

STATE OF NEW YORK

4148

2019-2020 Regular Sessions

IN ASSEMBLY

February 1, 2019

Introduced by M. of A. KOLB, BRABENEC, RAIA -- read once and referred to the Committee on Corporations, Authorities and Commissions

AN ACT to amend the public authorities law, in relation to establishing the metropolitan transportation authority fiscal oversight board, and to provide for the powers and duties of such board; and to repeal section 1279-a of such law relating to the management advisory board of the metropolitan transportation authority

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

1 Section 1. Section 1279-a of the public authorities law is REPEALED.

2 § 2. Article 5 of the public authorities law is amended by adding a
3 new title 10-E to read as follows:

4 TITLE 10-E

5 METROPOLITAN TRANSPORTATION

6 AUTHORITY FISCAL OVERSIGHT CONTROL BOARD

7 Section 1240. Short title.

8 1241. Legislative intent.

9 1242. Definitions.

10 1243. Establishment of metropolitan transportation authority

11 fiscal oversight control board.

12 1244. Administration of the board.

13 1245. General powers of the board.

14 1246. Transfer of powers, duties and functions.

15 1247. Transfer of records.

16 1248. Transfer of employees.

17 1249. Continuity of authority.

18 1250. Completion of unfinished business.

19 1251. Terms occurring in laws, contracts and other documents.

20 1252. Existing rights and remedies preserved.

21 1253. Pending actions and proceedings.

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

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1 1254. Assistance to the board; employees of the inspector gener-
2 al.

3 1255. Review period.

4 1256. MTA financial plan.

5 1257. Actions against the board.

6 1258. Audits.

7 1259. Effect of inconsistent provisions.

8 1259-a. Separability; construction.

9 § 1240. Short title. This title shall be known and may be cited as the
10 "Metropolitan transportation authority fiscal oversight control board
11 act".

12 § 1241. Legislative intent. The legislature hereby finds and declares
13 that the metropolitan transportation authority is facing an ongoing
14 financial crisis, and that the crisis cannot be resolved absent outside
15 intervention. The legislature therefore declares that the creation of an
16 independent fiscal oversight board is necessary to address this finan-
17 cial crisis to restore the confidence of the financial markets, those
18 who use the metropolitan transportation authority services, those who do
19 business with such authority and the people of the state of New York.

20 § 1242. Definitions. For the purposes of this title, unless the
21 context requires otherwise:

22 1. "Board", "control board" and "fiscal oversight control board" mean
23 the metropolitan transportation authority fiscal oversight control board
24 established by section twelve hundred forty-three of this title.

25 2. "Forensic audit" means the use of accounting methods to collect
26 forensic evidence to determine if a criminal act including, but not
27 limited to, embezzlement or fraud, is occurring or has occurred within
28 the MTA.

29 3. "Inspector general" means the office of metropolitan transportation
30 authority inspector general established by section twelve hundred seven-
31 ty-nine of this article.

32 4. "MTA" means the metropolitan transportation authority established
33 by title eleven of this article.

34 5. "MTA region" means the metropolitan commuter transportation
35 district established by section twelve hundred sixty-two of this arti-
36 cle.

37 § 1243. Establishment of metropolitan transportation authority fiscal
38 oversight control board. There is hereby established the metropolitan
39 transportation authority fiscal oversight control board, as an independ-
40 ent entity within the office of inspector general, which shall exercise
41 the powers and duties provided for in this title.

42 § 1244. Administration of the board. 1. The board shall consist of
43 seven members which shall be appointed by the governor. Of the seven
44 members, one such member shall be appointed following the recommendation
45 of the state comptroller; one such member shall be appointed on the
46 recommendation of the temporary president of the senate; one such member
47 shall be appointed on the recommendation of the speaker of the assembly;
48 one such member shall be appointed on the recommendation of the minority
49 leader of the senate; and one such member shall be appointed on the
50 recommendation of the minority leader of the assembly. Every member,
51 who is otherwise an elected official, shall be entitled to designate a
52 single representative to attend, in his or her place, meetings of the
53 board and to vote or otherwise act in his or her behalf. Such designees
54 shall be residents of the state. Written notice of such designation
55 shall be furnished prior to any participation by the single designee.
56 Such single designee shall serve at the pleasure of the representative,

