

Authorities **B**udget **O**ffice

- *Accountability*
- *Transparency*
- *Integrity*

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Best Practices Guide for Public Authorities

2018

**BEST PRACTICE GUIDE
FOR PUBLIC AUTHORITIES**

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TAB 1

Authority Budget Office Policy Guidance



No. 06-02

Date Issued: October 1, 2006

Supercedes: New

Subject: Understanding Corporate Governance Concepts

Statutory Citation: Section 27, Chapter 766 of the Laws of 2005

Provision: A primary purpose of the Public Authorities Accountability Act is to codify in statute certain basic principles of effective corporate governance and to promote the understanding and adoption of these principles by State and local public authorities. The Authority Budget Office was established, in part, to assess the compliance of public authorities with these principles and to assist public authorities improve their management and disclosure practices.

Authority Budget Office Policy Guidance: The concept of "corporate governance" is generally understood to apply to the rules, policies and management practices established by an organization to help it conduct business consistent with its corporate and public responsibilities. These governance principles establish the culture, values, organizational structure and control systems that promote accountability and integrity; set a standard of ethical behavior; support comprehensive, accurate and transparent reporting and an objective review of financial practices; and engender loyalty toward the organization. When followed, effective corporate governance contributes to public confidence in the performance and decision making of an organization.

The Authority Budget Office (ABO), in consultation with the Commission on Public Authority Reform, is committed to achieving adherence to the Act and the principles of corporate governance. Accordingly, the actions, decisions and practices of the ABO, and those of board members, management and appointing authorities, should be guided by the following tenets:

Transparency

- Public authorities should always conduct business in an environment that fosters transparency and enhanced public disclosure; focuses on accountability; and supports external oversight.
- The Board of Directors should instill and review a code of ethical conduct and competency in the organization; perform its oversight function in the interests of the public and consistent with the mission of the authority; and accurately

disclose the financial condition, risks, liabilities and management practices of the authority in regular public reports.

Fiduciary Duty

- The Board of Directors should be empowered to exercise its fiduciary duties of loyalty and care. Directors should always act in good faith and in the best interests of the public authority. Directors should act using the same care that any prudent person would exercise in a similar situation and under similar circumstances. This will require that directors weigh the public's interests and that of their appointing authorities when taking on these duties.
- The Board of Directors should be responsible for protecting the assets of the authority and the interest of bond holders and the public.

Board Independence and Accountability

- A Board of Directors that is informed, knowledgeable and engaged is integral to effective corporate governance. Directors should have a basic understanding of the primary business function and mission of the authority.
- Those responsible for making appointments to the boards of public authorities should take this obligation seriously by appointing knowledgeable and conscientious individuals who have a commitment to serve and a willingness to exercise management oversight, and who have a demonstrated intellectual independence to carry out the mission of the authority consistent with the public policy objectives of the State.

Separate Oversight and Executive Management Functions

- The Board of Directors, working with executive management, should establish the appropriate governance culture, philosophy and commitment to performance throughout the public authority. Directors have a responsibility to provide active oversight of management, and an obligation to make reasonable inquiry of activities when appropriate.
- Executive management should carry out those policies, making day-to-day operating decisions and keeping the Board informed with sufficient information of its actions, issues of concern, potential risks, and liabilities, so that the Board can make intelligent decisions. Executive management should also encourage Boards to stay informed on corporate governance issues.

The ABO will periodically issue policy guidance that amplifies these principles to assist public authorities in implementing the Act, and to incorporate these principles in the authorities' business practices.

TAB 2

Authority Budget Office Policy Guidance



No. 07-01

Date Issued: March 1, 2007

Supercedes: New

Subject: Independence of Board Members

Statutory Citation: Section 2825(2) of Public Authorities Law

Provision: Section 2825(2) of the Public Authorities Law requires that “except for members who serve as members by virtue of holding a civil office of the state, the majority of the remaining members of the governing body of every state or local authority shall be independent members.”

This provision applies to the composition of the board following appointments made on or after January 15, 2006.

Authority Budget Office Policy Guidance: The importance of establishing and preserving the independence of board members is to: (a) avoid conflicts of interest or the appearance of conflicts of interest in the actions and decisions of directors; (b) encourage directors to act in accordance with the mission and interests of the authority; and (c) distinguish between the oversight function of board members and the management responsibilities of executive staff. A board member is considered to be independent if all of the following criteria are met:

- The board member is not currently an employee of the public authority in an executive position, nor was an employee of the public authority in an executive position in the past two years.
- The board member is not or has not been in the previous two years, employed by an entity that received a payment valued at more than fifteen thousand dollars for goods and services provided to the public authority, as well as any other form of financial assistance valued at more than fifteen thousand dollars from the public authority.
- The board member is not a relative of an executive officer or employee in an executive position of the public authority or an affiliate.
- The board member is not a lobbyist registered under a state or local law and paid by a client to influence the management decisions, contract awards, rate determinations or any other similar actions of the public authority or affiliate.

In addition, an appointed director may be an employee of a county or local government and have some professional involvement with the public authority and still be independent. However, if a board member (1) is a member of a legislative body, or (2) is the chief executive officer, or (3) holds a policymaking position with a municipal government, that board member would not be independent if the public authority pays the municipal government \$15,000 or more annually for goods and services that are provided to the public authority by the municipal government. As a best practice it is not recommended that a majority of appointed board members have a political or employment relationship to the government for whose purpose the public authority was created.

Ex officio directors, by statute, are considered independent and may sit on the authority's audit or governance committee, although, to the extent practicable, boards are encouraged to select appointed directors who meet the independence criteria to these committees.

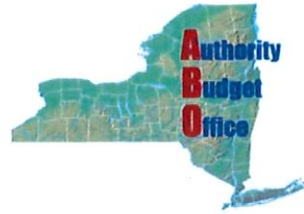
Board members may consult with the individuals who appointed them without losing their independence provided the board member's decisions are made in the interests of the public and consistent with the mission of the authority.

The ABO also recognizes that it is not uncommon for board members to have personal or professional relationships with vendors who may do business with the public authority. In such cases, board members must disclose any relationship prior to the authority considering doing business with the vendor and the board member should be recused from any board discussion or decision on such a transaction. Board members also should not discuss any qualities of the vendor with staff of the authority. In all cases, board members are to: avoid situations that could compromise their independence; act with transparency; and exercise their fiduciary duties of loyalty and care. This will require that directors weigh the public's interests and that of their appointing authorities when taking on these duties and be sensitive to potential conflicts of interest or the appearance of a conflict.

If the majority of directors appointed to a public authority do not meet this definition of independence, the official or officials having the authority to appoint or remove board members should take appropriate actions to address this issue.

TAB 3

Authority Budget Office Policy Guidance



No. 07-02

Date Issued: May 1, 2007

Supercedes: New

Subject: Financial Disclosure by Local Public Authority Board Members

Statutory Citation: Section 2825(3), Public Authorities Law

Provision: Board members, officers, and employees of a local public authority are to file annual financial disclosure statements with the appropriate local board of ethics (county or municipal) in which the local public authority has its primary office pursuant to Article 18 of the General Municipal Law.

Authority Budget Office Policy Guidance: Only a political subdivision that is required to adopt a financial disclosure policy under Article 18 of the General Municipal Law is required to establish and follow a financial disclosure policy under the Public Authorities Accountability Act.

Article 18 applies to a county, city, town or village with a population of 50,000 or more. These political subdivisions are to adopt a local law, ordinance or resolution setting forth the form of financial disclosure required and identifying the positions and offices to which this disclosure requirement applies. For purposes of financial disclosure, members, officers and employees of a local public authority are considered to be employees of the political subdivision.

Public authorities established to benefit a political subdivision with a population of 50,000 or less are exempt from the requirements of Article 18, although such a political subdivision may voluntarily adopt a financial disclosure policy. Since Section 2825 of the Public Authorities Law requires local public authorities to follow the disclosure practices established by the political subdivision and county board of ethics, board members, officers and employees of local public authorities established in these exempt political subdivisions may not be required to submit financial disclosure statements.

Political subdivisions subject to the financial disclosure requirements of Article 18 should already have policies and disclosure formats in place and covered individuals of local public authorities should be submitting financial disclosure statements annually to the board of ethics. If a political subdivision is subject to these disclosure requirements and has not adopted policies and procedures, it should take immediate action necessary to comply with the statute.



Local public authorities should direct questions to the board of ethics in their jurisdiction.



TAB 4

Authority Budget Office Policy Guidance



No. 09-01

Date Issued: August 1, 2009

Supersedes: New

Subject: Appropriate Use of Executive Session

Statutory Citation: Public Officers Law, Article 7

Provisions: Meetings of a public body are to be open to the general public, except when it is appropriate to enter into executive session. The term “executive session” refers to that portion of a public meeting during which the public may be excluded. Upon a majority vote of its total membership, taken in an open meeting pursuant to a motion identifying the general area or areas of the subject or subjects to be considered, a public body may conduct an executive session only for the purposes enumerated below:

- a. matters which will imperil the public safety if disclosed;
- b. any matter which may disclose the identity of a law enforcement agent or informer;
- c. information relating to current or future investigation or prosecution of a criminal offense which would imperil effective law enforcement if disclosed;
- d. discussions regarding proposed, pending or current litigation;
- e. collective negotiations pursuant to article fourteen of the civil service law;
- f. the medical, financial, credit or employment history of a particular person or corporation, or matters leading to the appointment, employment, promotion, demotion, discipline, suspension, dismissal or removal of a particular person or corporation;
- g. the preparation, grading or administration of examinations; and
- h. the proposed acquisition, sale or lease of real property or the proposed acquisition of securities, or sale or exchange of securities held by such public body, but only when publicity would substantially affect the value thereof.

At no time may a public authority vote to appropriate public moneys while in executive session.

The public authority may limit attendance at an executive session to any member of the public body and any other persons authorized by the public body.

Minutes of an executive session must be recorded if any action is taken by formal vote. The minutes serve as the record of the determination of the board, including the date and results of that vote. Minutes of an executive session need not include information that may be withheld under the Freedom of Information Law.

Minutes of meetings of all public bodies are to be available to the public in accordance with the provisions of the Freedom of Information Law within two weeks from the date of such meeting, except that minutes taken in executive session are to be available to the public within one week of the date of the executive session.

Authority Budget Office Policy Guidance: Public authorities should always conduct business in an environment that fosters transparency and public disclosure, and conforms to the intent of the Public Authorities Accountability Act and the Public Officers Law.

The law is clear that a public body may go into executive session only for specific and limited reasons. The board must provide sufficient details on the purpose of the meeting to assure the public that the subject matter meets the statutory test for executive session. While most of these permissible exclusions are self-explanatory, the use of executive session for discussion of personnel issues, audit findings, potential property transactions, and litigation is less clear. The courts have held and opinions and guidance rendered by the Committee on Open Government advise that, when in doubt as to the legality of meeting in executive session, public bodies should honor their fiduciary responsibilities, adopt a narrow interpretation of the statute and conduct business in public. Invoking the use of executive session without providing sufficient justification undermines the public's confidence in the decisions and actions of the board.

When a public body does vote to go into executive session, the motion must include a clear explanation of what will be discussed. For example, a motion that states the board is going into executive session to discuss "personnel" issues is not sufficient. Rather, the board should vote on a motion to discuss "the employment history of an employee", or "potential disciplinary action against an employee". In either case, it is not necessary to identify the individual who is the subject of the executive session. A board may vote to go into executive session to discuss *matters* leading to the hiring or firing of a particular person, and that is what should be reflected in the minutes of the public session.

The use of executive session to discuss the results of an audit is also limited. If the internal auditor appears before the audit committee or the full board to present his or her findings, that discussion must occur in an opening meeting, since the committee and the board are public bodies. A discussion of the audit findings or a

discussion concerning management's cooperation with the auditor (either internal or independent) is not an acceptable justification for adjourning to executive session.

The presentation of the annual independent audit to the audit committee and any general discussion of its findings with the committee or the board must be done in a public meeting. The independent audit report is a public document. An executive session can only be convened to discuss a finding that is consistent with the exceptions articulated in Public Officers Law. It is appropriate that the details of sensitive or confidential issues be presented to management, rather than to the board. For example, the public audit report can note significant internal control weaknesses with the authority's cash management policies, while the specific weaknesses or implications from the lack of controls can be discussed confidentially with management.

Similarly, a board can vote to go into executive session to discuss a potential property transaction only in limited circumstances. A public body can only convene an executive session if a public discussion of the property transaction would "substantially affect the value of the property." Discussing the merits of selling a piece of property through public bid, or concern about revealing the fair market value of the property, is insufficient justification to adjourn to executive session. As a general rule, if, as a matter of record, the public is aware of the public authority's interest in acquiring, selling or leasing real property, or if the value of the property has already been appraised, then it is not likely that a public discussion of the transaction would substantially affect the value of that property.

Finally, there may be occasions when litigation warrants a vote to convene an executive session. Again, this justification is limited to a discussion by the board of its legal strategy in litigation involving the board or pending before it. The board may not hold an executive session out of concern that a matter raised in public session may provoke a lawsuit, or fear of the threat of potential legal action. In its motion to convene an executive session, the board must be more expansive than "to discuss litigation". It is advisable that the record specifically state the purpose, such as "to discuss litigation issues in the case of XYZ Company vs. [NAME] public authority."

A public authority is advised to consult the Committee on Open Government if it has questions concerning what is appropriate under Public Officers Law. The Committee may be contacted at (518) 474-2518 or by fax at (518) 474-1927. Its web site address is: www.dos.state.ny.us/coog/.

TAB 5

Authorities Budget Office Policy Guidance



No. 10-01

Date Issued: March 1, 2010

Supersedes: New

Subject: Acknowledgement of Fiduciary Duty

Statutory Citation: Public Authorities Law Section 2824(1)(h)

Provisions: Section 6(i) of Public Authorities Law, as amended by Chapter 506 of the Laws of 2009 ("The 2009 Public Authorities Reform Act" or "PARA"), requires the Authorities Budget Office (ABO) to "develop and issue" a written acknowledgement that all board members must execute as part of their duties and responsibilities under Section 2824 of Public Authorities Law. By signing this acknowledgement a board member is stating "that he or she understands his or her role and fiduciary responsibilities" as well as his or her "duty of loyalty and care to the organization and commitment to the authority's mission and the public interest."

Pursuant to PARA, every board member of a Public Authority is required to sign an acknowledgement of fiduciary duty at the time he or she takes the oath of office. The effectiveness of the acknowledgement will be deemed applicable throughout the duration of such board member's term and/or for as long as such director continues to serve in such capacity. Board members appointed to their positions prior to the effectiveness of PARA and the implementation of this new requirement are required to execute an acknowledgement by May 1, 2010.

Authorities Budget Office Policy Guidance: The primary responsibility of a board member is to understand the mission and public purpose of the Authority and to act in the best interests of the Authority, its mission, and the public. The intent of this written acknowledgement is to re-affirm the importance of this duty to board members.

The ABO is directing all state and local public authorities to use the attached acknowledgement form to satisfy this statutory requirement. Public authorities are to maintain signed copies of the acknowledgement throughout the official term of each active board member. State and local authorities will also be expected to certify as part of the Annual Report submission that these statements were executed in accordance with Section 2824 of Public Authorities Law. The failure to execute this acknowledgment will be considered a failure to comply with the requirements of Public Authorities Law. The failure to act in accordance with the principles stated in this acknowledgment can be considered a breach of fiduciary duty and could result in a recommendation that the board member be sanctioned.

A board member is to sign a new acknowledgement document at the start of each new term to which the board member is appointed.



Acknowledgement of Fiduciary Duties and Responsibilities

As a member of the Authority's board of directors, I understand that I have a fiduciary obligation to perform my duties and responsibilities to the best of my abilities, in good faith and with proper diligence and care, consistent with the enabling statute, mission, and by-laws of the Authority and the laws of New York State. The requirements set forth in this acknowledgement are based on the provisions of New York State law, including but not limited to the Public Authorities Reform Act of 2009, Public Officers Law, and General Municipal Law. As a member of the board of directors:

I. Mission Statement

I have read and understand the mission of the Authority; and the mission is designed to achieve a public purpose on behalf of the State of New York. I further understand that my fiduciary duty to this Authority is derived from and governed by its mission.

I agree that I have an obligation to become knowledgeable about the mission, purpose, functions, responsibilities, and statutory duties of the Authority and, when I believe it necessary, to make reasonable inquiry of management and others with knowledge and expertise so as to inform my decisions.

II. Deliberation

I understand that my obligation is to act in the best interests of the Authority and the People of the State of New York whom the Authority serves.

I agree that I will exercise independent judgment on all matters before the board.

I understand that any interested party may comment on any matter or proposed resolution that comes before the board of directors consistent with the laws governing procurement policy and practice, be it the general public, an affected party, a party potentially impacted by such matter or an elected or appointed public official. However, I understand that the ultimate decision is mine and will be consistent with the mission of the Authority and my fiduciary duties as a member of the Authority's board of directors.

I will participate in training sessions, attend board and committee meetings, and engage fully in the board's and committee's decision-making process.

III. Confidentiality

I agree that I will not divulge confidential discussions and confidential matters that come before the board for consideration or action.

IV. Conflict of Interest

I agree to disclose to the board any conflicts, or the appearance of a conflict, of a personal, financial, ethical, or professional nature that could inhibit me from performing my duties in good faith and with due diligence and care.

I do not have any interest, financial or otherwise, direct or indirect, or engage in any business or transaction or professional activity or incur any obligation of any nature, which is in substantial conflict with the proper discharge of my duties in the public interest.

Signature: _____

Print Name: _____

Authority Name: _____

Date: _____

TAB 6

Authorities Budget Office Policy Guidance



No. 10-02

Date Issued: March 1, 2010

Supersedes: New

Subject: Public Authority Mission Statements and Measurement Reports

Statutory Citation: Section 2824-a, Public Authorities Law
Section 2800 of Public Authorities Law

Provisions: Chapter 506 of the Laws of 2009 (“The 2009 Public Authorities Reform Act”) added a new Section 2824-a in Public Authorities Law requiring state and local public authorities to develop and adopt a mission statement. The law also requires public authorities to develop performance measures to assist the authority determine how well it is carrying out its mission. Pursuant to this section, each state authority is to provide a copy of its mission statement and performance measures to the Authorities Budget Office, using the attached form, on or before March 31, 2010. Every local authority is to file a mission statement and performance measures with the ABO using the attached form by March 31, 2011.

For subsequent reporting years the mission statement is to be included as part of the Annual Report required to be filed with the ABO pursuant to Section 2800 of Public Authorities Law. Every public authority is also expected to annually review its mission statement and measures and publish a measurement report.

Public authorities are also required to post and maintain their mission statement and performance report on their web site.

