

**A RESOLUTION TO BE SUBMITTED
BY LEGISLATORS LORIGO & MILLS**

Support for NYS Legislation to allow the state's Authorities Budget Office to suspend local authority board members who have failed to file required annual reports

WHEREAS, Public authorities are corporate instruments of New York State created by the Legislature to further public interests; and

WHEREAS, Public authorities have various levels of autonomy from the state based on the powers, as well as the constraints, built into their legislative mandate; and

WHEREAS, as of January 2017, the overall debt of public authorities totaled more than \$267 billion equating to \$13,487 for every New York resident, and total annual spending was \$66.8 billion; and

WHEREAS, The Public Authorities Reform Act of 2009 require many measures designed to improve the oversight and accountability of New York's public authorities, and created the Authorities Budget Office (ABO) as an independent office; and

WHEREAS, the mission of ABO is to make public authorities more accountable and transparent, and to act in the public interest consistent with their intended purpose; and

WHEREAS, the ABO collects, analyzes and disseminates to the public information on the finances and operations of state and local public authorities; conducts reviews to assess the operation and governance practices of public authorities; promotes good governance principles through training and technical assistance and the issuance of policy guidance and best practices; and investigates complaints made against a public authority for non-compliance or inappropriate conduct; and

WHEREAS, proposed state legislation would give the ABO the power to suspend a public authority's board and executive officer if they are more than three years late filing required reports; and

WHEREAS, authorities would receive a notice of the ABO's intent to suspend individuals and they would have 30 days to come into compliance, there is also a mechanism that would allow a municipality to reinstate a public authority's board members if removed; and

WHEREAS, some authorities have gone years without filing reports, and a lack of enforcement powers prevents the ABO from being able to hold these delinquent authorities or economic development agencies accountable, currently the ABO is only able to recommend a suspension or dismissal of officers or board members; and

WHEREAS, this Honorable Body determines that the ABO should have greater enforcement powers to help ensure local authorities and economic development agencies comply with financial disclosure requirements and transparency; and

WHEREAS, the ABO conducted an operational review of the Erie County Water Authority and its past practices in a report dated June 8, 2018; and

WHEREAS, the ABO report led to the censuring of all sitting commissioners during the time period of the review by the Authorities Budget Office, and the ABO could only recommend the removal of the remaining board member (Commissioner Jerome Schad); and

WHEREAS, Erie County Legislature resolution no. 139-2018 called for the removal of Commissioner Schad; and

WHEREAS, Erie County Legislature resolution no. 201-2018 requested the Chair of the County Legislature remove Commissioner Schad; and

WHEREAS, the full Erie County Legislature does not even have the authority to remove a sitting ECWA commissioner, that authority solely rests with the Chair of the Legislature; and

WHEREAS, the oversight entities for public authorities need to have greater powers to suspend and remove out of compliance board members and officers.

NOW, THEREFORE, BE IT

RESOLVED, that this Honorable Body supports NYS Senate Bill S01872 and Assembly Bill A00220 to give the state's Authorities Budget Office the authority to suspend local authority board members or chief executive officers that have failed to file the reports required under the Public Authorities Law for more than three years after the due date; and

RESOLVED, that certified copies of this resolution be sent to Governor Cuomo, the Western New York delegation of the NYS Senate and Assembly, Senate Majority Leader Andrea Stewart-Cousins, Assembly Speaker Carl Heastie, and any other party deemed necessary and proper.

Fiscal Impact: None for this resolution

S01872 & A00220 Text:

AN ACT to amend the public authorities law, in relation to authorizing the authorities budget office to suspend local authority board members and executive staff

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. The public authorities law is amended by adding a new
2 section 6-a to read as follows:
3 § 6-a. Power to suspend local authority board members and executive
4 staff. 1. The authorities budget office shall have the authority,
5 subject to subdivision two of this section, to suspend one or more
6 members of a local authority board of directors, or the chief executive
7 officer or equivalent position of a local authority for a period not to
8 exceed ninety days when such individual or individuals knowingly fails
9 or neglects to submit any report required by section twenty-eight
10 hundred of this chapter within thirty-six months of its due date. The
11 authorities budget office is authorized to terminate such a suspension
12 if the board member or chief executive officer demonstrates that he or
13 she has remedied their non-compliance. For the purposes of this section,
14 the "suspension" of an individual shall mean the temporary removal of
15 the rights, responsibilities, powers and duties of a person who is an
16 appointed board member of a local authority or the individual who serves
17 as chief executive officer through appointment or contract. Should the
18 authorities budget office suspend the full board of directors or a
19 majority of current board members the term "suspension" shall mean the
20 board of directors is prohibited from taking actions, votes, or adopting
21 resolutions, that bind the board to future agreements, contracts, finan-
22 cial commitments, indebtedness, or other actions, other than actions

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets
[-] is old law to be omitted.