1 and shall not be authorized to delegate any of his or her duties or
2 functions to another person. Each member shall be appointed for a term
3 of four years, provided however, that three of the members first
4 appointed by the governor, including the member appointed following the
5 recommendation of the state comptroller shall serve for a term ending
6 June thirtieth, two thousand twenty-three, and the remaining four
7 members first appointed by the governor including the members appointed
8 on the recommendation of the temporary president of the senate, the
9 speaker of the assembly, the minority leader of the senate and the
10 minority leader of the assembly shall serve for a term ending June thir-
11 tieth, two thousand twenty-five. Each member shall hold office until
12 his or her successor has been appointed and qualified. Thereafter, each
13 member shall serve a term of four years, except that any member
14 appointed to fill a vacancy shall serve only until the expiration of his
15 or her predecessor's term.

16 2. The governor shall designate a chair and a vice-chair from among
17 the members. The chair shall preside over all meetings of the members
18 and shall have such other duties as the members may prescribe. The vice-
19 chair shall preside over all meetings of the members in the absence of
20 the chair and shall have such other duties as the members may prescribe.

21 3. The members of the board shall serve without salary, but each
22 member shall be reimbursed for actual and necessary expenses incurred in
23 the performance of such member's official duties as a member of the
24 board.

25 4. Notwithstanding any inconsistent provision of any general, special
26 or local law, ordinance, resolution or charter, no officer, member or
27 employee of the state, any city, county, town or village, any govern-
28 mental entity operating any public school or college, any school
29 district or any other public agency or instrumentality which exercises
30 governmental powers under the laws of the state, shall forfeit his or
31 her office or employment by reason of his or her acceptance of appoint-
32 ment as a member, officer or employee of the board, nor shall service as
33 such member, officer or employee of the board be deemed incompatible or
34 in conflict with such office or employment.

35 5. Four members shall constitute a quorum for the transaction of any
36 business or the exercise of any power of the board. No action shall be
37 taken by the board except pursuant to a favorable vote of at least four
38 members participating in a meeting at which such action is taken.

39 6. The board shall appoint a treasurer and may appoint officers and
40 agents as it may require and prescribe their duties.

41 § 1245. General powers of the board. Except as otherwise limited by
42 this title, the board shall have the following powers and duties:

43 1. to make and alter by-laws for its organizations and management;
44 2. to make and execute contracts and all other instruments or agree-
45 ments necessary or convenient to carry out any powers and functions
46 expressly given in this title;

47 3. to commence any action to protect or enforce any right conferred
48 upon it by any law, contract or other agreement;

49 4. to review, authorize and approve all contracts of the MTA or any of
50 its subsidiaries in excess of one hundred thousand dollars;

51 5. to approve or disapprove the financial plan and the financial plan
52 modifications of the MTA, and shall formulate and adopt its own modifi-
53 cations to the financial plan, as necessary such modifications shall
54 become effective upon their adoption by the control board;

55 6. to set a maximum level of spending for any proposed budget of any
56 subsidiary organizations of the MTA;

1 7. (a) to impose a wage and/or hiring freeze upon a finding by the
2 control board that a wage and/or hiring freeze is essential to the
3 adoption or maintenance of a MTA budget or financial plan that is in
4 compliance with this title, the board shall be empowered to order that
5 all increases in salary or wages of employees of the MTA and employees
6 of covered subsidiaries which will take effect after the date of the
7 order pursuant to collective bargaining agreements, other analogous
8 contracts or interest arbitration awards, in existence or thereafter
9 entered into, requiring such salary or wage increases as of any date
10 thereafter are suspended. Such order may also provide that all increased
11 payments for holiday and vacations differentials, shift differentials,
12 salary adjustments, according to plan and step-ups or increments for
13 employees of the MTA and employees of covered subsidiaries which will
14 take effect after the date of the order pursuant to collective bargain-
15 ing agreements, other analogous contracts or interest arbitration awards
16 requiring such increased payments as of any date thereafter are, in the
17 same manner, suspended. For the purposes of computing the pension base
18 of retirement allowances, any suspended salary or wage increases and any
19 other suspended payments shall not be considered as part of compensation
20 or final compensation or of annual salary earned or earnable.