Authorities Budget Office Policy Guidance: The mission statement is the prism through which a public authority’s actions are evaluated and its policy decisions are judged. Given its importance in defining how the public authority will operate, the board, in conjunction with the executive management of the authority, should exercise due diligence when developing and reviewing the authority’s mission statement, and the goals and measures that will be used to evaluate whether the authority is fulfilling its mission. Boards of directors should take time to thoroughly discuss, re-think, and reach agreement on the actual mission of their authority and to draft a mission statement that reflects this agreement. Only after undertaking this process and adopting a new mission statement should the authority submit its mission statement to the ABO and post it to their web site.

As a matter of law, public policy, and sound management, it is imperative that directors define and understand the purpose of the authority and the public interests it serves, and reflect these concepts in a mission statement. A board

member cannot properly execute his or her fiduciary duty without first understanding the mission and interests served by the authority.

A mission statement should capture in a few clear and concise sentences the purpose of the public authority, its goals and its reason for existence. The mission statement should address the intent and purpose for which the public authority was created. It should express the philosophy and guiding principles of the public authority, and provide staff and the public with an understanding of the values and culture of the organization. It should describe generally the services the public authority provides, the community it serves, and the reasonable expectations of its stakeholders. The mission statement should also be specific enough to be able to assess the organization's performance and to measure its success in achieving its intended public purpose.

When drafting an appropriate mission statement and evaluating its effectiveness, it may be helpful to answer the following questions:

- What is the public purpose for which the authority was created?
- How can we best achieve that purpose?
- How do we assess whether an action or decision before the board is consistent with this mission and the public interest?
- Who are the authority's stakeholders?
- What are the authority's goals?
- What are the values of the authority?

Once a public authority defines its mission and the interests and expectations of the community it serves, policies must be implemented to achieve those objectives. Performance measures are a means for the board and management to evaluate and monitor whether the authority's policies and operating practices are in accordance with its mission. Performance measures need not be complex or detailed. Performance measures will also vary depending on the purpose, size, and resources of the authority. They should be designed to answer some fundamental questions:

- How do we know if we are performing our mission?
- How do we know if we are performing that mission well?
- How can we be more effective and efficient?
- How do we know if we are meeting the interests of those we serve?

An authority's board must annually review the authority's mission statement and performance results to ensure that its mission has not changed and that the authority's performance goals continue to support its mission. Authorities are to annually report their performance results and revise their goals as necessary.

Implementation of Statutory Requirements: Authorities should complete the attached form and submit the entire document to the ABO via e-mail (info@abo.state.ny.us).

Authority Mission Statement and Performance Measurements

Name of Public Authority:


Public Authority's Mission Statement:

Date Adopted:

List of Performance Goals (If additional space is needed, please attach):

-

- 
4. Briefly describe the role of the Board and the role of management in the implementation of the mission.

- 
5. Has the Board acknowledged that they have read and understood the responses to each of these questions?

TAB 7

Authorities Budget Office Policy Guidance



No. 10-03

Date Issued: April 12, 2010

Supersedes: 07-04

Subject: Posting and Maintaining Reports on Public Authority Web Sites

Statutory Citation: Chapter 506 of the Laws of 2009

Provisions: Public Authorities Law, as amended in 2005 by the Public Authorities Accountability Act, requires state and local authorities to file specific financial and budgetary information with the ABO, as well as to report property transactions, debt issuances, and other information on their operations. Public authorities have been submitting these reports through the Public Authorities Reporting Information System (PARIS) and, to the extent practicable, posting the information on their official web sites. Information to be accessible on the authority's web site was to include its mission and current activities, its most recent annual financial reports, current year budget, its most recent independent audit report, and its investment and procurement guidelines.

The Public Authorities Reform Act of 2009 (Chapter 506) amended current law to require additional information be reported to the ABO and that all public authorities have an official web site or post this information on a shared web site.

Authorities Budget Office (ABO) Policy Guidance: The Authorities Budget Office (ABO) is committed to the principles of public disclosure and the transparent reporting of public authority financial and management information. Public authorities will continue to report using the Public Authorities Reporting Information System (PARIS), but now must also make specific information available to the public through the Internet.

To assist public authorities meet their disclosure and reporting obligations, the ABO has developed the attached checklist of policies, reports and authority information that public authorities must post and maintain on their web site.

This information is to be made available in a manner that enables the public to easily find and navigate through it. The failure to post this information on the web site and maintain its accuracy will be considered an act of non-compliance with state law and subject the authority to the sanctions and enforcement powers provided to the ABO by statute. If an authority does not have the resources to create and maintain its own web site, it should work with its sponsoring municipality to create a web page on the municipality's web site. ***The ABO expects public authorities to begin posting this information immediately.***

Procedures for Retaining and Maintaining Information on Web Sites: The ABO will be routinely checking web sites to monitor compliance. Therefore the ABO recommends referring to the attached checklist for guidance. As a general rule, information that is likely to remain static should be permanently posted to the web site but updated as necessary. At least two years of budget, financial and operating information should also be available on the web site.

Public authorities should also consider the following when posting and maintaining documents to their web sites:

- Public authorities are responsible for the information posted on their web sites.
- The information provided must be reliable and complete.
- Web sites should be monitored and updated regularly and all links should function properly.
- Individuals should be able to navigate through the web site with ease and have little difficulty finding the desired information and documents.
- All documents should be prepared using common terminology that facilitates a better understanding of the content.

Policies for the Retention of Records: New York State has adopted rules and regulations that govern the retention and disposition of records. These rules require that, even after removing a record from its web site, a public authority must retain copies of all records, whether electronic or hard copy, for the stipulated time periods outlined in the schedules prepared by the State Archives. (Please refer to: www.archives.nysed.gov/a/records/index.shtml).

To ensure compliance with the policies of the New York State Archives, the ABO recommends that public authorities establish a records management program to promote efficient administration and management of the Authority's records. This involves maintenance, retention, and storage of official records based on their legal and administrative value to the authority. A record retention program would require public authorities to:

- Develop a records retention and disposition policy and ensure compliance by all staff.
- Ensure that authority records are maintained and disposed in compliance with regulations.
- Identify, protect, and preserve archival records.
- Establish a process to prepare and annually review and update the records management plan.

Information To Be Posted on Public Authority's Web Site

§2800 Annual Report

- Report on Operations and Accomplishments
 - Include description of the authority's operations, completed and active projects, as well as any material changes in authority operations and programs
 - Updated annually within 90 days of end of fiscal year
 - Maintain each report on web site for two years

- Authority Mission Statement
 - See [ABO Policy Guidance 10-02](#)
 - Review annually
 - Update and approve as necessary
 - Maintain on web site permanently

- Performance Measures Report
 - See [ABO Policy Guidance 10-02](#)
 - Measures updated as necessary prior to start of fiscal year
 - Revised measures posted at start of fiscal year
 - Maintain report on web site until next measurement report is posted

- Schedule of Debt
 - Update annually to include new debt issuances
 - Post within 90 days of end of fiscal year
 - Maintain each annual schedule on web site for two years

- List of Authority Board Members and Executive Management Team
 - Include appointing entity, appointment dates and terms
 - Include professional experience and qualifications of each member, and the professional background and experience of officers
 - Update at time of changes in the board or staff
 - Maintain on web site permanently

- Personal and Real Property Transactions
 - Update annually and post within 90 days of end of fiscal year
 - Maintain each report on web site for two years

- Management's Assessment of the Authority's Internal Control Structure and Procedures
 - See ABO [Model Assessment of Internal Controls](#) best practices
 - Include a description of operating and financial risks
 - Update annually and post within 90 days of end of fiscal year
 - Maintain each assessment report on web site for two years

- Enabling Statute

- Post current enabling statute or active link to site
 - Maintain statute on web site permanently
 - Update as necessary to reflect statutory amendments
 - Local Development Corporations should post their articles of incorporation in lieu of an enabling statute

- List of Committees, Committee Members, and Committee Meetings
 - Post notices and proposed agendas of all committee meetings at least one week in advance of meetings
 - Names of all committees and their members should be posted permanently, and updated as necessary
 - Post minutes within 14 days of committee meeting
 - Maintain meeting minutes for at least two years following the date on which the meeting was held

- Board Meetings
 - Post schedule of all board meetings at beginning of the fiscal year
 - Post meeting notices and agendas at least one week in advance of a board meeting
 - Post all board meeting minutes within 14 days of meeting
 - Meeting minutes should be maintained on web site for at least two years following the date on which the meeting was held

- Subsidiaries, Affiliates, and Major Authority Units
 - Post subsidiary report submitted to the Legislature pursuant to statute
 - Report should include: contact information; an organization chart; names of Board members, directors and officers; by-laws; and a report on the purpose, operations, mission and projects of the subsidiary, including justification as to why it is necessary for the subsidiary to continue its operations for the benefit of the State
 - Maintain permanently on web site permanently
 - Update as necessary

- Authority Organization Chart
 - Post, at a minimum, the authority's executive structure and major organizational units.
 - Maintain permanently on web site
 - Update as necessary

- Authority By-laws
 - Maintain permanently on web site
 - Update as necessary

- Authority Code of Ethics
 - Maintain permanently on web site
 - Update as necessary

- Annual Budget Report
 - Details of 4-year financial plan
 - Maintain each budget report on web site for two years

§2802 Independent Audits and Audit Reports

- Certified Financial Audit
 - Post management letter and report on internal controls
 - Post the documents submitted as part of the Certified Financial Audit report in PARIS
 - Maintain on web site for two years following release of the report

Other Documents to be Posted on Web Site

- Procurement Policies and Annual Procurement Report
 - Post the reports generated from the PARIS Procurement Report, and include name of the Authority's Procurement Officer
 - Maintain policies permanently on the web site
 - Update policies as necessary
 - Maintain Procurement Reports on web site for two years
- Property Acquisition and Disposition Policies
 - Post a list of Real Property owned by the Authority
 - Maintain on web site permanently
 - Update as necessary to reflect property transactions
- Investment Policies and Annual Investment Report
 - Post the annual Investment Report, including the investment audit results and management letter, record of investment income of the authority and a list of fees paid for investment services
 - Post explanation for any amendments made to the Investment Policy
 - Maintain policy permanently on the web site
 - Update as necessary
 - Maintain investment reports on the web site for two years
- Uniform Tax Exemption Policy for IDAs
 - Maintain permanently on web site and update as necessary
- Fee Schedules (if applicable)
 - Post a list of service fees charged by the Authority
 - Maintain permanently on web site and update as necessary
- Current Year Official Statements (for those authorities issuing debt)
 - Post a copy of each official statement for all debt issuances
 - Maintain on web site for two years from date of bond issuance
 - Update web site as necessary with new statements

TAB 8

Authorities Budget Office Policy Guidance



No. 10-04

Date Issued: April 15, 2010

Supersedes: New

Subject: Fiduciary Duty of the Designee of a Voting Ex Officio Board Member

Statutory Citation: Section 2824 of Public Authorities Law

Provisions: Public Authorities Law, as amended in 2005 by the Public Authorities Accountability Act, codified in statute the role and responsibilities of board members of public authorities. The Public Authorities Reform Act of 2009 (Chapter 506) amends the existing law to require every board member to acknowledge that he or she understands his or her role and fiduciary responsibilities as a board member, including the duty of loyalty and care to the organization and commitment to the authority's mission and the public interest.

Authorities Budget Office (ABO) Policy Guidance: The duties and obligations of ex officio voting board members of public authorities extend to their designees. The duties and obligations include, among others, execution of the acknowledgement of fiduciary duty statement (see ABO Public Guidance 10-01: [Acknowledgement of Fiduciary Duty](#) issued March 1, 2010).

An ex officio board member is an individual who serves on a board by virtue of holding an elected or appointed civil position, such as a state agency commissioner, town supervisor or county legislator. The public authority's enabling statute or articles of incorporation stipulate who is to comprise the board of directors, including identifying any ex officio board members by their public positions.

The enabling statute or articles of incorporation should also indicate whether the ex officio board member is a voting or non-voting board member and if the ex officio board member may designate an individual to act as his or her representative on the board of the authority. Such a designation is also permissible if the general powers and duties of the office held by the ex officio, as expressed in statute, authorize the ex officio to delegate any of his or her powers to subordinate staff members. In the absence of such explicit authority, an ex officio voting board member may not delegate his or her board member responsibilities to a designee.

Ex officio board members who are authorized by law to appoint a designee must do so with care to maintain the integrity of the board and the oversight role of its members. To preserve the consistency and cohesion of board operations and decision making, it is beneficial for the ex officio to limit his or her appointment to a single designee who can regularly participate in all scheduled board and

committee meetings, even if the ex officio is permitted to name multiple designees. In no event, does the ex officio board member relinquish his or her responsibility, obligations or power as a board member through the appointment of a designee.

A designee is expected to act in the same capacity as a regular board member and to exercise the same governmental authority as that vested in a board member. He or she must act independently at all times when making decisions or voting on any matter that comes before the board. As with any other board member, the designee may listen to any interested party on any issue or proposed resolution, but ultimately the decision must be that of the designee.

The designee will be expected to attend board and committee meetings, engage fully in the board's and committee's decision-making process, and divulge actual, potential or perceived conflicts of interest. The designee will also be subject to financial disclosure requirements applicable to other board members.

Consistent with the law, designees must sign the acknowledgement of fiduciary duty statement that has been developed by the Authorities Budget Office (see ABO Policy Guidance 10-01: [Acknowledgement of Fiduciary Duty](#)).

In addition to acknowledging his or her fiduciary duty, a designee must attend board member training (see ABO Policy Guidance 15-02: [Board Member Training](#)).

TAB 9

Authorities Budget Office Policy Guidance



No. 10-05

Date Issued: October 26, 2010

Supersedes: New

Subject: Annual Board of Directors Evaluation

Statutory Citation: Public Authorities Law sections 2800(1)(a)(15) and 2800(2)(a)(15) and Section 2824(7)

Provision: The 2009 Public Authorities Reform Act requires that the board of every state and local public authority conduct an annual evaluation of its performance. Board member comments are protected from disclosure under Article 6 of Public Officers Law, but the results of the assessment are to be provided to the ABO.

Authorities Budget Office Policy Guidance: Board members must be committed to the highest standards of corporate governance. The board must hold itself accountable to the mission of the authority and the public interest. This annual assessment is a reminder to each board member of his or her duties, why those responsibilities are important, and whether they are performing those duties appropriately. The evaluation provides an opportunity for board members to measure their individual and collective effectiveness, determine if they are following their own policies and procedures, identify areas for board improvement, and to compare how their evaluation of the board's performance compares to that of other board members. This annual evaluation can be a learning tool to educate board members and build a well functioning board.

The Authorities Budget Office recommends that each board member annually perform his/her own evaluation of the whole board. The evaluation should be conducted confidentially with the results compiled by the governance committee. Furthermore, the ABO consulted with the Committee on Open Government, which advised that a board discussion of its performance "would constitute a matter made confidential, by state law that, therefore, could be conducted in private."

To the extent that the results of this evaluation demonstrate the need for the board to improve its performance, amend its practices or procedures, or clarify its expectations of board members, the board is expected to implement suitable corrective actions immediately.

The Authorities Budget Office has developed the following model board evaluation tool that can be adopted by public authorities to meet the needs of their boards of directors. This document should be completed by each board member.

Confidential Evaluation of Board Performance

Criteria	Agree	Somewhat Agree	Somewhat Disagree	Disagree
Board members have a shared understanding of the mission and purpose of the Authority.				
The policies, practices and decisions of the Board are always consistent with this mission.				
Board members comprehend their role and fiduciary responsibilities and hold themselves and each other to these principles.				
The Board has adopted policies, by-laws, and practices for the effective governance, management and operations of the Authority and reviews these annually.				
The Board sets clear and measurable performance goals for the Authority that contribute to accomplishing its mission.				
The decisions made by Board members are arrived at through independent judgment and deliberation, free of political influence, pressure or self-interest.				
Individual Board members communicate effectively with executive staff so as to be well informed on the status of all important issues.				
Board members are knowledgeable about the Authority's programs, financial statements, reporting requirements, and other transactions.				
The Board meets to review and approve all documents and reports prior to public release and is confident that the information being presented is accurate and complete.				
The Board knows the statutory obligations of the Authority and if the Authority is in compliance with state law.				
Board and committee meetings facilitate open, deliberate and thorough discussion, and the active participation of members.				
Board members have sufficient opportunity to research, discuss, question and prepare before decisions are made and votes taken.				
Individual Board members feel empowered to delay votes, defer agenda items, or table actions if they feel additional information or discussion is required.				
The Board exercises appropriate oversight of the CEO and other executive staff, including setting performance expectations and reviewing performance annually.				
The Board has identified the areas of most risk to the Authority and works with management to implement risk mitigation strategies before problems occur.				
Board members demonstrate leadership and vision and work respectfully with each other.				

Date Completed: _____

The member responses to the Board Evaluation questionnaire should be aggregated and the results submitted to the ABO via email (Subject: CONFIDENTIAL Results of Board of Directors Evaluation) within 90 days of the close of the authority's fiscal year. The board evaluation is required annually beginning with fiscal years ending on or after September 30, 2010.

A model summary reporting form has been provided, below, that should be revised to reflect the evaluation tool adopted by your public authority. Enter in each cell the number of board members who answered the question with that response.

Results should be sent to: info@abo.ny.gov

Summary Results of Confidential Evaluation of Board Performance

Criteria	Agree	Somewhat Agree	Somewhat Disagree	Disagree
Board members have a shared understanding of the mission and purpose of the Authority.	#	#	#	#
The policies, practices and decisions of the Board are always consistent with this mission.				
Board members comprehend their role and fiduciary responsibilities and hold themselves and each other to these principles.				
The Board has adopted policies, by-laws, and practices for the effective governance, management and operations of the Authority and reviews these annually.				
The Board sets clear and measurable performance goals for the Authority that contribute to accomplishing its mission.				
The decisions made by Board members are arrived at through independent judgment and deliberation, free of political influence or self-interest.				
Individual Board members communicate effectively with executive staff so as to be well informed on the status of all important issues.				
Board members are knowledgeable about the Authority's programs, financial statements, reporting requirements, and other transactions.				
The Board meets to review and approve all documents and reports prior to public release and is confident that the information being presented is accurate and complete.				
The Board knows the statutory obligations of the Authority and if the Authority is in compliance with state law.				
Board and committee meetings facilitate open, deliberate and thorough discussion, and the active participation of members.				
Board members have sufficient opportunity to research, discuss, question and prepare before decisions are made and votes taken.				
Individual Board members feel empowered to delay votes, defer agenda items, or table actions if they feel additional information or discussion is required.				
The Board exercises appropriate oversight of the CEO and other executive staff, including setting performance expectations and reviewing performance annually.				
The Board has identified the areas of most risk to the Authority and works with management to implement risk mitigation strategies before problems occur.				
Board members demonstrate leadership and vision and work respectfully with each other.				

