

# Local Development Corporations in the Eye of the Comptroller

By Kenneth W. Bond

## Introduction

New York State (State) law severely restricts the power of local governments<sup>1</sup> to issue debt under the State Constitution (Constitution). All local government debt must be “full faith and credit” debt supported by a pledge of real property taxes. This legal restriction has continued unabated since the mid-19th century when the Constitution placed limits on the type,<sup>2</sup> source of repayment,<sup>3</sup> purpose,<sup>4</sup> and application of proceeds.<sup>5</sup> As the party responsible for the issuance of municipal bonds, local governments, together with their bond counsel and financial advisors, have universally shown respect for this restriction, save errant deals to finance municipal facilities through Industrial Development Agencies (IDAs).<sup>6</sup> The State monitors local government debt for compliance with the Constitution through the audit power of the State Comptroller (Comptroller or OSC). OSC, in its published audit reports, is not shy to blast local governments that step over the line.

Unlike many states, New York law does not empower local governments to finance public facilities with revenue bonds<sup>7</sup>—any bonds (whether paid from a discrete stream of project revenues or legislative appropriations) *not* supported by the “full faith and credit” pledge. In contrast, State public authorities<sup>8</sup> have been given a pass in compliance with the Constitution.<sup>9</sup> If a local government wants to issue revenue bonds, it has to obtain State-enabling legislation to establish a public authority to issue the bonds—an expensive, politically charged and tiresome process. However, over the past several years, local governments have inched toward a revenue bond regime of their own, largely by accident, without the benefit of State legislation and now with the tacit acquiescence of OSC. The story of how this happened follows.

## Finding a Replacement for Civic Facility Bonds

In 2008, a popular form of conduit financing through IDAs, known as civic facilities bonds (CFBs), which permitted IDAs to finance non-profit healthcare and educational facilities through tax-exempt bonds expired—permanently. Giving up on its resurrection, finance professionals attempted to substitute CFBs is-



sued through IDAs with bonds issued by local development corporations (LDCs).<sup>10</sup> Here is how that works: The governing body of a local municipality establishes an LDC with the purpose to “lessen the burdens of government and act in the public interest” as an “on behalf of” entity or “instrumentality” of the local government.<sup>11</sup> The LDC owns and/or finances a public purpose which the local government does not want to or legally cannot<sup>12</sup> finance under the Constitution or Local Finance Law (LFL). The LDC, operating with general corporate powers under the State Not-for-Profit Corporation Law (NFPCL), issues bonds paid from revenues of the facility or, if there is a revenue shortfall, from annual appropriations of the local government. To date, no suit has been brought that this arrangement, whereby a subsidiary entity of a local government issues debt for the benefit of the local government, is unconstitutional local government debt. Under this structure, without enacting or amending any State law, local governments through an LDC have instituted the use of revenue bond financing, a concept on its face strictly prohibited by the Constitution.<sup>13</sup>

LDCs were first engaged to acquire underperforming assets of local governments, namely, county nursing homes. Getting these facilities off the books of local governments improved budgets by eliminating deficits and placed the facility’s procurement operations out of the reach of the Wicks Law,<sup>14</sup> prevailing wage requirements and Article VIII of the Constitution. Again, nobody sued. But the Comptroller put his foot down.

## Finding Risk, Fraud and Abuse of Taxpayers

In an April 2011 report (“2011 Report”),<sup>15</sup> the Comptroller chastised the use of LDCs to do anything except act as an administrative arm of an IDA for economic development purposes as increasing the risk of “waste, fraud and abuse of taxpayer dollars.” OSC introduced legislation to prevent the use of LDCs to finance local government purposes which can be (and should be, in the Comptroller’s view) financed solely under the provisions of the Constitution and the LFL.<sup>16</sup> Although the Comptroller has no authority to audit LDCs (a source of understandable frustration),<sup>17</sup> LDC bond issues were inspected by OSC nonetheless where a “financial relationship” exists with a local government being audited. The 2011 Report found LDCs were engaged primarily to avoid the restrictions of the Constitution and the LFL on incurring local government debt—not good.

