

Public Authority Board Member and Staff Training

Course Content

- ▶ What it Means to be a Public Authority Board Member Today
- ▶ Responsibilities of the Board under the Public Authorities Reform Act and Related Laws
- ▶ How can Public Authority Boards be Effective
- ▶ Scenarios / Q&A / Wrap up

What it Means to be a Public Authority Board Member Today

- ▶ Fiduciary Duty
- ▶ Mission
- ▶ Independence
- ▶ Ethical Considerations
- ▶ Risk Management

What is a Public Authority?

- ▶ State Authority (47):
 - Public authority or public benefit corporation created in state law
 - One or more members appointed by the Governor
 - Financing, Transportation, Economic Development, Hospitals, etc.

Public Authority (continued)

▶ Local Authority (535+)

- Public authority or public benefit corporation created under state law and members are not appointed or are appointed by governor upon recommendation
- A not-for-profit corporation affiliated, sponsored or created by a municipality
- A local IDA or authority or other local public benefit corporation
- An affiliate of such local authority
 - Industrial Development Agencies (~109)
 - Local Development Corporations (294+)
 - Other Locals (132): Water, Sewer, Parking, Community Development/Urban Renewal Agencies, etc.

Fiduciary Duty

- ▶ Public Authorities Reform Act of 2009 – Board Member Role and Responsibility
- ▶ What does it mean to execute a fiduciary duty?

“Perform each of their duties as board members...in good faith and with that degree of diligence, care and skill which an ordinary prudent person in like position would use under similar circumstances, and may take into consideration the views and policies of any elected official or body, or other person and ultimately apply independent judgment in the best interest of the authority, its mission and the public”

- ▶ How do you determine the best interest of a public authority?

Fiduciary Duty (continued)

- ▶ As a board member you should have already signed Acknowledgement of Fiduciary Duty (ABO Policy Guidance 10-01)
 - Mission – know and understand Authority’s purpose (it is the compass to determine best interest)
 - Deliberation – make an informed and independent decision....board members need to be engaged
 - Confidentiality – anything deemed to be confidential will not be shared with the public
 - Conflict of Interest – disclose conflicts or even the appearance of a conflict

Fiduciary Duty (continued)

- ▶ Ex Officio's Fiduciary Duty
 - The duties and obligations of ex officio voting board members extend to their designees. Board members cannot abrogate responsibilities even if they have effectively delegated responsibilities to a designee.
 - May only have a designee if it is stipulated in law (enabling statute) or articles of incorporation
 - *Designees must sign Acknowledgement of Fiduciary Duty*

Fiduciary Duty (continued)

- ▶ Does this mean that board members always have to agree?
 - Exercise appropriate independent judgment
 - Board members may disagree but must arrive at a consensus
 - Board members can vote 'no' if do not have enough information, or time and can also table an item until gather more information

Mission

- ▶ Public Authorities Law requires public authorities to develop and adopt a mission statement
 - Boards should re-adopt mission statement annually and if changes, submit to ABO
 - Post and maintain on web site

Mission (continued)

- ▶ Why are mission statements important?
 - Defines how a public authority will operate
 - Board members cannot properly execute fiduciary duty without understanding mission statement
 - Understand the mission, avoid mission creep

Mission (continued)

- ▶ What makes a good mission statement?
 - Clear statement of purpose
 - Includes comprehensive goals
 - Consistent with enabling statute or articles of incorporation
 - Easy to understand

Mission (continued)

- ▶ Board should take the time to discuss and deliberate mission statement
 - What are the values of the authority?
 - Who are the authority's stakeholders?
 - How will the public authority meet its mission?