Name of Authority: _____

Date Completed: _____

TAB 10

Authorities Budget Office Policy Guidance



No. 11-01

Date Issued: February 1, 2011

Supercedes: 07-03

Subject: Compliance Review Process

Statutory Citation: Section 6(1)(a) of Public Authorities Law

Provisions: The Public Authorities Accountability Act and the Public Authorities Reform Act empower boards of directors to take the steps necessary to promote effective management, improve accountability and oversight, encourage transparent and full disclosure, and establish a culture of ethical behavior and personal responsibility. The Authorities Budget Office (ABO) was created, in part, to assess and enforce the compliance of public authorities with these requirements and to review, analyze, and report on their operations, budgets and practices.

Authorities Budget Office (ABO) Policy Guidance: The ABO is committed to enforcing the requirements of the Acts and other applicable provisions of State law in a fair and balanced way. Its goal is to achieve broad compliance with the intent of the Acts, to identify and address factors that inhibit compliance, and to promote high quality performance consistent with the mission and purpose of the authority.

The ABO's responsibility is to ensure that all public authorities, regardless of size and resources, follow the model governance principles contained in the Acts and operate as efficiently and effectively as possible. Accordingly, its compliance assessments will focus on:

- **Governance Reports.** The purpose of these reviews is to provide an objective determination as to whether the authority has adopted the governance principles codified in the two Acts and in other applicable State laws.
- **Operational Reports.** These reviews are objective assessments of an authority's actual adherence to its adopted governance principles and policies, and how well its actions and activities contribute to achieving its statutory mission and performance objectives.

- **Limited Scope Reports.** These reviews are narrow and targeted assessments of specific operating or procedural issues, practices or activities that could compromise the effectiveness of the authority.

Compliance reviews will provide directors and officers with useful information to assist them manage the financial, operating and business risks associated with public authorities. The reviews will also provide information to the public and other government officials on the governance practices, operations and performance of public authorities.

The ABO will conduct its compliance reviews in accordance with internal protocols developed specifically for these reviews, which are based on generally accepted professional standards. These standards address issues such as the independence, competence, professional judgment, and training of ABO staff; quality control over the review process, the planning, supervision, and documenting of information for the compliance review; and the specific elements that must be included in the compliance review report.

The ABO will notify public authorities sufficiently in advance of a compliance review in order for the authority to have time to prepare and to maximize the efficiency of the process.

The components of the compliance review will consist of the following:

Entrance Conference: The ABO will hold an entrance conference with the authority's executive management to discuss the review process and its proposed scope.

Review Stage: This is the analytical phase and generally will take the most time to perform. During this stage, members of the ABO's compliance team will examine and assess relevant financial, operational, and procedural documents of the authority and interview appropriate board members, management and staff. The review stage will generally take place on-site at the authority, but may also take place in other locations.

Discussion Draft: This preliminary written document provides the authority with the results and conclusions of the compliance review. It is shared with authority management for its review and to address any factual errors or misinterpretations made by the compliance team. Management is expected to circulate the draft to the board for its comments. A written response from the authority to the draft report must be signed by the board chair. As necessary, the board's response will be reflected in a revised final draft.

Exit Conference: After authority management and the board of directors have had sufficient time to review the discussion draft and prepare comments, an exit conference may be scheduled. At the exit conference, the review team and

authority officials will discuss the contents of the discussion draft and the authority's comments and feedback. Based on the exit conference, the ABO may make revisions in advance of the final report, and any revisions will be discussed with authority management. An exit conference may not be held for all limited scope reviews, at the discretion of the ABO.

Final Report: The ABO will issue a final compliance report to the head of the authority. The authority's management is responsible for responding to the compliance issues and recommendations outlined in the report. The authority is expected to adopt policies and procedures that adequately address the concerns raised in the report and that advance the authority toward compliance with its statutory obligations. Subsequent to the release of the report, the ABO, as part of its technical assistance, training, and oversight responsibilities, will be available to work with management on developing and implementing appropriate corrective actions and will monitor progress toward compliance.

If the final report concludes that the authority is out of compliance with one or more reporting requirements, that board actions are inconsistent with its fiduciary responsibilities, or that management has not adopted or adhered to appropriate policies and procedures, the issuance of the final report will constitute an official warning by the ABO. The failure to adequately address these deficiencies could lead to additional enforcement actions being taken by the ABO.

As a general rule, the ABO will also distribute final compliance reports to officials having a direct interest in the results of the review team's work. Such officials could include representatives of the Governor, the chairman and ranking minority member of the Senate and Assembly standing committees on corporations, authorities, and commissions, the chairman and ranking minority member of the appropriate oversight committees, and local officials and appointing authorities. Copies of final compliance reports are also distributed to the media. Compliance reports will not contain information specifically exempted from disclosure by state or federal statute, or such information which if disclosed would constitute an unwarranted invasion of personal privacy or interfere with law enforcement investigations or judicial proceedings. When a compliance report is issued, the report will be made available to the public on the Authorities Budget Office website (<http://www.abo.ny.gov>).

TAB 11

Authorities Budget Office Policy Guidance



No. 11-02

Date Issued: February 10, 2011

Updated: March 21, 2011

Subject: Enforcement Powers of the Authorities Budget Office

Statutory Citation: Section (6)(2)(f) and Section (6)(2)(g) of Title 2 of Public Authorities Law

Provision: This is a public notice of the Authorities Budget Office's intent regarding its powers of enforcement. The 2009 Public Authorities Reform Act grants the Authorities Budget Office (ABO) the power to publicly warn and censure state and local authorities for non-compliance with the provisions of state law. The ABO may also recommend the suspension or dismissal of officers and/or boards of directors of public authorities under certain circumstances.

Authorities Budget Office (ABO) Policy Guidance: Any public warning or censure of a state or local authority will be directed to the board of directors and the chief executive officer, who have the responsibility to establish, oversee and execute the policies and operating practices of the authority and are responsible for the actions of the authority and its employees. The ABO may also directly warn or censure an individual board member, officer or staff member of the authority.

Public authorities have reporting obligations under Public Authorities Law, as well as an obligation to adhere to basic principles of corporate governance. Reporting requirements include filing with the ABO a multi-year budget plan, an annual report, a copy of the authority's annual financial audit, and reports on the authority's investment and procurement policies. Board members have a duty to understand the mission and purpose for which the authority was created, to act in good faith in the best interests of the authority and the citizens of New York State, to act with a duty of loyalty and care to the authority, and to exercise independent judgment free of personal or professional conflicts of interest. The board also has the responsibility to ensure that the professional conduct of officers and staff of the authority is appropriate and consistent with its public purpose.

The chief executive officer has a duty to faithfully carry out the policies adopted by the board of directors, to protect the assets of the authority, to present the board with a complete and accurate picture of the authority's finances, to submit required reports to the board for its review and approval prior to filing with the ABO, to oversee and enforce standards of professional conduct and behavior by officers and staff, and to inform the board of potential risks, transactions, and other decisions that impact on the authority's operations or adherence to state or local law.

The failure of the board or the chief executive officer to properly perform these duties and obligations may result in the ABO exercising its enforcement authority.

1. Public Warning: The Authorities Budget Office reserves the right to publicly warn a board of directors, a member thereof, the chief executive officer, or other officers or staff members for actions such as, but not limited to:

- Non-compliance of the authority with statutory reporting or governance requirements.
- Failure of a board member to execute his/her Acknowledgment of Fiduciary Duty.
- Failure of the board to review and understand financial information or other declarations contained in the reports filed with the ABO.
- A demonstrated lack of understanding of the mission, purpose, or performance objectives of the authority.
- Inadequate oversight of the authority's management or the activities of the authority.
- A failure of the chief executive to bring appropriate matters to the attention of the board.
- Misconduct or other actions inconsistent with the person's duties and obligations, or in violation of accepted legal and ethical standards.

A public warning may take the form of a declarative statement issued by the ABO in a governance and operational report on the authority, written correspondence to the authority that includes an official warning, or the inclusion of the authority in a public document that identifies out of compliance authorities. A warning shall describe the specific act of non-compliance for which the warning is issued, and establish a timeframe within which the authority is expected to take corrective action before additional sanctions are imposed.

2. Censure: A censure is a formal written reprimand or rebuke of the actions, failure to act, or conduct of the board of directors, a member thereof, the chief executive officer or staff of a state or local authority. The Authorities Budget Office reserves the right to censure, with or without a prior Public Warning referenced in paragraph 1, for actions the ABO deems to be inappropriate, such as, but not limited to:

- The failure to take appropriate corrective action if a warning was first issued by the Authorities Budget Office.
- The failure to respond to requests from the ABO for books, records, information, or other documentation.
- Reasonable evidence to suggest that the board, a member thereof, officer or staff person should have been aware of non-compliance, inappropriate actions, or violations of policies but failed to act.
- Conduct or a failure to act that is inconsistent with established law, authority policy or accepted standards of corporate governance.

- Conduct or actions that demonstrate a lack of understanding of the board's, a member thereof, officer's or staff member's role, responsibilities and fiduciary duty or a disregard for statutory requirements.
- The failure of the board to perform its fiduciary duties or to carry out the mission and public purpose of the authority.
- Actions that place the finances or operations of the authority at risk, damage the integrity or reputation of the authority, or fail to protect adequately the authority's assets.

The letter of censure shall be made public by the ABO and may be distributed to other appropriate oversight bodies. The letter of censure shall cite the statutory requirements that the ABO determined were violated, describe the nature of the offense, and provide context as to why the letter of censure is appropriate.

3. Suspension or Dismissal of Board Members and Officers: The Authorities Budget Office has the power to recommend the suspension or dismissal of officers or directors of a public authority. A recommendation relating to the board of directors of a public authority must be made in accordance with Section 2827 of Public Authorities Law. The Authorities Budget Office reserves the right to recommend the suspension or dismissal of an officer or one or more members of a board of directors, with or without a prior Public Warning or Censure referenced in paragraphs 1 or 2, when the officer or board of directors was made aware of inappropriate conduct or activities, or violations of law or policies but failed to take corrective action; where the conduct of the board demonstrated a persistent failure to exercise its fiduciary duty; when the actions or inactions of the officer or board caused damage to the authority's or the state's reputation, finances, or assets; or if the actions or inactions of the officer or board could be considered potential criminal or ethical wrongdoing.

In such circumstances, the ABO shall notify in writing the board of directors, public officer and public body empowered to appoint the involved officer, board members, or staff members of its recommendations and the reasons and justification for such action.

Notwithstanding the imposition of any of the foregoing sanctions, the ABO, in appropriate circumstances, may exercise its statutory authority under Section 6(2)(h) of the Public Authorities Law to refer matters to the office of the Attorney General and/or other prosecutorial agencies.

TAB 12

Authorities Budget Office Policy Guidance



No. 14-02

Date Issued: October 8, 2014

Supersedes: 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).

TAB 13

Authorities Budget Office Policy Guidance



No. 15-01

Date Issued: January 13, 2015

Supersedes: New

Subject: Restrictions on Grants and Loans Made by Public Authorities

Statutory Citation: Various Sections of New York State Law

Provision: State and local authorities, as defined by Section 2 of the Public Authorities Law, whether created as public benefit corporations or formed as not-for-profit corporations, have only those powers explicitly granted or necessarily implied by statute. Accordingly, state and local authorities may engage in only those activities and exercise those powers which are expressly authorized in law or which are incidental to performing their statutory purposes.

Authorities Budget Office Policy Guidance: This limitation applies to the power of a state or local authority to award its monies in the form of grants and loans to public or private interests. Such financial assistance is prohibited unless expressly authorized in statute.

A state and local authority (other than an industrial development agency) formed as public benefit corporation may not award grants or issue loans of its own funds unless such power is expressly permitted in its enabling statute. The authority to make grants and execute loans is not an implied power of a public benefit corporation.

An industrial development agency (IDA) may not, under any circumstances, award grants or make loans of its own monies. The New York State Attorney General has opined (Formal Opinion No. 2014-F1) that an IDA does not have the statutory power to provide grants or loans from its own funds to public or private interests. This 2014 Opinion is consistent with the view previously taken by the Office of the State Comptroller (Op. St. Comptr. Nos. 99-4 and 82-360). The Attorney General states that “while an IDA is expressly permitted to *accept* gifts, grants, loans and contributions from various entities and to use such moneys for its corporate purposes, General Municipal Law §858(11), the enabling statutes do not explicitly authorize an IDA to make grants or loans of its money to any type of entity. Nor do we believe that these activities are necessary for an IDA to completely exercise the powers granted by the Legislature.”

The statutory restrictions on a state or local authority’s power to award grants and issue loans is clear and unambiguous. A state or local authority may only accept loans, grants and contributions from federal, state or other public or private sources and expend or pass through those funds consistent with the public purpose of the

authority and statutory or programmatic limitations imposed on the use of those funds.

A state or local authority, unless otherwise empowered under the law, may not grant or loan its monies to public or private corporations, private businesses or interests, civic associations, charitable groups, educational institutions, not-for-profit corporations, or any other social, religious, fraternal or cultural organization.

Moreover, statutory language such as "to do all things necessary or convenient to carry out its purposes", "to act in the public interest" or "to lessen the burden of government" should not be construed as providing a state or local authority with implied authorization to make grants or loans from its own monies in the absence of clear statutory language. In fact, the Attorney General has stated that such an interpretation "would render meaningless the Legislature's careful delineation of express powers."

All state and local authorities which, as a matter of practice or policy, grant or loan their monies to such entities without specific legislative authorization are directed to immediately end such practice or policy so as to comply with applicable state law and the opinions of the State Attorney General and State Comptroller.

TAB 14

Authorities Budget Office Policy Guidance



No. 15-03

Date Issued: November 3, 2015

Supercedes: 14-01

Subject: Explanatory Statement of the Circumstances of Property Disposal by Negotiation

Statutory Citation: Section 2897(6)(d) of the Public Authorities Law and Section 1609(a-1) of Not-For-Profit Corporation Law.

Provision: Section 2897(6)(d) of the Public Authorities Law requires public authorities to submit a written explanation of the circumstances involving the disposal of property through a negotiated transaction to the Authorities Budget Office (ABO) not less than 90 days prior to the scheduled date of the transaction.

Section 1609 of Not-For-Profit Corporation Law excludes entities established under Article 16 (land banks) from the requirements of Section 2897 of Public Authorities Law.

Authorities Budget Office Policy Guidance: A written explanation of the circumstances involving the disposal of property through a negotiated transaction applies to the following property:

1. Personal property with an estimated fair market value more than \$15,000;
2. Real property having an estimated fair market value greater than \$100,000, except that any real property disposed of by lease or exchange;
3. Real property disposed of by lease, if the estimated annual rent over the term of the lease is in excess of \$15,000;
4. Real property disposed of by exchange, regardless of value, or any property any part of the consideration for which is real property;
5. Related personal property disposed of by exchange, regardless of value, or any property any part of the consideration for which is real property.

It is the intent of the Public Authorities Accountability Act (PAAA) and the Public Authorities Reform Act (PARA) to promote accountability and full public disclosure by all authorities. Therefore, the ABO will only accept an explanatory statement of the circumstances of a property disposal by negotiation that includes the following information:

1. Description of the parties involved in the property transaction;
2. Justification for disposing of property by negotiation;
3. Identification of property, including its location;
4. Estimated fair market value of the property;
5. Proposed sale price of the property;

6. Size of the property; and
7. Expected date of sale of property.

TAB 15

Authorities Budget Office Policy Guidance



No. 17-01

Date Issued: January 27, 2017
Supersedes: 15-02

Subject: Board Member Training

Statutory Citation: Section 2824(2) of Public Authorities Law

Provision: Section 2824(2) of the Public Authorities Law, as amended by Section 18 of the Public Authorities Accountability Act, requires directors to “participate in State approved training regarding their legal, fiduciary, financial and ethical responsibilities as board members of an authority within one year of appointment to a board.” It also requires board members to “participate in such continuing training as may be required to remain informed of best practices, regulatory and statutory changes relating to the effective oversight of the management and financial activities of public authorities and to adhere to the highest standards of responsible governance.”

The purpose of this training is to prepare individuals to understand and properly execute their role as board members and to be well-versed in the principles of corporate governance and the requirements of the law. Training provides the foundation for directors to exercise appropriate oversight and to recognize the responsibility they have to the mission of their organization, its management and staff, and to the public.

Authorities Budget Office Policy Guidance: The Authorities Budget Office (ABO) is overseeing the implementation of Section 2824(2) and has developed this Guidance to assist public authorities meet the requirements of the Act.

This Guidance outlines the training requirements and best practices for state and local public authority boards, including the timeframes for board member training, the board members who are required to receive training, board member training that meets this requirement, and the need for refresher training.

Training Requirements

Board members have 12 months from the date of their appointment to participate in training. As a best practice, the ABO recommends public authorities also conduct an internal orientation session for new board members upon their appointment to provide an overview of the authority’s operations. Guidance on this subject is provided here:

<http://www.abo.ny.gov/recommendedpractices/NewBoardMemberOrientation.pdf>

Participation in training extends to all members, including voting and non-voting members, ex officio members or designees. Board members may only have a designee if it is stipulated in law (enabling statute) or articles of incorporation. As a best practice the ABO encourages management staff, including Counsel, to attend training when appropriate.

The Act requires directors to participate in continuing training to "remain informed of best practices, regulatory and statutory changes relating to the effective oversight of the management and financial activities of public authorities and to adhere to the highest standards of responsible governance" (Section 2824(2)). As a best practice, the ABO recommends that directors participate in refresher training upon re-appointment to the Board or at least every three years.

The ABO has developed a comprehensive corporate governance curriculum and conducts training for directors and executive management of all state and local public authorities at no cost. Interactive webinar training, conducted by ABO staff is available on a regular basis during regular business hours. Authorities may sign up for training here:

<http://www.abo.ny.gov/training/onlinetraining.html>

It is the responsibility of the public authority to maintain documentation of board member participation in required training and to assure that board members are compliant with this requirement.

TAB 16

Authorities Budget Office Policy Guidance



No. 17-02

Date Issued: June 5, 2017

Supercedes: New

Subject: Public Authority Procurement Guidelines

Statutory Citation: Section 2824 (1) (e), Section 2879, Section 2880 of Public Authorities Law; Section 104-b of General Municipal Law; Article 15-A of Executive Law; and State Finance Law 139-j.

Provision: Section 2824 (1) (e) of Public Authorities Law (PAL) requires boards of state and local authorities, as defined by Title 1 Section 2 of PAL, to adopt written policies and procedures for the procurement of goods and services. Section 2879 (3) of Public Authorities Law enumerates the necessary items to be included in the procurement guidelines for state authorities, while industrial development agencies are subject to Section 104-b of General Municipal Law (GML) which outlines the expectations for procurement policies and procedures related to goods and services.

Public authorities are also subject to the Procurement Lobbying Act, Section 139-j of State Finance Law, which requires the authority to designate a person or persons to serve as the authorized contact on a specific procurement.