21 (b) Notwithstanding the provisions of paragraph (a) of this subdivi-
22 sion, this subdivision shall not be applicable to employees of the MTA
23 or employees of a covered subsidiary subject to a collective bargaining
24 agreement or an employee of the MTA or a covered subsidiary not subject
25 to the collective bargaining agreement where the collective bargaining
26 representative or such unrepresented employee has agreed to a deferment
27 of salary or wage increase, by an instrument in writing which has been
28 certified by the control board as being an acceptable and appropriate
29 contribution toward alleviating the fiscal crisis of the authority. Any
30 such agreement to a deferral of salary or wage increase may provide that
31 for the purposes of computing the pension base of retirement allowances,
32 any deferred salary or wage increase may be considered as part of
33 compensation or final compensation or of annual salary earned or earn-
34 able.

35 (c) Notwithstanding the provisions of paragraphs (a) and (b) of this
36 subdivision, no retroactive pay adjustments of any kind shall accrue or
37 be deemed to accrue during the period of wage freeze, and no such addi-
38 tional amounts shall be paid at the time a wage freeze is lifted, or at
39 any time thereafter;

40 8. to conduct forensic audits and report any in which there is reason
41 to believe a violation of a law, abuse or waste occurred relating to the
42 MTA to the state inspector general or, where applicable, the inspector
43 general;

44 9. to review and approve or disapprove any collective bargaining
45 agreement to be entered into by the MTA or any covered subsidiary or
46 purporting to bind, the MTA or any covered subsidiary. Prior to entering
47 into any collective bargaining agreement, the MTA or any covered subsid-
48 iary shall submit a copy of such collective bargaining agreement to the
49 control board, accompanied by an analysis of the projected costs of such
50 agreement and certification that execution of the agreement will be in
51 accordance with the financial plan. Such submission shall be in such
52 form and shall include such additional information as the control board
53 may prescribe. The control board shall promptly review the terms of such
54 collective bargaining agreement and the supporting information in order
55 to determine compliance with the financial plan, and shall disapprove
56 any collective bargaining agreement which, in its judgement, would be

1 inconsistent with the financial plan. No collective bargaining agree-
2 ment binding, or purporting to bind, the MTA or any covered subsidiary
3 after the effective date of this title shall be valid and binding upon
4 the MTA or any covered subsidiary unless first approved by resolution of
5 the control board and shall act jointly with the MTA in selecting
6 members of any interest arbitration panel. Notwithstanding any other
7 evidence presented by the MTA, the covered organization or any recog-
8 nized employee organization, the arbitration panel must, prior to issu-
9 ing any final decision, provide the board with the opportunity to pres-
10 ent evidence regarding the fiscal condition of the MTA;

11 10. to make recommendations to the governor, the temporary president
12 of the senate, the speaker of the assembly, the minority leaders of the
13 senate and the assembly, and the chairs and ranking minority members of
14 the following committees: the senate finance committee, the assembly
15 ways and means committee, the senate committee on corporations, authori-
16 ties and commissions and the assembly committee on corporations, authori-
17 ties and commissions and control board members concerning opportunities
18 to improve the performance, reporting, reformation, structure and over-
19 sight of the MTA;

20 11. to provide such additional information and analysis as may be
21 reasonably requested by the legislature and state comptroller;

22 12. to review the potential for and make recommendations to the gover-
23 nor and legislature regarding the terms of board members;

24 13. to develop and issue a written acknowledgement that a board member
25 must execute at the time that the member takes and subscribes their oath
26 of office, or within sixty-five days after the effective date of this
27 title if the member has already taken and subscribed their oath of
28 office, in which the board member acknowledges that they understand
29 their independence and fiduciary duties, including their duty of loyalty
30 and care to the organization and commitment to the control board's
31 mission;

32 14. to recommend to the legislature and governor a compensation plan
33 for officers of the MTA and covered subsidiaries;

34 15. to develop guidelines for best corporate management and financial
35 practices of the MTA, where such authority shall comply with those
36 guidelines except when the MTA provides to the control board a detailed
37 explanation of the MTA's failure to comply, and where an explaining
38 authority shall be considered in compliance with such guidelines unless
39 and until notified to the contrary by the control board;

40 16. to periodically evaluate the suspension of salary or wage
41 increases or suspension of other increased payments or benefits, and
42 may, if it finds that the fiscal crisis, in the sole judgment of the
43 control board has abated, terminate such suspensions;