Independence

- ▶ The term “independent” has two different meanings
 1. Majority of board members must be independent
 - Financial and Personal Independence
 - Public Authorities Law defines board member independence from a public authority see Policy Guidance 07-01
 - What if a board member is not independent?
 - Disclose information and recuse themselves

Independence (continued)

2. Board members must demonstrate independent judgment and action
 - Listen to constituents and gather information to make an informed decision
 - The ultimate decision in voting is that of the board member

Ethical Considerations

- ▶ All authorities must establish a Code of Ethics (see ABO recommended practice)
- ▶ State Board members must comply with provisions of Public Officers Law and Public Authorities Law
- ▶ IDA's must comply with General Municipal Law and Public Authorities Law
- ▶ Local Development Corporations must comply with NFP Corporation Law and Public Authorities Law
- ▶ No gifts are to be accepted
- ▶ Lobbying
- ▶ Avoid conflict or even the appearance of conflict

Risk Management

- ▶ What is risk?
 - Chance of injury, damage, or loss
 - Policies should be in place to minimize risks
- ▶ Types of risk
 - External
 - Reputational, environmental, customer demand, market forces
 - Internal
 - Financial, quality of services, control mechanisms, ineffective management and communications
- ▶ What risks does your authority have?

Risk Management (continued)

- ▶ Understand Risks and Strategy
- ▶ Manage Risks – risk oversight should be priority of the board
 - Impact of risk on operations
 - Identify risks including
 - those more commonplace
 - those that occur less frequently but whose consequences could be significant
- ▶ Oversight and Risk Process
 - Assess and monitor authority's performance
 - Review controls and compliance

Responsibilities of the Board under Public Authorities Reform

- ▶ Management Oversight
- ▶ Financial Oversight
- ▶ Committees
- ▶ Understanding of Statutory Requirements (PARIS)
- ▶ Authority Web Site
- ▶ Performance Measures
- ▶ Performance Evaluations
- ▶ Board Evaluations
- ▶ Whistleblower Policies

Management Oversight

- ▶ Board, working with management, defines organizational culture
- ▶ The board's first obligation is to ensure that the authority's conduct is legally and ethically appropriate

Management Oversight (continued)

- ▶ Board has a responsibility to provide active oversight of management, and an obligation to make reasonable inquiry of activities when appropriate
 - Support management and review their performance
 - Understand the distinction between board governance and management

Management Oversight (continued)

▶ Management

- Carry out policies board and management have agreed upon
- Make day-to-day operating decisions
- Keep board informed with sufficient information on actions, issue of concern, potential risks and liabilities
- Enable board to make informed, intelligent decisions

Financial Oversight

- ▶ Board members have a fiduciary responsibility to oversee the financial condition of an organization
- ▶ Board needs to understand financial situation to understand operations and make good decisions
- ▶ Board members should regularly review financial policies and practices

Financial Oversight (continued)

- ▶ Financial updates should be provided by management to the board at each regularly scheduled board meeting
 - Board members should review changes in monthly data, comparing the information to the prior month and to the prior year
 - Compare monthly financial data to budget projections
 - Any changes should be explained to the board
 - Debt management

Financial Oversight (continued)

- ▶ Board members should:
 - Ask questions to understand variances
 - If you don't understand, chances are other board members don't understand
 - Review and discuss budgets, financial statements, etc., prior to adoption
 - Request details
 - Make your own decision (do not rely solely on management's recommendations)

Financial Oversight (continued)

- ▶ Internal Controls – (see recommended practice document)
- ▶ Board members should understand internal control structure and must ensure that:
 - Management and staff should understand and be aware of policies and practices in place
 - Ensures that authority is effective
 - Addresses risks that are relevant to operation
 - Controls should provide reasonable assurance
 - Staff understand and properly carry out their responsibilities
 - Appropriate professional and ethical conduct is observed
 - Authority will honor its purpose and mission

Committees

▶ Audit Committee

- Fulfill responsibilities of internal and external audit process, financial reporting, risk assessment and internal controls
- Be familiar with the different types of audits
- Provide avenue of communication between management, independent and external and internal auditors and board
 - Shared commitment between Auditors and authority staff – auditors will try to reduce disruption to operations and minimize burden on staff. Management and staff should provide full and timely cooperation during process
- An audit can be a useful tool for management and Board of Directors to learn about any issues that may be present and improvements that can be made to authorities internal controls and processes
- Should be at least 3 board members, minutes must be kept