In addition to the above, state authorities are required to comply with Section 2880 of PAL in regards to a prompt payment policy as well as Article 15-A of Executive law with respect to Minority and Women Owned Business Enterprise (MWBE) requirements in the procurement contracts.

Authorities Budget Office Policy Guidance: Authorities are required to develop, adopt and annually review comprehensive guidelines that govern the authority's policies and instructions concerning procurement activities. Procurement guidelines help to ensure authority moneys are used in a financially sound manner, enable authorities to acquire maximum quality at the lowest possible cost, and guard against favoritism, fraud and corruption.

At a minimum, the guidelines should address approval thresholds, describe the types of goods and services eligible to be procured and establish the authority's policies regarding soliciting proposals, obtaining quotes, selecting contractors, and awarding, monitoring and reporting of contracts.

Each authority is different, especially when it comes to the types and values of goods and services they procure. Therefore, no single policy exists that is appropriate for all authorities. Instead, each individual board of directors must review its own operations and determine an appropriate policy that best fits its

needs. The authority should consider the following issues in developing its procurement guidelines:

- Establishing various approval and procedural thresholds. For example, an authority may wish to allow discretionary spending below a certain dollar amount, while requiring executive director or board approval for procurements that exceed that amount. Dollar thresholds could also be established that require different procedures be followed to ensure that the good or service is of maximum quality at a reasonable price – such as requiring competitive selection. An authority may also elect to address the single purchases of goods or services that cumulatively exceed the aforementioned thresholds.
- Creating safeguards for services and allowable expenses, i.e. limiting reimbursable costs such as travel expenses, lodging or food to rates established by the United States General Services Administration.
- Maintaining a list of qualified vendors from whom services have been previously purchased.
- Identifying exceptions to the authority's procurement policy. Authorities should define what constitutes an emergency purchase and outline what documents or details are required from the purchaser to justify the emergency expense. Evidence supporting the reliance that the purchase price is fair and reasonable should also be provided.

As indicated in the Provisions, all authorities are required to establish a policy regarding procurement lobbying. In addition, state authorities should provide details concerning the use of MWBE and prompt payment in their procurement guidelines.

Procurement Lobbying: An authority must designate an individual who will act as an authorized contact during each procurement activity. If an impermissible contact occurs, the authority is required to maintain a written record of the contact. An impermissible contact is when a potential contractor initiates contact with someone other than the designated contact during a period when such contact is not permitted or attempts to influence the procurement in a manner that could reasonably be construed as a violation of procurement lobbying requirements.

Minority and Women Owned Business Enterprise (MWBE): All state authorities are to comply with the MWBE requirements with respect to procurement contracts pursuant to Article 15-A of the Executive Law. State authorities are to provide detailed information on their MWBE program and identify the targets they have set for MWBE participation in their awarded procurements.

Prompt Payment: State authorities are to develop and adopt a prompt payment policy that includes a procedure for requesting payment, a payment schedule, defining an interest rate to be paid if prompt payment is not made, and conditions that would permit an extension to the prompt payment deadline.

Procurement guidelines should be presented to and approved by the authority's board on an annual basis and posted to the authority's web site for public view.

Authorities may also wish to review New York State Procurement Guidelines for additional guidance and suggestions.

<https://www.ogs.ny.gov/BU/PC/Docs/Guidelines.pdf>

TAB 17

Authorities Budget Office Policy Guidance



No. 18-01

Date Issued: March 22, 2018
Supercedes: New

Subject: Preferred Source Procurement

Statutory Citation: Section 162 of New York State Finance Law

Provision: New York State's Preferred Source Program (Program), established under Section 162 of the New York State Finance Law (Law), grants "preferred source" status to veterans, not-for-profit organizations that serve and employ people who are blind and severely disabled, and the correctional industries program to the department of corrections and community supervision (Corcraft).

Section 162(4) of State Finance Law requires public authorities and public benefit corporations, including those public benefit corporations that meet the definition of a state or local authority, as defined by Title 1 Section 2 of Public Authorities Law, to purchase certain approved products and services from preferred sources if available. Purchases from preferred sources take precedence over all other sources of supply and competitive procurement methods.

Authorities Budget Office Policy Guidance: The Authorities Budget Office (ABO) is committed to promoting good corporate governance, including sound financial management and procurement practices. As such, it is expected that all public authorities seek to purchase commodities and services from preferred sources first if a preferred source offering meets the authority's needs for form, function, and utility. The intent of the Program is to advance social and economic opportunities for these groups. The advantage to procuring from Preferred Sources is that the public authority does not need to follow the competitive bid process.

New York State has three Preferred Source organizations:

1. [New York State Department of Correctional Services Division of Industries - Corcraft](#), provides employment opportunities for state inmates.
2. [New York State Preferred Source Program for People Who Are Blind \(NYSPSP\)](#), provides employment opportunities for New Yorkers who are blind and visually impaired.
3. [New York State Industries for the Disabled](#), provides employment opportunities for both New Yorkers who are disabled and who are veterans.

More information for purchasing from a Preferred Source can be found on the [New York State Office of General Services' website](#).

TAB 18

Authorities Budget Office Recommended Practice



This Recommended Governance Practice is intended for use by policymakers, and directors, officers and officials of state and local authorities. These bulletins are intended to promote best practices and encourage their consideration and incorporation into the management policies and oversight of public authorities.

Issue: Conflict of Interest Policy for Public Authorities

Provisions: A conflict of interest is a situation in which the financial, familial, or personal interests of a board member or employee come into actual or perceived conflict with their responsibilities with the authority. Various sections of New York State law require state and local public authority board members and employees to examine conflicts of interest issues that may arise at their respective authority. For example, Section 2824(7) of Public Authorities Law stipulates that the Governance Committee of a state and local public authority is to examine ethical and conflict of interest issues. Article 18 of General Municipal Law requires officers and employees of industrial development agencies, urban renewal agencies and community development agencies to disclose conflicts of interest and specifies conflicts of interest that are prohibited. Section 74 of Public Officers Law restricts officers and employees of state public authorities from having a direct or indirect interest or engage in business or activities that may conflict with their proper discharge of duties. Section 55 of Executive Law requires board members and directors of state authorities to report to the state inspector general any information concerning undisclosed conflicts of interest by another board member or employee of the authority relating to his or her work for the authority. And section 715(a) of Not-for-Profit Corporation Law requires not for profit entities, some of which also are considered public authorities, to adopt a conflict of interest policy.

Objectives: The enactment of the Public Authorities Accountability Act (PAAA) and the Public Authorities Reform Act (PARA) included provisions in Public Authorities Law (PAL) for state and local public authorities, as defined by Section 2 of PAL, to be more transparent and accountable to the public. Board members and employees of state and local public authorities owe a duty of loyalty and care to the authority and have a fiduciary responsibility to always serve the interests of the public authority above their own personal interests when conducting public business. As such, board members and employees have the responsibility to disclose any conflict of interest, including any situation that may be perceived as a conflict of interest, to the authority board and the public. Board members and employees of public authorities are often unaware that their activities or personal interests are in conflict with the best of interests of the authority. A goal of the

authority should be to raise awareness and encourage disclosure and discussion of any circumstances that may constitute a conflict of interest.

The purpose of a conflict of interest policy is to protect a public authority's interest when it is contemplating entering into a transaction or arrangement that might benefit the private interest of a board member or employee of the authority or might result in a possible excess benefit transaction. Therefore, it is important for public authorities to develop a written conflict of interest policy to formally establish the procedures for dealing with conflict of interest situations and assure that the public authority's interest prevails over personal interests of authority's board members and employees.

Recommended Practice: Conflicts of interest of board members and employees of public authorities are not uncommon due to the multitude of relationships that occur between authorities, other governmental entities, and the private sector. Public authorities are at risk of being improperly influenced by board members and employees that have personal interests that can be in conflict with the best interest of the authority. To reduce this risk, the ABO recommends that state and local authorities adopt a written conflict of interest policy to ensure that its board members and employees act in the authority's best interest. The conflict of interest policy should clearly define what is expected of board members and employees when a conflict of interest or the appearance of a conflict of interest arises as well as the penalties for failing to comply with the policy. At a minimum, a conflict of interest policy should always require those with a conflict (or who think they may have a conflict) to disclose the real or perceived conflict. The policy should also prohibit employees with a conflict from being involved with the approval of any transactions related to the conflict and prohibit interested board members from being a part of discussions and voting on any matter in which there is a conflict.

State and local authorities are advised to adopt a conflict of interest policy that includes:

- An explanation of the circumstances (examples) that constitute a conflict of interest or the appearance of a conflict of interest.
- Procedures for disclosing conflicts or the appearance of conflicts to the board.
- A requirement that the person with the conflict of interest or appearance cannot participate in board or committee deliberation or vote on the matter giving rise to such conflict or appearance
- A prohibition against any attempt by the person with the conflict or appearance to influence improperly the deliberation or vote on the matter giving rise to such conflict.
- A requirement that the existence and resolution of the conflict or appearance of a conflict be documented in the public record, including in the minutes of any meeting at which the conflict was discussed or voted upon.

- Description of the penalties for failing to comply with the conflict of interest policy

Board members or employees that are unsure whether a particular relationship, association or situation constitutes a conflict of interest or the appearance of a conflict of interest should refer to the authority's Governance Committee, which is the body responsible for examining conflicts of interest issues at the authority. Conflicts of interest identification can be difficult and the Governance Committee should at all times err on the side of caution and treat instances where there is the appearance of conflict of interest as a perceived conflict of interest to avoid compromising the public trust in the authority. Governance Committees are encouraged to seek guidance from counsel or NYS agencies, such as the Authorities Budget Office, State Inspector General or the Joint Commission on Public Ethics (JCOPE) when dealing with cases where they are unsure of what to do.

The ABO has developed a model conflict of interest policy for state and local authorities to use as a reference when drafting and/or revising their own policies. Note that there is no "one size-fits-all" policy and public authorities' officials need to decide the level of detail desired and tailor their conflicts of interest policy to meet the needs and circumstances of the authority. For example, an authority may want to set different conflicts of interest standards for board members and employees. Standards for employees can be more rigorous in prohibiting outside employment that may be in conflict with employment at the authority, while standards for board members would allow for outside employment and address conflicts as circumstances arise.

The board should have procedures in place to ensure that all employees and board members understand and comply with the standards set in the conflict of interest policy. The conflict of interest policy of an authority should be reviewed annually by the board members to ensure that it meets the organization's needs and addresses any revisions in the law.

MODEL CONFLICT OF INTEREST POLICY

All Board Members and employees should be provided with this Conflict of Interest Policy upon commencement of employment or appointment and required to acknowledge that they have read, understand and are in compliance with the terms of the policy. Board members and employees should review on an ongoing basis circumstances that constitute a conflict of interest or the appearance of a conflict of interest, abide by this policy and seek guidance when necessary and appropriate.

This policy is intended to supplement, but not replace, any applicable state and federal laws governing conflicts of interest applicable to public authorities.

Conflicts of Interest: A conflict of interest is a situation in which the financial, familial, or personal interests of a director or employee come into actual or perceived conflict with their duties and responsibilities with the Authority. Perceived conflicts of interest are situations where there is the appearance that a board member and/or employee can personally benefit from actions or decisions made in their official capacity, or where a board member or employee may be influenced to act in a manner that does not represent the best interests of the authority. The perception of a conflict may occur if circumstances would suggest to a reasonable person that a board member may have a conflict. The appearance of a conflict and an actual conflict should be treated in the same manner for the purposes of this Policy.

Board members and employees must conduct themselves at all times in a manner that avoids any appearance that they can be improperly or unduly influenced, that they could be affected by the position of or relationship with any other party, or that they are acting in violation of their public trust. While it is not possible to describe or anticipate all the circumstances that might involve a conflict of interest, a conflict of interest typically arises whenever a director or employee has or will have:

- A financial or personal interest in any person, firm, corporation or association which has or will have a transaction, agreement or any other arrangement in which the authority participates.
- The ability to use his or her position, confidential information or the assets of the authority, to his or her personal advantage.
- Solicited or accepted a gift of any amount under circumstances in which it could reasonably be inferred that the gift was intended to influence him/her, or could reasonably be expected to influence him/her, in the performance of his/her official duties or was intended as a reward for any action on his/her part.
- Any other circumstance that may or appear to make it difficult for the board member or employee to exercise independent judgment and properly exercise his or her official duties.

Outside Employment of Authority's Employees: No employee may engage in outside employment if such employment interferes with his/her ability to properly exercise his or her official duties with the authority.

PROCEDURES

Duty to Disclose: All material facts related to the conflicts of interest (including the nature of the interest and information about the conflicting transaction) shall be disclosed in good faith and in writing to the Governance Committee and/or the Ethics Officer. Such written disclosure shall be made part of the official record of the proceedings of the authority.

Determining Whether a Conflict of Interest Exists: The Governance Committee and/or Ethics Officer shall advise the individual who appears to have a conflict of interest how to proceed. The Governance Committee and/or Ethics Officer should seek guidance from counsel or New York State agencies, such as the Authorities Budget Office, State Inspector General or the Joint Commission on Public Ethics (JCOPE) when dealing with cases where they are unsure of what to do.

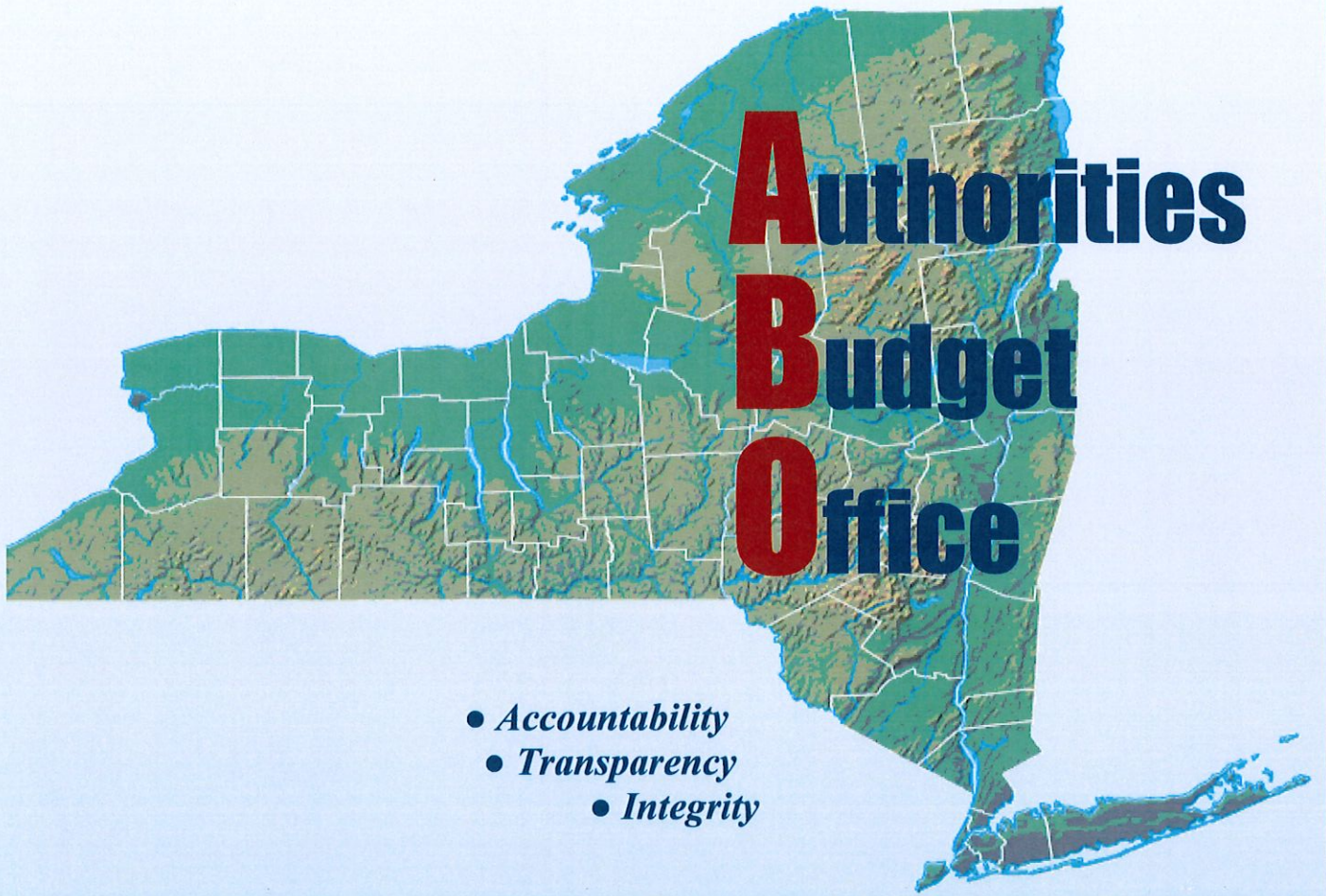
Recusal and Abstention: No board member or employee may participate in any decision or take any official action with respect to any matter requiring the exercise of discretion, including discussing the matter and voting, when he or she knows or has reason to know that the action could confer a direct or indirect financial or material benefit on himself or herself, a relative, or any organization in which he or she is deemed to have an interest. Board members and employees must recuse themselves from deliberations, votes, or internal discussion on matters relating to any organization, entity or individual where their impartiality in the deliberation or vote might be reasonably questioned, and are prohibited from attempting to influence other board members or employees in the deliberation and voting on the matter.

Records of Conflicts of Interest: The minutes of the authority's meetings during which a perceived or actual conflict of interest is disclosed or discussed shall reflect the name of the interested person, the nature of the conflict, and a description of how the conflict was resolved.

Reporting of Violations: Board members and employees should promptly report any violations of this policy to his or her supervisor, or to the public authority's ethics officer, general counsel or human resources representative in accordance with the authority's Whistleblower Policy and Procedures.

Penalties: Any director or employee that fails to comply with this policy may be penalized in the manner provided for in law, rules or regulations.

TAB 19



- *Accountability*
- *Transparency*
- *Integrity*

Board Meetings: Best Practices Guide for Public Authorities

January 27, 2015

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INTRODUCTION

Public Authority board meetings are the public setting in which board members exercise their duties. It is during board meetings that the public can best observe directors perform their governance responsibilities, exercise management oversight, and make decisions regarding the public authority's finances and operations. The better informed, engaged and mission driven the board, the more likely the public authority will operate consistent with its stated purpose, policies and legal obligations.

