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:

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 Section 1279-a of the public authorities law is REPEALED.

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

TITLE 10-E
METROPOLITAN TRANSPORTATION
AUTHORITY FISCAL OVERSIGHT CONTROL BOARD

Section 1240. Short title.
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EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

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1254. Assistance to the board; employees of the inspector general.
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1259-a. Separability; construction.

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

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

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

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

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

3. "Inspector general" means the office of metropolitan transportation authority inspector general established by section twelve hundred seventy-nine of this article.

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

5. "MTA region" means the metropolitan commuter transportation district established by section twelve hundred sixty-two of this article.

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

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

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

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

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

4. Notwithstanding any inconsistent provision of any general, special or local law, ordinance, resolution or charter, no officer, member or employee of the state, any city, county, town or village, any governmental entity operating any public school or college, any school district or any other public agency or instrumentality which exercises governmental powers under the laws of the state, shall forfeit his or her office or employment by reason of his or her acceptance of appointment as a member, officer or employee of the board, nor shall service as such member, officer or employee of the board be deemed incompatible or in conflict with such office or employment.

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

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

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

1. to make and alter by-laws for its organizations and management;

2. to make and execute contracts and all other instruments or agreements necessary or convenient to carry out any powers and functions expressly given in this title;

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

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

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

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

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

(b) Notwithstanding the provisions of paragraph (a) of this subdivision, this subdivision shall not be applicable to employees of the MTA or employees of a covered subsidiary subject to a collective bargaining agreement or an employee of the MTA or a covered subsidiary not subject to the collective bargaining agreement where the collective bargaining representative or such unrepresented employee has agreed to a deferment of salary or wage increase, by an instrument in writing which has been certified by the control board as being an acceptable and appropriate contribution toward alleviating the fiscal crisis of the authority. Any such agreement to a deferral of salary or wage increase may provide that for the purposes of computing the pension base of retirement allowances, any deferred salary or wage increase may be considered as part of compensation or final compensation or of annual salary earned or earnable.

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

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

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

inconsistent with the financial plan. No collective bargaining agreement binding, or purporting to bind, the MTA or any covered subsidiary after the effective date of this title shall be valid and binding upon the MTA or any covered subsidiary unless first approved by resolution of the control board and shall act jointly with the MTA in selecting members of any interest arbitration panel. Notwithstanding any other evidence presented by the MTA, the covered organization or any recognized employee organization, the arbitration panel must, prior to issuing any final decision, provide the board with the opportunity to present evidence regarding the fiscal condition of the MTA;

10. to make recommendations to the governor, the temporary president of the senate, the speaker of the assembly, the minority leaders of the senate and 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 control board members concerning opportunities to improve the performance, reporting, reformation, structure and oversight of the MTA;

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

12. to review the potential for and make recommendations to the governor and legislature regarding the terms of board members;

13. to develop and issue 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-five days after the effective date of this title if the member has already taken and subscribed their oath of office, in which the board member acknowledges that they understand their independence and fiduciary duties, including their duty of loyalty and care to the organization and commitment to the control board's mission;

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

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

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

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

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

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

19. to annually issue reports on its findings and analyses to the governor, the chair and ranking minority member of the senate finance committee, the chair and ranking minority member of the assembly ways and means committee, the chair and ranking minority member of the senate standing committee on corporations, authorities and commissions, the chair and ranking minority member of the assembly standing committee on corporations, authorities and commissions, the state comptroller and the attorney general, with conclusions and opinions concerning the performance of the MTA and to study, review and report on the operations, practices and finances of the MTA. Such reports shall include, but not be limited to: (a) the economic impact of the mobility tax on the MTA region, (b) a compensation schedule in addition to the report described in section twenty-eight hundred six of this chapter 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, (c) educational background and professional experience for all directors, officers and employees for whom salary reporting is required under paragraph (b) of this subdivision, (d) the projects undertaken by such authority during the past year, (e) a listing and description, in addition to the report required by paragraph a of subdivision three of section twenty-eight hundred ninety-six of this chapter of all real property of the MTA having an estimated fair market value in excess of fifty thousand dollars that the MTA 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 sold or bought by the MTA, (f) the MTA's code of ethics, (g) an assessment of the effectiveness of its internal control structure and procedures, (h) a description of the MTA and its board structure, including (i) names of committees and committee members, (ii) lists of board meetings and attendance, (iii) descriptions of major MTA units and subsidiaries, and (iv) number of employees, (i) its charter, if any, and by-laws, (j) a listing of material changes in operations and programs during the reporting year, (k) a description of assets valued at more than twenty thousand dollars and/or services bought or sold and contracts for services valued at more than one hundred thousand dollars entered into other than on a competitive basis, including (i) the nature of those assets and services, (ii) the names of the counterparties, and (iii) where the contract price for goods purchased exceeds fair market value, or where the contract price for goods sold is less than fair market value, a statement of the fair market value, a detailed explanation executed by the chief executive officer, chief financial officer or procurement officer of the reasons for the high price purchase or the low price sale including the relationship, if any, of persons associated with the buyer/purchaser and persons associated with the MTA and/or the officials who appointed members to the MTA board, and (l) a description of any material pending litigation in which the authority is involved as a party during the reporting year; and

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

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

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

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

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

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

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

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

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

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

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

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

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

3. In the event the board shall disapprove such budget proposal and financial plan based on disapproval of certain actions or assumptions, the board shall promptly thereafter notify the MTA of its reasons. Within fifteen days from the receipt of such notification the MTA shall modify the budget proposal and financial plan, and unless such budget proposal and financial plan modification is approved by the board, the board shall impose a financial plan of its own formulation as soon as practicable.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) In connection with any such claim, demand, suit, or judgment, any member, officer or employee of the board shall be entitled to representation by private counsel of his or her choice in any civil judicial proceeding whenever the attorney general determines based upon his or her investigation and review of the facts and circumstances of the case that representation by the attorney general would be inappropriate. The attorney general shall notify the individual in writing of such determination that the individual is entitled to be represented by private counsel. The attorney general may require, as a condition to payment of the fees and expenses of such representative, that appropriate groups of such individuals be represented by the same counsel. If the individual or groups of individuals is entitled to representation by private counsel under the provisions of this section, the attorney general shall so certify to the state comptroller. Reasonable attorneys' fees and litigation expenses shall be paid by the state to such private counsel from time to time during the pendency of the civil action or proceeding, subject to certification that the individual is entitled to representation under the terms and conditions of this section by the board, upon the audit and warrant of the state comptroller. The provisions of this subdivision shall be in addition to and shall not supplant any indemnification or other benefits heretofore or hereafter conferred upon members, officers, or employees of and representatives to the board by section seventeen of the public officers law, by action of the board or otherwise. The provisions of this subdivision shall inure only to

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

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

2. For each fiscal year, and within one hundred twenty days after the close of the MTA's fiscal year, the MTA shall submit its audited financial statements to the board.

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

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

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