Chief among the offenses discussed in the 2011 Report in using LDCs is reliance on the statutory phrase in NFPCL §1411 “lessening the burdens of government and acting in the public interest” as the primary purpose of an LDC, rather than the purpose OSC believes was intended by the Legislature; promote economic development through administering intergovernmental grants funds. But since CFBs were gone for good after 2008, by growing custom and use without a lawsuit filed, LDCs became not only an administrative arm of IDAs, but a debt-issuing body for local governments as well. And what a relief it was to issue local government purpose debt under the broad corporate powers of a NFPCL,<sup>18</sup> and escape the strictures of the Constitution and the LFL. In an LDC financing, local governments might have the best of both worlds: (i) structural flexibility to finance public purposes with (ii) a corporate entity which is the *alter ego* of the local government.

As the sale of deficit-ridden nursing homes to LDCs gained favor among counties, the OSC report reminded officials that public assets cannot be sold unless obsolete, subject to a public hearing and at “fair value” (and sometimes sold at competitive sale to assure the best price). The 2011 Report also pointed out that LDCs were no longer just not-for-profit corporations. Under “authority reform legislation” enacted in 2005<sup>19</sup> and 2009<sup>20</sup> they were now local “public benefit corporations” subject to the same rules on reporting financial information to, and required ethics training for directors from, the Public Authorities Budget Office (PABO). Although the PABO compliance burden might give pause to engage an LDC just to circumvent the Constitution and the LFL, the PABO monitoring function had the salient effect of bringing into analysis whether local government LDC debt should be entitled to the same permissive jurisprudence by which the State Court of Appeals has permitted State “public benefit corporations” to pile up billions of dollars of state appropriation-backed debt<sup>21</sup> without voter approval.

The 2011 Report emphasizes that the sole purpose of LDCs is to provide economic development—not finance purposes which local governments finance under the LFL. It then provides unpleasant examples of instances where local governments have used LDCs when they should have financed under the LFL:<sup>22</sup> (i) Town of Watertown (2010)—the city gave money to an LDC which financed an ambulance service from which the city received no benefit from the service; (ii) Nyack Fire District (2009)—the fire district financed a new firehouse through an LDC and avoided a vote on the bond resolution and bypassed the Wicks Law; (iii) City of Yonkers (2006)—the city issued bonds to finance a library, gave the proceeds to the city school district, the school district formed an LDC<sup>23</sup> and loaned the library bond proceeds to the LDC to build a baseball

stadium; (iv) Town of Cicero (2004)—the town formed an LDC and issued bonds guaranteed by the town to finance a park, the LDC bonds defaulted and the town bailed out the LDC debt and lost its credit rating.

There was more. Following the 2011 Report, further local government audits revealed more abuses: (i) Ramapo (2012)—after voters defeated a bond proposition to finance a baseball stadium, an LDC was formed to finance the stadium although stadium revenues were likely to be insufficient to pay debt service on LDC bonds; (ii) Monroe County (2012)—(a) county sold a coal plant to an LDC without an appraisal or soliciting bids and used the LDC bond proceeds to finance county budget deficits, (b) an LDC was formed to provide a county emergency technology / communications system, providers skimmed fees from the LDC and were indicted by the Monroe County district attorney for embezzlement and fraud. The 2011 Report underscores that just as local governments may not borrow to finance budget deficits<sup>24</sup> in the depths of the Great Recession, LDCs should not be given license to do so.

At bottom, the 2011 Report recommended that, among other things, (i) “lessening the burdens of government and acting in the public interest” should not be a stand-alone purpose for which an LDC may issue debt lest the Constitution and LFL be made impotent, (ii) local governments should not guarantee LDC debt, and (iii) OSC should have the power to audit LDCs independent of PABO and any financial arrangement with a local government. Ironically, OSC’s proposed legislation in the Assembly to codify the recommendations of the 2011 Report died in the Senate, never to rise again.