The board of directors of a public authority plays an integral governing role in the organization. The board of directors delegates to staff most of its responsibility for the day-to-day operations of the public authority, but is ultimately responsible for all of the public authority's decisions and actions. By accepting appointment to the board, a member (or his/her designee) has made a commitment to the authority's mission and the public interest. Board members are responsible for defining the culture of the organization, setting its policies, and ensuring that the mission of the authority is met. The role and responsibilities of board members are codified in the New York Public Authorities Law.¹ A board member's role includes participating in training sessions, consistently attending board and committee meetings, and engaging fully in the board's and committee's decision-making process. Board members exercise their fiduciary duties by knowing and understanding the mission of the authority they govern, making informed and independent decisions that are in the best interest of the authority, disclosing any conflicts (or the appearance of a conflict) of interest, and not divulging confidential discussions and confidential matters that come before the board.

Because board meetings are where issues are formally addressed, the public must be able to attend meetings and listen to the deliberations and discussions that lead to decisions. Accordingly,

board members should make every effort to ensure that public business is conducted in an open and transparent manner. The more transparent the actions of the authority, the more likely the public will accept and have confidence in those actions.

This guide was developed to assist board members and staff conduct effective board meetings. It is organized in a questions and answers format by topics. Legal requirements (if applicable) and recommended practices are included for each topic. While the law contains the minimum requirements regarding board meetings, best practices go beyond these requirements and provide authority officials with additional guidance for conducting productive and transparent board meetings.

This document discusses the requirements and expectations that board members and staff of public authorities are to meet for providing public notice of meetings, conducting board meetings, keeping board minutes, as well as many other related topics. It is meant to serve as a basic introduction to both public authorities' board meetings and the role and responsibilities of board members, as well as a tool that directors and staff can refer to when conducting board meetings.

PUBLIC MEETINGS & OPEN MEETINGS LAW

A meeting is the official convening of a public body² for the purpose of conducting public business. According to Open Meetings Law (OML), meetings of public bodies must be open to the public. The law does provide that in limited circumstances, directors may vote to discuss specifically permitted matters in executive session (see [Executive Session](#)). The intention of OML, also known as the "Sunshine Law", is to promote openness and transparency. This law applies to the regular, committee, and subcommittee meetings of all public authorities as defined in Public Authorities Law.³

■ ***When does Open Meetings Law NOT apply?***

There are three situational exemptions from OML:⁴

1. Judicial or quasi-judicial proceedings (except public service commission proceedings and zoning boards of appeals).
2. Deliberations of political committees, conferences and caucuses.
3. Any matter made confidential by federal or state law.

An example of an exemption to open meetings law is attorney-client privileged communications.⁵ To invoke the exemption, an authority must be seeking legal advice from its attorney, and the attorney must provide relevant legal advice. The scope of attorney-client privilege is considered limited.⁶ Once legal advice is given, if the authority begins discussing or deliberating independent of the attorney, the attorney-client privilege has ended and OML applies going forward.

In addition to these exceptions, OML does not apply if board members meet by chance, or at a social gathering, as long as there is no intention to conduct public business in such a setting. For instance, if a majority of board members begin to casually discuss business as a group during a social gathering, they should recognize they have started to conduct public business without public notice and immediately end all such discussion.⁷

PUBLIC NOTICES

The first step towards ensuring openness and transparency of board meetings is to provide the public with clear and conspicuous advance notice of meetings (see [Appendix A- Public Notice Sample](#)).

■ ***What information should be included in a public notice?***

A public notice must include the date, time, and location of the meeting.⁸ It is recommended that the notice include the name of the public authority holding the meeting, the type of meeting being held (regular, committee, or special) as well as a contact person or office where interested parties can obtain more information. If the authority has established rules or procedures requiring additional information in its notices, they should be followed.⁹

Although an agenda is not required, it is strongly recommended that authorities post on their website an agenda that includes the activities planned for the meeting at least one week in advance of a board meeting (see [ABO Policy Guidance 10-03](#)). Posting the agenda increases transparency by allowing the public to know in advance what will be discussed and what matters are scheduled for a vote.

■ ***When should the public be notified of the board meeting?***

For meetings scheduled more than one week in advance, notice should be given no less than 72 hours (3 days) in advance.¹⁰ For meetings scheduled less than a week in advance, notice should be given within a reasonable time frame. In the absence of emergency situations, it is not reasonable to schedule meetings less than one week in advance and notices should not be posted less than 3 days in advance.¹¹

■ ***Where should the public notice be posted?***

Public notice should be given to the news media and conspicuously posted in one or more designated locations.¹² Designated locations should be easily accessible and visible to the public. In addition, notice of the meeting's time and place should be conspicuously posted on the public authority's

website. The same posting location requirements apply for emergency meetings.

The board should designate by resolution, or through the adoption of a policy or directive, the location(s) where it will routinely post notice of meetings.¹³

Authorities are not required to publish the notice as a legal notice.¹⁴ Public authorities comply with the law by giving notice to the news media. Public authorities can meet this requirement by emailing the information of the meeting to the major television, radio and newspaper outlets as well as local community papers in their area. The newspapers, television, or radio stations that receive the notice can choose not to publicize the public meeting, and the public authority would still be in compliance with the law.

It is recommended that public authorities provide an option to the public to subscribe to a mailing list to receive automatic notice of all meetings. In addition, public authorities can post on their website the schedule of all planned board meetings for the year at beginning of the fiscal year (see [ABO Policy Guidance 10-03](#)).

■ ***Should a notice be posted if a scheduled board meeting is cancelled?***

While OML does not require publication of a cancellation notice, best practice recommends that notice of a cancellation or postponement be given to board members, as well as posted at the location(s) where the authority posts its meeting notices. If the meeting is rescheduled, the public notice for the rescheduled meeting has to comply with the same posting requirements as the meeting that was originally scheduled.

■ ***What are the public notice requirements if videoconferencing is used to conduct the meeting?***

If videoconferencing is available at the meeting, the public notice must: (1) inform the public this option will be used. (2) identify the locations for the meeting. (3) state that the public has the right to attend the meeting at any of the identified locations.¹⁵

MEETING AGENDA & BOARD MATERIALS

The agenda is a key document for every meeting since it identifies the matters and issues that are before the board for review, discussion, or action. Common items to include in the agenda are roll call, approval of minutes from previous meeting, an executive director report, committee reports, old business and new business (including resolutions presented for approval) and adjournment (see [Appendix B- Agenda Sample](#)).

■ ***Who should prepare the meeting agenda?***

It is recommended that both the chief executive of the authority and the Chair of the board of directors collaboratively prepare the agenda. By taking an active part in the agenda preparation, the Chair can ensure that appropriate topics are discussed during board meetings and help create a setting for board members to exercise their fiduciary duties.

Boards should have a process that allows individual board members to recommend agenda items for consideration, either through the Chair or the executive director.

■ **What actions should the board take every year to be compliant with Public Authorities Law?**

Public Authorities Law requires board approval for all the records submitted by authorities as part of their annual reports.¹⁶

To be compliant with Public Authorities Law, authorities must annually submit their annual report, mission statement and measurement report¹⁷, budget report, audit report, procurement report, and the board of directors' evaluation.

It is recommended that board of directors and staff collectively develop a calendar that indicates the time of the year when the content of those reports will be discussed and voted on so that the authority meets reporting deadlines and is compliant with Public Authorities Law. The chief executive officer of the authority and the Chair of the board of directors can refer to this calendar when preparing meeting agendas to ensure that the information required by law is brought to the board at the appropriate time of the year (see [Appendix C- PAL Compliance Calendar Sample](#)).

In addition, the board should annually review, and update as necessary, their policies for defense and indemnification, salary and compensation, travel, time and attendance, whistleblower protection, investments, property guidelines and procurement guidelines, and code of ethics. These reviews do not all have to occur at one meeting, but can be spread throughout the year.

■ **What materials should board members receive for a board meeting?**

Board members should be provided with the information they need to attend board meetings prepared and ready to participate. Materials distributed to the board prior to a board meeting, sometimes referred to as the *board book* or *board*

packet, should include those documents relevant to the items on the agenda. Some common materials distributed to the board in anticipation of a meeting are:

- ✓ Agenda
- ✓ Meeting minutes from previous meeting
- ✓ Financial statements
- ✓ Management reports
- ✓ Committee reports
- ✓ Compliance items
- ✓ Background information of discussion items
- ✓ Resolutions to be voted on and associated documents (i.e. budget, contracts, policies)
- ✓ Update on legal issues affecting the public authority

It is recommended to distribute the meeting materials to board members at least one week in advance so that they have enough time to prepare for the meeting. A board of directors that is informed, knowledgeable and engaged is integral to effective corporate governance.

OML states that any proposed resolution, law, rule, regulation, policy or any amendment thereto, that is scheduled to be the subject of discussion by a public body during an open meeting shall be made available upon request and to the extent practicable, prior to or at the meeting during which the records will be discussed.¹⁸ Copies of these records shall be made available to the public for a reasonable fee. If the public authority maintains a regularly and routinely updated website, records should be posted on the website prior to the meeting.

CONDUCTING BOARD MEETINGS

The frequency a board meets depends on the amount of work that needs to be accomplished. A common practice is for the full board to meet every month. Committee meetings are usually less frequent.

The Chair of the board is responsible for conducting meetings, including ensuring that a quorum is present, facilitating all proceedings, moderating discussions, and making sure the meeting runs smoothly. The Chair should ensure that the agenda is appropriate and identifies the routine and new business expected to be addressed by the board.

If the Chair is unable to make a meeting, the vice Chair typically assumes the responsibilities of running the meeting. The board may also choose to elect a temporary Chair in place of the vice Chair to facilitate a meeting.

The Chair should remain communicative with board members and staff between meetings to ensure that agenda items requiring further action or follow through are being addressed.

■ ***Are there any requirements for the meeting place of board meetings?***

Boards of directors are required to ensure that *all reasonable efforts* are made to hold meetings in an appropriate facility which can adequately accommodate members of the public who wish to attend (i.e. making sure there is enough space to accommodate the public attending).¹⁸ Additionally, they have a responsibility to make *all reasonable efforts* to ensure that meetings are held in facilities that permit barrier-free access to physically handicapped persons.¹⁹ There is no requirement for an authority to construct a new facility or to renovate an existing facility to permit barrier-free access to physically handicapped persons. However, if an authority has the capacity to hold its meetings in a first floor that is accessible to handicapped persons rather than a second floor, the meeting should be held in the room that accommodates the needs of the physically handicapped.²⁰

If a board member attends a meeting by videoconference, the authority is required by law to allow the public to attend, listen and observe the

meeting at the sites at which the members participate.²¹

■ ***Are there any requirements for the meeting time of board meetings?***

While there is nothing in OML that refers to the time a meeting may be held, it is important that the board hold its meetings at a time that would reasonably allow interested parties to attend since the law requires that every meeting of a public body be open to the general public.

■ ***Can the public speak during a board meeting?***

The board may permit the public to speak at a board meeting, but is not required to do so by law. If the board allows public participation during the meeting, it is recommended that rules and procedures be developed so that the members of the public are treated equally and the meeting is conducted in an orderly manner.²²

■ ***Can meetings be photographed, broadcast, webcast or otherwise recorded?***

Any meeting of a public body that is open to the public must be open to being photographed, broadcast, webcast, or otherwise recorded and/or transmitted by audio or video means.²³ The board should adopt rules, consistent with recommendations from the committee on open government that reasonably govern the location of equipment and personnel used to photograph, broadcast, webcast, or otherwise record a board meeting so that the meeting is not disrupted and is held in an orderly manner.

■ ***Can a meeting be conducted through teleconferencing?***

No. OML requires board members to be either physically present at meetings or attend the meeting through videoconference. Attendance at a meeting through teleconference is not permitted because

voting members and their surroundings have to be visible to those in attendance. For this reason, other means of conducting a meeting (such as e-mail or mail) are also impermissible as they are inconsistent with the law.²⁴

This doesn't preclude board members from taking part in the meeting deliberations through teleconferencing, mail or email. However, these members do not count toward a quorum and cannot vote.

■ ***Should public authorities broadcast meetings on the internet?***

State public authorities are required by executive order to webcast meetings.²⁵ It is recommended that local authorities and industrial development agencies with the capacity to do so follow similar practice.

EXECUTIVE SESSION

OML defines "executive session" as a portion of an open meeting not open to the general public. Public authorities are authorized to enter executive session only for the purposes enumerated in OML provided that no action by formal vote is taken during executive session to appropriate public moneys.²⁶ All board members and any other persons authorized by the board may attend an executive session.

A board meeting may only go into executive session after a motion identifying the subject to be considered during executive session is passed by the majority of the total members of the board.²⁷

■ ***For what purposes can an authority conduct an executive session?***

Boards of directors should only approve going into executive sessions during meetings for the following eight purposes enumerated in the law:²⁸

1. Matters which will imperil the public safety if disclosed.

2. Any matter which may disclose the identity of a law enforcement agent or informer.
3. Information relating to current or future investigation/prosecution of a criminal offense which would imperil effective law enforcement if disclosed.
4. Discussions regarding proposed, pending or current litigation.
5. Collective negotiations pursuant to article fourteen of the civil service law.
6. The medical, financial, credit or employment history of a *particular* person or corporation, or matters leading to the appointment, employment, promotion, demotion, discipline, suspension, dismissal or removal of a *particular* person or corporation.
7. The preparation, grading or administration of examinations.
8. The proposed acquisition, sale or lease of real property or the proposed acquisition of securities, or sale or exchange of securities held by such public body, but only when publicity would substantially affect the value thereof.

BOARD MEETINGS ATTENDANCE

Board members are expected to attend and participate in regular meetings of the board, as well as meetings of the committees on which they serve. This is also true for the designees of board members.

Board members and/or their designees are required by law to sign an acknowledgement of fiduciary duties and responsibilities, including participating in training sessions, attending board and committee meetings, and engaging fully in the boards and committee's decision-making process (see [ABO Policy Guidance 10-01](#)). As a best practice, the ABO recommends public authorities also conduct an internal orientation session for new board members upon their appointment to provide an overview of the authority's operations (see [ABO New Member Orientation Guidance](#)).

■ ***Can designees of board members attend board meetings?***

Board members can only designate an individual to act on their behalf and attend board meetings if they are authorized by law to do so. Public authorities that were not created in statute must include in their bylaws or certificate of incorporation an authorization that board members may appoint designees to serve on the board and to act in the absence of the board member.

A designee is expected to act in the same capacity as the board member and to exercise the same governmental authority as that vested in a board member. To preserve the consistency and cohesion of board operations and decision making, it is beneficial to limit appointments to a single designee who can regularly participate in all scheduled board and committee meetings, even if the board member is permitted to name multiple designees (see [ABO Policy Guidance 10-04](#)).

BOARD MEETINGS QUORUM

A minimum number of board members of the public body must be in attendance before a meeting can begin. This number is known as a quorum.

Roll call should be taken at the meeting to confirm a quorum is present. Only members physically present at the meeting or present through videoconferencing can be counted towards the quorum. If no quorum is present, those members in attendance may not convene an official meeting. While no official business can be transacted, members may engage in informal discussions. In the absence of a quorum, it is advised that the board members attending fix the time in which to adjourn, recess, or take measures to obtain a quorum.²⁹

Once a quorum has been confirmed, the presence of a quorum is presumed until the Chair or any other member notices that a quorum is no longer present.

This may occur if board members leave the meeting. Once there is no longer a quorum, the Chair should state such for the record and table further business until a quorum can be achieved.

Board members should be aware of the quorum requirements of the authority they govern and make sure public business is only conducted when a quorum is present. Any vote or formal action intended to bind the board taken in the absence of a quorum may be challenged as null and void.

BOARD MEETINGS ACTION

Board members are expected to cast a vote only after carefully assessing the action brought to the board for approval, voicing any concerns, asking for clarification if necessary, and being confident that their vote serves the best interest of the public authority.

Some actions taken by the board should be documented by the adoption of board resolutions. A board resolution is a formal, written decision of an authority's board of directors. It is in the best interest of the board of directors to draft a resolution for matters that they consider important so that there is clarity about their decision and their wishes are carried out. As a best practice, the by-laws of the authority should identify the types of actions that require a board resolution. It is recommended that board resolutions include a consecutive number that identifies each resolution, the date the meeting took place, a description of the decision made, a record of how each member voted, and the signature of the Chair of the board (see [Appendix D- Board Resolution Sample](#)).

■ ***How many votes are needed for the board to take action?***

Public Authorities Law states that no less than a majority of the whole of the board may perform and exercise the powers authorized and provided in

Public Authorities Law.³⁰ For example, if an authority consists of seven members, four affirmative votes would be needed to approve an action, even if only four or five members are present at the meeting.

This is the rule to follow, unless an authority's governing statute states otherwise. For example, by law a board may have the power to act by a majority of the members present at any meeting in which a quorum is in attendance.

■ ***Can abstentions from voting be counted as an affirmative vote?***

No. Courts have consistently found that abstentions are not an affirmative vote. Since it is not counted as an affirmative vote, its effect is similar to a negative vote for purposes of meeting majority voting requirements to take action.³¹

■ ***Can board members vote by proxy?***

No. Members can only vote in a meeting when they are physically present or attending through videoconferencing.

CONFLICTS OF INTEREST

A conflict of interest is a situation in which the personal interests of a board member come into actual, potential or perceived conflict with their fiduciary or public responsibilities as a board member. Board members should always serve the interests of the public authority above their own personal interests when conducting public business.

■ ***What are the requirements for public authority regarding conflicts of interest?***

Public Authorities Law requires boards of public authorities to adopt a code of ethics applicable to each officer, director and employee.³² The code of ethics is a document that sets standards of conduct for board members and employees and should

include rules about the procedures to follow when situations involving conflicts of interest arise.

Public Authorities Law also requires board members to establish a governance committee which is responsible of examining ethical and conflict of interest issues.³³

In addition to the Public Authorities Law, Public Officers Law states that no officer or employee of a state agency, member of the legislature or legislative employee shall have any interest, financial or otherwise, direct or indirect, or engage in any business or transaction or professional activity or incur any obligation of any nature, which is in substantial conflict with the proper discharge of his duties in the public interest.³⁴

■ ***What should the code of ethics include regarding conflict of interests?***

While Public Authorities Law does not indicate what the code of ethics should include, it is recommended that an authority's code of ethics includes the requirements for conflict of interest policies established by Not-for-Profit Corporation Law:³⁵

1. A definition of the circumstances that constitute a conflict of interest.
2. Procedures for disclosing a conflict of interest to the board.
3. A requirement that the person with the conflict of interest cannot participate in board or committee deliberation or vote on the matter giving rise to such conflict.
4. A prohibition against any attempt by the person with the conflict to influence improperly the deliberation or vote on the matter giving rise to such conflict;
5. A requirement that the existence and resolution of the conflict be documented in the public record, including in the minutes of any meeting at which the conflict was discussed or voted upon.

■ ***What should occur if a board member has a conflict of interest?***

It is important for the public to have confidence in the board of directors of every public authority. Board members have a fiduciary duty to disclose all real or potential conflicts of interest and to refrain from participating in discussions or decisions that could cause even the appearance of such a conflict.

