in excess of \$1,000,000 shall adopt a whistleblower policy to protect from retaliation persons who report suspected improper conduct. Such policy shall provide that no director, officer, employee or volunteer of a corporation who in good faith reports any action or suspected action taken by or within the corporation that is illegal, fraudulent or in violation of any adopted policy of the corporation shall suffer intimidation, harassment, discrimination or other retaliation or, in the case of employees, adverse employment consequence.</p> <p>B. The whistleblower policy shall include the following provisions:</p> <ol style="list-style-type: none"> 1. Procedures for the reporting of violations or suspected violations of laws or corporate policies, including procedures for preserving the confidentiality of reported information; 2. A requirement that an employee, officer or director of the corporation be 	<p>Board members shall establish (1) policies regarding the payment of salary, compensation and reimbursements to, and establish rules for the time and attendance of, the chief executive and senior management, and (2) written policies and procedures on personnel including policies protecting employees from retaliation for disclosing information concerning acts of wrongdoing, misconduct, malfeasance, or other inappropriate behavior by an employee or board member of the authority. PAL§2824(1)(e)</p>

Issue	Nonprofit Revitalization Act Provision	PAAA Provision
	<p>designated to administer the whistleblower policy and to report to the audit committee or other committee of independent directors or, if there are no such committees, to the board; and</p> <p>3. A requirement that a copy of the policy be distributed to all directors, officers, employees and to volunteers who provide substantial services to the corporation.</p> <p>C. A corporation that has adopted and possesses a whistleblower policy pursuant to federal, state or local laws that is substantially consistent with the provisions of paragraph B above shall be deemed in compliance with provisions of this section. In addition, any corporation that is a state authority or local authority, and that has complied substantially with Section 2824 of the PAL and is subject to the provisions of Section 2857 of the PAL, shall be deemed in compliance with the provisions of this section.</p> <p>D. Nothing in this section shall be interpreted to relieve any not-for-profit corporation from any additional requirements in relation to internal compliance, retaliation, or document retention required by any other law or rule. NPCL §715-b</p>	
Whistleblower Protection	No provision.	No state or local authority shall fire, discharge, demote, suspend, threaten, harass or discriminate against an employee because of the employee's role as a whistleblower, insofar as the actions taken by the employee are legal. PAL§2857
Whistleblower Access and Assistance Program	No provision.	The director of the Authorities Budget Office, after consultation with the Attorney General, shall develop and recommend to the State Legislature a whistleblower access and assistance program which shall include, but not be limited to: (1) evaluating and commenting on whistleblower programs and policies by state and local authorities pursuant to PAL§2824(1)(e); (2) establishing toll-free telephone and facsimile lines available to employees at state and local authorities; (3) offering advice regarding employee rights under applicable state and federal laws and advice and options available to all persons; and (4) offering an opportunity for employees of state and local authorities to identify concerns regarding any issue at a state or local authority. PAL§2986(2)

Issue	Nonprofit Revitalization Act Provision	PAAA Provision
Adoption of Investment Policy	No provision.	Board members shall establish written policies and procedures on investments. PAL§2824(1)(e)
Adoption of Investment Guidelines; Annual Review	No provision.	The board of every public benefit corporation by resolution must adopt comprehensive investment guidelines which detail the corporation's operating policy and instructions to officers and staff regarding the investing, monitoring and reporting of funds of the corporation. The investment guidelines shall be annually reviewed and approved by the board of the corporation. PAL§2925(1)
Adoption of Travel Policy	No provision.	Board members of a local authority shall establish written policies and procedures on travel. PAL§2824(1)(e)
Adoption of Real Property Acquisition Policy	No provision.	Board members of a local authority shall establish written policies and procedures on the acquisition of real property. PAL§2824(1)(e)
Adoption of Property Disposition Policy	No provision.	Board members of a local authority shall establish written policies and procedures on the disposition of real and personal property. PAL§2824(1)(e)
Property Defined	No provision.	Property means (1) personal property in excess of \$5000 in value, (2) real property, (3) any inchoate or other interest in such property, excluding an interest securing a loan or other financial obligation of another party. PAL§2895(3)
Adoption of Property Use and Disposition Guidelines; Annual Review	No provision.	The board of each authority must by resolution adopt comprehensive guidelines which detail the authority's operative policy and instructions regarding the (1) use of property and (2) awarding, monitoring and reporting of contracts for the disposal of property. The property disposition guidelines shall be annually reviewed and approved by the board. PAL§2896(1)
Annual Filing and Posting of Property Disposition Guidelines	No provision.	On or before March 31 of each year, the public authority shall (1) file with the State Comptroller a copy of the property disposition guidelines most recently reviewed and approved by the board, and (2) post said property disposition guidelines on the authority's website. PAL§2896(1)
Contracting Officer	No provision.	The board of each authority must by resolution appoint an officer or employee to be responsible for (1) the disposition of property, and (2) the authority's compliance with the authority's property use and disposition guidelines. PAL§2895(1); PAL§2896(1)(b)

