
Authorities Budget Office Policy Guidance



No. 14-02

Date Issued: October 8, 2014

Supercedes: New

Subject: Formation of a Subsidiary by a Public Authority

Statutory Citation: Section 2827(a) of the Public Authorities Law

Provision: Public authorities, as defined by Section 2 of the Public Authorities Law and established in statute, derive their powers and duties from the authorization granted to them in their enabling legislation. The power to form a subsidiary corporation, for example, must be provided to the public authority by specific legislative language. No public authority established in statute may form a subsidiary in the absence of legislation providing such expressed or necessarily implied power.

Section 2827-a of the Public Authorities Law, effective March 1 2010, prohibits state authorities from forming new subsidiaries without expressed legislative approval; provided however that a subsidiary may be formed for a project or purpose for which the authority itself was created; for the primary reason of limiting the potential liability impact of the subsidiary's project(s) on the authority; or if federal or state laws require the formation of a subsidiary. In addition, the subsidiary corporation must file reports and disclose operations as required of state authorities, either separately or as part of the parent authority's reports.

In addition, a subsidiary corporation formed under Section 2827-a may only issue bonds, notes, or other indebtedness to its parent corporation. No such debt may exceed, at any time, a principal amount of \$500,000 or, \$1 million during the nine months after its formation.

Authorities Budget Office Policy Guidance: No public authority as defined by Section 2 of the Public Authorities Law and established in statute, may form a subsidiary corporation unless such power is expressly granted to it in its enabling legislation.

The New York State Attorney General has opined that industrial development agencies do not have the statutory power to form subsidiary corporations. The Attorney General Formal Opinion No. 2014-F1 states that "nothing in the enabling statutes governing IDAs expressly authorizes the creation of a subsidiary...an IDA is fully able to fulfill its purpose without creating a subsidiary and thus the power to create a subsidiary is not necessarily implied from the powers expressly granted."

Reporting Requirements: When a public authority properly forms a subsidiary, it must:

1. File a notice with the Authorities Budget Office, no later than 60 days prior to the forming a subsidiary.
2. State in the certificate of incorporation or other document filed to organize its subsidiary corporation that it is organizing the corporation.
3. Report all of its required subsidiary information, either within its annual, budget, certified financial audit, procurement and investment reports, or direct its subsidiary to file separately such reports in the format requested by the Authorities Budget Office.
4. Enter the subsidiary information on the “Subsidiary/Component Unit Verification Screen” of the Annual Report in the Public Authorities Reporting Information System (PARIS).