## LDCs in the Real World

Meanwhile, LDCs gained acceptance as quasi-revenue bond subsidiaries of local governments for both local government and economic development purposes. The revenue may be nothing more than an annual legislative budget appropriation, but the Court of Appeals on several occasions had long validated such appropriation-backed debt against complaints of State constitutional violations in the case of State public benefit corporations.<sup>25</sup> Why could not the same principles apply to LDCs established by local governments? The short answer was that LDCs are not created by the Legislature as Article 10, §5 of the Constitution requires.<sup>26</sup> The notion that an LDC could rise to the status of an entity like the Thruway Authority or the Dormitory Authority seemed ridiculous. But was it?

The 2005 and 2009 “authority reform” legislation, intended to tighten up administration and financial accountability of public benefit corporations, also introduced the concept of “local public authorities.” The term reflects the Legislature’s design to have increased long-arm regulatory jurisdiction not only over State

public authorities but also those formed to operate in a specific local government, namely, IDAs and LDCs. A primary mission of authority reform was to make it difficult from a State regulatory standpoint to operate IDAs and LDCs. Of central importance was creation of PABO,<sup>27</sup> directed to maintain fiscal oversight over “local public authorities” as well as the big State agencies. And what was a “local public authority?”—an LDC? Probably not because it was not formed by the Legislature and had no taxing power as Article X, §5 of the Constitution requires. But in *Griffiss LDC v. DiNapoli and PABO*<sup>28</sup> the Third Department said yes: an LDC is a local public authority because PABO has fiscal oversight jurisdiction over an LDC just as it does over State public authorities. That being the case, could an LDC issue debt for local government purposes such as a State public authority issues debt for State purposes? The question remains unanswered to this date. But in certain cases (not including the power to issue debt) New York adopts the rule of construction that characterizing an entity for one purpose implies it is imbued with all the powers and purposes of the entity.<sup>29</sup> Getting closer to finding LDCs may issue debt on behalf of a local government is the case of *Summers v. City of Rochester*<sup>30</sup> where the Fourth Department upheld an arrangement whereby the city guaranteed the debt of a limited liability company (of which the city was the sole member) which bought a ferry service across Lake Ontario that became bankrupt. In the city’s picking up the LLC’s debt,<sup>31</sup> the court said the city was not violating the gift or loan clause of Article VIII, §1 of the Constitution.<sup>32</sup> The court recognized the City as the sole member of the LLC, thereby making the LLC a *de facto* department or agency of the City. In much the same way, an LDC, as an on-behalf-of entity or instrumentality, acts as a department or agency of a local government. The LDC is not a private corporation to which the gift or loan prohibition is directed. *Griffiss LDC* and *Summers* point the way toward judicial loosening of the Constitutional strictures on local government debt paid for from a non-tax revenue issued by entities under their control which serve a public purpose. These entities issue revenue bonds, i.e., debt paid from a source other than real property taxes.<sup>33</sup>

## The Comptroller Reconsiders the 2011 Report

In 2015 OSC again reported on the state of affairs of “local authorities” (the “2015 Report”)<sup>34</sup> and again reminded us that LDCs operate without Constitutional constraints on incurring debt, making it difficult to assess their “efficiency” and leading to risk, fraud and taxpayer abuse. That premonition out of the way, OSC offered no proposed legislation except to ask again for the power to audit LDCs. Although the 2015 Report reiterated its position in the 2011 Report that the purposes of LDCs are solely economic development, it offered that LDCs may also be used to finance