44 17. to appoint such officers and employees as it may require for the
45 performance of its duties and to fix and determine their qualifications,
46 duties and compensation, and to retain or employ counsel, auditors and
47 private financial consultants and other services on a contract basis or
48 otherwise for rendering professional, business or technical services and
49 advice; and, in taking such actions, the control board shall consider
50 the financial impact on the MTA;

51 18. to make reports received by and prepared by the control board
52 available to the public, to the extent practicable, through the inter-
53 net. In addition, the control board may make publicly available, and to
54 the extent practicable through the internet, such additional information
55 as it deems appropriate, provided such disclosure does not interfere
56 with the oversight functions of such board. The provisions of this

1 subdivision shall not require, however, the public disclosure of docu-
2 ments or information not subject to disclosure under the provisions of
3 section eighty-seven of the public officers law. Furthermore, before
4 making publicly available in any manner information that is not subject
5 to mandatory disclosure under the provisions of section eighty-seven of
6 the public officers law, the control board shall first obtain the
7 consent of the MTA;

8 19. to annually issue reports on its findings and analyses to the
9 governor, the chair and ranking minority member of the senate finance
10 committee, the chair and ranking minority member of the assembly ways
11 and means committee, the chair and ranking minority member of the senate
12 standing committee on corporations, authorities and commissions, the
13 chair and ranking minority member of the assembly standing committee on
14 corporations, authorities and commissions, the state comptroller and the
15 attorney general, with conclusions and opinions concerning the perform-
16 ance of the MTA and to study, review and report on the operations, prac-
17 tices and finances of the MTA. Such reports shall include, but not be
18 limited to: (a) the economic impact of the mobility tax on the MTA
19 region, (b) a compensation schedule in addition to the report described
20 in section twenty-eight hundred six of this chapter that shall include,
21 by position, title and name of the person holding such position or
22 title, the salary, compensation, allowance and/or benefits provided to
23 any officer, director or employee in a decision making or managerial
24 position of such authority whose salary is in excess of one hundred
25 thousand dollars, (c) educational background and professional experience
26 for all directors, officers and employees for whom salary reporting is
27 required under paragraph (b) of this subdivision, (d) the projects
28 undertaken by such authority during the past year, (e) a listing and
29 description, in addition to the report required by paragraph a of subdi-
30 vision three of section twenty-eight hundred ninety-six of this chapter
31 of all real property of the MTA having an estimated fair market value in
32 excess of fifty thousand dollars that the MTA acquires or disposes of
33 during such period. The report shall contain the price received or paid
34 by the authority and the name of the purchaser or seller for all such
35 property sold or bought by the MTA, (f) the MTA's code of ethics, (g) an
36 assessment of the effectiveness of its internal control structure and
37 procedures, (h) a description of the MTA and its board structure,
38 including (i) names of committees and committee members, (ii) lists of
39 board meetings and attendance, (iii) descriptions of major MTA units and
40 subsidiaries, and (iv) number of employees, (i) its charter, if any, and
41 by-laws, (j) a listing of material changes in operations and programs
42 during the reporting year, (k) a description of assets valued at more
43 than twenty thousand dollars and/or services bought or sold and
44 contracts for services valued at more than one hundred thousand dollars
45 entered into other than on a competitive basis, including (i) the nature
46 of those assets and services, (ii) the names of the counterparties, and
47 (iii) where the contract price for goods purchased exceeds fair market
48 value, or where the contract price for goods sold is less than fair
49 market value, a statement of the fair market value, a detailed explana-
50 tion executed by the chief executive officer, chief financial officer or
51 procurement officer of the reasons for the high price purchase or the
52 low price sale including the relationship, if any, of persons associated
53 with the buyer/purchaser and persons associated with the MTA and/or the
54 officials who appointed members to the MTA board, and (l) a description
55 of any material pending litigation in which the authority is involved as
56 a party during the reporting year; and

1 20. to do any and all things necessary or convenient to carry out its
2 purposes and exercise the powers expressly given and granted in this
3 title, provided, however, the board shall under no circumstances
4 acquire, hold or transfer title to, lease, own beneficially or other-
5 wise, manage, operate or otherwise exercise control over any real prop-
6 erty, any improvement to real property or any interest therein other
7 than a lease or sublease of office space deemed necessary or desirable
8 by the control board.

