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# Authorities Budget Office Policy Guidance



**No.** 11-02

**Date Issued:** February 10, 2011

**Supersedes:** New

**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 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.

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 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, 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 or chief executive officer 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.

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, chief executive officer or employees of a public authority. The Authorities Budget Office reserves the right to censure a public authority, 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 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 authority policy or accepted standards of corporate governance.
- Conduct or actions that demonstrate a lack of understanding of the board'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: 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 or board 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.