water systems, parking facilities and housing (sometimes through local authorities other than LDCs). In sum, OSC admitted that in light of the 2005 and 2009 authority reform legislation which placed LDCs under the regulatory umbrella of PABO, and, without saying so, in light of the holdings in *Griffiss LDC* and *Summers*, there are now “several types of public corporations that had not been universally regarded as public authorities before”<sup>35</sup> but now have pried open the door to the “public authority” club. This is OSC’s tepid acknowledgement that LDCs have gained acceptability as revenue bond agencies of local governments. The 2015 Report’s use of the term “public corporation” in describing an LDC is significant because it suggests that resort to the Legislature via Article X, §5 of the Constitution as the exclusive way to form a public authority is an outdated view. Perhaps a local public authority formed under a general law (i.e., the NFPCL) enjoys the power of borrowing on behalf of a local government just as a public authority established in the Public Authorities Law borrows on behalf of the State? Many states’ statutes embrace this principle.<sup>36</sup>

Put another way, an LDC is not the “public corporation” which can only be established by the Legislature the Constitution had in mind. To the extent an LDC receives money from a local government, the money is an appropriated revenue, not taxes or assessments which the local government may pledge to levy under an agreement with the LDC. The local government’s payment to the LDC is a “service fee” subject to annual appropriation. And in this respect, neither is the local government issuing invalid debt because its faith and credit are not pledged to the payment of an LDC’s bonds as Article VIII of the Constitution requires for local government debt. LDC debt becomes “appropriation-backed” debt sanctioned by the Court of Appeals for the big State public agencies.<sup>37</sup> LDC bondholders take the risk that the local government may not appropriate the service fee in the future. But like “tax-exempt leasing” authorized under the General Municipal Law<sup>38</sup> (e.g., equipment, HVAC systems), the “essentiality” of the purpose financed (e.g., a water system, sewer system, etc.) implies that the likelihood of future non-appropriation is substantially reduced. The essentiality factor (aren’t these payments really local government debt?) versus the non-appropriation clause (no future legislature is bound to make a payment, so how can this be debt?) create an analytic tension which New York and other state supreme court cases have uniformly resolved to uphold appropriation-backed revenue bond financing.<sup>39</sup>

The 2015 Report indicates that OSC is aware of judicial resolution of this “analytic tension” and given that LDCs as “local authorities” are public authorities, save their formation under a general law rather than the Legislature, shows tolerance to LDC purposes other than economic development, stating “the ability



of local authorities to issue debt without some of the legal requirements to which counties, cities, towns and villages are subject can make such entities an attractive alternative source of financing projects in certain circumstances.”<sup>40</sup> Those “certain circumstances” include, among others, local government purposes where LFL compliance would ruin the deal. An LDC as an “attractive alternative” is a long way from requiring LFL compliance “as the exclusive law” for local government financing recited in the 2011 Report. Yet OSC warns, somewhat tepidly, having relaxed the public corporation standard for LDCs “the relative freedom from restrictions [of the Constitution and LFL] means local authority debt may not come under the same public scrutiny as a local government’s general obligation debt”<sup>41</sup>—i.e., no voter approval, no debt limits, and no competitive bidding.

The 2015 Report does not tell us why LDCs are an “attractive alternative” or why the “relative freedom from restrictions” is not likely to result in risk, fraud and taxpayer abuse. But developments in the municipal securities market, of which OSC is no doubt aware, give clues to the change in attitude between the 2011 Report and the 2015 Report. Two points stand out. First, private sector participants are now active in financing local government purposes as sources of capital rather than merely as contractors and vendors. For example, a community may need a new water or sewer plant and a developer may want water and sewer services brought to a new master plan tract in the community. Rather than just extend lines into the tract from an inadequate water or sewer plant, the developer may offer to “design, build, operate and finance” a new plant. This “public-private partnership” arrangement, for which no express statutory regime exists in New York<sup>42</sup> (as it does in 35 other states!) can be facilitated through LDC financing. LDC bondholders incur non-appropriation risk but both the community and developer are winners.

