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## Authorities Budget Office Policy Guidance



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**No.** 20-01

**Date Issued:** February 3, 2020

**Supercedes:** 11-02

**Subject:** Enforcement Powers of the Authorities Budget Office

**Statutory Citation:** Sections (6)(2)(f); Section (6)(2)(g) and Section 6-a 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, and under certain circumstances may also recommend the suspension or dismissal of officers and/or boards of directors of state and local public authorities. The ABO also has the power to suspend local authority board members and executive staff for failure to submit statutorily required reports.

**Authorities Budget Office (ABO) Policy Guidance:** Any public warning or censure of a state or local authority 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. The ABO may also directly warn or censure an individual board member, officer or staff member of the authority.

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. Board members are required to participate in state approved training regarding their legal, fiduciary, financial and ethical responsibilities within one year of appointment. The board also has the responsibility to ensure that the professional conduct of officers and staff of the authority is appropriate and consistent with its public purpose.

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, to oversee and enforce standards of professional conduct and behavior by officers and staff, 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, a member thereof, the chief executive officer, or other officers or staff members 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 or participate in required board training.
- 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.
- Misconduct or other actions inconsistent with the person's duties and obligations, or in violation of accepted legal and ethical standards.

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, a member thereof, the chief executive officer or staff of a state or local authority. The Authorities Budget Office reserves the right to censure, 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, a member thereof, officer or staff person 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 law, authority policy or accepted standards of corporate governance.

- Conduct or actions that demonstrate a lack of understanding of the board's, a member thereof, officer's or staff member'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. Recommendation to Suspend or Dismiss Board Members and Officers:

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, board members, or staff 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.

4. Suspension of Local Authority Board Members and Executive Staff:

The Authorities Budget Office has the power to suspend board members and executive staff of local authorities for a period not to exceed ninety days when such individual(s) knowingly fails or neglects to submit any report required by Section 2800 of Public Authorities Law within three years of its due date, including budget, annual, certified financial audit, procurement and investment reports. If the ABO suspends the full board of directors or a majority of board members, the board is prohibited from taking actions, votes or adopting resolutions that bind the board for future commitments or actions, other than actions necessary to resolve the noncompliance or satisfy existing legal or administrative obligations.

The ABO will provide at least 30 days' notice to initiate suspension proceedings to the chairperson of the local authority, appointing authority, and/or individual board member and executive management. The notice shall include the reason(s) for suspension, proposed suspension time-frame, an option for the board member or executive to respond with reason why he or she should not be suspended. The notice may also include, if applicable, a time-frame to remedy the noncompliance. If after the expiration of the notice there is no response or remedy, the ABO will provide notice that the individual(s) is suspended and a time-frame for such suspension.

The ABO also may terminate any suspension when the individual(s) fulfill the reporting requirements. In addition, when an individual is suspended, the appointing authority may reinstate a suspended board member. If the appointing authority is a legislative body, such action to reinstate shall be held in a public meeting with the opportunity for the public to comment, and a resolution must be voted on, adopted and recorded. If the appointing authority is the chief executive official of a municipality for whose benefit the local authority was created, any reinstatement of a board member or executive management shall be recorded in writing and include the reasons for reinstatement.