9 § 1246. Transfer of powers, duties and functions. All powers, duties
10 and functions conferred upon the management advisory board created by
11 the former section twelve hundred seventy-nine-a of this article, shall
12 be transferred to and assumed by the board.

13 § 1247. Transfer of records. The former management advisory board
14 created by the former section twelve hundred seventy-nine-a of this
15 article shall deliver to the board all books, papers, records and prop-
16 erty as requested by the board.

17 § 1248. Transfer of employees. Upon the transfer of the functions of
18 the former management advisory board created by the former section
19 twelve hundred seventy-nine-a of this article to the board, any affected
20 employees may be transferred to the board in accordance with section
21 seventy of the civil service law.

22 § 1249. Continuity of authority. For the purpose of succession to all
23 functions, powers, duties and obligations transferred and assigned to,
24 devolved upon and assumed by the board shall be deemed and held to
25 constitute the continuation of the former management advisory board
26 pertaining to the powers and functions transferred.

27 § 1250. Completion of unfinished business. Any business or other
28 matter undertaken or commenced by the former management advisory board
29 created by the former section twelve hundred seventy-nine-a of this
30 article pertaining to or connected with the functions, powers, obli-
31 gations and duties transferred and assigned to the board, and pending on
32 the effective date of this title may be conducted and completed by the
33 board in the same manner and under the same terms and conditions and
34 with the same effect as if conducted and completed by the former manage-
35 ment advisory board.

36 § 1251. Terms occurring in laws, contracts and other documents. When-
37 ever the former management advisory board created by the former section
38 twelve hundred seventy-nine-a of this article is referred to or desig-
39 nated in any law, contract or documents pertaining to the functions,
40 powers, obligations and duties transferred and assigned to the board,
41 such reference or designation shall be deemed to refer to the board.

42 § 1252. Existing rights and remedies preserved. No existing right or
43 remedy of any character shall be lost, impaired or affected by reason of
44 this title.

45 § 1253. Pending actions and proceedings. No action or proceeding
46 pending at the time when this act shall take effect, brought by or
47 against the former management advisory board created by the former
48 section twelve hundred seventy-nine-a of this article relating to the
49 function, power or duty transferred to or devolved upon the board shall
50 be affected by this title, but the same may be prosecuted or defended in
51 the name of the board accountability and upon application to the court,
52 the board shall be substituted as a party.

53 § 1254. Assistance to the board; employees of the inspector general.
54 1. The board may use agents, employees and facilities of the inspector
55 general.

1 2. Officers and employees of the MTA may be transferred to the board
2 without examination and without loss of any civil service or retirement
3 status or rights. Any officer or employee of the board who heretofore
4 acquired or shall hereafter acquire such position status by transfer and
5 who at the time of such transfer was a member of the New York state and
6 local employees' retirement system shall continue to be a member of such
7 system as long as he or she continues in such service, and shall contin-
8 ue to have all the rights, privileges and obligations of membership in
9 such system.

10 § 1255. Review period. 1. Annually not later than November first, the
11 MTA shall submit to the board an annual budget proposal and financial
12 plan.

13 2. Not later than thirty days after such submission, the board shall
14 approve or disapprove the budget proposal and financial plan.

15 3. In the event the board shall disapprove such budget proposal and
16 financial plan based on disapproval of certain actions or assumptions,
17 the board shall promptly thereafter notify the MTA of its reasons. With-
18 in fifteen days from the receipt of such notification the MTA shall
19 modify the budget proposal and financial plan, and unless such budget
20 proposal and financial plan modification is approved by the board, the
21 board shall impose a financial plan of its own formulation as soon as
22 practicable.

23 § 1256. MTA financial plan. 1. The MTA shall prepare and submit to
24 the board a four-year financial plan, not later than the date required
25 for submission of the annual budget. Such financial plan shall, in addi-
26 tion to the requirements for financial plans set forth in subdivisions
27 two and three of this section, contain actions sufficient to ensure with
28 respect to the major operating funds for each fiscal year of the plan
29 that annual aggregate operating expenses for such fiscal year shall not
30 exceed annual aggregate operating revenues for such fiscal year.