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1 necessary to resolve the noncompliance or satisfy existing legal or
2 administrative obligations.
3 2. (a) Pursuant to policies and procedures developed by the authori-
4 ties budget office and made available on its website, when the authori-
5 ties budget office has reason to believe that one or more board members
6 of a local authority has knowingly failed or neglected to submit any
7 report required by section twenty-eight hundred of this chapter within
8 thirty-six months of its due date, the authorities budget office shall
9 provide at least thirty days' notice of its intent to initiate suspen-
10 sion proceedings to the chairperson of the local authority, to the indi-
11 vidual or individuals responsible for appointing such board members, and
12 to each such board member. If the authorities budget office has reason
13 to believe that the chief executive officer of a local authority has
14 knowingly failed or neglected to submit any report required by section
15 twenty-eight hundred of this chapter within thirty-six months of its due
16 date, the authorities budget office shall provide at least thirty days'
17 notice of its intent to initiate suspension proceedings to the chair-
18 person of the local authority and to the chief executive officer. Such
19 notice shall include, but shall not be limited to (i) the date and a
20 brief description of the facts and nature of each non-compliance for
21 which such suspension is proposed; (ii) the number of days that the
22 authorities budget office proposes to suspend such board member or chief
23 executive officer; (iii) the option to submit a formal response to the
24 authorities budget office which demonstrates why such board member or

25 chief executive officer should not be suspended; and (iv) if applicable,
26 a period of time in which such local authority or board member or chief
27 executive officer may remedy the non-compliance.

28 (b) If, after the expiration of the deadline set forth in the notice
29 of intent pursuant to subparagraph (iv) of paragraph (a) of this subdi-
30 vision, the board member or members or chief executive officer, whichev-
31 er is applicable, has not responded to the notice or has not remedied
32 the non-compliance to the satisfaction of the authorities budget office,
33 the authorities budget office shall issue to the non-compliant board
34 member or members or chief executive officer a notice of suspension
35 which shall include: (i) the number of days of suspension; and (ii) the
36 date that such suspension shall commence, which date shall be at least
37 one hundred eighty days from the date of the issuance of the notice of
38 suspension.

39 3. (a) Whenever the authorities budget office has suspended one or
40 more board members of a local authority, the individual or individuals
41 who appointed those board members may act to reinstate a suspended board
42 member. If the appointing authority is a legislative body or a member of
43 the legislative body, any action to reinstate a suspended board member
44 shall occur in a public meeting of such body and following an opportu-
45 nity for the public to comment. Such action shall be deemed valid upon
46 passage of a written resolution of reinstatement by a majority and
47 recorded vote of the legislative body. Such resolution shall describe
48 the facts and circumstances by which the legislative body has reached
49 this determination. If the appointing authority is the chief executive
50 official of the municipality for whose benefit the local authority was
51 created, any action to reinstate a suspended board member shall be
52 through an official act of the chief executive official. Such act shall
53 be recorded in writing and shall describe the facts and circumstances by
54 which the chief executive official reached this determination.

55 (b) Whenever the authorities budget office has suspended the chief
56 executive officer of a local authority, the chairperson of such local
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1 authority may initiate action to reinstate the suspended chief executive
2 officer. Any action to reinstate a suspended chief executive officer
3 shall occur in a public meeting of the board of directors and following
4 an opportunity for the public to comment. Such action shall be deemed
5 valid upon passage of a written resolution of reinstatement by a majori-
6 ty and recorded vote of the current board of directors. Such resolution
7 shall describe the facts and circumstances by which the board of direc-
8 tors reached this determination.

9 (c) For the purposes of this section, "reinstatement" shall mean the
10 restoration of the rights, responsibilities, powers and duties of a
11 board member or chief executive officer of a local authority.

12 § 2. This act shall take effect on the ninetieth day after it shall
13 have become a law.