Second, although granting OSC audit power over LDCs would clearly be in the public interest, much of the State law “public scrutiny” imposed for general obligation debt, the avoidance of which OSC laments, is taken up today by Big Brother. To some extent, OSC can relax in unearthing shady deals because the U.S. Securities and Exchange Commission (SEC) is heavy on the back local government financing. The Wall Street reform legislation, known as Dodd-Frank,<sup>43</sup> among other things, requires the SEC to “protect investors” against securities fraud in the municipal bond market. 2013 saw stepped-up surveillance by the SEC looking for failure to continuously disclose throughout the life of local government bonds material facts an investor would take into account in buying or holding. In several “cease and desist” orders the SEC imposed financial penalties, suspension of underwrit-

ers from participating in municipal bond deals, and brought lawyers to the threshold of malpractice. In 2014 the SEC imposed a requirement on all municipal bond issuers and underwriters to disclose failures to report financial information and “material events” to the SEC reporting website in a timely fashion, throwing panic into hearts of issuers and underwriters, alike.<sup>44</sup> The point of the SEC’s enforcement effort (its legality under the United States Constitution in doubt in this writer’s view), is that no LDC bond issue is likely to be sold which is a sham transaction lest everyone involved risk paying large fines and going to jail. The days of the City of Troy IDA revenue bonds<sup>45</sup> are over. The feds have replaced traditional state law safeguards (i.e., Articles V [OSC audit powers], VII and VIII of the Constitution) not to protect taxpayers (who may be inadvertent third party beneficiaries of Dodd-Frank), but to protect the investing public. In this regard, the SEC has inured, in part, to the job of protecting the public reasonably sought by OSC in statutory audit authority over all LDCs. It is not that New York “public scrutiny” law should not be enforced in authorizing local government debt, but rather, if the financing itself develops a bad odor the SEC may sniff it out and investors (and, perhaps, taxpayers) warned of the risks.

## **Toward Revenue Bonds for Local Governments**

The Comptroller concludes the 2015 Report with an exposition on “revenue debt” and “conduit debt.” Other than to point out that most LDC debt is supported by annual appropriations of the local government, rather than revenues from the sale of municipal services of the facility financed by LDCs, the discussion serves mainly to inform us that OSC recognizes that at the local government level, there is a distinction between general obligation bonds—secured by a pledge of real property taxes without legislative discretion—and revenue bonds—secured by moneys other than real property taxes. And in making that distinction, OSC hints that perhaps revenue bonds are not *ipso facto* invalid unconstitutional debt, after all. Rather than assert that “lessening the burden of government in the public interest” is not a financeable purpose of an LDC, as in the 2011 Report, in the 2015 Report OSC leaves the door open that a well-conceived LDC financing that is more than an end run around the Constitution and the LFL may serve a valid public purpose.

OSC’s expression of tolerance toward LDC financing in the 2015 Report is not the end of the story. It is only the beginning: the Legislature needs to craft a law that authorizes local government revenue bonds. With constitutional restraints on local government debt still firmly in place, operating in the LDC financing space is dangerous.<sup>46</sup> This is not a reliable legal basis for engaging in a municipal finance transaction. Extrapolating public purposes through custom and use can only go

so far before allegations of risk, fraud and taxpayer abuse are back on the table or the SEC is subpoenaing documents, or both. New York could benefit from looking across the Hudson at New Jersey “county improvement authorities” and “redevelopment area bonds,”<sup>47</sup> statutory regimes for local government revenue bonds which have been in place for decades and have operated efficiently.

We could also address the uncertainties of LDC financing by amending the Constitution. That opportunity arises again in 2017 when the voters will be asked to vote on holding a constitutional convention.<sup>48</sup> The Constitution is nearly 80 years old; its origins on local government finance law date back to the Civil War. It’s time for an update. Until our finance laws are modernized, we practice local government finance law in the “wild west” with only the Comptroller and decisional law to guide us safely around antiquated constitutional and statutory law to the shores of bond closings.

