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## 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 06-01: [Board Member Training](#)).