The Attorney General has opined that board members with conflicts of interest must recuse themselves from any deliberations or voting concerning the matter creating the conflict.³⁶ The procedure an authority should follow when a conflict of interests arises should be described in the Code of Ethics of the authority.

Any person who knowingly and willfully participates in matters that present a clear conflict of interest can be fined, suspended or removed from office in the manner provided by law³⁷ and the action taken can be deemed null, void, and wholly unenforceable.³⁸

BOARD MEETING MINUTES

Minutes are the official record of a meeting. They contain information about all the actions taken during board meetings and can be considered legal evidence of the facts they report. For this reason, it is important that the minutes be recorded in a way that clearly and accurately reflects all the business transacted during a board meeting. OML requires that minutes be taken at all meetings of public bodies. This includes meetings of the full board as well as committee meetings. The ABO often reviews board meeting minutes of the public authorities it oversees to ascertain if the board is fulfilling its fiduciary duties.

■ ***What information should be included in the meeting minutes?***

OML requires that minutes consist of a record or summary of all motions, proposals, resolutions and any other matter formally voted upon and the voting results.³⁹ These are the minimum requirements of what should be included in the board meeting minutes. Best practices call for meeting minutes that include the following information:

- ✓ Name of the organization
- ✓ Date and time of meeting
- ✓ Board members in attendance, excused, and absent (including departures and reentries)
- ✓ Staff and guests in attendance
- ✓ Existence of a quorum
- ✓ Motions made and by whom
- ✓ Brief objective account of any debate
- ✓ Existence of conflicts of interest and how they were resolved
- ✓ Voting results
- ✓ Names of abstainers and dissenters
- ✓ Resolutions adopted
- ✓ Reports and documents introduced
- ✓ Future action steps
- ✓ Time meeting ends
- ✓ Signature of secretary and Chair

It is also recommended that the meeting minutes follow the structure set by the meeting agenda (see [Appendix E –Board Meeting Minutes Sample](#))

■ ***How much detail should be included in the meeting minutes?***

Minutes must be sufficiently descriptive to enable the public and others (i.e. public officials) to ascertain the nature of action taken by the board.⁴⁰ Minutes should include enough information so that they are useful to understand the decisions that were made and the reasons the decision was made. When there is a debate or discussion, the minutes should

include and attribute the major points raised by individual board members. Above all, the minutes should be an *accurate* record of what occurred at the meeting.⁴¹ Note that the Freedom of Information Law requires that a record be maintained that indicates how each member cast his or her vote. The record of the members' votes commonly is included in minutes of a meeting.⁴²

■ ***When should board meeting minutes be available to the public?***

Meeting minutes should be available to the public within two weeks of the date the meeting was held.⁴³ Minutes taken at executive sessions are subject to shorter time requirements (see [Executive Session Minutes](#)).

If the minutes have not been approved within two weeks of the meeting, it is recommended the minutes be identified as “unapproved”, “draft”, “preliminary”, or other words to that effect when being made public. This way the two week window for making the meeting minutes available is met, and the public is aware that the minutes are subject to change. While public bodies are not required to approve the minutes of their meetings, they generally do so as a matter of best practice.⁴⁴

■ ***Should meeting minutes be posted on the authorities' website?***

Public Authorities Law requires authorities to make documentation pertaining to its activities available to the public via its official or shared official website.⁴⁵ Meeting minutes should be maintained on the web site for at least two years following the date on which the meeting was held ([ABO Policy Guidance 10-03](#)).

■ ***Should minutes of executive session be recorded?***

Yes. Minutes are required for any action taken by vote during executive session. These minutes should

include the date the action was taken, a summary of the final determination of the action, and the voting results.⁴⁶ The summary of the action does not need to include any matters which are not required to be made public by the freedom of information law. Minutes of executive session are to be available to the public within one week of the date of the executive session. Although not required by law, as a best practice, authorities should keep minutes of executive session for their own record even if no action is taken.

PENALTIES FOR FAILING TO FOLLOW OML

Section §107 of OML provides the remedy for cases when the board and/or staff of public authorities fails to follow OML. Anyone who feels that a public body has not appropriately followed OML can challenge the public body through filing a complaint pursuant to Article 78 of the Civil Practice Law and Rules. Litigation may be initiated against a public body within four months from the date the action was taken by the body. Should the court determine that there was a violation of OML, the court can invalidate action taken at the meeting, and require the public body to participate in training at the Committee on Open Government.⁴⁷ In any action brought pursuant to section §107 of OML, costs and reasonable attorney fees may be awarded at the court's discretion to the successful party.

For example, failure to comply with the public notice requirements gives aggrieved persons grounds to file a complaint pursuant to Article 78 of the Civil Practice Law and Rules. This can result in the court invalidating an action taken during the public meeting for which a notice was not posted. However, an unintentional failure to fully comply with the notice provisions required by the OML is not sufficient for invalidating any action taken at a meeting of the board. When a legal challenge is

initiated relating to a failure to provide notice, the key issue is to determine whether the failure to post the meeting notice as required by OML was “unintentional”.⁴⁸

CONCLUSION

From its inception, the ABO’s mission has been to make public authorities more accountable and transparent and to act in ways consistent with their governing statutes and public purpose. One of the ways the ABO accomplishes its missions is by promoting good governance principles through training, policy guidance and the issuance of best practice recommendations. This document is designed to assist board members and staff of public authorities conduct productive and transparent board meetings and to understand their fiduciary duties and the importance of conducting business in an open and transparent manner. This includes posting public notices, preparing the agenda and distributing information with adequate review time, holding meetings that conform to the requirements of OML, taking and posting meeting minutes, and following up after the meeting (see [Appendix F- Procedures for Holding a public Authority Board Meeting](#)). Following these procedures ensures that public authorities are not only more accountable to the public, but also more effective in pursuing the mission for which they were created.

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END NOTES

- ¹ Public Authorities Law §2824
² Public Officers Law §102(2) defines a public body as “any entity, for which a quorum is required in order to conduct public business and which consists of two or more members, performing a governmental function for the state or for an agency or department thereof, or for a public corporation as defined in section sixty-six of the general construction law, or committee or subcommittee or other similar body of such public body.”
³ Public Authorities Law §2
⁴ Public Officers Law §108
⁵ Civil Practice Law and Rules §4503 considers the attorney-client relationship confidential
⁶ White v. Kimball [Supreme Court, Chautauqua County, January 27, 1997]
⁷ Committee on Open Government. Advisory Opinion # 3110
⁸ Public Officers Law §104
⁹ Committee on Open Government. Advisory Opinion # 2256
¹⁰ Public Officers Law §104
¹¹ Committee on Open Government. Advisory Opinion # 2186
¹² Public Officers Law §104(1)
¹³ Committee on Open Government. Advisory Opinion # 2186)
¹⁴ Public Officers Law § 104(3)
¹⁵ Public Officers Law §104(4)
¹⁶ Public Authorities Law §2800
¹⁷ For more information about the mission statement and measurement report see [ABO Policy Guidance 10-02](#)
¹⁸ Public Officers Law §103(d)
¹⁹ Public Officers Law §103(b)
²⁰ Committee on Open Government. Advisory Opinions # 3019 and #3403
²¹ Public Officers Law §103(c)
²² Committee on Open Government. Advisory Opinion # 2199
²³ Public Officers Law §103(1)
²⁴ Committee on Open Government. Advisory Opinion # 4336
²⁵ NYS Executive Order #3 of 2007. The NYS Office of Information Technology Services has developed best

practice guidelines for webcasting open meetings that can be found at: <http://www.its.ny.gov/policy/G07-002/NYS-G07-002-11-27-2012.pdf>.

- ²⁶ Public Officers Law §102
²⁷ Public Officers Law §105(1)
²⁸ Public Officers Law §105
²⁹ Robert, H. M. (2008). Robert's rules of order. Wildside Press LLC. Pg. 258
³⁰ Public Authorities Law §2826
³¹ Committee on Open Government. Advisory Opinion #2198
³² Public Authorities Law §2824(1)
³³ Public Authorities Law §2824(7)
³⁴ Public Officers Law §74
³⁵ Not-For-Profit Corporation Law §715(a)
³⁶ NYS Attorney General. Informal Opinion # 1995-02
³⁷ Public Officers Law §74(4)
³⁸ General Municipal Law §804
³⁹ Public Officers Law §106
⁴⁰ Committee on Open Government. Advisory Opinion #3773
⁴¹ The decision Mitzner v. Goshen Central School District Board of Education [Supreme Court, Orange County, April 15, 1993] presents an example of board meeting minutes that didn't contain enough detail about the actions taken. The case involved complaints made by the petitioner that were reviewed by the School Board president, and the minutes of the Board meeting stated that "the Board hereby ratifies the action of the President in signing and issuing eight Determinations in regard to complaints received from Mr. Bernard Mitzner." The court determined that "these bare-bones resolutions do not qualify as a record or summary of the final determination as required" by §106 of OML because it failed to indicate the nature of the determination of the complaints.
⁴² Public Officers law §87(3)(a)
⁴³ Public Officers Law §106
⁴⁴ Committee on Open Government. Advisory Opinion #4146
⁴⁵ Public Authorities Law §2800
⁴⁶ Public Officers Law §105(2)
⁴⁷ Public Officers Law §107
⁴⁸ Committee on Open Government. Advisory Opinion #2850

Appendix A-BOARD NOTICE SAMPLE

**NOTICE
BOARD MEETING**

A Board Meeting of the [PUBLIC AUTHORITY NAME] will
be held on [DATE] at [TIME] at [ADDRESS].

Please contact [NAME OF CONTACT PERSON] at
[PHONE/EMAIL OF CONTACT PERSON] for additional
information.

Appendix B-AGENDA SAMPLE

[PUBLIC AUTHORITY NAME]
Board of Directors Meeting
[DATE] at [TIME]
[ADDRESS]

- I. Call to Order/Roll Call
- II. Approval of minutes
- III. Executive Director Report
- IV. Committee Reports
- V. Review of Compliance Items
- VI. Old Business
 - A. Bids and contracts
 - B. Loans and grants
 - C.
- VII. New Business
 - A. New Projects
 - B. ...
- VIII. Adjournment

Appendix C- PAL COMPLIANCE CALENDAR SAMPLE

Board Meeting Month	Activity
Month 1	Conduct Evaluation of Board Performance (See Policy 10-05 Annual Board of Directors Evaluation)
Month 2	Annual, audit, procurement, and investment reports are due 90 Days after start of Fiscal Year (Requires board review and approval)
Month 3	
Month 4 Month 5 Month 6 Month 7 Month 8	
Month 9	Budget Report for State Authorities is due 90 days before end of Fiscal Year (Requires board review and approval)
Month 10	Budget Report for Local Authorities is due 60 days before end of Fiscal Year (Requires board review and approval)
Month 11 Month 12	Review Policies and Procedures and Update if necessary

Month 1= First month of the fiscal year

Appendix D- BOARD RESOLUTION SAMPLE

BOARD RESOLUTION #

[CREATE A UNIQUE NUMBER FOR EACH RESOLUTION]

At the meeting of the Board of Directors of [PUBLIC AUTHORITY NAME] on [DATE OF MEETING], the following resolution was proposed and approved by the board:

WHEREAS, [PROVIDE SOME BACKGROUND AND CONTEXT TO THE MATTER THAT WAS RESOLVED]

NOW, THEREFORE IT BE RESOLVED THAT:

[PROVIDE A BRIEF DESCRIPTION OF THE MATTER THAT WAS RESOLVED]

The question of the adoption of the foregoing Resolution was duly put to a vote on roll call, which resulted as follows:

	Yes	No	Abstain	Absent
Board Member 1	[]	[]	[]	[]
Board Member 2	[]	[]	[]	[]
Board Member 3	[]	[]	[]	[]
Board Member 4	[]	[]	[]	[]
.....				

Signed by:

(Chairman)

Appendix E- BOARD MEETING MINUTES SAMPLE

[PUBLIC AUTHORITY NAME]

Board of Directors Meeting

Minutes of [DATE]

The board of directors of [PUBLIC AUTHORITY NAME] met on [DATE] at [TIME] on [ADDRESS]

Board members present: [NAMES OF BOARD MEMBERS THAT ATTENDED]

Board members absent: [NAMES OF BOARD MEMBERS ABSENT]

Staff present: [NAMES AND TITLES OF STAFF PRESENT]

Guests: [NAMES AND AFFILIATIONS OF GUESTS]

I. Call to Order/Roll Call

The meeting was called to order at [ACTUAL TIME OF START]

II. Approval of Minutes

Summary of any discussion regarding the board minutes to be approved (if any)

On a motion by [Director], the Board approved the minutes from the previous meeting.

Positive votes: # Negative votes: #

III. Executive Director Report

Brief summary of key items of the reports and any board discussion.

...

V. Old Business

A. Bids and Contracts

Brief summary of the bids/contracts brought to the board for approval and concise recount of board discussion (if any).

On a motion [Director], the Board approved entering into a contract with [Name of Company] for [goods/services provided] for the amount of [value of contract]

Positive votes: # Negative votes: #

(If anyone abstained from participating in the discussion and/or vote due to a conflict of interests the name of the director it should be noted)

...

VIII. Adjournment

The meeting was adjourned at [ACTUAL TIME OF END OF MEETING]

APPENDIX F- PROCEDURES FOR HOLDING A PUBLIC AUTHORITY BOARD MEETING

Preparing the Public Notice

- Include date, time, and location
 - Ensure meeting time is reasonable to allow the public to attend the meeting
- Identify a contact person
- Include videoconferencing location, if applicable
- Provide notice to media and post in designated location
 - Provide no less than 72 hour notice for meetings scheduled a week or more in advance
 - Provide reasonable notice to the extent practicable for meetings scheduled less than a week in advance

Preparing the Agenda

- Board Chair and Chief Executive of Authority should work together to create a list of topics for discussion, allowing for board members to add items
- Ensure compliance with Public Authorities Law by allowing enough time to review appropriate documents (see Appendix C of document – PAL Compliance Calendar Sample)
- Post the agenda to the website
- Make arrangements to ensure the meeting is broadcast (required for State Authorities, recommended for all others, if able)

Meeting Materials for Board Members

- Meeting materials should be distributed at least one week in advance, if possible
- Meeting materials to include in board packet:
 - Agenda
 - Meeting minutes from previous meeting
 - Financial statements
 - Management reports
 - Committee reports
 - Compliance items
 - Background information of discussion items
 - Resolutions to be voted on and associated documents (budget, contracts, policies)
 - Update on legal issues

Holding the Board Meeting

- Chair of the board, or someone they have designated to lead the meeting, calls the meeting to order
- Determine that a quorum is present through roll call
 - Business cannot be conducted in the absence of a quorum
- Follow order of the meeting agenda
- Conflicts of interest should be identified and those board members in that position, or with an appearance of a conflict, should recuse themselves from any discussion or voting concerning the matter

Preparing the meeting minutes

- Best practices call for meeting minutes to include the following:
 - Name of the organization
 - Date and time of meeting
 - Board members in attendance, excused and absent (including departures and reentries)
 - Staff and guests in attendance
 - Existence of a quorum
 - Motions made and by whom
 - Brief objective account of any debate
 - Existence of conflicts of interest and how they were resolved
 - Voting results
 - Names of abstainers and dissenters
 - Reports and documents introduced
 - Future action steps
 - Time meeting ends
 - Signature of secretary and Chair
- Meeting minutes should be made available to the public within two weeks from the date of the meeting
 - Minutes should be marked 'draft', 'unapproved' or preliminary' and made available to the public even if they have not been approved in the two weeks after the meeting
 - Minutes of action taken in executive session should be available to the public within ONE week of the executive session.
- Minutes should be posted to the authority's website or shared website and be maintained for at least two years.

TAB 20

Authorities Budget Office Recommended Practice



This Recommended Governance Practice is intended for use by policymakers, and directors, officers and officials of state and local authorities. These bulletins are intended to promote best practices and encourage their consideration and incorporation into the management policies and oversight of public authorities.

Issue: Written Policies Governing the Use of Authority Discretionary Funds

Provisions: Section 2824(1)(b) of Public Authorities Law requires directors to understand, review and monitor the implementation of fundamental financial and management controls and the operating decisions of the authority.

Objectives: Boards of directors and authority management have an obligation to authorize the expenditure of funds only for purposes that relate to and support the mission of the authority. The fiduciary duty of the board includes adopting policies that safeguard the assets and resources of the authority and protect against the use of funds for purposes that do not advance its core purpose and objectives. It is particularly important for the board to develop a policy on the proper use of authority discretionary funds that clarifies for all employees what would and would not be considered appropriate expenditures.

Recommended Practice: Public authorities are governed by statute. In its legal opinion #2007-F4, the Office of the Attorney General determined that the expenditure of authority funds must relate directly to an enumerated power, duty or purpose of the authority. The funds of an authority may not be spent in support of the private or personal interests or to the benefit of directors, management or staff. Accordingly, the Authorities Budget Office recommends that all state and local authorities adopt written policies that specifically delineate the proper use of an authority's discretionary funds. This policy should address not only what constitutes a proper discretionary expenditure related to the mission and public purpose of the authority, but also address what would be considered an improper use of those funds.

For example, at the discretion of the board or management certain out-of-town business travel and travel-related expenses may be appropriate to advance the mission of an authority. While such an expense would be permissible under the authority's policy, the policy should also provide guidance as to reasonable amounts for such expenses and require that employees perform due diligence to obtain the lowest cost. The policy should also require prior approval of or authorization by an appropriate individual to ensure that such travel is reasonable and necessary. The policy should require documentation to justify the nature and purpose of such expenses, require the employee to provide receipts for

expenses and provide dollar thresholds for what will be considered reasonable (such as amounts allowed by federal GSA guidelines for travel expenses including per diems, government lodging rates and amounts for meals and other incidental expenses).

Certain meal costs also may be incurred through participation in, or sponsorship of, activities integral to meeting the core public purpose of the authority. Similar to appropriate travel expenses, eligible meal costs must be properly documented and reasonable cost thresholds established.

At the same time, the policy should explicitly outline the types of expenses for which the board will not give approval. This section should specifically note the impropriety of purchases using authority cash or credit that are personal in nature, that would benefit one or more staff of the authority rather than benefit those dependent on the authority's services, or are not necessary to advance the mission of the authority. Examples of inappropriate use of authority funds would include, but need not be limited to:

- Food, beverages, and other refreshments purchased for the personal use of directors, management or other employees, or by persons with whom the authority conducts business (unless prior authorization is received);
- Flowers and gifts for staff, directors or family members;
- Subsidized or free use of authority services for the personal use of current or former board members, staff, or family members of staff;
- Celebrations for special occasions that do not directly relate to the purpose of the authority, such as catering or decorations for summer picnics, office parties or holiday or retirement parties;
- Charitable contributions or sponsorships of events not associated with the authority's mission;
- Purchases of alcohol or tobacco products;
- Membership dues in professional organizations on behalf of employees;
- Renewal of professional licenses for staff;
- Personal use of authority vehicles, unless properly documented for tax purposes;
- Costs to purchase or mail holiday cards, invitations or expressions of sympathy to staff or families of authority staff; or
- Assignment of cell phones or vehicles to non-authority staff.