## Endnotes

1. N.Y. Local Fin. Law § 2.00(1) (McKinney) (defining the term “municipality” as a “county, city, town or village”).
2. General obligations to which the faith and credit (i.e., real property tax levy) of the municipality is pledged.
3. Solely real property taxes plus the “first revenues” secured by the faith and credit pledge.
4. Only a facility or service for use of the general public and owned by the municipality.
5. Proceeds of borrowing strictly limited to paying vendors for facilities built and services provided.
6. In the early 1980s the City of Troy sold its City Hall to the Troy IDA to fund a cumulative deficit, a deal properly excoriated in a report of the State Comptroller (Comptroller or OSC), leading to an amendment, since repealed, to Article 18A of the General Municipal Law (GML), dealing with the industrial development agencies (IDAs), that IDAs may not finance municipal purposes which can be financed under the LFL.
7. MUNICIPALBONDS.COM (last visited Sept. 13, 2015, 4:36 PM), General Obligation vs. Revenue Bonds: A MunicipalBonds. Com Guide, June 24, 2015, <http://www.municipalbonds.com/education/two-types-of-bonds-general-obligation-vs-revenue-bonds/> (states, cities and towns are the most common issuers of general obligation bonds; transportation systems, utilities, and other local authorities that “generate revenues from providing services to the public” are most commonly the issuers of revenue bonds).
8. N.Y. Pub. Auth. Law (McKinney).
9. Article VII of the Constitution requires State debt be approved by the voters. In the so-called *Wein* cases, 36 N.Y.2d 610, 370 N.Y.S.2d 550 (1975); 39 N.Y.2d 136, 383 N.Y.S.2d 225 (1976), from the 1970s and the *Schultz* cases, 198 A.D.2d 554, 603 N.Y.S.2d 207 (3d Dep’t 1993); 84 N.Y.2d 231, 616 N.Y.S.2d 343 (1997), from the 1990s, the Court of Appeals made abundantly clear that State authority debt paid through legislative appropriations but not approved by the voters is not unconstitutional under the unique (to New York) theory, among others, that the Constitution does prohibit gifts from the state to and among its public authorities. *Comereski v. City of Elmira*, 308 N.Y. 248, 252, 125 N.E.2d 241, 242 (1955) (N.Y. Const. art. VIII, § 1 provision that “[n]o county, city, town, village or school district shall give or loan any money or property to or in aid of any individual, or private corporation or association, or private undertaking” does not prohibit monetary gifts from one local municipality to another public corporation for a public purpose).
10. LDCs are special purpose charitable not-for-profit corporations created under §1411(b) of N.Y. Not-for-Profit Corp. Law. On its face, and as the Comptroller has maintained, LDCs are tools for promoting economic development within a municipality. However, one of the enumerated powers in §1411(a) is “lessening the burdens of government and acting in the public interest.” The paragraph ends with the statement: “in carrying out said purposes and in exercising the powers conferred by paragraph (b) such corporations will be performing an essential governmental function.” *Id.* An LDC is not a municipality but is a “local public authority.”
