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 (45):

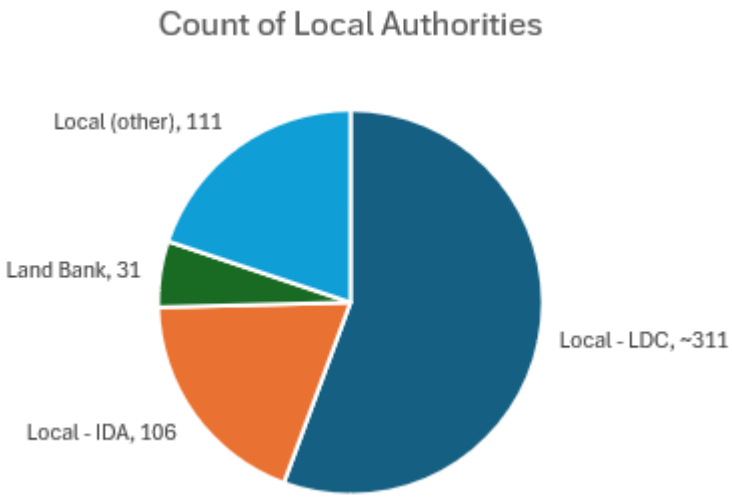
- Public authority or public benefit corporation created in state law
- One or more members appointed by the Governor

  Examples: Financing, Transportation, Economic Development, Hospitals, etc.

Public Authority (continued)

Local Authority (~560)

- Public authority or public benefit corporation created under state law and members are not appointed by the governor or are appointed by governor upon recommendation
  examples: Water, Sewer, Parking, Community Development/Urban Renewal Agencies, etc.
- A not-for-profit corporation affiliated with, sponsored or created by a municipality
- A local IDA or authority or other local public benefit corporation
- A land bank corporation
- An affiliate of such local authority



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)

All new and reappointed board members are required to sign the Acknowledgement of Fiduciary Duties and Responsibilities (ABO Policy Guidance 10-01)

- Mission – know and understand Authority's purpose (it is the compass to guide the authority)
- 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 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 certificate of incorporation.
- *Designees must sign Acknowledgement of Fiduciary Duties and Responsibilities and complete the board member training.*

Fiduciary Duty (continued)

Does this mean that board members always have to agree?

- Exercise appropriate independent judgment
- Board members may disagree but should develop a consensus/agreement
- Board members have the option to vote:
  - 'no' if they do not have enough information
  - call a 'time out', request to table an item until the next board meeting
- Board members should wait to vote until all pertinent and necessary information is gathered to ensure a knowledgeable decision is made

Mission

- Public Authorities Law requires public authorities to develop and adopt a mission statement (see ABO Policy Guidance 10-02)
- Boards should re-adopt the mission statement annually and submit any changes to the mission statement to the ABO
- Post and maintain the authority's mission statement on the authority website

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
- Understanding the mission helps to avoid mission creep

Mission (continued)

What makes a good mission statement?

- Clear statement of purpose
- Include comprehensive goals
- Consistent with enabling statute or certificate 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

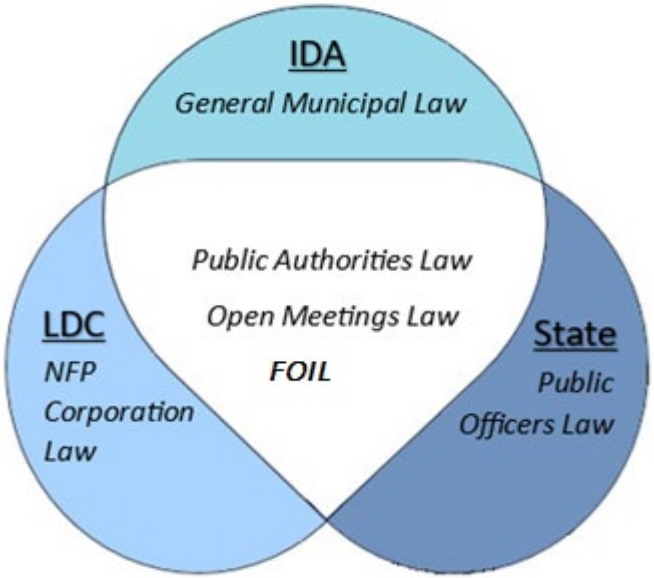
- Majority of board members must be independent
  - Ex officios are considered independent by statute
  - Financial and Personal Independence
  - Public Authorities Law defines board member independence from a public authority (see ABO Policy Guidance 07-01)
- What if a board member is not independent?
  - Disclose information and recuse themselves

Independence (continued)

- 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 and Conflict of Interest Policy (see ABO recommended practice)
- Authority board members must comply with the appropriate laws:



- No gifts are to be accepted
- Avoid lobbying
- Avoid conflict or even the appearance of conflict

Lobbying

Lobbying is any attempt to influence

- Any potential conflict caused by lobbying should be disclosed
- Your relationship with the authority depends on your role as a lobbyist – are you lobbying the authority?
- See ABO's recommended practice Conflict of Interest Policy for Public Authorities, Policy Guidance 07-01:Board Member Independence, and Policy Guidance 10-01:Acknowledgement of Fiduciary Duty

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
  - Identify and assess potential risks
    - 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 annually
  - Review controls and compliance annually

Responsibilities of the Board under Public Authorities Reform

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

Management Oversight

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

Management Oversight (continued)

Board has a responsibility to:

- Provide active oversight of management
- Support management and review their performance
- Ensure effective planning
- Obligation to make reasonable inquiry of activities when appropriate
- Understand the distinction between board governance and management

Management Oversight (continued)

Management has a responsibility to:

- Carry out policies board and management have agreed upon
- Make day-to-day operating decisions
- Keep board informed with sufficient information on actions, issues 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, and protect, the organization's assets
- Board needs to be aware of and understand the 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 prior to/at the 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
- Items planned to be discussed must be made available to the public at least 24-hours prior to the meeting (Public Officers Law Section 103 (e))

Financial Oversight (continued)

Board members should:

- Ask questions!
  - If you don't understand, chances are other board members don't understand
  - Questions might identify potential problems or issues with the information being discussed
- 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 are aware of, and understand, policies and practices that:
    - Ensure the authority is effective
    - Address risks that are relevant to operations
- 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

- Be familiar with the different types of audits
- Fulfill responsibilities of internal and external audit process, financial reporting, risk assessment and internal controls
- 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 many be present and discuss improvements that can be made to the authority's internal controls and processes
- Should be at least 3 independent board members, follow Open Meetings Law, minutes must be kept and posted

Committees (continued)

Governance Committee

- Examine ethical and conflict of interest issues
- Perform self-evaluations
- Recommend policies, procedures, and bylaws
- Keep 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
- Annually review the compensation and benefits for senior staff
- Should be at least 3 independent board members, follow Open Meetings Law, minutes must be kept and posted

Committees (continued)

Finance Committee

- Review proposals for the issuance of debt by the authority and its subsidiaries
- Make recommendations to the Board concerning debt
- Annually review the authority's financing guidelines and recommend criteria governing its financings
- Should be at least 3 independent board members, follow Open Meetings Law, minutes must be kept and posted

Understanding of Statutory Requirements

Public Reporting

- Public Authorities Reporting Information System (PARIS) - timely, board reviewed reporting.
- Board members should receive all the reports in sufficient time to review before having to approve.
- PARIS can create PDFs to give to board members and fulfill other reporting purposes.

Understanding of Statutory Requirements (continued)

Annual Report: Due within 90 days of the end of the authority's fiscal year

- The Annual Report includes:
  - Certified Financial Audit – final audit must be approved by Board prior to uploading in PARIS
  - Procurement Report – all agreements and contracts of $5,000 or more (including legal counsel, bond counsel, and auditor)
  - Investment Report – information on comprehensive investment guidelines and reports
- The above reports must be certified prior to certifying the Annual Report
- *The board must review and approve all data prior to certifying any information in PARIS*

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 not less than 90 days before the start of fiscal year
- Local authorities submit budget reports not more than 90 days and not less than 60 days before the start of fiscal year
- *The board must review and approve all data prior to certifying any information in PARIS*

Understanding of Statutory Requirements (continued)

Real Property Acquisition or Disposition

- Annually report property exceeding $15K
- Disposition and Fair Market Value
  - Exceptions:
    - Disposal to government or public entity
    - Disposal is within mission of authority as defined by governing statute
    - Local Government: local government approval is sufficient for disposal, if provided for by statute and property was originally obtained by the authority from the local government
- 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 ABO Policy Guidance 15-03)

Authority Website

- All public authorities must post certain information on their website
- This information is to be made available in a manner that enables the public to easily find and navigate through it (see ABO Policy Guidance 25-02)

Performance Measures

- Public Authorities Law requires boards to identify measurements by which performance of the authority and the achievement of its goals may be evaluated
- A way for the board and management to evaluate and monitor whether the authority's policies and operating practices align with its mission
- Do not need to be complex or detailed
- Measures will vary depending on the purpose, size, and resources of the authority

Performance Measures (continued)

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 occurs at the end of the fiscal year
- Provides an update of the authority's performance measures
- Tool to determine how the authority should proceed the following year
  - Changes to the performance measures?
  - Changes to adopted policies?
- Must publish the evaluation summary to the authority's website annually

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 members
- Results of this annual evaluation:
  - Can be a learning tool to educate and develop board members
  - Individual results are not subject to disclosure under Public Officers Law
  - A summary of the results must be sent to the Authorities Budget Office (see ABO Policy Guidance 10-05)
- 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, ask questions, and prepare before decisions are made and votes taken?
- Do you feel empowered to delay votes, defer agenda items, or table actions if you 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 (see ABO recommended practices)

How to be an Effective Public Authority 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 – this includes a URL if the meeting will be live streamed
- 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 ABO Policy Guidance 26-01)
  - Become familiar with allowable reasons to use executive session
  - Motion to enter executive session requires a need for specificity
  - Voting to go into executive session must take place in an open meeting
- 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 themself

Transparency

- Conduct Business
  - In an environment that fosters transparency and enhances 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
- Review policies and procedures including bylaws on an annual basis
- Look for ways to improve or build upon what is already in place
- Receive updates from management concerning items like new/changing procurement contracts
- 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 with clearly defined roles 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
- 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
- 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

ABO Policy Guidance (continued)

- 17-01 Board Member Training
- 17-02 Procurement Guidelines
- 18-01 Preferred Source Procurement
- 18-02 Public Authority Investment Report
- 20-01 Enforcement Powers of the Authorities Budget Office
- 25-01 Freedom of Information Law (FOIL) and Open Meetings Law (OML) Requirements
- 25-02 Website Transparency Requirements and Record Retention
- 26-01 Appropriate Use of Executive Session

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