January 26, 2016

Honorable William B. Magnarelli
New York State Assembly
Legislative Office Building, Room 837
Albany, NY 12248

Dear Assemblyman Magnarelli:

Part R of the Article VII TED budget legislation would require projects financed by local Industrial Development Agencies using tax-exempt private activity bonds subject to the bond volume cap to be approved by the Public Authority Control Board (PACB).

The PACB was created by Chapter 38 of the Laws of 1976 to monitor and approve state public authority debt in response to a growing amount of state public debt issued by state public authorities, which contributed significantly to the New York State/New York City fiscal crisis of the mid-1970s. Since its inception, the law requires eleven statewide public authorities to receive a resolution of approval from the PACB prior to entering into project-related financings.

Tax-exempt private activity bonds issued by Industrial Development Agencies are not debt or obligations of the state, the local government served by the IDA, or the IDA. These bonds are singularly the obligation and liability of the borrower, and such assertions are prominent in the covenants contained in the bond documents.

These bonds can only be used to finance very specific types of projects authorized in IRS regulations, including manufacturing, affordable housing, pollution control equipment, and waste disposal facilities, for example.

In 1986, congress and the president enacted comprehensive tax reform which, among other things, limited the amount of tax-exempt private activity bonds that could be issued in a state. The bond volume cap was established as a per capita dollar amount. The law established a 50-50 allocation of tax-exempt private activity bond capacity for statewide and local issuers. However, the law allowed states to establish different allocations that better suited their unique circumstances and conditions. New York responded by creating a law that allocated tax-exempt PABs according to the following formula: one-third for state issuers; one-third for local issuers (IDAs); and one-third for a bond reserve that could be accessed by state or local issuers should they exhaust their local allocation but still have projects to be financed.

Today, the federal formula allocates $100 times the population of the state. So, New York is awarded just under $2 Billion in PAB capacity, one third of which is reallocated to local IDAs.
This formula established state control of its allocation and local control of bond capacity allocated to IDAs. The assertion of state control over local allocation contained in the Governor’s budget casts aside the principle of local control of the local allocation of the state volume cap.

Because these local projects have no impact on state debt, and because Part R would eliminate the principle of local control provided in the current statute, which has operated effectively for 29 years, the New York State Economic Development Council requests your opposition to Part R of the Article VII TED budget legislation, and that it not be included in the final adopted state budget.

Sincerely,

[Signature]

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CC: Craig Swiecki