Committees (continued)

▶ Governance Committee

- Examine ethical and conflict of interest issues
- Perform self-evaluations
- Recommend policies and procedures and bylaws
- Keeping the Board informed of current best practices in corporate governance
- Advise those responsible for appointing directors to the Board on the skills, qualities and professional or educational experiences necessary to be effective Board members
- Review annually the compensation and benefits for senior staff

Committees (continued)

- ▶ Finance Committee
 - Review proposals for the issuance of debt by the authority and its subsidiaries and make recommendations

Understanding of Statutory Requirements

- ▶ Public Reporting
 - PARIS (timely, board reviewed reporting)
- ▶ Board should receive all of these reports in sufficient time to review before having to approve. PARIS has the ability to create a PDF to give to board members and other reporting purposes.
- ▶ *Annual Report*: Due within 90 days of the end of the authority's fiscal year
- ▶ Certified Financial Audit must be approved by Board in order to complete and submit Annual Report in PARIS

Understanding of Statutory Requirements (Continued)

- ▶ *Procurement Report:* Due when authority submits annual report, within 90 days of the end of the authority's fiscal year
 - All agreements and contracts over \$5,000 (including local counsel, bond counsel and auditor)
- ▶ *Investment Report:* Due when authority submits annual report, within 90 days of the end of the authority's fiscal year

Understanding of Statutory Requirements (Continued)

- ▶ *Budget Report:* Requires budgets for current operating year, last year, next year and three out years
 - State authorities submit budget reports not more than 120 days and no less than 90 days before the start of fiscal year
 - Local authorities submit budget reports not more than 90 days and no less than 60 days before the start of fiscal year

Understanding of Statutory Requirements (Continued)

- ▶ Real Property Acquisition or Disposition
 - Annually report property exceeding \$15K
 - Disposition and FMV
 - Exceptions
 - Disposal to government or public entity
 - Disposal is within mission of authority as defined by governing statute
 - Local Government: local government is sufficient as defined by enabling statute and transfer is for property originally possessed by authority
- ▶ Negotiated transaction – written explanation of circumstances involving the disposal of property through a negotiated transaction submitted to the ABO 90 days prior to the scheduled date of transaction – see Policy Guidance 15–03

Authority Web Site

- ▶ All public authorities must post certain information 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 (Policy Guidance 21-01)

Performance Measures

- ▶ PAL requires board to identify measurements by which performance of the authority and the achievement of its goals may be evaluated
- ▶ 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
- ▶ Need not be complex or detailed
- ▶ Measures will also vary depending on the purpose, size, and resources of the authority

Performance Measures (Cont)

- ▶ 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?

Performance Evaluations

- ▶ Authority Evaluation
 - Publish annually an evaluation based on performance measures

Board Evaluations

- ▶ Provides an opportunity for board members to:
 - Measure their individual and collective effectiveness
 - Determine if they are following their own policies and procedures
 - Compare how their evaluation of the board's performance compares to that of other board member
- ▶ Results of this annual evaluation can be a learning tool to educate and develop board members
- ▶ Process can be used to build a well functioning board
 - An effective and efficient public authority that is fulfilling its mission

Board Evaluations (continued)

- ▶ Does the Board set clear and measurable performance goals for the Authority that contribute to accomplishing its mission?
- ▶ Do you have sufficient opportunity to research, discuss, question and prepare before decisions are made and votes taken?
- ▶ Do you feel empowered to delay votes, defer agenda items, or table actions if they feel additional information or discussion is required?
- ▶ Are the decisions made by you arrived at through independent judgment and deliberation, free of political influence, pressure or self-interest?

