



School of Professional Studies
The City University of New York

CUNY School of Professional Studies
Public Authorities Training Program

Public Authority Accountability Act of 2005
Summary of Public Authority Board Member Responsibilities
(Adapted from 02/02/2006 Memorandum By Robert J. Ryan, Esq. of Harris Beach PLLC)

1. Role and Responsibilities of Board Members (Act §18, amends Public Authorities Law ["PAL"] §2824)

A. Authority Board Member Responsibilities are defined to include:

- (1) Executing direct oversight of the authority's chief executive and other senior management in the effective and ethical management of the authority;
- (2) Understanding, reviewing and monitoring the implementation of fundamental financial and management controls and operational decisions of the authority;
- (3) Establishing policies regarding the payment of salary, compensation and reimbursements to, and establishing rules for the time and attendance of, the chief executive and senior management;
- (4) Adopting a code of ethics applicable to each officer, director and employee that, at a minimum, includes the standards established in Section 74 of the Public Officers Law;
- (5) Establishing written policies and procedures on personnel including policies protecting employees from retaliation for disclosing information concerning acts of wrongdoing, misconduct, malfeasance, or other inappropriate behavior by an employee or board member of the authority, investments, travel, the acquisition of real property and the disposition of real and personal property and the procurement of goods and services; and
- (6) Adopting a defense and indemnification policy and disclosing such plan to any and all prospective board members.

B. Training

- (1) Authority Board members must participate in state approved training regarding their legal, fiduciary, financial and ethical responsibilities as directors of the authority within one year of appointment to the board.
- (2) Board members must participate in continuing training as may be required to remain informed of best practices, and regulatory and statutory changes relating to effective oversight of management and financial activities of authorities.

C. Separation of Board and Management

No Board member can serve as an authority's CEO, executive director, CFO, comptroller, or hold any other equivalent position while also serving as a board member.

D. Extension of Credit

The Board is prohibited from extending or maintaining credit, arranging for the extension of credit, or renew an extension of credit, in the form of a personal loan to or for any officer, board member or employee of the authority.

E. Establishment of Committees

(1) Audit Committee: Each public authority must establish an audit committee comprised of "independent" members. To the extent practicable, members of the audit committee should be familiar with corporate financial and accounting practices. The audit committee must recommend to the board the hiring of a CPA firm, establish compensation to be paid to the CPA firm and provide direct oversight of the performance of the independent annual audit performed by the CPA firm.

(2) Governance Committee: Each public authority must establish a governance committee to be comprised of "independent" members. The governance committee must keep the board informed of current best governance practices, review corporate governance trends, update the authority's governance principles, and to advise appointing authorities on the skills and experiences required of potential board members.

Due Date: Effective immediately unless the authority fiscal year begins after January 1, 2006.

2. **Board Member Independence and Financial Disclosure (Act §19, amends PAL §2825)**

A. Independent Member Requirements

Except for board members who serve as members by virtue of holding a civil office of the state, the majority of the remaining members who are appointed on or after January 13, 2006 must be independent. An independent member is one who:

(1) Is not, and in the past two years has not been, employed by the public authority or an affiliate in an executive capacity;

(2) Is not, and in the past two years has not been, employed by an entity that received remuneration valued at more than \$15,000 for goods and services provided to the public authority or received any other form of financial assistance valued at more than \$15,000 from the public authority;

(3) Is not a relative of an executive officer or employee in an executive position of the public authority or an affiliate; and

(4) Is not, and in the past two years has not been, 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 an affiliate. The new audit committee would be required to make recommendations to the board concerning the engagement of a certified independent accounting firm, compensation to be paid for same, and to provide direct over-sight of the engagement.

B. Financial Disclosure Requirements: Board members, officers, and employees are required to file annual financial disclosure statements. *Board members of state authorities* must file these statements as required by Section 73a of Public Officers Law. *Board members of local authorities* must file with the county board of ethics for the county in which the local public authority has its primary office pursuant to Article 18 of the General Municipal Law.