Absent specific statutory power, public authorities may not use public funds to purchase items considered personal expenses or that are intended to personally benefit an employee or director. Expenses such as those listed above do not advance a public purpose and should be considered personal in nature.

TAB 21

This model Code of Ethics reflects current best practices and incorporates the statutory requirements of the Public Authorities Accountability Act. This document is intended for use by public authorities as a guide for formulating and/or revising their own code of conduct. No sample code can address all activities and situations that might be appropriate for a specific authority's code of ethics. Therefore, this code should be modified to address the requirements and governing rules of each individual authority.

=====

MODEL CODE OF ETHICS

This Code of Ethics shall apply to all officers and employees of the [Name of Authority]. These policies shall serve as a guide for official conduct and are intended to enhance the ethical and professional performance of the Authority's directors and employees and to preserve public confidence in the Authority's mission.

Responsibility of Directors and Employees

1. Directors and employees shall perform their duties with transparency, without favor and refrain from engaging in outside matters of financial or personal interest, including other employment, that could impair independence of judgment, or prevent the proper exercise of one's official duties.
2. Directors and employees shall not directly or indirectly, make, advise, or assist any person to make any financial investment based upon information available through the director's or employee's official position that could create any conflict between their public duties and interests and their private interests.
3. Directors and employees shall not accept or receive any gift or gratuities where the circumstances would permit the inference that: (a) the gift is intended to influence the individual in the performance of official business or (b) the gift constitutes a tip, reward, or sign of appreciation for any official act by the individual. This prohibition extends to any form of financial payments, services, loans, travel reimbursement, entertainment, hospitality, thing or promise from any entity doing business with or before the Authority.
4. Directors and employees shall not use or attempt to use their official position with the Authority to secure unwarranted privileges for themselves, members of their family or others, including employment with the Authority or contracts for materials or services with the Authority.
5. Directors and employees must conduct themselves at all times in a manner that avoids any appearance that they can be improperly or unduly influenced, that they could be affected by the position of or relationship with any other party, or that they are acting in violation of their public trust.

6. Directors and employees may not engage in any official transaction with an outside entity in which they have a direct or indirect financial interest that may reasonably conflict with the proper discharge of their official duties.

7. Directors and employees shall manage all matters within the scope of the Authority's mission independent of any other affiliations or employment. Directors, including ex officio board members, and employees employed by more than one government shall strive to fulfill their professional responsibility to the Authority without bias and shall support the Authority's mission to the fullest.

8. Directors and employees shall not use Authority property, including equipment, telephones, vehicles, computers, or other resources, or disclose information acquired in the course of their official duties in a manner inconsistent with State or local law or policy and the Authority's mission and goals.

9. Directors and employees are prohibited from appearing or practicing before the Authority for two (2) years following employment with the Authority, consistent with the provisions of Public Officers Law.

Implementation of Code of Ethics

This Code of Ethics shall be provided to all directors and employees upon commencement of employment or appointment and shall be reviewed annually by the Governance Committee.

The board may designate an Ethics Officer, who shall report to the board and shall have the following duties:

- Counsel in confidence Authority directors and employees who seek advice about ethical behavior.
- Receive and investigate complaints about possible ethics violations.
- Dismiss complaints found to be without substance.
- Prepare an investigative report of their findings for action by the Executive Director or the board.
- Record the receipt of gifts or gratuities of any kind received by a director or employee, who shall notify the Ethics Officer within 48 hours of receipt of such gifts and gratuities.





Penalties

In addition to any penalty contained in any other provision of law, an Authority director or employee who knowingly and intentionally violates any of the provisions of this code may be removed in the manner provided for in law, rules or regulations.

Reporting Unethical Behavior

Employees and directors are required to report possible unethical behavior by a director or employee of the Authority to the Ethics Officer. Employees and directors may file ethics complaints anonymously and are protected from retaliation by the policies adopted by the Authority.



TAB 22

This model Audit Committee Charter reflects current best practices and incorporates the statutory requirements of the Public Authorities Accountability Act. This document is intended for use by public authorities as a guide for formulating and/or revising their own charters. No sample charter can encompass all activities that might be appropriate for a specific authority's audit committee. Given the differences in purpose and resources that exist among public authorities, all the activities identified in this model charter may not be relevant to every authority's audit committee. Therefore, this charter should be modified to address the needs and governing rules of each individual authority.

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MODEL AUDIT COMMITTEE CHARTER

This Audit Committee Charter was adopted by the Board of Directors of the (Name) Authority, a public benefit corporation established under the laws of the State of New York, on this ___ day of (Month, Year).

Purpose

Pursuant to Article __, Section __ of the Authority's bylaws, the purpose of the audit committee shall be to (1) assure that the authority's board fulfills its responsibilities for the authority's internal and external audit process, the financial reporting process and the system of risk assessment and internal controls over financial reporting; and (2) provide an avenue of communication between management, the independent auditors, the internal auditors, and the board of directors.

Powers of the Audit Committee

It shall be the responsibility of the audit committee to:

- Appoint, compensate, and oversee the work of any public accounting firm employed by the authority.
- Conduct or authorize investigations into any matters within its scope of responsibility.
- Seek any information it requires from authority employees, all of whom should be directed by the board to cooperate with committee requests.
- Meet with authority staff, independent auditors or outside counsel, as necessary.
- Retain, at the authority's expense, such outside counsel, experts and other advisors as the audit committee may deem appropriate.

The (Name of Authority) board will ensure that the audit committee has sufficient resources to carry out its duties.

Composition of Committee and Selection of Members

The audit committee shall be established as set forth in and pursuant to Article __, Section __ of the Authority's bylaws. The audit committee shall consist of at

least three members of the board of directors who are independent of authority operations. The Authority's board will appoint the audit committee members and the audit committee chair.

Audit committee members shall be prohibited from being an employee of the authority or an immediate family member of an employee of the authority. In addition, audit committee members shall not engage in any private business transactions with the authority or receive compensation from any private entity that has material business relationships with the authority, or be an immediate family member of an individual that engages in private business transactions with the authority or receives compensation from an entity that has material business relationships with the authority.

Ideally, all members on the audit committee shall possess or obtain a basic understanding of governmental financial reporting and auditing.

The audit committee shall have access to the services of at least *one financial expert*; whose name shall be disclosed in the annual report of the authority.

The audit committee's financial expert should have 1) an understanding of generally accepted accounting principles and financial statements; 2) experience in preparing or auditing financial statements of comparable entities; 3) experience in applying such principles in connection with the accounting for estimates, accruals and reserves; 4) experience with internal accounting controls and, 5) an understanding of audit committee functions.

Meetings

The audit committee will meet a minimum of twice a year, with the expectation that additional meetings may be required to adequately fulfill all the obligations and duties outlined in the charter.

Members of the audit committee are expected to attend each committee meeting, in person or via telephone or videoconference. The audit committee may invite other individuals, such as members of management, auditors or other technical experts to attend meetings and provide pertinent information, as necessary.

The audit committee will meet with the authority's independent auditor at least annually to discuss the financial statements of the authority.

Meeting agendas will be prepared for every meeting and provided to the audit committee members along with briefing materials 5 business days before the scheduled audit committee meeting. The audit committee will act only on the affirmative vote of a majority of the members at a meeting or by unanimous consent. Minutes of these meetings will be recorded.

Responsibilities

The audit committee shall have responsibilities related to: (a) the independent auditor and annual financial statements; (b) the Authority's internal auditors; (c) oversight of management's internal controls, compliance and risk assessment practices; (d) special investigations and whistleblower policies; and (e) miscellaneous issues related to the financial practices of the Authority.

A. Independent Auditors and Financial Statements

The audit committee shall:

- Appoint, compensate and oversee independent auditors retained by the authority and pre-approve all audit services provided by the independent auditor.
- Establish procedures for the engagement of the independent auditor to provide permitted audit services. The authority's independent auditor shall be prohibited from providing non-audit services unless having received previous written approval from the audit committee. Non-audit services include tasks that directly support the authority's operations, such as bookkeeping or other services related to the accounting records or financial statements of the authority, financial information systems design and implementation, appraisal or valuation services, actuarial services, investment banking services, and other tasks that may involve performing management functions or making management decisions.
- Review and approve the authority's audited financial statements, associated management letter, report on internal controls and all other auditor communications.
- Review significant accounting and reporting issues, including complex or unusual transactions and management decisions, and recent professional and regulatory pronouncements, and understand their impact on the financial statements.
- Meet with the independent audit firm on a regular basis to discuss any significant issues that may have surfaced during the course of the audit.
- Review and discuss any significant risks reported in the independent audit findings and recommendations and assess the responsiveness and timeliness of management's follow-up activities pertaining to the same.

B. Internal Auditors

The audit committee shall:

- Review with management and the internal audit director, the charter, activities, staffing and organizational structure of the internal audit function. The audit committee shall have authority over the appointment, dismissal, compensation and performance reviews of the internal audit director.
- Ensure that the internal audit function is organizationally independent from authority operations.
- Review the reports of internal auditors, and have authority to review and approve the annual internal audit plan.
- Review the results of internal audits and approve procedures for implementing accepted recommendations of the internal auditor.

C. Internal Controls, Compliance and Risk Assessment

The audit committee shall:

- Review management's assessment of the effectiveness of the authority's internal controls and review the report on internal controls by the independent auditor as a part of the financial audit engagement.

D. Special Investigations



The audit committee shall:

- Ensure that the authority has an appropriate confidential mechanism for individuals to report suspected fraudulent activities, allegations of corruption, fraud, criminal activity, conflicts of interest or abuse by the directors, officers, or employees of the authority or any persons having business dealings with the authority or breaches of internal control.
- Develop procedures for the receipt, retention, investigation and/or referral of complaints concerning accounting, internal controls and auditing to the appropriate body.
- Request and oversee special investigations as needed and/or refer specific issues to the appropriate body for further investigation (for example, issues may be referred to the State Inspector General or, other investigatory organization.)
- Review all reports delivered to it by the Inspector General and serve as a point of contact with the Inspector General.

E. Other Responsibilities of the Audit Committee



The audit committee shall:

- Present annually to the authority's board a written report of how it has discharged its duties and met its responsibilities as outlined in the charter.
 - Obtain any information and training needed to enhance the committee members' understanding of the role of internal audits and the independent auditor, the risk management process, internal controls and a certain level of familiarity in financial reporting standards and processes.
 - Review the committee's charter annually, reassess its adequacy, and recommend any proposed changes to the board of the authority. The audit committee charter will be updated as applicable laws, regulations, accounting and auditing standards change.
 - Conduct an annual self-evaluation of its performance, including its effectiveness and compliance with the charter and request the board approval for proposed changes.
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TAB 23

This model Governance Committee Charter reflects current best practices and incorporates the statutory requirements of the Public Authorities Accountability Act. This document is intended for use by public authorities as a guide for formulating and/or revising their own charters. No sample charter can encompass all activities that might be appropriate for a specific authority's governance committee. Given the differences in purpose and resources that exist among public authorities, all the activities identified in this model charter may not be relevant to every authority's governance committee. Therefore, this charter should be modified to address the needs and governing rules of each individual authority.

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MODEL GOVERNANCE COMMITTEE CHARTER

This Governance Committee Charter was adopted by the Board of Directors of the (Name of Authority), a public benefit corporation established under the laws of the State of New York, on this ___ day of (Month, Year).

Purpose

Pursuant to Article __, Section __ of the Authority's bylaws, the purpose of the governance committee is to assist the Board by:

- Keeping the Board informed of current best practices in corporate governance;
- Reviewing corporate governance trends for their applicability to the (Name of Authority);
- Updating the (Name of Authority)'s corporate governance principles and governance practices; and
- Advising those responsible for appointing directors to the Board on the skills, qualities and professional or educational experiences necessary to be effective Board members.

Powers of the Governance Committee

The Board of Directors has delegated to the governance committee the power and authority necessary to discharge its duties, including the right to:

- Meet with and obtain any information it may require from authority staff.
- Obtain advice and assistance from in-house or outside counsel, accounting and other advisors as the committee deems necessary.
- Solicit, at the Authority's expense, persons having special competencies, including legal, accounting or other consultants as the committee deems necessary to fulfill its responsibilities. The governance committee shall have the authority to negotiate the terms and conditions of any contractual

relationship subject to the Board's adopted procurement guidelines as per Public Authorities Law Section 2879, and to present such contracts to the Board for its approval.

Composition and Selection

The membership of the committee shall be as set forth in accordance with and pursuant to Article __, Section ___ of the Authority's bylaws. The governance committee shall be comprised of (X) independent members. (The size of the committee is determined by the Board of Directors.) The governance committee members shall be appointed by, and will serve at the discretion of the (Name of Authority)'s Board of Directors. The Board may designate one member of the governance committee as its Chair. The members shall serve until their resignation, retirement, removal by the Board or until their successors shall be appointed and qualified. When feasible, the immediate past governance committee Chair will continue serving as a member of the Committee for at least one year to ensure an orderly transition.

Governance committee members shall be prohibited from being an employee of the Authority or an immediate family member of an employee of the Authority. In addition, governance committee members shall not engage in any private business transactions with the Authority or receive compensation from any private entity that has material business relationships with the authority, or be an immediate family member of an individual that engages in private business transactions with the Authority or receives compensation from an entity that has material business relationships with the Authority.

The governance committee members should be knowledgeable or become knowledgeable in matters pertaining to governance.

Committee Structure and Meetings

The governance committee will meet a minimum of twice a year, with the expectation that additional meetings may be required to adequately fulfill all the obligations and duties outlined in the charter. All committee members are expected to attend each meeting, in person or via telephone or videoconference.

Meeting agendas will be prepared for every meeting and provided to the governance committee members at least five days in advance of the scheduled meeting, along with the appropriate materials needed to make informed decisions. The governance committee shall act only on the affirmative vote of a majority of the members at a meeting or by unanimous consent. Minutes of these meetings are to be recorded.

Reports

The governance committee shall:

- Report its actions and recommendations to the Board at the next regular meeting of the Board.
- Report to the Board, at least annually, regarding any proposed changes to the governance charter or the governance guidelines.
- Provide a self-evaluation of the governance committee's functions on an annual basis.

Responsibilities

To accomplish the objectives of good governance and accountability, the governance committee has responsibilities related to: (a) the Authority's Board; (b) evaluation of the Authority's policies; and (c) other miscellaneous issues.

Relationship to the Authority's Board

The Board of Directors has delegated to the governance committee the responsibility to review, develop, draft, revise or oversee policies and practices for which the governance committee has specific expertise, as follows:

- Develop the Authority's governance practices. These practices should address transparency, independence, accountability, fiduciary responsibilities, and management oversight.
- Develop the competencies and personal attributes required of Directors to assist those authorized to appoint members to the Board in identifying qualified individuals.

In addition, the governance committee shall:

- Develop and recommend to the Board the number and structure of committees to be created by the Board.
- Develop and provide recommendations to the Board regarding Board member education, including new member orientation and regularly scheduled board member training to be obtained from state-approved trainers.
- Develop and provide recommendations to the Board on performance evaluations, including coordination and oversight of such evaluations of the board, its committees and senior management in the Authority's governance process.

Evaluation of the Authority's Policies

The governance committee shall:

- Develop, review on a regular basis, and update as necessary the Authority's code of ethics and written policies regarding conflicts of interest. Such code of ethics and policies shall be at least as stringent as the laws, rules, regulations and policies applicable to state officers and employees.
- Develop and recommend to the Board any required revisions to the Authority's written policies regarding the protection of whistleblowers from retaliation.
- Develop and recommend to the Board any required revisions to the Authority's equal opportunity and affirmative action policies.
- Develop and recommend to the Board any required updates on the Authority's written policies regarding procurement of goods and services, including policies relating to the disclosure of persons who attempt to influence the Authority's procurement process.
- Develop and recommend to the Board any required updates on the authority's written policies regarding the disposition of real and personal property.
- Develop and recommend to the Board any other policies or documents relating to the governance of the Authority, including rules and procedures for conducting the business of the Authority's Board, such as the Authority's by-laws. The governance committee will oversee the implementation and effectiveness of the by-laws and other governance documents and recommend modifications as needed.

Other Responsibilities

The governance committee shall:

- Review on an annual basis the compensation and benefits for the Managing Director and other senior Authority officials.
- Annually review, assess and make necessary changes to the governance committee charter and provide a self-evaluation of the governance committee.

TAB 24

Authorities Budget Office Recommended Guidance



This Recommended Governance Practice bulletin on internal controls is intended for use by policymakers, and directors, officers and officials of public authorities. These bulletins are intended to delineate best practices and encourage their consideration and incorporation into the management and oversight of public authorities.

Subject: Assessment of the Effectiveness of Internal Controls

Provisions: Section 2800 (1)(a)(9) and Section 2800 (2)(a)(9) of Public Authorities Law require all public authorities to complete an annual assessment of the effectiveness of their internal control structures and procedures. Additionally, State authorities with a majority of the members appointed by the Governor must establish and maintain a system of internal control and a program of internal control review as provided in Title 8 of Public Authorities Law.

Objectives: The importance of an adequate system of internal control is to: (a) promote effective and efficient operations so as to help the authority carry out its mission; (b) provide reasonable, but not absolute, assurance that assets are safeguarded against inappropriate or unauthorized use; (c) promote the accuracy and reliability of accounting data and financial reporting to ensure transactions are executed in accordance with management's authorization and recorded properly in accounting records; (d) encourage adherence to management's policies and procedures for conducting programs and operations; and (e) ensure compliance with applicable laws and regulations. Furthermore, a successful system of internal control includes performing an annual assessment to identify potential weaknesses in policies or procedures and to implement corrective actions.

For purposes of complying with the requirements of Section 2800, an internal control assessment is an annual evaluation performed by management to determine the effectiveness of its internal control system. This assessment should be sufficiently thorough so as to identify significant weaknesses in controls, recognize emerging or inherent risks, and to enable early detection of existing or potential problems. If an internal control system is working effectively, management will have a reasonable indication of the reliability of its operating practices and the accuracy of the information it is using to measure its activities and performance. Any deficiencies identified as a result of the assessment could be quickly addressed.

Recommended Practice:

As a recommended practice, the Authorities Budget Office has identified five major components of an internal control assessment.

A. Define the Authority's Major Business Functions

The first step is to articulate the mission of the authority and to determine its primary operating responsibilities, including various business units, operations and functions that have been put in place to achieve the goals of the authority. Every authority should have a written mission statement that clearly defines the purpose of the authority. The authority should also define its objectives and ensure they are understood by staff. Additional policies, procedures and guidelines should be in place to guide staff in the operations of each specific business function, communicate the objectives, and provide the methods and procedures used to assess the effectiveness of those functions.

