

Model Governance Principles for Public Authorities
NYS Committee on Public Authority Reform
As of February 2004 - With June 2004 Modifications and Additions

1. The Public Authority Board – Training

- Board members shall receive appropriate training regarding their legal, fiduciary and ethical responsibilities as directors of a public authority.

6/04 Additions:

Boards should develop a means of self-evaluation as well as a means to orient and train future and existing board members (director training should include topics such as distinguishing the role of the board from the day-to-day management of operations). In addition, there should be a central place for authorities to send their board members for training.

2. The Public Authority Board – Separating Oversight and Executive Functions

- The primary responsibility of the board of directors shall be overseeing the authority's chief executive and other senior management in the effective and ethical management of the authority.
- The board shall understand, review and monitor the implementation of fundamental financial, management and operational decisions of the authority.
- The chair of the board of directors shall not be a member of management and shall be charged with leading the board's oversight role, including setting the board's agenda, managing the flow of information to the board, coordinating the work of the board's committees and serving as the primary liaison between the board and senior management.
- The day-to-day management responsibilities of the authority shall be vested in a separate chief executive who serves at the pleasure of the board.
- The board of directors shall establish policies regarding the payment of salary, compensation and reimbursement to, and establish rules for the time and attendance of, the chief executive and senior management of the authority.

6/04 Modification:

Separation of the roles of Chairman of the Board and Chief Executive Officer of the authority should take place as soon as possible, but taking into account special circumstances. The Model Governance Principles originally did not state a timeframe for implementing this principle.

3. The Public Authority Board – Establishing a Coordinated Committee Structure

- The authority's board shall establish board committees with clearly defined responsibilities pursuant to a written charter.
- Every authority shall have a governance committee and an audit committee comprised entirely of independent members. A member shall be deemed "independent" if he or she is: (a) not employed by the authority, (b) not employed by a state or local government and (c) not employed by an entity, public or private, that is, or is likely, to do business with the particular authority.

6/04 Modifications:

Every authority shall have a governance committee and an audit committee comprised of a majority of independent members. The Model Governance Principles originally required that such committees be comprised entirely of independent members.

A member shall be deemed "independent" if: (a) such member, and each member of its immediate family, is not employed by the authority and (b) such member is not employed by an entity, public or private, that does

or is likely to do, business with the authority. The Model Governance Principles originally required that independent board members not be employed by a state or local government. In addition, clause (a) was expanded to include immediate family members of the member.

4. The Public Authority Board – Renewed Focus on Governance and Ethics

- The responsibilities of the governance committee shall include establishing policies to promote honest and ethical conduct by authority directors, officers and employees and enhance public confidence in the authority.
- The governance committee shall review and regularly update the authority's code of conduct and written policies regarding conflicts of interest. Such code of conduct and policies shall be at least as stringent as the laws, rules, regulations and policies applicable to state officers and employees.
- The governance committee shall review and regularly update the authority's written policies regarding procurement of goods and services and the acquisition of real property or interests therein, including policies relating to the implementation of Executive Order No. 127 and the disclosure of persons who attempt to influence the authority's procurement process.
- The governance committee shall review and regularly update the authority's written policies regarding the disposition of real and personal property.
- The governance committee shall review and regularly update the authority's written policies regarding the protection of whistleblowers from retaliation.

6/04 Addition:

The responsibilities of the Governance Committee shall include the preparation of a profile of the skill sets and experiences of individuals best equipped to be constructive board members of that authority; keeping up-to-date with current governance practices; continually reviewing corporate governance trends and best practices; and updating the authority's corporate governance documents accordingly. Additionally, the Governance Committee should consider making recommendations to the Governor or State Legislature regarding the kinds of people (not necessarily specific individuals) the authority believes should be appointed to the board for reasons such as experience, qualifications, or otherwise. These responsibilities are in addition to those originally set forth in the Model Governance Principles.

5. The Public Authority Board – Renewed Focus on Audits and Accountability

- The responsibilities of the audit committee shall include:
 1. Reviewing and approving the authority's financial statements;
 2. Overseeing the authority's internal controls and compliance systems;
 3. Appointing, compensating and overseeing outside auditors retained by the authority;
 4. Resolving disagreements with respect to, and overseeing compliance with accounting policies and principles;
 5. Reviewing management reports on internal controls and the attestation of such reports by the authority's outside auditors; and
 6. Investigating compliance with the authority's policies and/or referring instances of non-compliance to the State Inspector General (or, where applicable, the authority's Inspector General) for investigation.
- The audit committee shall establish procedures for the receipt, retention, investigation, and/or referral to the State Inspector General (or, where applicable, the authority's Inspector General) of complaints received by the authority regarding accounting, internal controls, and auditing.
- The audit committee shall establish policies and procedures to ensure that every director, officer and employee of the authority shall report promptly to the State Inspector General (or, where applicable, the authority's Inspector General) any information concerning 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. The audit committee shall review all reports and draft reports

delivered by the State Inspector General (or, where applicable, the authority's Inspector General) to the authority and shall serve as a point of contact with such Inspector General.