Effective Date: Effective immediately. *Board members of state authorities* must file financial disclosure statements by May 15, 2006. *Board members of local authorities* should check with their county ethics boards for filing deadlines.

3. **Annual Report (Act § 15, amends PAL §2800)**

A. Annual Report Contents. The authority must submit reports to the chief executive officer, chief fiscal officer, chairperson of the legislative body of the local government or local governments, and the Authority Budget Office.

Required Report Contents:

- (1) Authority's operations and accomplishments;
- (2) Authority's receipts and disbursements, or revenues and expenses, during such fiscal year;
- (3) Authority's assets and liabilities at the end of its fiscal year including the status of reserve, depreciation, special or other funds and including the receipts and payments of these funds;
- (4) A schedule of its bonds and notes outstanding at the end of its fiscal year, together with a statement of the amounts redeemed and incurred during such fiscal year as part of a schedule of debt issuance (see Act for more detail on the debt issuance schedule);
- (5) A compensation schedule salary, compensation, allowance and/or benefits provided to any officer, director or employee in a decision making or managerial position of such authority whose salary is in excess of one hundred thousand dollars;
- (6) The projects undertaken by such authority during the past year;
- (7) Listing of (i) all real property of such authority having an estimated fair market value in excess of \$15,000 that the authority intends to dispose of; (ii) all such property held by the authority at the end of the period covered by the report; and (iii) all such property disposed of during such period (see Act for more details on what this list should include);
- (8) Authority's code of ethics; and an assessment of the effectiveness of its internal control structure and procedures.

B. Certification of Financial Reports. Every financial report submitted in the annual report must be approved by the board and must be certified in writing by the CEO and the CFO of such authority.

C. Web Sites. - To the extent practicable, the authority must post its mission, current activities, most recent annual financial report, current year budget and its most recent independent audit report on its web site.

Due Date: Both State and Local Authorities must submit the annual report within 90 days after the end of the fiscal year that starts on or after January 13, 2006.

4. Budget Report (Act §16, amends PAL §2801)

The authority must submit to the chief executive officer, chief fiscal officer, chairperson of the legislative body of the local government or local governments, and the Authority Budget Office a budget report containing, for operations and capital construction, actual receipts and expenditures of last completed fiscal year, estimated receipts and expenditures for the next fiscal year and the current fiscal year.

Due Date: *State Authorities* submit the budget report at least 90 days before the start of the next fiscal year. *Local Authorities* submit the budget report at least 60 days before the start of the fiscal year that commences on or after December 31, 2007.

5. Independent Audit and Audit Report (Act §17, amends PAL §2802)

A. The Independent Audit Report. The authority must submit a copy of the annual independent audit report (performed by a certified public accounting firm in accordance with generally accepted government auditing standards), a management letter, and any other external examination of the books and accounts of the authority, other than examinations made by the State Comptroller to the chief executive officer, chief fiscal officer, chairperson of the legislative body of the local government or local governments, and the Authority Budget Office. An Authority may exempt information from disclosure if it may be exempted pursuant to "FOIL."

Independent Auditor Must Report to the Audit Committee:

- (a) All critical accounting policies and practices to be used;
- (b) All alternative treatments of financial information within generally accepted accounting principles that have been discussed with management officials of such authority, ramifications of the use of such alternative disclosures and treatments, and the treatment preferred by the certified independent public accounting firm; and
- (c) Other material written communications between the certified independent public accounting firm and the management of such authority, such as the management letter along with management's response or plan of corrective action, material corrections identified or schedule of unadjusted differences, where applicable.

B. Auditor Qualifications. The CPA firm is prohibited from performing any non-audit function contemporaneously with the audit, unless prior approval by audit committee; the CPA firm is prohibited from performing the audit if senior management of the authority was employed by the CPA firm within 1 year prior to the commencement of the audit; the lead audit partner or the audit partner responsible for reviewing the audit cannot have performed audit services for the authority in each of the five previous fiscal years.

Due Date: *State Authorities* must submit the Audit Report within 30 days after receipt starting in fiscal years ending on or after January 13, 2006. *Local Authorities* must submit the Audit Report within 30 days after receipt starting in fiscal years ending on or after December 31, 2007.