31 2. Each financial plan and financial plan modification shall conform
32 to the requirements of paragraph (a) of this subdivision and shall
33 provide that the major operating funds of the MTA will be balanced in
34 accordance with generally accepted accounting principles. The financial
35 plan shall be developed and approved, and may from time to time be modi-
36 fied, in accordance with the following procedures:

37 (a) The MTA shall submit to the board a certificate stating that the
38 budget submitted to the board is consistent with the financial plan
39 submitted therewith and that operation within the budget is feasible.

40 (b) Prior to the approval or disapproval of the financial plan of the
41 MTA by the board, the board shall verify that the MTA has requested
42 community, educational or other entities to seek public input and
43 comment relating to the MTA's and/or any covered subsidiaries' financial
44 plan. The board shall evaluate any proposals submitted to the board for
45 cost savings and/or service delivery enhancement by the MTA.

46 (c) If the board determines that the financial plan or financial plan
47 modification provided pursuant to paragraph (e) of this subdivision or
48 section twelve hundred fifty-five of this title is complete and complies
49 with the standards set forth in this subdivision, the board shall make a
50 certification to the MTA setting forth revenue estimates agreed to by
51 the board in accordance with such determination.

52 (d) The board shall, in the event it disagrees with elements of the
53 financial plan provided pursuant to paragraph (e) of this subdivision,
54 or section twelve hundred fifty-five of this title, provide notice ther-
55 eof to the MTA, with copies to the director of the budget, the state
56 comptroller, the chair of the assembly ways and means committee, the

1 chair of the senate finance committee and the ranking minority members
2 of such committees, if, in the judgment of the board, such plan: (i) is
3 incomplete; (ii) fails to contain projections of revenues and expendi-
4 tures that are based on reasonable and appropriate assumptions and meth-
5 ods of estimations; (iii) fails to provide that operations of the MTA
6 and the covered subsidiaries will be conducted within the cash resources
7 available; or (iv) fails to comply with the provisions of this title or
8 other requirements of law.

9 (e) After the initial adoption of an approved financial plan, the
10 revenue estimates certified by the board and the financial plan shall be
11 regularly reexamined by the board in consultation with the MTA, the
12 state comptroller and the covered subsidiaries, and the MTA shall
13 provide a modified financial plan in such detail and within such time
14 periods as the board may require. In the event of reductions in such
15 revenue estimates, or in the event the MTA or a covered subsidiary shall
16 expend funds at a rate that would exceed the aggregate expenditure limi-
17 tation for the MTA or covered subsidiary prior to the expiration of the
18 fiscal year, the MTA shall submit a financial plan modification to
19 effect such adjustments in revenue estimates and reductions in total
20 expenditures as may be necessary to conform to such revised revenue
21 estimates or aggregate expenditure limitations.

22 (f) If, within a time period specified by the board, the MTA fails to
23 make such modifications after reductions in revenue estimates, or to
24 provide a modified plan in detail and within such time period required
25 by the board, the board shall adopt a resolution so finding and shall,
26 as soon as practicable thereafter, formulate and adopt a financial plan
27 to be effective until the board approves a financial plan submitted by
28 the MTA. All budgets and operations of the MTA or a covered subsidiary
29 shall be in conformance and compliance with the financial plan then in
30 effect.

31 (g) The MTA shall amend its budget or shall submit a financial plan
32 modification for the approval of the board such that the MTA's budget
33 and the approved financial plan shall be consistent. In no event shall
34 the MTA operate under a budget that is inconsistent with an approved
35 financial plan.

36 3. The financial plan shall be in such form and shall contain such
37 information for each year during which the financial plan is in effect
38 as the board may specify, and shall include the MTA and all the covered
39 subsidiaries, and shall, in such detail as the board from time to time
40 may prescribe, include (a) statements of all estimated revenues and of
41 all expenditures and cash flow projections of the MTA and each covered
42 subsidiary, and (b) an accounting of the expenditure of efficiency
43 incentive grants available to the MTA for each year of the plan.