11. “On behalf of” and “instrumentality” of a political subdivision are terms used in the revenue rulings of the Internal Revenue Service to describe the factors required of municipal special purpose “subsidiary” entities, like an LDC, which issue debt for a local government purpose, the interest on which qualifies for exemption from federal income tax.
12. For example, Article 5L § 119-gg of the GML authorizes municipality to make “sustainable energy loans” but no authority to borrow or make loans under the Constitution or LFL. Similarly, municipalities have housing powers to raise funds.
13. Richard L. Sigal, *The Proposed Constitutional Amendments to the Local Finance Article: A Critical Analysis*, 8 Fordham Urb. L. J. 29; Kenneth W. Bond, *Toward Revenue Bonds for N.Y. Municipal Finance*, NEW YORK LAW JOURNAL, September 1983, Vol. 190, No. 63 (discussing New York’s legal aversion to local government revenue bonds).
14. N.Y. Gen. Mun. Law § 101 (McKinney) (generally requiring separate specifications for certain public work).
15. N.Y. STATE OFFICE OF THE STATE COMPTROLLER, MUNICIPAL USE OF LOCAL DEVELOPMENT CORPORATIONS AND OTHER PRIVATE ENTITIES: BACKGROUND, ISSUES AND RECOMMENDATIONS (2011).
16. N.Y. Local Fin. Law § 176.00 (McKinney) (providing that LFL is the exclusive law for financing by municipalities).
17. *See, New York Charter Sch. Ass’n, Inc. v. DiNapoli*, 13 N.Y.3d 120, 886 N.Y.S.2d 74 (2009) (holding that the OSC is not authorized under Article V of the Constitution to audit private entities like charter schools, and by extension, LDCs); *see also*, N.Y. STATE OFFICE OF THE STATE COMPTROLLER, *supra* note 15 at 1 (OSC “currently does not have direct authority to audit LDC’s or most other private entities.”).
18. The authority to exercise powers of corporations, including not-for profit corporations, and municipalities, including the power to incur debt, are different. Corporations may do any lawful act described in their article of incorporation. Municipalities may not exercise any power unless expressly authorized by statute or necessarily implied from statute (i.e., Dillon’s Rule).
19. Public Authorities Accountability Act of 2005, Ch 766, L 2005.
20. Public Authorities Reform Act of 2009, Ch 506, L 2009.
21. MUNICIPALBONDS.COM, *supra* note 7.
22. N.Y. STATE OFFICE OF THE STATE COMPTROLLER, *supra* note 15 at 6-7.
23. A school district is not a municipality and therefore may not create an LDC as its on-behalf-of entity or instrumentality.
24. *Hurd v. City of Buffalo*, 34 N.Y.2d 628, 629-30, 355 N.Y.S.2d 369 (1974) (explaining that a municipality may not borrow to finance an annual expense paid through real property taxes to avoid exceeding the constitutional tax limit).