Whistleblower Policies

- ▶ An authority may not fire, discharge, demote, suspend, threaten, harass, or discriminate against an employee for their whistleblower actions
- ▶ Authorities are required to have a whistleblower protection policy

How to be an Effective Board

- ▶ Meetings
- ▶ Transparency
- ▶ Practices
- ▶ Challenges for Boards

Meetings

- ▶ See Board Meetings: Best Practice Guide
- ▶ Agenda to be distributed to board members and published appropriately before scheduled meeting
- ▶ Time and location to be published before meeting to allow for public access
- ▶ Must be conducted in conjunction with Open Meetings Law – Committee on Open Government
<http://www.dos.ny.gov/coog/index.html>

Meetings (continued)

- ▶ Executive Sessions should be limited – see Policy Guidance 09–01 and become familiar with allowable reasons for Executive Sessions.
- ▶ Board should discuss and deliberate issues before making decisions
 - If a member thinks that more information is needed to make an informed decision, take a “Time Out”
 - Make your own decision when voting
- ▶ Conflicts of Interest and Recusal
 - If there is even an appearance of a conflict, board member should disclose the issue to the board and when necessary recuse

Transparency

- ▶ **Conduct business**
 - In an environment that fosters transparency and enhanced public disclosure
 - focuses on accountability
 - supports external oversight
- ▶ **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
 - Accurately disclose the financial condition, risks, liabilities and management practices of the authority in regular public reports

Practices

- ▶ Communication/Interaction with Staff
 - Ask questions
- ▶ Policies and Procedures/Bylaws
 - Review policies and procedures including bylaws on an annual basis
- ▶ Procurement Updates
- ▶ Financial Updates
- ▶ Equality Among Board Members

Challenges For Boards

- ▶ Board cohesion
- ▶ Effective organizational planning, future thinking
- ▶ Clear goals resulting from strategic planning
- ▶ Ensure authority has appropriate resources to be effective in completing mission

Challenges (continued)

- ▶ Conflicts of board members, recusal
- ▶ Do board members understand mission?
- ▶ Board Members and Management
 - Work together to create environment that fosters frank discussion
 - Culture begins with board members
- ▶ Organizational structure pattern should be clear and roles clearly defined and in accordance with authority's mission

Challenges (continued)

- ▶ What challenges do you face as a board member at your authority?

Authorities Budget Office

www.abo.ny.gov

info@abo.ny.gov

1-800-560-1770

518-474-1932

ABO Policy Guidance

- 06-02 Understanding Corporate Governance Principles
- 07-01 Independence of Board Members
- 07-02 Local Financial Disclosure
- 09-01 Appropriate Use of Executive Session
- 10-01 Acknowledgement of Fiduciary Duty
- 10-02 Public Authority Mission Statements and Measurement Reports
- 10-04 Fiduciary Duty of the Designee of a Voting Ex Officio Board Member
- 10-05 Annual Board of Directors Evaluation

ABO Policy Guidance (Continued)

- 11-01 Compliance Review Requirements
- 14-02 Formation of a Subsidiary by a Public Authority
- 15-01 Restrictions on Grants and Loans Made by Public Authorities
- 15-03 Explanatory Statement of the Circumstances of Property Disposal by Negotiation
- 17-01 Board Member Training
- 17-02 Procurement Guidelines
- 18-01 Preferred Source Procurement
- 18-02 Public Authority Investment Report

ABO Policy Guidance (Continued)

- 20–01 Enforcement Powers of the Authorities Budget Office
- 20–02 Industrial Development Agency State Disaster Emergency Loan Program Reporting Guidelines
- 22–01 Posting and Maintaining Reports on Public Authority Web Sites

ABO Recommended Practices

- Conflict of Interest Policy for Public Authorities
- Board Meetings – Best Practices Guide for Public Authorities
- Written Policies Governing the Use of Authority
Discretionary Funds
- Model Code of Ethics
- Model Audit Committee Charter
- Model Governance Committee Charter
- Model Assessment of Internal Controls
- Model Finance Committee Charter
- New Board Member Orientation
- Whistleblower Access and Assistance Program