44 4. The financial plan shall include any information which the board
45 may request to satisfy itself that (a) projected employment levels,
46 collective bargaining agreements and other actions relating to employee
47 costs, capital construction and such other matters as the board may
48 specify are consistent with the provisions made for such obligations in
49 the financial plan, (b) the MTA and the covered subsidiaries are taking
50 whatever action is necessary with respect to programs mandated by state
51 and federal law to ensure that expenditures for such programs are limit-
52 ed to and covered by the expenditures stated in the financial plan, (c)
53 adequate reserves are provided to maintain essential programs in the
54 event revenues have been overestimated or expenditures underestimated
55 for any period, and (d) the MTA has adequate cash resources to meet its
56 obligations. In addition, except to the extent such reporting require-

1 ments may be modified pursuant to agreement between the board and the
2 MTA, for each fiscal year, or while bonds, notes or other obligations
3 issued by the MTA are outstanding, the MTA shall prepare a quarterly
4 report of summarized budget data depicting overall trends, by major
5 category within funds, of actual revenues and budget expenditures for
6 the entire budget rather than individual line items, as well as updated
7 quarterly cash flow projections of receipts and disbursements. Such
8 reports shall compare revenue estimates and appropriations as set forth
9 in such budget and in the quarterly revenue and expenditure projections
10 submitted therewith, with the actual revenues and expenditures made to
11 date. Such reports shall also compare actual receipts and disbursements
12 with the estimates contained in the cash flow projections, together with
13 variances and their explanation. All quarterly reports shall be accompa-
14 nyed by recommendations from the MTA to the board setting forth any
15 remedial action necessary to resolve any unfavorable budget variance
16 including the overestimation of revenues and the underestimation of
17 appropriations. These reports shall be completed within thirty days
18 after the end of each quarter and shall be submitted to the inspector
19 general, the board, the director of the budget and the state comp-
20 troller.

21 5. For each financial plan and financial plan modification to be
22 prepared and submitted by the MTA to the board pursuant to the
23 provisions of this section, the covered subsidiaries shall submit to the
24 MTA such information with respect to their projected expenditures,
25 revenues and cash flows for each of the years covered by such financial
26 plan or modification as the MTA shall determine.

27 § 1257. Actions against the board. 1. Except in an action for wrongful
28 death, no action or proceeding shall be prosecuted or maintained against
29 the board for personal injury or damage to real or personal property
30 alleged to have been sustained by reason of the negligence or wrongful
31 act of the board or of any member, officer, agent or employee thereof,
32 unless (a) it shall appear by and as an allegation in the complaint or
33 moving papers that a notice of claim shall have been made and served
34 upon the board, within the time limit prescribed by and in compliance
35 with section fifty-e of the general municipal law, (b) it shall appear
36 by and as an allegation in the complaint or moving papers that at least
37 thirty days have elapsed since the service of such notice and that
38 adjustment or payment thereof has been neglected or refused, and (c) the
39 action or proceeding shall be commenced within one year after the
40 happening of the event upon which the claim is based. An action against
41 the board for wrongful death shall be commenced in accordance with the
42 notice of claim and time limitation provisions of title eleven of arti-
43 cle nine of this chapter.

44 2. Wherever a notice of claim is served upon the board, it shall have
45 the right to demand an examination of the claimant relative to the
46 occurrence and extent of the injuries or damages for which claim is
47 made, in accordance with the provisions of section fifty-h of the gener-
48 al municipal law.

49 3. The board may require any person presenting for settlement an
50 account or claim for any cause whatever against the board to be sworn
51 before a member, counsel or an attorney, officer or employee thereof
52 designated for such purpose, concerning such account or claim and when
53 so sworn, to answer orally as to any facts relative to such account or
54 claim. The board shall have power to settle or adjust any claims in
55 favor of or against the board.

1 4. The rate of interest to be paid by the board upon any judgment for
2 which it is liable, other than a judgment on bonds, notes or other obli-
3 gations, shall not exceed the maximum rate of interest on judgments and
4 accrued claims against municipal authorities as provided in the general
5 municipal law. Interest on payments of principal or interest on any
6 bonds, notes or other obligations in default shall accrue at the rate
7 specified in the general municipal law until paid or otherwise satis-
8 fied.

9 5. The venue of every action, suit or special proceeding brought
10 against the board shall be the supreme court in a county in the MTA
11 region.

12 6. Neither any member of the board nor any officer, employee or agent
13 of the board, while acting within the scope of his or her authority,
14 shall be subject to any liability resulting from exercising or carrying
15 out any of the powers given in this title.