25. *Comereski v. City of Elmira*, 308 N.Y. 248 (1955); *Wein v. City of New York*, 36 N.Y.2d 610 (1975); *Schultz v. State of New York*, 84 N.Y.2d 231 (1994); and *Schultz v. New York State Legislature*, 224 A.D.2d 126 (1998) (all standing for the proposition that funds appropriated by the state or a local government to a public benefit corporation are not unconstitutional debt of the state or local government but a mere gift excluded from the gift or loan prohibition of §1, Article VIII of the State Constitution). See also, *Local Gov't Assistance Corp. v. Sales Tax Asset Receivable Corp.*, 2 N.Y.3d 524, 535, 813 N.E.2d 587 (2004) (Chief Judge Kaye of the Court of Appeals, after reviewing the constitutionality of public benefit corporation debt funded by annual government appropriations found no unconstitutionality, observes that "At the outset, we again note that the wisdom of this refinancing plan is not a matter for this Court to evaluate.").
26. OSC and finance professionals have long held that a public authority (i.e., a public corporation—the phrase used in the Constitution) cannot exist outside its creation by the Legislature. The public corporation the Constitution addresses is one that both (i) levies taxes and assessments, and (ii) incurs debt, i.e., a municipality itself or a special purpose entity with the same debt/tax powers as a municipality. But an LDC, being a subsidiary finance arm of a municipality created by its governing board without the power to tax or assess directly, is not covered by Article X, §5.
27. Public Authorities Reform Act, *supra* note 20.
28. *Griffiss Local Dev. Corp. v. State of New York Auth. Budget Office*, 85 A.D.3d 1402 (3d Dep't 2011).
29. *Buffalo News, Inc. v. Buffalo Enterprise Development Corp.*, 84 N.Y.2d 488, 619 N.Y.S.2d 695 (1994) (holding that not-for-profit local corporation administering government loan programs was "agency" subject to Freedom of Information Law).
30. 60 A.D.3d 1271, 875 N.Y.S.2d 658 (4th Dep't 2009).
31. Limited liability companies share a quasi-government purpose with LDCs: NY Limit Liab Co § 202(n) (McKinney) ("a limited liability company may: transact any lawful business in aid of governmental policy.").
32. Article VIII, §1 of the Constitution provides: "No county, city, town, village or school district shall give or loan any money or property to or in aid of any individual, or private corporation or association, or private undertaking, or become directly or indirectly the owner of stock in, or bonds of, any private corporation or association."
33. MUNICIPALBONDS.COM, *supra* note 7.
34. N.Y. STATE OFFICE OF THE STATE COMPTROLLER, RESEARCH BRIEF: LOCAL AUTHORITIES IN NEW YORK STATE—AN OVERVIEW, at 1 (April 2015).
35. N.Y. STATE OFFICE OF THE STATE COMPTROLLER, *supra* note 34 at 2.
36. For example, in New Jersey County Improvement Authorities Law (P.L. 1960, c. 183, § 1, eff. Jan. 18, 1961; N.J.S.A. 40:37A-44 et seq.) and Redevelopment Area Bond Financing Law (N.J.S.A. 40A:12A-65 et seq.).
37. MUNICIPALBONDS.COM, *supra* note 7.
38. General Municipal Law, §109-b.
39. The dissent of Judge Jason in *Wein v. City of New York* still haunts us today: "The...Act violates the letter and the spirit of article VIII of the State Constitution. No amount of words can disguise the simple fact that while liability of the city is disavowed, it effectively commits its sources of revenue from the State to the discharge of the obligations of the...Corporation. It is, therefore, *indistinguishable from a commitment of its credit*. The fact is that while the city's sources of revenue from the State are not committed by existing law *but only by annual appropriations*, their continuance is economically and governmentally inevitable. The city has, therefore, committed its sources of revenue to the payment of these "debts"; *that is tantamount to a commitment of credit economically, practically and, therefore, legally*. As a consequence, the act is unconstitutional." (emphasis added). 36 N.Y.2d 610, 621, 370 N.Y.S.2d 550 (1975) (Jason, J. dissenting).
40. N.Y. STATE OFFICE OF THE STATE COMPTROLLER, *supra* note 34 at 9.
41. *Id.*
42. See, New York Senate bill 5501, Two Hundred Thirty-Seventh Legislative Session, comprehensive P3 law, modeled after statutes enacted in Florida, Maryland, Texas and Virginia, introduced in the 2013 session of the Legislature (referred to the Finance Committee where it died; reintroduced on June 8, 2014 where it died again in committee).
43. Public Law 111-203 [H.R. 4173], July 21, 2010, 124 Stat 1376, codified at 12 U.S.C. §5301 et seq.—Dodd-Frank Wall Street Reform and Consumer Protection Act.
44. United States Securities and Exchange Commission, Press Release announcing Municipal Securities Continuing Disclosure Initiative, March 10, 2014, available at <http://www.sec.gov/News/PressRelease/Detail/PressRelease/1370541090828> (last visited Sept. 19, 2015, 7:25 p.m.).
45. City of Troy, *supra* note 6.
46. LDCs, as not-for-profit corporations, have no limits on their corporate powers save acts which are *ultra vires*.
47. New Jersey County Improvement Authorities Law, *supra* note 36.
48. Article XIX, §2 of the Constitution provides: "At the general election to be held in the year nineteen hundred fifty-seven, and every twentieth year thereafter, and also at such times as the legislature may by law provide, the question "Shall there be a convention to revise the constitution and amend the same?" shall be submitted to and decided by the electors of the state."

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