- The authority shall ensure that the audit committee has access to sufficient resources to carry out its duties.
- Insofar as practicable, at least one member of the audit committee should be a 'financial expert' and this shall be disclosed in the annual report of the authority.

6/04 Modification:

Each member of the audit committee shall have financial experience and, if possible, at least one member who qualifies as a financial expert. The Model Governance Principles originally only required that one member of the audit committee be a "financial expert," in so far as possible.

6. Internal Auditors and Outside Auditors – Strengthening Internal Controls

- The authority shall have an internal auditor with clearly defined responsibilities who shall report directly to the audit committee and serve at its pleasure.
- The responsibilities of the internal auditor shall include directing authority-wide internal audit functions, including conducting financial, operational, procurement, compliance, contract, ethics and any other necessary audits. In addition, the internal auditor shall coordinate its work with the work of the outside auditors retained by the audit committee.
- The board, acting through its audit committee, shall engage an independent auditing firm to audit the financial statements, internal controls, compliance, and operations and management of the authority on a regular basis.
- An outside auditor retained by an authority shall be prohibited from providing non-audit services to the authority.
- The chief executive, chief financial officer and auditor director shall not have been employed by the authority's outside auditors during the two year period preceding the audit.

6/04 Modification

The development of an internal audit function is an important aspect of governance reforms in public authorities and, collectively with other issues identified herein, requires further study and discussion with the Governor's Office, representatives of the authorities, the financial community and relevant experts, before recommendations for an unambiguous Executive Order or legislative language is proposed.

7. Transparency & Disclosure

- The authority should file an annual operational and financial report, modeled on the reports filed by publicly held companies pursuant to the federal securities laws, so as to accurately present to the public with the financial condition and results of operation of the authority, including a comparison of actual financial results versus financial projections. These reports and other information concerning the finances of the authority shall be available to the public on the Internet.
- Each board member shall sign the authority's annual report.
- The chief executive, chief financial officer, the audit director and other senior management of the authority shall certify the appropriateness of the financial statements and disclosures contained in the authority's report, and that those financial statements and disclosures fairly present, in all material respects, the operations and financial condition of the authority.
- Each annual report shall contain an "internal control report," signed by the chief executive, chief financial officer, audit director and other senior management of the authority, which shall state the responsibility of management for establishing and maintaining an adequate internal control structure and procedures for financial reporting, and contain an assessment of the effectiveness of the internal control structure and procedures of the authority for financial reporting. The authority's auditor shall attest to, and report on, such assessment, and the audit committee shall review and approve such report.

6/04 Additions:

The matter of accessibility of materials, including financial statements, offering statements and annual reports is an area where the Committee believes that consistent standards among the authorities should be required. There are differences among the public authorities regarding what information, if any, is publicly available. While certain authorities may make materials available on their respective web sites, others only grant information via a Freedom of Information Act request.

- The Committee believes that at minimum each authority should have its annual report and adopted budget easily accessible to the general public. Such annual report, which must be signed by each board member of the authority, and should contain information regarding the authority's activities from the previous year, as well as its plan for the upcoming year (including, for example, a budget reconciliation), all modeled on the reports filed by publicly held companies pursuant to the federal securities laws, including Management's Discussion and Analysis of Financial Condition and Results of Operations contained in the annual reported filed under Form 10-K.
- Additionally, authorities should have a matrix or a template to follow so that all public disclosures are consistent in format and content. Members of the financial community and the Division of the Budget should consider a model paradigm for public disclosure of financial information, which may take the form of an omnibus procedures act covering matters such as the corporate functions, bond issuances and financial disclosures of public authorities.

Additional Reforms Suggested by the Committee In Addition to the Model Governance Principles - June 2004

Director Compensation – Thought should be given to compensating certain board members.

Indemnification and D&O Insurance – Given the enhanced responsibilities of directors and the related liability that directors may be exposed to, it is appropriate to review the State's current indemnification and defense procedures for directors of public authorities and to recommend any necessary amendments or additional legislation. Additionally, it may be appropriate to examine the possibility of coverage of directors of public authorities under a Directors and Officer's Insurance policy.

Fiduciary Duties – Legislative study should be undertaken to determine whether the fiduciary duty of public authority board members is sufficiently articulated.

Continuous Review of Governance of Public Authorities – Some means should be developed to subject the implementation of governance guidelines by the boards of authorities to continuous examination.

Waivers – There should be some vehicle for granting waivers to authorities which demonstrate an inability to adopt a specific principle.