6. **Property Disposition (Act §20, adds PAL Title 5-A)**

A. Property Disposal Guidelines. The Authority must adopt comprehensive guidelines which detail policies regarding property disposal contracts and appoint a Contracting Officer to be responsible for compliance and enforcement of such guidelines. The guidelines should be annually reviewed and approved by the board. The guidelines should be filed with the Comptroller and posted on the Authority's website.

B. Property Reports. Every year the Authority must publish a list of real and personal property and provide a description of the property disposed of during the year.

Please refer to the Act for additional guidance concerning disposal requirements, procedures for disposal

Due Date: Effective immediately unless the authority fiscal year begins after January 1, 2006. Property disposal guidelines must be provided to the Comptroller by March 31 of each year.

7. **Investment Guidelines (Act §21, amends PAL §2925)**

The Authority must adopt and review comprehensive investment guidelines which detail the authority's operative policy and instructions to officers and staff regarding the investing, monitoring and reporting of funds of the corporation. These guidelines must be annually reviewed and approved.

Due Date: Effective immediately unless the authority fiscal year begins after January 1, 2006.

CODE OF ETHICS - Public Officers Law § 74

1. Definition. As used in this section: The term "state agency" shall mean any state department, or division, board, commission, or bureau of any state department or any public benefit corporation or public authority at least one of whose members is appointed by the governor. The term "legislative employee" shall mean any officer or employee of the legislature but it shall not include members of the legislature.
2. Rule with respect to conflicts of interest. No officer or employee of a state agency, member of the legislature or legislative employee should 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.
3. Standards.
 - a. No officer or employee of a state agency, member of the legislature or legislative employee should accept other employment which will impair his independence of judgment in the exercise of his official duties.
 - b. No officer or employee of a state agency, member of the legislature or legislative employee should accept employment or engage in any business or professional activity which will require him to disclose confidential information which he has gained by reason of his official position or authority.
 - c. No officer or employee of a state agency, member of the legislature or legislative employee should disclose confidential information acquired by him in the course of his official duties nor use such information to further his personal interests.
 - d. No officer or employee of a state agency, member of the legislature or legislative employee should use or attempt to use his official position to secure unwarranted privileges or exemptions for himself or others.
 - e. No officer or employee of a state agency, member of the legislature or legislative employee should engage in any transaction as representative or agent of the state with any business entity in which he has a direct or indirect financial interest that might reasonably tend to conflict with the proper discharge of his official duties.
 - f. An officer or employee of a state agency, member of the legislature or legislative employee should not by his conduct give reasonable basis for the impression that any person can improperly influence him or unduly enjoy his favor in the performance of his official duties, or that he is affected by the kinship, rank, position or influence of any party or person.
 - g. An officer or employee of a state agency should abstain from making personal investments in enterprises which he has reason to believe may be directly involved in decisions to be made by him or which will otherwise create substantial conflict between his duty in the public interest and his private interest.
 - h. An officer or employee of a state agency, member of the legislature or legislative employee should endeavor to pursue a course of conduct which will not raise suspicion among the public that he is likely to be engaged in acts that are in violation of his trust.
 - i. No officer or employee of a state agency employed on a full-time basis nor any firm or association of

which such an officer or employee is a member nor corporation a substantial portion of the stock of which is owned or controlled directly or indirectly by such officer or employee, should sell goods or services to any person, firm, corporation or association which is licensed or whose rates are fixed by the state agency in which such officer or employee serves or is employed.

j. If any officer or employee of a state agency shall have a financial interest, direct or indirect, having a value of ten thousand dollars or more in any activity which is subject to the jurisdiction of a regulatory agency, he should file with the secretary of state a written statement that he has such a financial interest in such activity which statement shall be open to public inspection.

4. Violations. In addition to any penalty contained in any other provision of law any such officer, member or employee who shall knowingly and intentionally violate any of the provisions of this section may be fined, suspended or removed from office or employment in the manner provided by law.

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