16 7. (a) The state shall hold harmless and indemnify members, officers
17 and employees of the board, all of whom shall be deemed officers and
18 employees of the state for purposes of section seventeen of the public
19 officers law, against any claim, demand, suit, or judgment arising by
20 reason of any act or omission to act by such member, officer or employee
21 occurring in the discharge of his or her duties and within the scope of
22 his or her service on behalf of the board including any claim, demand,
23 suit or judgment based on allegations that financial loss was sustained
24 by any person in connection with the acquisition, disposition or holding
25 of securities or other obligations. In the event of any such claim,
26 demand, suit or judgment, a member, officer or employee of the board
27 shall be held harmless and indemnified, notwithstanding the limitations
28 of subdivision one of section seventeen of the public officers law,
29 unless such individual is found by a final judicial determination not to
30 have acted, in good faith, for a purpose which he or she reasonably
31 believed to be in the best interest of the board or not to have had
32 reasonable cause to believe that his or her conduct was lawful.

33 (b) In connection with any such claim, demand, suit, or judgment, any
34 member, officer or employee of the board shall be entitled to represen-
35 tation by private counsel of his or her choice in any civil judicial
36 proceeding whenever the attorney general determines based upon his or
37 her investigation and review of the facts and circumstances of the case
38 that representation by the attorney general would be inappropriate. The
39 attorney general shall notify the individual in writing of such determi-
40 nation that the individual is entitled to be represented by private
41 counsel. The attorney general may require, as a condition to payment of
42 the fees and expenses of such representative, that appropriate groups of
43 such individuals be represented by the same counsel. If the individual
44 or groups of individuals is entitled to representation by private coun-
45 sel under the provisions of this section, the attorney general shall so
46 certify to the state comptroller. Reasonable attorneys' fees and liti-
47 gation expenses shall be paid by the state to such private counsel from
48 time to time during the pendency of the civil action or proceeding,
49 subject to certification that the individual is entitled to represen-
50 tation under the terms and conditions of this section by the board, upon
51 the audit and warrant of the state comptroller. The provisions of this
52 subdivision shall be in addition to and shall not supplant any indemni-
53 fication or other benefits heretofore or hereafter conferred upon
54 members, officers, or employees of and representatives to the board by
55 section seventeen of the public officers law, by action of the board or
56 otherwise. The provisions of this subdivision shall inure only to

1 members, officers and employees of the board, shall not enlarge or
2 diminish the rights of any other party, and shall not impair, limit or
3 modify the rights and obligations of any insurer under any policy of
4 insurance.

5 § 1258. Audits. 1. Any accounts of the board shall be subject to the
6 audit of the state comptroller. In addition, the board shall be subject
7 to an annual financial audit performed by an independent certified
8 accountant selected by the board. Such audit report shall be submitted
9 to the board, the inspector general, the governor, the state comp-
10 troller, the chair and ranking minority member of the senate finance
11 committee and the chair and ranking minority member of the assembly ways
12 and means committee.

13 2. For each fiscal year, and within one hundred twenty days after the
14 close of the MTA's fiscal year, the MTA shall submit its audited finan-
15 cial statements to the board.

16 § 1259. Effect of inconsistent provisions. Insofar as the provisions
17 of this title are inconsistent with the provisions of any other act,
18 general or special law (including article nine of this chapter), or of
19 any charter, local law, ordinance or resolution of any municipality, the
20 provisions of this title shall be controlling. Nothing contained in this
21 section shall be held to supplement or otherwise expand the powers or
22 duties of the board otherwise set forth in this title.

23 § 1259-a. Separability; construction. If any clause, sentence, para-
24 graph, section, or part of this title shall be adjudged by any court of
25 competent jurisdiction to be invalid, such judgment shall not affect,
26 impair or invalidate the remainder thereof, but shall be confined in its
27 operation to the clause, sentence, paragraph, section, or part thereof
28 involved in the controversy in which such judgment shall have been
29 rendered. The provisions of this title shall be liberally construed to
30 assist the effectuation of the public purposes furthered hereby.

31 § 3. This act shall take effect on the sixtieth day after it shall
32 have become a law; provided, however, that the governor is hereby
33 authorized and directed to appoint all seven members of the metropolitan
34 transportation authority fiscal oversight control board on or before
35 such effective date.