B. Determine the Risks Associated with Its Operations

Management should assess the risk exposure and associated vulnerability of each function and assign a corresponding risk level (i.e. high, medium, or low). Risk can originate both internally and externally. Control activities should be tailored to the individual operation based on management's identification and evaluation of applicable risks.

Once a risk is identified, management must determine how to best handle it by evaluating its significance, likelihood, and cause. Based on the assigned risk levels, management should determine how frequently to review the controls in place for each function (i.e., high risk functions to be reviewed more frequently than lower risk functions).

C. Identify the Internal Control Systems in Place

Internal controls are the policies, practices, attitudes, guidelines and other actions adopted by the authority that, when followed, provide reasonable assurance that staff understand and properly carry out their responsibilities, that appropriate professional and ethical conduct is observed, and that the authority will honor its purpose and mission. Management and staff throughout the organization should understand and be aware of the policies and practices in place to ensure that the authority is effective and to address the risks that are relevant to the operation.

D. Assess the Extent to Which the Internal Control System is Effective

The assessment of internal controls should be a structured and monitored process to identify and report any weaknesses of the internal control structure to the authority. This process should determine if the existing control structure and procedures are adequate, to then mitigate risk, minimize ineffectiveness and deter opportunities that could lead to the abuse of assets. The assessment should provide management with information as to whether the authority's

policies and operating practices were understood and executed properly, and whether they are adequate to protect the organization from waste, abuse, misconduct, or inefficiency. This assessment can be completed through a combination of inquiry and observation, a review of documents and records, or by replicating transactions to test the sufficiency of the control system.

E. Take Corrective Action

When a weakness is identified, a corrective action plan should be developed, adopted by the board, and monitored by management to ensure that the vulnerability is addressed.

Internal Control Assessment:

To satisfy the requirement of Sections 2800 (1) (a) (9) and 2800 (2)(a)(9) of Public Authorities Law, authorities should incorporate, either within their annual report or as a separate document, a statement explaining that the authority has conducted a formal, documented process to assess the effectiveness of their internal control structure and procedures, and indicating whether or not the internal controls are adequate. This statement should be posted to the authority's website. An example of this statement is provided below:

This statement certifies that the [Name of Authority] followed a process that assessed and documented the adequacy of its internal control structure and policies for the year ending [Month,Date,Year]. To the extent that deficiencies were identified, the authority has developed corrective action plans to reduce any corresponding risk.

The authority should retain this documentation. If the authority has found any deficiencies with the internal controls over its functions or operations, additional documentation should be maintained to demonstrate that the authority has adopted corrective action plans to address these weaknesses. This documentation should be made available upon request to the authority's independent auditor or to the Authorities Budget Office compliance review staff.

Public Authorities Reporting Information System (PARIS): As part of the PARIS Annual Report tab, state and local authorities will be required to indicate whether or not they have prepared this assessment and to provide the URL link to the statement.

Additional material that may be helpful in establishing and evaluating internal controls can be found on the Office of the New York State Comptroller's web site:

<http://www.osc.state.ny.us/localgov/pubs/lgmg/managementsresponsibility.pdf>

<http://www.osc.state.ny.us/localgov/pubs/lgmg/practiceinternalcontrols.pdf> .

TAB 25

Public authorities that issue debt are required to have a finance committee. This committee should be active at the time an authority is contemplating or planning a debt issuance, is in the process of issuing debt, or has outstanding debt. This model Finance Committee Charter reflects current best practices and incorporates the statutory requirements of the 2009 Public Authorities Reform Act. This document is intended for use by public authorities as a guide for formulating and/or revising their own charters. No sample charter can encompass all activities that might be appropriate for a specific authority's finance committee. Given the differences in purpose, statutory authorizations and resources that exist among public authorities, all the activities identified in this model charter may not be relevant to every authority's finance committee. Therefore, this charter should be modified to address the needs and governing rules of each individual authority.

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MODEL FINANCE COMMITTEE CHARTER

Purpose

Pursuant to Article __, Section __ of the Authority's bylaws, the purpose of the finance committee is to oversee the Authority's debt and debt practices and to recommend policies concerning the Authority's issuance and management of debt.

Duties of the Finance Committee

It shall be the responsibility of the finance committee to:

- Review proposals for the issuance of debt by the Authority and its subsidiaries and to make recommendations concerning those proposals to the board.
- Make recommendations to the board concerning the level of debt and nature of debt issued by the Authority.
- Make recommendations concerning the appointment and compensation of bond counsel, investment advisors and underwriting firms used by the Authority, and to oversee the work performed by these individuals and firms on behalf of the Authority.
- Meet with and request information from Authority staff, independent auditors and advisors or outside counsel, as necessary to perform the duties of the committee.
- Retain, at the Authority's expense, such outside counsel, experts and other advisors as the finance committee may deem appropriate.
- Review proposals relating to the repayment of debt or other long-term financing arrangements by the Authority and its subsidiaries.

- Annually review the Authority's financing guidelines and make recommendations to the board concerning criteria that should govern its financings. These should include security provisions required for a bond financing undertaking, specific requirements of credit enhancements or additional guarantees used, such as a pledge of revenues, financial covenants or debt service reserves.
- Report annually to the Authority's board how it has discharged its duties and met its responsibilities as outlined in the charter.
- Conduct an annual self-evaluation of its performance, including its effectiveness and compliance with the charter and request the board approval for proposed changes.

Composition of Committee and Selection of Members

The finance committee shall consist of not less than three independent members of the board of directors, who shall constitute a majority on the committee. If the board has less than three independent members, non-independent members may be appointed to the committee provided that the independent members constitute a majority of the committee. The Authority's board shall appoint the finance committee members and the finance committee chair. Members shall serve on the committee at the discretion of the board. Members appointed to the committee shall have the background necessary to perform its duties.

Meetings

The finance committee shall meet at such times as deemed advisable by the chair, but not less than twice a year. The committee must meet prior to any debt issuance planned to be undertaken by the Authority.

Members of the finance committee are expected to attend each committee meeting, in person or via telephone or videoconference. The finance committee may invite other individuals, such as members of management, auditors or other technical experts to attend meetings and provide pertinent information, as necessary. A majority of the committee members present or participating through telephone or videoconference shall constitute a quorum.

Meeting agendas shall be prepared prior to every meeting and provided to finance committee members along with briefing materials five (5) business days before the scheduled finance committee meeting. The finance committee may act only on the affirmative vote of a majority of the members or by unanimous consent. Minutes of these meetings shall be recorded.

A report of the committee's meeting shall be prepared and presented to the board at its next scheduled meeting following the meeting of the committee.

Meetings of the committee are open to the public, and the committee shall be governed by the rules regarding public meetings set forth in the applicable provisions of the Public Authorities Law and Article 7 of the Public Officers Law that relate to public notice and the conduct of executive session.

In addition to these duties and responsibilities, the board may wish to authorize the finance committee to perform the following additional duties:

Review the Authority's Annual Budget

The finance committee shall:

- Review the Authority's proposed annual operating budget as presented by Authority management for the upcoming fiscal year.
- Recommend the annual budget to the board for approval after incorporating necessary amendments.
- Monitor and report to the board on the Authority's compliance with its adopted budget during the fiscal year (actual verses estimated budget) on a monthly/quarterly basis.

Oversee the Authority's Investments

The finance committee shall:

- Annually review the Authority's investment policy and evaluate allocation of assets.
- Review and recommend to the board approval of the Authority's annual investment report.
- Annually review the Authority's audit of investments as provided by independent auditors.
- Recommend to the board the selection of investment advisors.
- Monitor the economic performance of the Authority's pension plans.

Assess the Authority's Capital Requirements and Capital Plan

The finance committee shall:

- Assess the financial requirements of the Authority's capital plans. The assessment is to include current and future capital needs, a justification of why such capital expenditure is required and an explanation of funding sources for capital projects such as grants, issuance of debt or specified pay-as-you-go resources.

- Review the financial aspects of major proposed transactions, significant expenditures, new programs and services, as well as proposals to discontinue programs or services and making action recommendations to the board.

Review Financial and Procurement Thresholds

The finance committee shall:

- Review and make recommendations to the board regarding any proposed procurements submitted to the committee by the Authority's procurement officer.
- Review and recommend changes to the Authority's thresholds for procuring goods and services and procurement policy.
- Review and recommend changes to the Authority's uniform tax exemption policy that includes general provisions for entering into payment-in-lieu-of-taxes (PILOT) agreements and allowing tax exemptions.
- Review and recommend changes to the Authority's fee schedules.
- Review the scope and terms of the Authority's insurance policies and liability coverage on an annual basis.

TAB 26

Authorities Budget Office Recommended Guidance



This Recommended Governance Practice bulletin on corporate governance principles is intended for use by policymakers, and directors, officers and officials of public authorities. These bulletins are intended to delineate best practices and encourage their consideration and incorporation into the management and oversight of public authorities.

Subject: New Board Member Orientation

Objectives: A well-informed, engaged and principled board of directors is the most effective means to assure that public authorities act in accordance with their missions and the interests of the public, operate in an ethical and transparent manner, and adhere to the highest standards of good corporate governance. Those appointed to the board should be well prepared to undertake their role and responsibilities, add value to the deliberative and decision-making process and advance the authority's performance objectives.

A board's primary responsibility is to provide the vision and guidance necessary for the authority to fulfill its mission and meet its ethical and legal obligations. It is important for board members to be well-versed in the purpose and operations of the authority. New board members should familiarize themselves with the authority's mission, understand the responsibilities and expectations of their appointed position, and be willing and able to invest the time and effort to attend and actively participate in board meetings.

Recommended Practice: The Authorities Budget Office recommends that public authorities provide an orientation session for new board members upon appointment to the board. This orientation session at minimum should include an overview of the public authority and the new board member's responsibilities. Topics that should be reviewed with the new board member might include answers to the following questions:

- What are the board's fiduciary duties and responsibilities?
- What are the public's expectations for board members?
- What makes a board member "independent"?
- How is the board organized to do its work? How are decisions made?
- What information, staff and resources are accessible to members?
- When, where and how often are board and committee meetings held?
- How are special meetings handled?
- What laws, rules and regulations govern a board member's actions?

- How is board performance evaluated?
- Are members entitled to compensation or reimbursement?
- What is the mission and what are the values of the authority?
- Who are the authority's stakeholders?
- What is the organizational structure of the authority?
- What are the authority's major programs and services? What are the authority's current goals and priorities?
- How does the authority measure its performance to ensure it is effectively carrying out its mission?
- What are the authority's long-term goals and strategic direction?

New board members should also be given an overview of how to navigate through the public authority's web site, and where the board member can find the most recent information about the public authority. Some board members may be able to review policies, procedures and financials via the public authority's web site, while other board members may prefer hard copies. Depending on the culture of the public authority and its board, below are the types of documents that new board members should be able to easily access or be given at the time of their appointment, so that they may familiarize themselves with the public authority and their role and responsibilities on the board.

A. Board Information

- List of board members - names, affiliations, short biographies
- List of board committees, committee members, and charters
- Acknowledgement of fiduciary duties and responsibilities
- Calendar of board meetings and committee meetings
- Board and committee meeting minutes and agendas for the last two years
- Board member training schedule
- Code of ethics
- Conflicts of interest procedures
- Defense and indemnification policy
- Financial disclosure requirements and sample financial disclosure form

B. Authority's Background Information

- Mission statement
- Authority's enabling legislation*
- Performance measures for the year, including most recent measurement report
- Current By-laws

* Local Development Corporations should provide their articles of incorporation in lieu of an enabling legislation

C. Authority Organization and Structure

- Organizational chart
- List of staff with titles, short biographies of key staff
- Description of the authority's major departments/units and subsidiaries
- Description of major programs administered by the authority, including a list of grant and subsidies administered (if applicable)
- List of all active authority supported projects
- Authority's internal control assessment
- Authority's fee schedules (if applicable)
- Description of any material pending legislation
- Important dates for reporting deadlines; budget calendar
- Acronym dictionary - list of common acronyms used by the authority

D. Financial Information

- Authority's Annual Report
- Operating Budget (including an estimated vs. actual budget)
- Authority's Financial Audit for the last two fiscal years (including management letter and report on internal controls)
- Authority's debt schedule listing applicable debt caps, new debt issuances and outstanding debt including refinancings, refundings and defeasements
- Authority's current bond rating
- List of authority leases
- List and brief description of use of real property owned by the authority
- Four-year financial plan
- Current and projected capital budget

E. Policies & Reports

- Procurement Policy and Procurement Report
- Investment Guidelines and annual Investment Report
- Property Disposition Guidelines
- Uniform Tax Exemption Policy (for IDAs)
- Other required policies of the Authority (i.e. salary and compensation)

F. Other Applicable Laws and Guidance

- Public Authorities Reform Act of 2009
- Applicable sections of Public Authorities Law, General Municipal Law, Public Officers Law and State Finance Law
- Guidance issued by the Authorities Budget Office
- Other applicable State and Federal laws relating to the authority's operations
- Other applicable rules and regulations

TAB 27

Authorities Budget Office Recommended Guidance



This Recommended Governance Practice bulletin on a Whistleblower Access and Assistance Program is intended for use by policymakers, and directors, officers and officials of public authorities. These bulletins are intended to delineate best practices and encourage their consideration and incorporation into the management and oversight of public authorities.

Subject: Whistleblower Access and Assistance Program

Provisions: Title 12 of Article 9 of Public Authorities Law requires the Authorities Budget Office, in consultation with the Office of the Attorney General, is to develop a whistleblower access and assistance program. The purpose of this program is to provide board members, officers, and staff of state and local public authorities with a confidential means to report credible allegations of misconduct, wrongdoing, or unethical behavior and to protect those individuals, when acting in good faith, from personal or professional retaliation.

As part of this program, state and local authorities are to adopt and adhere to whistleblower protection policies.

Objectives: To assist state and local authorities implement an effective whistleblower protection program, the ABO and the Office of the Attorney General have developed a model whistleblower policy. It is expected that every state and local authority would be guided by these provisions, but the board of directors of each authority should write and adopt a policy that best meets the needs of the authority while still conforming to the intent of the law.

Recommended Practice:

Whistleblower Policy and Procedures

Purpose

It is the policy of this Public Authority to afford certain protections to individuals who in good faith report violations of the Public Authority's Code of Ethics or other instances of potential wrongdoing within the Public Authority. The Whistleblower Policy and Procedures set forth below are intended to encourage and enable employees to raise concerns in good faith within the Public Authority and without fear of retaliation or adverse employment action.

Definitions

“Good Faith”: Information concerning potential wrongdoing is disclosed in “good faith” when the individual making the disclosure reasonably believes such information to be true and reasonably believes that it constitutes potential wrongdoing.

“Public Authority Employee”: All board members, and officers and staff employed at this Public Authority whether full-time, part-time, employed pursuant to contract, employees on probation and temporary employees.

“Whistleblower”: Any Public Authority Employee (as defined herein) who in good faith discloses information concerning wrongdoing by another Public Authority employee, or concerning the business of the Public Authority itself.

“Wrongdoing”: Any alleged corruption, fraud, criminal or unethical activity, misconduct, waste, conflict of interest, intentional reporting of false or misleading information, or abuse of authority engaged in by a Public Authority Employee (as defined herein) that relates to the Public Authority.

“Personnel action”: Any action affecting compensation, appointment, promotion, transfer, assignment, reassignment, reinstatement or evaluation of performance.

Section I: Reporting Wrongdoing

All Public Authority Employees who discover or have knowledge of potential wrongdoing concerning board members, officers, or employees of this Public Authority; or a person having business dealings with this Public Authority; or concerning the Public Authority itself, shall report such activity in accordance with the following procedures:

- a) The Public Authority Employee shall disclose any information concerning wrongdoing either orally or in a written report to his or her supervisor, or to the Public Authority’s ethics officer, general counsel or human resources representative.
- b) All Public Authority Employees who discover or have knowledge of wrongdoing shall report such wrongdoing in a prompt and timely manner.
- c) The identity of the whistleblower and the substance of his or her allegations will be kept confidential to the best extent possible.
- d) The individual to whom the potential wrongdoing is reported shall investigate and handle the claim in a timely and reasonable manner, which may include referring such information to the Authorities Budget Office or an appropriate law enforcement agency where applicable.

- e) Should a Public Authority Employee believe in good faith that disclosing information within the Public Authority pursuant to Section 1(a) above would likely subject him or her to adverse personnel action or be wholly ineffective, the Public Authority Employee may instead disclose the information to the Authorities Budget Office or an appropriate law enforcement agency, if applicable. The Authorities Budget Office's toll free number (1-800-560-1770) should be used in such circumstances.

Section II: No Retaliation or Interference

No Public Authority Employee shall retaliate against any whistleblower for the disclosure of potential wrongdoing, whether through threat, coercion, or abuse of authority; and, no Public Authority Employee shall interfere with the right of any other Public Authority Employee by any improper means aimed at deterring disclosure of potential wrongdoing. Any attempts at retaliation or interference are strictly prohibited and:

- a) No Public Authority Employee who in good faith discloses potential violations of this Public Authority's Code of Ethics or other instances of potential wrongdoing, shall suffer harassment, retaliation or adverse personnel action.
- b) All allegations of retaliation against a Whistleblower or interference with an individual seeking to disclose potential wrongdoing will be thoroughly investigated by this Public Authority.
- c) Any Public Authority Employee who retaliates against or had attempted to interfere with any individual for having in good faith disclosed potential violations of this Public Authority's Code of Ethics or other instances of potential wrongdoing is subject to discipline, which may include termination of employment.
- d) Any allegation of retaliation or interference will be taken and treated seriously and irrespective of the outcome of the initial complaint, will be treated as a separate matter.

Section III: Other Legal Rights Not Impaired

The Whistleblower Policy and Procedures set forth herein are not intended to limit, diminish or impair any other rights or remedies that an individual may have under the law with respect to disclosing potential wrongdoing free from retaliation or adverse personnel action.

- a) Specifically, these Whistleblower Policy and Procedures are not intended to limit any rights or remedies that an individual may have under the laws of the State of New York, including but not limited to the following provisions: Civil Service Law § 75-b, Labor Law § 740, State Finance Law § 191 (commonly known as the "False Claims Act"), and Executive Law § 55(1).
- b) With respect to any rights or remedies that an individual may have pursuant to Civil Service Law § 75-b or Labor Law § 740, any employee who wishes to preserve such rights shall prior to disclosing information to a government body, have made a good faith effort to provide the appointing authority or his or her designee the information to be disclosed and shall provide the appointing authority or designee a reasonable time to take appropriate action unless there is imminent and serious danger to public health or safety. (See Civil Service Law § 75-b[2][b]; Labor Law § 740[3]).