Issue	Nonprofit Revitalization Act Provision	PAAA Provision
Inventory of Property; Identification of Excess Property	No provision.	Each public authority must (1) maintain adequate inventory controls and accountability systems for all property under its control; (2) periodically inventory all property under its control to determine which property shall be disposed of; (3) produce a written report of such excess property; and (4) transfer or dispose of such excess property as promptly as possible. PAL§2896(2); PAL§2896(3)
Annual Publication of Real Property List	No provision.	Each public authority must publish, at least annually, a report listing all real property of the authority. Such report shall include a list and full description of all real and personal property disposed of during such period. The report shall contain the price received by the public authority and the name of the purchaser for all such property sold by the public authority during such period. PAL§2896(3)
Adoption of Procurement Policy	No provision.	Board members of a local authority shall establish written policies and procedures on the procurement of goods and services. PAL§2824(1)(e)
Adoption of Defense and Indemnification Policy	No provision.	Board members of a local authority shall adopt a defense and indemnification policy and disclose such plan to any and all prospective board members. PAL§2824(1)(f)
Website Information	No provision.	Each local authority shall make accessible to the public, via its official or shared internet web site, documentation pertaining to its mission, current activities, most recent annual financial reports, current year budget and its most recent independent audit report unless such information is covered by subdivision two of section eighty-seven of the public officers law. PAL§2800(2)(a)
Additional Website Information	No provision.	Each public authority must annually (on or before March 31 of each year) post its property disposition guidelines on its official internet web site. PAL§2896(1)
Appointment of Governance Committee	No provision.	Board members of each local authority shall establish a governance committee to be comprised of not less than three independent members, who shall constitute a majority on the committee, and who shall possess the necessary skills to understand the duties and functions of the governance committee; provided, however, that in the event that a board has less than three independent members, the board may appoint non-independent members to the governance committee, provided that the independent members must constitute a majority of the members of the governance committee. PAL§2824(7)

Issue	Nonprofit Revitalization Act Provision	PAAA Provision
Duties of Governance Committee	No provision.	The governance committee shall: (1) keep the board informed of current best governance practices; (2) review corporate governance trends; (3) update recommend updates to the authority's corporate governance principles; (4) advise appointing authorities on the skills and experiences required of potential board members, (5) examine ethical and conflict of interest issues, (6) perform board self-evaluations and (7) recommend by-laws which include rules and procedures for conduct of board business. PAL§2824(7)
Appointment of Finance Committee	No provision.	Board members of each local authority which issues debt, shall establish a finance committee to be comprised of not less than three independent members, who shall constitute a majority on the committee, and who shall possess the necessary skills to understand the duties and functions of the committee; provided, however, that in the event that a board has less than three independent members, the board may appoint non-independent members to the finance committee, provided that the independent members must constitute a majority of the members of the finance committee. PAL§2824(8)
Duties of Finance Committee	No provision.	It shall be the responsibility of the members of the finance committee to review proposals for the issuance of debt by the authority and its subsidiaries and make recommendations. PAL§2824(8)